

May 30, 2011

State of Michigan

Employment Relations Commission

In the matter of  
County of St. Joseph, Michigan  
Respondent

Case No. L09 F-9005

and

Police Officers Association of Michigan  
Petitioner

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Appearances

For the Labor Organization  
For the Employer  
Fact-finder

James DeVries, Business Agent  
Bonnie G. Toskey, Esq.  
James A. Mackraz

Background

Pursuant to Public Act 176 of 1939, the undersigned on December 7, 2010, was appointed by the Michigan Employment Relations Commission as the fact-finder in the above referenced matter. Hearing was held on April 28, 2011, at the St. Joseph, Michigan, County Offices in Centerville, Michigan.

Representing the Labor Organization ( "Union"), was James DeVries, Business Agent. For St. Joseph County, Michigan, ( "Employer"), was Bonnie G. Toskey, Esq.

The parties had earlier agreed to a 3-year successor contract term, with two issues remaining unresolved, wages and health insurance.

### Union Position

The Union argues that the Corrections unit was the only one of the four bargaining units in the Sheriff's department that did not receive at least a 2% wage increase during the period of 2009 through 2011. Its exhibits purported to show that its position regarding external and internal comparables was growing more and more unfavorable with the passage of time.

A mediation conference was held September 24, 2010, involving the Corrections unit, along with Road Command and Deputies (the three units were bargaining in concert). Within that single day's mediation session, full agreement was reached between Employer and two of the units, Road Command and Deputies, based upon the revised health plan and a 2% increase in wages, effective the second year of the three-year contract. When the Corrections unit proposed that it too become party to the same agreement, Employer agreed, on condition that that unit forego any wage increase until December 31, 2011. Rejecting that condition, the Union opted for fact-finding.

### Employer Position

Employer's argument draws heavily on Section 9 of PL 312, the Compulsory Arbitration Statute for Police and Fire Departments. In particular, Employer stresses the applicability of Subsection (c), the financial ability of the employer to meet the

costs of the pending negotiations; and, secondly, of Subsection (d), the principle of comparable wages, i.e., the comparison of the wages of the affected employees with those of employees performing similar services in other comparable plants, as well as in the same plant.

Although these PL 312 factors are not related in law to fact-finding, their general acceptance in collective bargaining make them commonly recognized standards among its practitioners. The Union presented no evidence that even suggested, let alone showed, that its proposal is supported by any of these Section 9 criteria.

#### Discussion

The first thing to be said about Employer's argument is that this fact-finding case has no connection to PL 312, the compulsory arbitration statute for police and firemen. That statute's Section 9 criteria are the factors which the arbitration panel must consider in formulating its award. Nothing therein makes any mention of fact-finding.

However, two of the criteria stressed by Employer in this Section are germane to this fact-finding effort. Subsection (c) concerns the Employer's ability to pay the costs entailed by the negotiations; and Subsection (d) concerns the important factors of internal and external comparable wages. Even though these criteria are not mentioned in the fact-finding statute, they are commonly, and rightly, taken into consideration in most wage determination situations., as they will be in this fact-finding matter.

On the ability-to-pay question, Employer stresses the fact that the county's "taxable value" actually decreased by 22 millions from the prior year, 2009, a drop equivalent to approximately \$100,000 in county revenue. Although the taxable value increased in 2011, it is still five million less than the taxable value in 2009.

The financial stakes in the matter before us involve a 2% wage increase for 17 employees.<sup>1</sup>) Union Exhibit 1 shows their current average annual salary to be \$42,765 per person. An increase of 2% amounts to \$855 a year for each. For all 17 employees the annual cost of that increase is \$14,540. The current annual payroll for that 17 man crew amounts to about \$727,000. An annual labor cost increase of \$14,540 is appreciable, but does not appear to be a backbreaker.

On the comparable wage issue, Union Exhibit 1 shows that in 2010, six of the nine classifications in the Sheriff's department, other than Corrections, received a 2% increase. In 2011, the other three classifications receive the same 2% increase. The last increase received by the Corrections crew was in 2009.

If internal comparable wages are an important factor in wage determination, then the pattern of increases shown above doesn't fill that bill.

The proceedings in this fact-finding hearing were governed by Michigan Employment Relations Commission's Rules 131-138. These rules are devoid of any of PL 312's Section 9 criteria, either expressly or by implication. The relevant part of fact-finder Rule 137 provides that its report must include "the parties' names, a

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<sup>1</sup> .There is also an added cost in the revision of the health insurance plan, but the parties appeared to have effectively resolved this issue early on in the negotiations on the basis of the Employer proposal.

statement of findings of facts and conclusions upon all material issues presented at the hearing, and recommendations with respect to the issues in dispute.” (The Rule’s Subsection (d) provides additional factors that the fact-finder must include in its report, unless the parties waive this Subsection (d) requirement. In the telephone pre-hearing conference of February 16, 2011, both parties agreed so to waive the requirements of (d), leaving the fact-finder to issue his report based only upon Subsections (a), (b) and (c) of this Rule.)

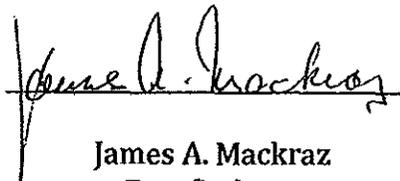
In collective bargaining, wage determination for bargaining unit employees is clearly influenced by the wage levels of employees doing the same or similar work in other nearby plants (external comparables) and, in particular, for those who perform the same or similar work in the same plant (internal comparables) . Here, we have the 17 Corrections employees working in the Sheriff’s department alongside the Deputies and the Road Command. Their leadership appeared in a mediation conference with Employer, in a further attempt to negotiate a new contract. The Deputies and the Road Command units, and Employer, reached agreement on the two unresolved issues, health insurance and wages, thereby successfully concluding negotiations on a new three year contract for those two units. The 2% increase would become effective in the second year of the contract. Upon learning of this development, the Corrections unit proposed that it also become party to the same settlement. Employer agreed, but only on condition that that unit, Corrections, forego any claim to a wage increase for the three-year duration of the new contract. Rejecting that condition, the Union opted for fact-finding.

### Conclusion

Other things being equal, internal comparable wages are of high importance in determining a worker's wages. The unit in question, Corrections, was the only unit in the County's employ that did not receive the 2% wage increase in the period of 2009 through 2011. The fact that Corrections, Deputies, and Road Command were negotiating in concert with Employer clearly establishes that these employees had common interests in the workplace. Internally, their wages were pretty well comparable. To deny the Corrections unit the same 2% increase granted to the Road Command and Deputies units is clearly inconsistent with observing the comparison standard in wage determination.

### Findings

The Corrections unit is to be included as party to the contract reached between Employer, on the one hand, and the Deputies and Road Command units, on the other, in the September 24, 2010, mediation conference, this to include the revised health insurance plan and the 2% wage increase effective in the second year of that contract.

A handwritten signature in black ink, appearing to read "James A. Mackraz", is written over a horizontal line. The signature is cursive and somewhat stylized.

James A. Mackraz  
Fact finder