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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the
Fact Finding Between:

COUNTY OF LAPEER

-and-

POLICE OFFICERS LABOR COUNCIL

MERC Fact Finding
Case No. D03 H-2308

FACT FINDER'S FINDINGS OF FACT, REPORT AND RECOMMENDATIONS

APPEARANCES:

FOR COUNTY OF LAPEER and its SHERIFF'S DEPARTMENT:

Howard Shifman, Attorney
John Beseve, CAO
Robert Rapson, Undersheriff

FOR POLICE OFFICERS LABOR COUNCIL UNITS C and D:

Mark Douma, Attorney
Frank Klik, Labor Representative
Steve Beebe, Chief Steward, Unit C
Jim Prebel, Chief Steward, Unit D
Pam Cross, Negotiating Committee

Background

Lapeer County is bordered by Oakland, Macomb, Tuscola and Genesee Counties at the outer edge of southeastern Michigan. It has a population of approximately 92,500 persons, covering 660 square miles. Its largest city is Lapeer.

The County employees are organized into ten bargaining units. Within its Sheriff's Department, there are four bargaining units represented by the Police Officers Labor Council – Unit A being the Command Officers constituting 12 members, Unit B being the Deputies

constituting 32 officers. Both of these Units, consisting of certified police officers, are subject to binding arbitration pursuant to Act 312 of Public Acts of 1969. *See, MCL 423.21.* The remaining two Units in the Sheriff's Department – Unit C consisting of the Correction Officers composed of approximately 26 members, and Unit D consisting of the Correction Command Officers composed of six to seven members – are not subject to the provisions of Act 312.

The Command Officers Association of Michigan represents four dispatch supervisors. The Police Officers Association of Michigan represents 12 dispatchers. These two groups are not part of the Sheriff's Department and, thus, are not subject to the provisions of Act 312.

Teamsters Local 214 represents three Units, namely, 16 employees in the District Court, 16 employees in the Friend of the Court, and 47 general employees. The American Federation of State, County and Municipal Employees, Council 25, represents 50 employees in the County's Health and DOSA Departments. The employees represented by the Teamsters and AFSCME are not Act 312 eligible. There is a tenth bargaining unit involving 60 employees in the Community Health Service.

Over the years, the County has had collective bargaining agreements with the representatives representing the aforementioned bargaining units. The most recent collective bargaining agreements for each of the Units expired on December 31, 2003.

The County and the various bargaining unit representatives commenced bargaining prior to the expiration of these contracts. The County was able to reach agreements with the Teamsters, COAM, POAM and AFSCME units covering the period from January 1, 2004 through December 31, 2006. Negotiations with the POLC as to Unit A, the Deputies, resulted in an impasse causing an arbitration panel to be empaneled pursuant to Act 312. The awards of the

Act 312 panel settled that agreement for the same period, January 1, 2004 through December 31, 2006.

Following the Deputy Unit A Act 312 awards and subsequent settlement, the POLC and the County settled the Unit B Command Officers contract covering the same period and on the same basis as the Deputy contract.

The County has not settled the Community Health contract. Those negotiations are in mediation. The County has not reached settlement with the POLC Units C and D, namely, the Correction Officers and the Command Correction Officers. It is their dispute that is now before this Fact Finder.

The Criteria

In crafting recommendations, fact finders utilize criteria as an aid in doing so. The statute providing for fact finding does not set forth the criteria. However, when the legislature enacted the provisions of binding arbitration in police and fire disputes, namely, Act 312 of Public Acts of 1969, the legislature provided in Section 9 (MCLA 423.239) the list of criteria that arbitrators under that Act are to apply, namely:

> Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable.
>
> (a) The lawful authority of the employer.
>
> (b) Stipulations of the parties.
>
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the

wages, hours and conditions of employment of other employees performing similar services and with other employees generally.

(i) in public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment.

Though the criteria as set forth in Act 312 was established as a guide to Act 312 arbitrators, this criteria, established by the Legislature, certainly can be a guide to fact finders. In fact, the reference in Section 9(h) to the criteria followed by fact finders is a recognition that the criteria to be considered by Act 312 arbitrators is similar to the criteria, if not identical, to be considered by fact finders.

Although Section 9 of Act 312 does not give any particular criteria priority over another, each bargaining situation, based upon the bargaining dynamics, may very well require emphasis on given criteria.

As will be developed, in the dispute between the parties the two criteria listed in Section 9 that are of particular importance are the ability to pay plus the comparable criteria. The comparable criteria not only includes external comparables, but also internal comparables.

In addition, applying the Section 9(h) criteria, fact finders use the bargaining history – current and previous bargaining history – as well as the art of the possible.

