

2275

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES  
EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION BETWEEN:

**KALAMAZOO COUNTY and THE  
KALAMAZOO COUNTY SHERIFF,**

Employers,

and

MERC Case No. L-07-J4013

**THE KALAMAZOO COUNTY SHERIFF'S'  
DEPUTIES ASSOCIATION,**

Labor Organization.

---

**ARBITRATION OPINION, AWARD AND ORDER**  
**WITH RESPECT TO COMPARABLE**  
**COMMUNITIES**

---

**PANEL OF ARBITRATORS**

Allen J. Kovinsky, Chairperson  
Michael F. Ward, Union Delegate  
John H. Gretzinger, County Delegate

---

Panel Chairperson, Allen J. Kovinsky  
Sommers Schwartz, P.C.  
2000 Town Center, Suite 900  
Southfield, Michigan 48075

County of Kalamazoo and Kalamazoo County Sheriff  
By: John H. Gretzinger  
Nantz, Litowich, Smith, Girard and Hamilton  
2025 East Beltline Street, Suite 600  
Grand Rapids, Michigan 49546

Kalamazoo County Sheriff's Deputies Association  
By: Michael F. Ward  
PO Box 3368; 141 East Michigan Avenue, Suite 302  
Kalamazoo, Michigan 49003

---

## EXHIBITS

- Petitioner's Exhibit 1: Petition for Act 312 and attachments thereto filed by the Kalamazoo County Sheriff's Deputies Association
- Petitioner's Exhibit 2: Comparable exhibits with tabs 1 through 7
- Respondent's Exhibit 1: Counter Petition for Act 312 and attachments thereto filed by the County of Kalamazoo with the Michigan Employment Relations Commission
- Respondent's Exhibit 2: Fact-finding Petition filed with the Michigan Employment Relations Commission
- Respondent's Exhibit 2: Volumes 1 and 2 individual tabs of Respondents exhibits with regard to comparables
- Respondent's Exhibit 3: Annual audit of Kalamazoo County

## RELEVANT STATUTORY PROVISIONS

MCLA Sec. 423.239:

“Section 9. Where there is no agreement between the parties or where there is an agreement but the parties have begun negotiation 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 units 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.

## BACKGROUND INFORMATION

The County of Kalamazoo and the Sheriff of the County of Kalamazoo, as employers, and the County of Kalamazoo Sheriff's Deputies Association, as a labor organization, have been parties to a series of Collective Bargaining Agreements, with the latest one terminating on or about December 31, 2007. The parties were unable to resolve their differences and as a result, the Sheriff's Association (hereinafter referred to as the "Union") filed a petition pursuant to the provisions of Act 312 of the Public Acts of 1969 for binding arbitration with respect to the wages, hours and conditions of employment contained in the Collective Bargaining Agreement. Subsequently, the County of Kalamazoo and the Sheriff of the County of Kalamazoo (hereinafter referred to as the "Employer") filed a counter-petition. These two petitions referred to those employees who are covered by the provisions of Act 312 and specifically, the provisions of Section 423.232 which referred to public police and fire departments having employees engaged as policemen or subject to the hazards thereof, emergency medical service personnel employed by police department or an emergency telephone operator employed by a police department. In addition, the Employer filed a petition for fact-finding with respect to the employees of the Sheriff's Department who are not otherwise covered by the provisions of Act 312.

Subsequent to the filing of the petitions, Allen J. Kovinsky was selected as Panel Chairperson pursuant to the provisions and rules and regulations of the Michigan Employment Relations Commission, as well as Act 312. Meetings were conducted with the representatives of the Employer and the Union and the Panel chairperson in order to attempt to obtain a new Collective Bargaining Agreement. A tentative agreement

was reached in May of 2009, which was rejected by the Union membership. A subsequent meeting between the parties and the Panel Chairperson did not produce a new Collective Bargaining Agreement and as a result, it was determined that a hearing would be necessary with regard to the selection of comparable communities.

