

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

FACT FINDING

IN THE MATTER OF:

NEWAYGO COUNTY and

NEWAYGO COUNTY SHERIFF

MERC Case No. L02 K-4009

Employers

-and-

POLICE OFFICERS ASSOCIATION

OF MICHIGAN

Union

APPEARANCES:

For the Union: Patrick Spidell, Business Agent/Advocate

For the Employer: Cohl, Stoker, Toskey & McGlinchey

By John McGlinchey, Esq.

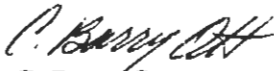
FINDINGS AND STIPULATED RECOMMENDATION

The Union represents a bargaining unit of approximately 26 corrections officers employed in the Newaygo County Sheriff's Department. The collective bargaining agreement between the parties expired on December 31, 2002. Negotiations on a replacement agreement, including mediation efforts, did not result in a new agreement. On November 26, 2003, the Union filed a Petition for Fact Finding with the Michigan Employment Relations Commission. The Commission appointed the undersigned as the Fact Finder and a hearing was held on September 2, 2004 regarding which comparable communities should be used in comparing wages and other working conditions of similar

employees. The fact finder issued a decision regarding this issue on October 18, 2004. A hearing was held on January 11, 2005 on the disputed issues. The Employer submitted 31 exhibits and the Union submitted 16 exhibits in support of their respective positions, which were entered into the record. During the course of the proceedings, the parties entered into discussions, which resulted in a resolution of the dispute. The stipulated recommended settlement is as follows:

1. Wages: A 3% increase for each year of a three (3) year contract retroactive to January 1, 2003. The term of the contract being January 1, 2003 – December 31, 2005.
2. The parties will split the cost of an actuarial report to improve the pension plan for the Corrections Officers to the B-4 level. The amortization period will be the same as the Road Patrol Officers.
3. The parties agree to meet for bargaining as early as June 1, 2005, if requested by the Union.
4. All other unresolved issues of the parties are withdrawn.

In reviewing the exhibits submitted by the parties regarding comparable pay levels, it is apparent that an annual wage increase of 3% will provide the bargaining unit member's pay schedules, which will at least maintain their relative standing among the list of comparable jurisdictions. Consequently, the fact finder recommends the stipulated settlement reached by the parties as a reasonable resolution of the dispute.



C. Barry Ott  
Fact Finder

Dated:

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

FACT FINDING

IN THE MATTER OF:

NEWAYGO COUNTY and

NEWAYGO COUNTY SHERIFF

MERC Case No. LO2 K-4009

Employers

-and-

POLICE OFFICERS ASSOCIATION  
OF MICHIGAN

Union

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APPEARANCES:

For the Union: Patrick Spidell, Business Agent/Advocate

For the Employer: Cohl, Stoker, Toskey & McGlinchey

By John McGlinchey, Esq.

FINDINGS, OPINION AND RECOMMENDATION

The Union represents a bargaining unit of approximately 26 corrections officers employed in the Newaygo County Sheriff's Department. The collective bargaining agreement between the parties expired on December 31, 2002. Negotiations on a replacement agreement, including mediation efforts, did not result in a new agreement.

On November 26, 2003, the Union filed a Petition for Fact Finding with the Michigan Employment Relations Commission. The Commission appointed the undersigned as the Fact Finder and during the course of proceedings a hearing on proposed comparable communities was convened on September 2, 2004. The parties filed briefs in support of their respective comparable jurisdictions in October of 2004.