Fact finders do use the bargaining history of the parties, both the bargaining history in the past and the bargaining history during the current negotiations, in an attempt to ascertain what the parties may have settled upon on their own when faced with outside deadlines.

The art of the possible is a corollary to the bargaining history, namely, what is a possible settlement between the parties recognizing the give-and-take of negotiations. The "art of the possible" in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise. When all the circumstances are considered and, if the parties were left to their own devices, without the aid of fact finding, what would the parties, when faced with deadlines such as a strike deadline, agree to? Thus, the art of the possible.

As the Fact Finder views the issues before him, it is the internal comparable, the ability to pay, *i.e.*, economic criteria, the bargaining history and the art of the possible criteria that provide the key criteria supporting the Recommendations to be made in this Report.

The Issue

As pointed out in the background, with the exception of Community Health, whose contract talks are still in mediation, all of the bargaining units, except Units C and D, have settled their contract – either by virtue of Act 312 or by bargaining. Each of the settled contracts cover

the period from January 1, 2004 through December 31, 2006. The economic settlements are reflected in the parties' agreement as to Units C and D, which reads:

COUNTY OF LAPEER
and
POLC (UNIT "C" / "D"
YEARS 2004-2006

POSITION STATEMENT

1. Duration:
Three Year Contract (2004/2006)
Effective 1/01/04-12/31/0-6

2. Wages:

2004	Increase 1.65%, no retroactivity
2004	Increase 2.0%, effective first payroll period following the date of ratification, no retroactivity.
*2006	Increase of 2.0% effective first payroll period following the date of ratification, no retroactivity.

*It is the County's understanding that the issue of retroactivity is the only outstanding issue between th respective parties.

B. Health Insurance

2004

- Establish Blue Care Network (BCN) as base rate insurance and initial base cost with the Blue Cross for Dental and Vision.

- The following shall be established as the base Blue Care Network (BCN) insurance rates including Dental, Vision, and Life:

	Total Cost	2004 Employee Cost
Single	$396.21	-0-
Double	$837.28	-0-
Family	$899.29	-0-

- 10/20 RX Card

2005

- Employees enrolled in the base HMO health plan will pay 25% of any increase in annual premium cost of the HMO 2004 base with a cap of $25.00 per month.

HMO BASE

	Total Cost	2005 Employee Cost
Single	$421.88	$ 6.42
Double	$892.19	$13.74
Family	$958.68	$14.86

- 10/20 RX Card

2006

a) **The following rates will be effective at ratification:**

- Employees enrolled in the base HMO health plan will pay 25% of any increase in premium cost of the HMO 2005 base with a cap of $25.00 per month.

	Total Cost	2006 Employee Cost	Employee Cumulative
Single	$ 448.69	$ 6.70	$13.12
Double	$ 949.11	$14.23	$27.96
Family	$1,019.35	$15.17	$30.02

- 10/20 RX Card

* Any employee expense can be applied pretax through the 125 Plan
* If employees choose CMM/PPO or traditional insurance, they will pay the difference in premium expense from the base rate.

3. Retiree Health Program: Allow the Employer to change the VEBA Program to the MERS Retirement Health Care Savings Program

a. Establish MERS Retirement Health Care Savings Program as provider.
b. Adjust eligibility (vesting)from three to ten years (consistent with retirement vesting provisions).
c. $30 per month will be deposited into the individual HCSP account. Balance will not be available until employee completes 10 years (120 months) of service.
d. Place all unit members into the Health Care Savings Program.
   1. A service credit adjustment deposit will be made as noted on the attached sheet.
e. At ratification, those hired before 1991 may elect the proposed MERS Retirement Health Care Savings Program in lieu of the current $150 per month retirement health insurance program (per the attached

list). *(Note Article XX, Section 5c).*

4. Modify Article II - Recognition
   Add the Jail Administrator position to Unit D.

5. Vacations - Article XIII:
   a. Remove Section 14 language ("~~Vacation advance check not to exceed a two (2) week period may be issued to an employee upon request prior to the taking of his vacation. Such requests must be in writing two (2) weeks prior to the starting date of the employee's vacation and presented to the employee's supervisor~~".)

In particular, this settlement between Units C and D and the County as to wages and health care, including health care contributions and drug co-pay, is identical to the settlements with the other bargaining units thus mentioned. The Fact Finder is also led to believe, except as to the one issue that is now before the Fact Finder, the other items set forth above are identical to the settled agreement.

What has kept these parties from reaching agreement is the retroactivity of wages and their relationship to the health care changes. Thus, the issue is retroactivity with the POLC seeking retroactivity to January 1, 2004 and the County maintaining that the wage increases not be retroactive and shall only take effect when an agreement is ratified.