The hearing took place on July 9, 2009, at which time the parties were given an opportunity to present exhibits and witnesses in support of their respective positions.

The Union proposed the Counties of Ingham, Ottawa, Livingston, St. Clair and the City of Kalamazoo, the City of Portage and the Township of Kalamazoo. The County proposed the following counties as comparable under Section 9(d) of the Act: Berrien, Calhoun, Ingham, Jackson, Muskegon, Ottawa and Saginaw. In addition, the County proposed the following communities as labor market comparable communities pursuant to Section 9(h) of the Act: Allegan, Barry, Branch, Cass, Eaton, Kent, St. Joseph, and Van Buren. The County also proposed the City of Portage, the City of Kalamazoo, and the Township of Kalamazoo as labor market comparable communities pursuant to Section 9(h) of the Act.

In reaching the decisions which are hereinafter set forth, I have reviewed the following factors as presented by the parties: the communities which are within the Kalamazoo metropolitan statistical area, population, population policed, index and non-index crimes, household income, family income, median family income, and per capita income, median value of homes, taxable value of property, taxable value per capita of property, the individual county tax rates, the amount of money raised by taxes within the individual communities, the revenue raised per capita, the type of community, whether or not the communities are subject to the Kalamazoo County Public Safety millage, the

number of sworn officers, and the prior bargaining history of the parties with respect to the utilization of comparables in collective bargaining and/or Act 312 proceedings as well as the factors common to the County of Kalamazoo, the City of Portage, the City of Kalamazoo and Kalamazoo Township which will be set forth hereinafter.

It has been observed by many of the panel chairpersons when discussing the provisions of Act 312, and in particular, the provisions or lack thereof with regard to comparable communities, that the selection of comparable communities is not an exact science. I wholeheartedly concur. The legislature, in its infinite wisdom, or lack thereof, has failed to give the Panel Chairperson as well as the delegates and representatives any guidelines with respect to the selection of comparable communities. Accordingly, over the years, the parties have developed a number of factors including but not necessarily limited to those which I have hereinabove set forth, as an indication of whether or not a community is or is not comparable. Obviously, there are not two communities within this state which are exactly comparable in every respect. Accordingly, there has also been developed a percentage differential over the years which varies from case to case and panel chairperson to panel chairperson. The variance often is dependent in scope upon the issue of whether or not there are a large number of communities or a small number of communities within a reasonable percentage variance. For purposes of this case, I have chosen a factor of one-third. That is to say, for example, that the County of Kalamazoo has a population of approximately 246,000. Thus, for comparative purposes with regard to population any county or other governmental community with a population of 164,000 to 328,000 would

be within a reasonable parameter. I have considered each and every factor with regard to the determination of which communities are determined to be comparable.

As a general rule, I concur with the majority of panel chairpersons who have opined that counties should be compared with counties, cities with cities and townships with townships. However, for every general rule as attorneys who studied the Rule in *Shelley's* case know, there are exceptions. Thus, in the instant case, the Union has offered two cities and a township as comparable pursuant to the provisions of Section 9(d). The County objects to those three entities being considered as Section 9(d) comparables but does offer them for purposes of Section 9(h). The issue of Section 9(d) and 9(h) comparables will be dealt with hereinafter in separate portions of this opinion.

#### **STIPULATED COUNTIES**

Both the Union and the Employer have proposed the Counties of Ingham and Ottawa as comparable communities. I know of know reason, based upon prior bargaining history or the comparable factors hereinabove set forth, why those two communities should not be acceptable. Accordingly, the Counties of Ingham and Ottawa will be utilized as comparable communities for purposes of the Act 312 evidentiary hearing with respect to wages, hours and conditions of employment.

#### **COUNTY COMPARABLES**

I have rejected the County of St. Clair due to the fact that while it may be comparable with respect to many of the factors hereinabove set forth, it is geographically remote and within a labor area that is dominated by the City of Detroit



and the Counties of Wayne, Oakland and Macomb. It also draws from a significantly different labor force.