#### UNION COMPARABLES

Calhoun	Kalamazoo	Van Buren
Clinton	Kent	Eaton
Marquette	Ingham	Mecosta

In selecting the above counties the Union asserts that each of these jurisdictions have contracted with the Federal government for the housing and transportation of federal prisoners in the western district of Michigan. The Union argues that Newaygo's correction officers perform work identical to that of corrections officers in those counties housing federal prisoners. Admittedly, the majority of the Union comparables have larger populations and tax bases, but the Union maintains that Newaygo County can afford to pay more than the average of the surrounding counties who do not house federal prisoners because of the similarity of the work and the fact that counties housing federal prisoners receive additional revenue for such services. In support of this contention the Union has offered a table purporting to show the Federal per diem rates for those counties housing federal prisoners. Additionally the table presented data depicting the jail capacity, and federal inmates. This data was not introduced at the hearing of September 2<sup>nd</sup> and may not now be introduced on brief. The data contained in this table may or may not be relevant in support of future arguments related to any wage premiums that might exist for corrections officers who deal with federal prisoners versus those who do not, but there has been no evidence submitted in this case. Obviously counties performing such services for the Federal government receive compensation and hopefully such compensation covers the costs involved, but there is nothing in this record that addresses the relative ability to pay corrections officers of the various participating counties based

upon contracting with the Federal government. The Union also argues that there is additional paper work and rules involved in the care of federal prisoners, that such prisoners are often charged with or convicted of very serious crimes, may have mental health issues and have language/communication problems.

The Union urges this fact finder to apply the standards of Act 312 of the Public Acts of 1969, MCL 423.231, specifically Section 9 to this fact-finding case. The provisions of Section 9 set-forth the factors that an arbitration panel must apply in decided the issues in dispute in a compulsory arbitration case. This is a fact-finding case, pursuant to Section 25 of the Labor Mediation Act 176 of 1939 as amended, MCL 423.25, and in accordance with the provisions of R 423.131 of the General Rules of the Michigan Employment Relations. While the provisions of Section 9 of the Compulsory Arbitration Act do not apply to fact-finding cases, practitioners and fact-finders often utilize many of the same criteria. This proceeding has started with an inquiry as to which jurisdictions are comparable to Newaygo for purposes of comparing wages and other conditions of employment. Nothing in the respective statutes defines the term “comparable” and as such it remains a matter of argument and persuasion.

#### EMPLOYER COMPARABLES

The Employer submitted nine exhibits (Emp. 1- Emp. 9) which were received into the record without objection on September 2, 2004. Employer witness Mr. William Rye prepared the exhibits, which resulted the following list of proposes comparable counties.

Barry	Isabella
Clare	Mecosta
Gratiot	Montcalm
Ionia	Wexford

In selecting the above list of counties, the Employer notes that the statute does not define the term “comparable community” and consequently applied the definitions found in Black’s Law Dictionary(4<sup>th</sup> Edition), p 350, for the term “community” and Webster’s

Seventh New Collegiate Dictionary, p 168, for the term “comparable”. In summary, the term “comparable community” means a group of communities within a locality in more or less proximity and who have equivalent or similar characteristics. Mr. Rye testified that in preparing the Employer’s exhibits he applied three basic criteria commonly used in evaluating comparable communities in fact-finding cases: population, taxable valuation (as measured by the State Equalized Valuation data), and geographic proximity. Mr. Rye first applied population and taxable value to the 83 Michigan counties and then narrowed the group by limiting those counties that were within 50% of the taxable value and population of Newaygo County. The exercise was repeated by applying a 40% and then a 30% factor, reducing the list of comparables to 16 Counties. In further refining the list, Mr. Rye applied a geographic proximity factor of considering only those counties that were no more than 1 county removed from Newaygo County, resulting in the proposed list of 8 counties that were within 40% of Newaygo County’s population and taxable value.

The Employer argues that this list of 8 counties is the result of objectively established criteria, uniformly applied to Michigan counties and they are the most appropriate comparable communities in this case. By contrast, the Employer argues that the Union’s proposed list of counties was exclusively based on the counties it claims housed federal inmates. Moreover, the Employer states that there was no evidence submitted by the Union comparing numbers of federal prisoners held by these counties or whether they are held for a comparable period of time or as frequently as Newaygo County. The Employer asserts that the Union list consists of counties that are substantially larger in population and taxable valuation than Newaygo County, with the exception of Marquette and Clinton counties, and Marquette is located in the Upper Peninsula, far removed from Newaygo County. The Employer argues that the Union’s assertion that the incarceration of federal prisoners should determine comparability is only supported only by anecdotal evidence in the form of the testimony of Sgt. Thomas Green. The Employer characterizes Green’s testimony regarding federal prisoners as inmates with nothing to lose and are more dangerous and more difficult to control than other inmates as unsupported by any evidence. The Employer notes that on cross