Thus, the issue separating the parties is retroactivity.

The Ability To Pay – Economic Criteria

As such, the County does not claim an inability to pay. But what the County has claimed is that there are financial pressures on its resources.

In terms of finances, the County has seen since 2001 a downward trend in its revenue sharing in the State of Michigan to the point that, between 2003 and 2004, the revenue sharing

dropped 47%, approximately $700,000.00. Tax collections are not increasing at the rate they increased in the late 1990's and early 2000's. The family Medical, Vision and Dental CCM/PPO Plans over the years have had the following increases:

Year	Family Vision, Dental Prescription & CCM/PPO 1000/2000 Plan	% Increase
1997	$ 391.03	
1998	$ 423.34	8%
1999	$ 492.54	16%
2000	$ 540.17	10%
2001	$ 646.58	20%
2002	$ 726.91	12%
2003	$ 876.48	21%
2004	$ 989.19	13%
2005	$1,139.83	15%

For the last three years, the total health care expenditures for all bargaining units increased as follows:

Year	Health Fund Expenditures	% Increase
	* * *	
2003	$2,274,968.00	6%
2004*	$3,026,776.86	33%
2005**	$3,222,500.00	6%

* Unadjusted/Unaudited
**Budgeted

As to 2005, the County points out that the health costs have been moderated by virtue of the change in health care plans, the adoption of a 10/20 drug co-pay, plus the premium sharing. The County notes that Units C and D are still operating under the health care plan that was in existence in the previous contract; that if there had been an agreement at an earlier point on

health care, the County would have experienced more cost constraints. It is this point that has been a lynchpin in the dispute between the parties.

Though the Fact Finder concludes that the County does have the ability to pay, the pressure of increased health care, which represents 8% of the County's budget, and reduced revenue sharing, plus what seems to be a declining increase in tax collections, could in the near future impact on the County's ability to pay. Thus, it becomes important that there be some constraints on health care costs. Otherwise, there will be at some point a lack of resources to fund future pay increases.

The Comparables

The POLC presented several exhibits on external comparables, suggesting that Units C and D are not comparing favorably with all of the comparables, although this is not universal. The problem with the external comparables is that, in this situation, the most persuasive criteria in ascertaining the basis for a contract with Units C and D are the internal comparables.

Union Exhibit 4 is a percentage increase of the history of comparison. It is interesting to note that, in 2001, the average wage increase in the nine comparable communities was 2.84%. In Lapeer, the increase was 6.05%. In 2002, the average increase was 3.07% and in Lapeer the increase in wages was 5.82%. In 2003, the average increase was 2.86%. The increase in Lapeer was 3%. The point is that, going into the current contract, Lapeer has had a history of paying above average wage increases. It may be true that in 2004, 2005 and 2006 the base wage of some of the comparables may be higher than Lapeer. But given the background of substantially higher percentage increases, coupled with the internal comparables, the wage offer in Lapeer for Units C and D is reasonable.

Note that the wage pattern with all the Lapeer County bargaining units that have contracts is identical, as are the health care provisions. What is also identical as to the Units that did not have Act 312 is that the County insisted that wages not be retroactive because the County did not receive the benefit of the health care changes until the respective contracts were ratified.

The first contracts to be ratified were the COAM and POAM contracts. These contracts were ratified in November 2004. At that time or shortly thereafter, the wages went into effect, but were not retroactive. Likewise, the health care changes went into effect as soon as permitted by the insurance company. Similarly, the AFSCME contract was ratified in December 2004 and was treated the same way – no retroactivity, but the wages became effective December 2004, at which time or closely thereafter the health care provisions came into effect.

Then came the POLC and Unit A, the Deputies, which went to Act 312, with this Fact Finder as the Chairman of the Panel. Retroactivity was an issue in that case. This Fact Finder, in awarding retroactivity in that case, wrote:

> Reaching this conclusion, the Chairman then turns to the issue of retroactivity. Act 312 of Public Acts of 1969, as amended, in Section 13, MCLA 423.243, provides that there not be changes in employment conditions during the pendency of arbitration proceedings. Though this section is not exactly on point, the fact is the contract remains in place unless the parties otherwise agree, pending the Act 312 proceedings. Unfortunately, it takes time to implement an Act 312 arbitration proceeding, causing some concern about retroactivity when the opinion and award is finally issued.
>
> And this comment brings forth the art of the possible criteria.
>
> If the parties were left to their own devices, they might well have reached agreement by December 31, 2003, so that retroactivity would not be an issue. But because of the pendency of the Act 312 petition and its availability, the parties had difficulty reaching agreement as this agreement was negotiated in a period of economic distress in Michigan. Moreover, the Union was diligent in moving to Act 312 arbitration. No delays occurred in moving forward by the

Union.