The only other Union proposed county is Livingston. I find that that county is comparable since it falls within the one-third variance in terms of population, population policed, median family and per capita family income, taxable value of property, taxes raised, revenue per capita and the type of community since it is indicated as being a central metropolitan community which is the same as the County of Kalamazoo. I believe that those factors are significant and accordingly, the County of Livingston will be accepted as a comparable community pursuant to the provisions of Act 312, Section 9(d).

Insofar as the Employer proposed comparables are concerned, I find that the Counties of Berrien, Calhoun, Jackson, Muskegon and Saginaw are comparable based upon the following factors. The County of Berrien is within the one-third statistical variance with regard to population, index and non-index crimes, income for households, median family income and per capita income, as well as the median value of homes, the taxable value of property, the taxable value per capita, the county tax rate, taxes raised, revenue per capita, and the type of community. The County of Calhoun statistically falls within the one-third variance with regard to household income, median family income, per capita income, the median value of homes, taxable value per capita, the county tax rates for millage, the revenue per capita, the type of community and it is within the same general geographic area and relies upon approximately the same labor market. With respect to the County of Jackson, it is within the statistical variance with respect to population, income for households, median family and per capita, the median value of

homes, the taxable value per capita, the county tax millage rate, the revenue per capita, the type of community and the same general geographic area. The County of Muskegon is comparable with respect to population, population policed, index and non-index crimes, household family and per capita income, the median value of homes, taxable value per capita, the county tax rate, taxes raised, revenue raised per capita, and the type of community. The County of Saginaw lies within the statistical variation with regard to population, index and non-index crimes, household median family and per capita income, the median value of homes, the taxable value per capita, the county tax rate in terms of millage, taxes raised, revenue per capita, the same type of community and the same type of community in terms of being a central metropolitan community.

#### **SECTION 9(h) PROPOSED COUNTIES**

As noted, the Employer has proposed a total of seven counties as being labor market comparable communities pursuant to Section 9(h) of Act 312. The proposal assumes that counties which do not qualify as being comparable under Section 9(d) may be comparable for certain purposes pursuant to the provisions of Section 9(h). While the argument in favor of those counties is certainly inventive, innovative and unique, I am constrained to reject it. I do not believe that the legislature intended to have two different types of public employment comparable communities. Section 9(d)(i) provides for public employment in comparable communities and (ii) provides for private employment in comparable communities. Nowhere do I find any language contained in the statute which would indicate that a community may be comparable on a limited basis as proposed by the employer. Section 9(h) refers to other factors. I do not

believe that the word factors encompasses communities. Other factors could include such items as the rate of foreclosures in the community which would necessarily impact their tax raising ability. The rate of unemployment in the community which would negatively impact the revenue streams that the community counts on. A reduction in state and/or federal revenue sharing which would negatively impact a community's ability to pay increased wages and benefits. The lack of construction or the halting of construction projects in the community which would negatively impact predicted future property taxes. Businesses shutting down which would negatively impact the property values thus decreasing property taxes, as well as negatively impacting on departments within a community such as the water department and numerous other factors which could either negatively or positively impact a community with regard to its ability to pay or not pay future wages and benefits.

I do not believe that a community is comparable for some purposes under Section 9(h) but is not otherwise comparable under Section 9(d). I have reviewed MERC Case No. L-07-1-4013 *Grand Rapids Police Command Officers Association and City of Grand Rapids*. I am aware that the panel chose to consider all other proposed communities as relevant under Section 9(h), while finding only six communities as being comparable under Section 9(d). There does not seem to be any rationale supplied by the panel with regard to their decision to include certain communities under Section 9(h). It would appear that the panel accepted the Section 9(h) argument grudgingly.

The panel noted:

It should go without saying that some of these will have little or no bearing on the deliberations of the panel.