examination Green testified that federal prisoners in the Newaygo Jail are not segregated from other inmates and they are given a medium risk classification. Green also testified that while disciplinary measures are available to corrections officers, he could not cite one example of such measures being utilized against a federal inmate at the Jail. The Employer contends that the only reason for the Union's proffered theory of federal inmates as the basis of comparability is to "capture" Michigan counties that are vastly larger and richer than Newaygo County. According to the Employer, these counties do not pay their corrections officers more simply because they house federal prisoners, but because they have greater resources in terms of population, taxable valuation and greater community economic resources in terms of being manufacturing centers.

Employer's exhibit 8 illustrates the difference in taxable valuation of the proposed lists of comparables.

<u>Employer's List</u>	<u>03 Taxable Val.</u>	<u>Diff. With Newaygo</u>	<u>% Diff.</u>
Mecosta	938,775,724	97,941,049	
Barry	1,417,472,692	(380,755,919)	-37%
Clare	768,198,996	268,517,777	26%
Gratiot	715,373,997	321,342,776	31%
Ionia	1,128,645,356	(91,928,583)	-9%
Isabella	1,145,972,887	(109,256,114)	-11%
Montcalm	1,363,277,707	(326,560,934)	-31%
Wexford	750,971,897	285,744,876	28%
<u>Union's List</u>			
Mecosta	938,775,724	97,941,049	
Calhoun	3,111,551,148	(2,074,834,375)	-200%
Clinton	1,756,359,518	(719,642,745)	-69%
Eaton	2,724,098,997	(1,687,382,224)	-163%
Ingham	6,489,197,117	(5,452,480,344)	-526%
Kalamazoo	6,398,020,818	(5,361,304,045)	-517%
Kent	17,175,074,149	(16,138,357,376)	-1557%
Marquette	1,327,383,078	(290,666,305)	-28%

VanBuren	2,055,411,338	(1,018,694,565)	-98%
<u>NEWAYGO</u>	<u>1,036,716,773</u>		

\* The data regarding population contained in Employer's Exh. 1 need not be reproduced here and is incorporated by reference.

### OPINION AND DECISION

The objective of this proceeding is to establish a list of comparable communities for the purpose of comparison of wages, benefits, and other conditions of employment of employees performing similar services.

The Union has focused on those counties in the Western District of Michigan who have contracted with the Federal government to transport and house federal prisoners. This focus seeks to identify comparable communities based on a specific element of the work of corrections officers, namely the custody of Federal prisoners. Such an approach simply ignores the more traditional methods of identifying comparable communities utilized in the fact-finding process. Population, taxable valuation and geographic proximity are factors commonly used to identify comparable communities. There are many other factors such as: industrial base, income per capita, average household income and relative tax rates as a burden on household income to name just a few. All such factors are helpful in analyzing a list of communities that might be deemed comparable.

In this case the Employer has advanced a list of counties developed by an analysis of the factors of population, taxable value, and geographic proximity. The record evidence and the testimony of Mr. Rye regarding his methodology results in a list of 8




counties that are all no more than 1 county removed from Newaygo County and are within 40% of Newaygo County's population and taxable valuation.

Adoption of the Union's list of comparables based solely on their singular criteria would not result of a true list of comparables. To do so would result in a list of counties with a wide variance in population, taxable value, and geographic proximity. The resulting comparisons of wages, benefits and conditions of employment of such a list would no doubt place Newaygo County in competition with counties having substantially larger populations and much greater taxable valuations. These factors simply cannot be ignored since they all translate into the county's ability to provide for public services.

For the reasons cited above, I will adopt the following list of counties as those that represent a reasonable list of comparable communities for purposes of comparison of wages, benefits, and other conditions of employment in this case.

Barry	Isabella
Clare	Mecosta
Gratiot	Montcalm
Ionia	Wexford

Submitted By:

  
C. Barry Ott

Fact Finder

Dated: 10/19/04