> Considering these factors, the art of the possible requires that the 1.65% increase be retroactive to January 1, 2004. ...
>
> In summary, both Delegates join with the Chairman in awarding a 2% increase across-the-board, effective January 1, 2005 and a 2% increase across-the-board, effective January 1, 2006. The County Delegate dissents as to retroactivity for 2005. The County Delegate will join with the Chairman in concurring for a 1.65% increase across-the-board for 2004, but will dissent as to the retroactivity of same to January 1, 2004.
>
> The Union Delegate dissents as to the 1.65% for 2004, but concurs with the Chairman that wages be retroactive to January 1, 2004.

Shortly thereafter, the County agreed to retroactivity for Unit B because Unit B was subject to Act 312.

Subsequently, the Teamsters' contracts were negotiated. The Teamsters attempted to obtain retroactivity, apparently making reference to this Fact Finder's Act 312 Opinion and Award with the Deputies. The upshot was that in December 2005 the County refused to agree to retroactivity, but did agree to a $400 one-time payment if the contract was ratified, which it was in December 2005. Thus, the Teamsters wages were effective in December 2005 and the health care changes went into effect shortly thereafter.

The internal comparables cannot be separated from the bargaining history because the comparables came about as a result of bargaining history with the other bargaining units. And the upshot of this bargaining with the non-Act 312 eligible units is that there was no retroactivity; that wages became effective when the contracts were ratified and the wage increases were dovetailed with the changes in health care.

It is true that, as an Act 312 Panel Chairman, this Fact Finder did award retroactivity, but this was not done voluntarily by the County. And after the Act 312, the County did voluntarily

do so with the Police Certified Command, but only because the Command had the right to go to Act 312. With the three Teamsters bargaining units representing 79 employees, after the Act 312 the County continued to insist on no retroactivity and only gave a wage increase when the contracts were ratified and the County received the benefit of the health care changes. True, the County did give a $400 one-time payment to the Teamster units, which this Fact Finder will discuss later in this Report.

The Bargaining History

In discussing the comparables criteria, this Fact Finder has alluded to the current bargaining history with the other bargaining units that have settled their contracts with the County. In connection with Units C and D, the parties had their last mediation meeting on November 15, 2005. At that time, the Act 312 Award involving the Deputies was known, as well as the settlement with the Command Unit of the certified officers. Likewise, it was known that AFSCME, COAM and POAM had also settled their contracts in November 2004 and were receiving the pay increases as of those dates.

About the same time, the Teamsters Units were bargaining.

Units C and D offered on November 15th to pay their share of the employees' cost of health care. Based on a family plan for the year 2005, this would amount to $178.32. In return, for 2005, the retroactivity would amount to $629 and it is claimed for 2006 to be $1,404.

The County's response at fact finding was that this did not include the adoption as of January 2004 of the Blue Care Network Plan in place of the CMM/PPO Plan with the cost restraints accompanied with such adoption, as well as the early adoption of the $10/$20 drug co-pay. For this reason, the offer was rejected by the County.

Now note what happened with the Teamsters. At about the same time as the Unit C and D offer in November 2005, the Teamsters, in December 2005, who represent 79 employees, double the number represented by Units C and D, even though there was the presence of the Act 312 Award, opted for a $400 one-time payment and no retroactivity. What this bargaining history indicates is that (1) three units back in 2004 settled with no retroactivity; (2) three units who did not have Act 312, following the Deputies' award, settled with no retroactivity, but did receive the $400 one-time payment when it was known that the Deputies received retroactivity. This bargaining history suggests that the County will not settle a contract with retroactivity because the health care is not retroactive. It also indicates the range in which the County will settle following the Deputies' 312 Award.

The Art of the Possible

As already noted, Units C and D claim that, if their members received retroactivity for 2005, they claim a member will receive $629 and for 2006, $1,404. But in return, the County will not have received the revised health care plan for over two years that was designed to constrain costs. The Fact Finder has not used the word "savings" because there are no savings in the sense that health care costs will continue to increase. The change in the drug co-pay and the change in the basic plan plus premium co-pay was designed to control costs so that increased wages can be given.

If the parties do not settle, they are in a situation of fast approaching the beginning of negotiations for a new contract. And it is possible that, by continuing to hold out, Units C and D will end up not receiving any pay increase for the three years of the contract and the County will not be receiving any change in health care.