The panel seemed to have bought into a concept that the mere fact that communities are within a common labor market allows them to be utilized for purposes of Section 9(h). I do not agree. While, I recognize that there may be gray areas with respect to interpreting legislative acts and there may not be bright line distinctions separating communities in order to determine whether they fall within Section 9(d) or as alleged Section 9(h), I do not believe that the legislature intended to create this type of dichotomy. The *Grand Rapids* panel in its very brief discussion of Section 9(h) referred to items which I feel clearly fall within factors that can be utilized under Section 9(d) such as rank equivalency, department size, taxable or sev value, population, bargaining history and geographic proximity. The mere fact that there may or may not be a common labor market standing alone is irrelevant. If we were to accept the common labor market theory as being sufficient to raise issues of comparability with regard to communities that are otherwise not comparable, we would find ourselves in the position of having to select every community within the County of Kalamazoo and perhaps the surrounding counties simply based upon the theory that they all draw from a common labor market regardless of size, population, taxable value, or any of the other factors which are historically analyzed in order to determine whether or not communities are truly comparable.

Accordingly, I do not accept the counties proposed pursuant to Section 9(h) by the County for any purpose. The only relevant evidence with respect to comparable communities will be limited to those communities which have been accepted hereinabove and which are accepted in the ensuing analysis.

## COMMUNITIES OTHER THAN COUNTIES

As previously noted, as a general rule most panel chairpersons including me, believe that whenever possible the selection of comparable communities should be limited to the same type of governmental entity, which means county for county, city for city, and township for township. But, also, as previously noted, for every general rule there are often exceptions. The Union urges that that should be the case with regard to the proposed communities of the City of Kalamazoo, the City of Portage and the Township of Kalamazoo. In support of its position, the Union notes that the legislature chose to refrain from defining a comparable community as being the same type of governmental entity. The Union in its analysis and presentation of exhibits cites a long history of the County of Kalamazoo and the three units in question being used by each of the respective communities as comparable for purposes of collective bargaining and/or Act 312 arbitrations. The Union has submitted as exhibits six separate Act 312 cases which included for comparability purposes the County of Kalamazoo, the City of Portage, the City of Kalamazoo and the Township of Kalamazoo.

In 1995, in the County of Kalamazoo and the Sheriff of the County of Kalamazoo MERC Case No. G95-I-3008, the panel found based upon the testimony of Larry F. Bean that all four communities were comparable and had similarly situated employees for the purpose of collective bargaining. In so doing, the panel found the following testimony to be relevant and compelling:

The Association believes these employers are comparable, because they exist in the same labor market as the Kalamazoo County Sheriff's Department. Kalamazoo County Sheriff's Deputies work on a day to day basis with officers from these three jurisdictions. These three jurisdictions are supported by taxpayers, by the taxpayers that live and work in this

area and have agreed to a common law enforcement millage supported – to support police activities in this county.

Kalamazoo County Sheriff's Deputies also patrol the streets and enforce laws within each of these comparable communities. The four units share financially from the same funding source. Kalamazoo County has a law enforcement millage which is shared by all four communities . . . the officers of Kalamazoo County Sheriff's Department are an intergraded part of the greater Kalamazoo County labor market. The Kalamazoo county Sheriff's Department officers share the same work environment, cost of living, crime element and danger as the officers in the other three agencies, and therefore, should share and be compared to those officers for the purposes of wages and fringe benefits.

In the case of the City of Portage and the Portage Police Officers Association, MERC Case No. L-05-1-4002, Panel Chairperson Gravel found all four communities to be comparable based upon a stipulation of the parties, which included the four communities plus about ten other cities.

In another City of Portage case, MERC Case No. L-00-D-7014, Panel Chairperson Long found the four communities to be comparable based on a prior case involving the City of Portage and the Portage Police Officers Association which he determined supported the findings and conclusions pertaining to the comparables offered in that case as basis for the same findings and conclusions on the comparables as the instant case. In addition, ten communities which were cities were determined to be comparable.

In an earlier City of Portage case, MERC Case No. G-94-F-4010, Panel Chairperson Mark Glazer accepted a stipulation of the parties which included the four communities as comparable, along with ten other cities.

In the case of City of Kalamazoo and the Kalamazoo Public Safety Officers Association, MERC Case No. LO4-L-4003, Panel Chairperson Hiram Grossman

accepted the four communities based upon agreement of the Union and the City that Kalamazoo County, Kalamazoo Township and Portage were comparable in addition to a number of other cities.

In the City of Kalamazoo and Kalamazoo Police Officers Association, MERC Act 312 Case No. L01-J-1012, Panel Chairperson George Roumel indicated that the four communities were considered to comparable based upon areas of cooperation, including backup, area club meetings and similar activities, as well as sharing financially from the same funding sources specifically the Kalamazoo County Law Enforcement Millage.

Without anything further by way of testimony or exhibit, it would be difficult to reject the three communities as being comparable even though they clearly represent different forms of government with different property tax bases, as well as significantly different populations. However, it should also be noted that based upon statistical variations and other factors the three communities are within the Kalamazoo metropolitan statistical area, they are within a third based upon household income, median family income and per capita income. They are also within a third based upon median value of homes. The taxable value of property obviously is considerably different as is the rate of millage for each of the communities. Both Kalamazoo and Portage are considered to be principal cities while Kalamazoo Township is not designated. All three share in the six mil public safety millage which is dedicated to the public safety departments within the respective communities.

The four communities including the county constitute an integral and essential component of the integrated and mutually dependent law enforcement community

according to the Union. Again according to the Union, the four communities perform approximately 90 to 95 percent of law enforcement within the county. The unrebutted testimony indicates that the four bargaining units belong to a county-wide labor organization known as the Kalamazoo County Police Officers Association. Each bargaining unit has a representative that serves on a Board of Directors, which meets at least once a month and among its other functions, establishes labor policy and collective bargaining strategy for the four units. The Union dues which are withheld by the County are paid to the Kalamazoo County Police Officers Association as are the dues from at least two of the other three entities. All four agencies draw from the special law enforcement millage in order to fund their operations. The Police Officers Association to which the four agencies belong have on numerous occasions been requested to support and endorse critical issues common to the four governmental entities such as a law enforcement millage, a millage to fund a new jail and criminal law complex and a millage to fund a new juvenile and family law building.

The testimony further indicates that the deputies in the Sheriff's Department work on a day-to-day basis with the officers in the other three entities. They back each other up and engage in similar activities from traffic stops to homicides. Officers from all four jurisdictions are routinely dispatched to back-up officers from one or another of the other jurisdictions on a daily basis. The City of Kalamazoo has public safety officers who perform both police and fire functions. When they are required to respond to a fire, it is not unusual for the County to send deputy sheriffs to cover and patrol the City until the officers are freed from their firefighting duties. Deputies have responded to requests for crowd control, alarms, shootings, homicides, breaking and entering, trouble with



suspects, domestic violence and other types of calls when the City of Kalamazoo Police Officers were required to attend a fire. Routinely, sheriff deputies and officers from the three communities may simultaneously attend serious calls such as armed robberies or homicides in order to afford back-up forces. They work jointly with one another from other jurisdictions performing investigations, writing reports, interviewing suspects, requesting warrants and testifying at trials. This is true with respect to the City of Portage as well as the City of Kalamazoo and the Township of Kalamazoo. The reverse is also true when the deputies need back-up, they are often supplemented by officers from either one of the cities and/or the township.

The City of Kalamazoo has a canine unit which is available to the other three governmental entities. The officers with the canine unit often work in conjunction with deputies and/or officers from the other governmental entities. The City of Kalamazoo maintains a SWAT team for use in critical situations such as hostage taking and the SWAT team works in conjunction with officers from the other three governmental entities. The City of Kalamazoo also maintains a bomb squad which is supplemented by officers from the Township and City of Portage. All four departments utilize the bomb squad and work side-by-side with officers of the bomb squad. There is a common county-wide drug enforcement team known as KVET. All four governmental entities contribute officers to that team. The team works under the authority of the Kalamazoo sheriff and are sworn as deputies no matter what jurisdiction they come from. Currently the commanding officer is a captain in the City of Kalamazoo. However, command officers from the Sheriff's Department have also supervised the unit in the past. Officers work under command of all four departments from time-to-time.