When faced with such a dilemma, it must be noted that, prior to the Act 312, three units settled with no retroactivity and, after the Act 312, three units not subject to Act 312 settled with no retroactivity but a $400 one-time payment. This would suggest that, applying the art of the possible, the bargaining history criteria, the internal comparison criteria, and the County's economic criteria (insisting that it receive the health care changes before it gives the wage increase), *i.e.*, the ability to pay, the Teamsters model should be recommended.

When all of the above factors are considered, the criteria dictates that, as to Units C and D, the Teamsters model should be recommended. The fact that the Deputies and the certified Command Officers received retroactivity is a factor of both groups being entitled to binding arbitration pursuant to Act 312. The Correction Officers are not subject to Act 312 binding arbitration. Because they are not covered by Act 312, Correction Officers cannot base their bargaining on what may have happened to the certified Deputies and their Command Officers who were subject to Act 312. This means that the Correction Officers and their Command Officers, Units C and D, can only rely on the bargaining history of the units within Lapeer County who are not subject to Act 312 and who did settle, and did settle on the basis of no retroactivity.

Once the 312 awards were announced as to the Deputies and the certified Command Officers who were also subject to Act 312 settled, based upon the retroactivity set forth in the Deputies 312 award, the Teamsters, who did not have the right to go to Act 312, in December 2005 settled with no retroactivity, along with a $400 one-time payment which the County agreed to. Thus, with this bargaining history, given the circumstances, following the art of the possible, the Teamsters model, to repeat, should be the recommendation as to Units C and D.

There will, however, be a "twist" to the recommendation as to Units C and D. One of the problems here was that Units C and D did not appreciate the County's position and the fact that Units C and D do not have the benefit of Act 312 when the Units had their last mediation session in 2005. Nor did Units C and D know in November 2005 of the post-Act 312 settlement of the Teamsters, arrived at in December 2005. Now, Units C and D have the information.

Therefore, in order to bring this matter to conclusion, if the County offers Units C and D a $400 one-time payment, and Units C and D ratify the agreement based upon the terms set forth in the Position Statement at pages 6-8 of this Report, within three weeks of the date of this Report, then there will be retroactivity to the date that the Teamsters received retroactivity.

If Units C and D, or either of the two Units, fail to ratify within the time limits set forth herein, then the retroactivity will be only to the date of ratification, along with the $400 one-time payment. This should be an incentive to complete this contract forthwith.

A Word To The Parties

In the vernacular of the street, "it's showtime." The time has come to bring this impasse to an end. Three units settled prior to the Act 312 award with no retroactivity. Because of their early settlements (In November 2004), these units received the benefit of an earlier wage increase, but no retroactivity, whereby the County received the benefit of an earlier implementation of the health care changes. The three Teamsters units that settled after the Act 312 did not receive retroactivity and, in effect, lost two years of retroactivity. But, as a compromise, they did receive $400 from the County plus implementation of the wage increase. This is the best that Units C and D can expect. Units C and D can reject this Fact Finding Report and continue bargaining and each day the Units delay in reaching agreement, they delay getting

any wage increases. Likewise, the County could refuse to give the $400 one-time payment and, each day the County does so, the County loses the implementation of the health care changes. There is a time that realism takes place. And the realism is that the same deal that the Teamsters agreed to should be the deal that Units C and D accept. The Fact Finder has recommended a time limit for ratification so as to put Units C and D on the same par with the Teamsters. But if Units C and D do not ratify within said three weeks of the date of this Report, then Units C and D will lose the momentum and will be limited to retroactivity to the date of ratification, along with the $400 one-time payment.

It is true that under this Recommendation the County will have lost over two months in converting to the health care changes. But this is part of the art of the possible.

This is a balancing act. All the Fact Finder can do is issue his Report as soon as possible, which he has done within one week, so that the parties can have a reality check, sit down immediately, and reach agreement. The time has come to end this impasse.

RECOMMENDATION

The Fact Finder recommends as follows.

1. The Position Statement as set forth at pages 6-8 of this Report be adopted.

2. As to retroactivity, if Units C and D ratify the Recommendations set forth herein within three weeks of the date of this Report, the retroactivity shall be the same date that the Teamsters received retroactivity. If Units C and D, or either of the Units, fail to ratify within three weeks of this Report, then the Recommendation is that the retroactivity shall be as of the date of the actual ratification.

3. Upon ratification, on the same basis as the Teamsters' agreement, the members of Units C and D shall receive a $400 one-time payment.

4. The health care changes as set forth in the Position Statement shall be implemented as soon as possible after ratification.

GEORGE T. ROUMELL, JR.
Fact Finder

February 23, 2006