Officers from the four agencies trained together both at the Sheriff's Department and in the City of Portage. The agencies have the same or similar policies for "use of force" and train together with respect to that policy. The officers are issued the same weapons and receive the same annual or semi-annual firearms training. All four agencies send officers to be trained at the City of Kalamazoo firing range. The officers may be certified by either a City of Kalamazoo or Kalamazoo Township instructor. The County has a rifle and shotgun range which is available to officers from all four communities.

Although the four agencies have separate detective departments, they meet jointly on a monthly basis to exchange information and leads with respect to crimes. They also exchange information with regard to child death cases and numerous other matters. Both the sheriff and the City of Kalamazoo have certified polygraph examiners which are utilized by all four agencies. The four agencies share in grant monies for special enforcement programs and officers from all four agencies work side-by-side when working in those special programs. The City of Kalamazoo and the Kalamazoo County Sheriff's Department maintain a combined laboratory located in the City of Kalamazoo Central Police Station. It provides services to all four agencies and is staffed by employees of the sheriff and the City of Kalamazoo. A county sheriff lieutenant supervises the crime lab and the lab techs work side-by-side within the lab with street officers and detectives from all four agencies.

Kalamazoo County Sheriff, the Township and the City of Kalamazoo have co-located their dispatch center in a new facility at the City of Kalamazoo headquarters. Dispatchers from all three agencies work side-by-side in the same dispatch center.

They use the same radio system and the same computer files program for all their dispatches and reports. In addition, the County pays a portion of the wages and benefits of the IT specialists at the City of Kalamazoo facility.

Deputies work in the court located in the City of Portage and accordingly work day in and day out with Portage officers. The City of Kalamazoo assigns officers to work at the County Building and those officers work hand-in-hand with deputies working at that facility. The City of Kalamazoo officers also come to the County jail and assist on video arraignments working side-by-side with deputies working in the jail.

The County Sheriff maintains a marine division which enforces laws and patrols waters within all four of the governmental entities. Officers from the other entities train with Sheriff's deputies on the use of boats and related equipment. All four agencies respond to water related emergencies within their respective jurisdictions with respect to the sheriff responding county-wide, as well as within the other three entities in dispute.

There is a common millage which is taxed on all of the property within the county including the four governmental entities in question. The millage funds the activities of the four law enforcement agencies.

The Union notes that the word "comparable" as well as the word "community" are not defined under Act 312. The dictionary definition of community includes a neighborhood, vicinity or locality or society or group of people with similar rights or interest. The dictionary defines comparable as having enough like characteristics or qualities to make comparisons appropriate. The Union alleges that the four communities based upon their inter-relationships clearly fall within the definitions of a community and comparability.

The County objects to the utilization of the Cities of Kalamazoo and Portage as well as the Township of Kalamazoo. In support of its position, the County notes that the testimony established that those communities have never engaged in any form of joint bargaining with representatives of the various labor organizations that make up the FOP lodge. The County notes that the extent of the voluntary associations formed by labor organizations have never been a factor in determining comparable community status and should not be utilized in the instant case.

The County also notes that a substantial number of the employees in the sheriff's unit provide correctional services in the jail or inmate related services to the court. It notes that the other three communities do not provide such services so that information regarding wages and fringe benefits paid to their law enforcement employees will not provide any meaningful assistance to this proceeding. It also notes that City of Kalamazoo operates a public safety department with fully cross-trained officers who provide both police and fire service. It notes that a financial comparison would be difficult since Kalamazoo operates on a work schedule that utilizes 42 hour work weeks and has built in a 10 percent cross training premium that increases the salaries paid to these public safety officers over that paid to law enforcement officers.

The County further notes that there is a close inter-relationship among the various counties proposed by the County who belong to a variety of organizations including the South Central Michigan Planning Commission, the regional jail study collaboration, the Southwest enforcement team, the Southwest Commercial Auto Recovery Team, geographically within Michigan State Police District Number 5, the

District 5 Homeland Security Regional Planning Board, and the Long Term Ombudsman Program.

The County also notes that on occasion it is necessary to stretch the definition of comparable to include marginally comparable communities where there are not enough good comparable communities. At that time, communities that are in close geographic proximity or in the same general labor market may be considered to be comparable although they are not necessarily the same type of governmental entity. Finally, the County alleges that if the panel is to take information concerning the other three entities, it should be admitted under Section 9(h) and in that case, the counties proposed by the County Section 9(h) comparables should also be utilized.

I have already determined that there are no communities which are to be considered comparable solely for the purpose of Section 9(h). The only communities which are to be considered comparable are those which have been found to be comparable pursuant to Section 9(d). While, under normal circumstances, as previously noted, I would exclude non-counties from a county Act 312 arbitration proceeding, I do not feel that it would be appropriate in the instant circumstances. There are at least two decades of history with respect to collective bargaining and/or Act 312 arbitrability covering the four communities. It is clear that up until this proceeding each of the communities has, as a general rule, determined that the other three communities would be considered to be comparable. Not only is there a long history of collective bargaining and Act 312 arbitration utilizing the four communities as comparables, but there are numerous factors as hereinabove set forth which compel a finding that the four communities are to be utilized as comparables when one of them is

involved in an Act 312 arbitration proceeding. I have not, by way of oral argument or in the briefs supplied by the parties, been furnished with one instance in which any one of the four entities has objected to the utilization of the other three entities as being comparable until this proceeding. I find that the four communities in terms of services provided and the interplay of the officers, as well as numerous other factors are so inextricably woven that it would be inappropriate in this proceeding to deny comparability. Accordingly, I find that for purposes of Section 9(d) of the Act, the Cities of Kalamazoo and Portage as well as the Township of Kalamazoo shall be considered to be comparable communities.

#### **CONCURRENCE AND DISSENT**

It should be noted that both Mr. Ward and Mr. Gretzinger as well as myself concur in the finding with respect to the inclusion of the Counties of Ingham and Ottawa as comparable communities.

It should also be noted that Mr. Ward concurs with my finding that the County of Livingston and the Cities of Portage and Kalamazoo as well as the Township of Kalamazoo shall be considered comparable communities and that Mr. Gretzinger dissents from those findings.

It should also be noted that Mr. Ward dissents from my exclusion of the County of St. Clair and Mr. Gretzinger concurs in that finding.

It should also be noted that Mr. Gretzinger concurs in my finding that the Counties of Calhoun, Jackson, Berrien, Muskegon and Saginaw are comparable and shall be utilized as Section 9 comparables and Mr. Ward dissents from that finding that those counties are comparable.

It should also be noted that Mr. Ward concurs and Mr. Gretzinger dissents with regard to my findings insofar as the alleged Section 9(h) counties are concerned. That is to say I have ruled that those counties should be excluded from the proceedings.

It should also be noted that at the time of the evidentiary hearing with regard to the merits of the individual issues, if Mr. Gretzinger wishes to do so, he may make an offer of proof on the record with regard to the counties which he wanted to have utilized for Section 9(h) purposes. The offer will be rejected but the rejection will preserve the right of Mr. Gretzinger in the event he wishes to appeal that ruling to a court of competent jurisdiction.

It should also be noted that Mr. Gretzinger, if he so desires, will have the right to attach a dissent to this Opinion with regard to any of the rulings which are contrary to his positions, as well as Mr. Ward having a similar right.

IT IS SO ORDERED.

  
Allen J. Kovinsky, Panel Chairperson

Dated: August 27, 2009