STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING BETWEEN:

INGHAM COUNTY EMPLOYEES ASSOCIATION,

Labor Organization,

MERC Case No. L12 J-1259

Fact Finder:
Judge Lawrence C. Root (Ret.)

-and-

INGHAM COUNTY BOARD OF COMMISSIONERS, THIRTIETH JUDICIAL CIRCUIT COURT AND THE 55TH JUDICIAL DISTRICT,

Co-Employers,

REPORT OF FACT FINDER

I. Introduction

The Ingham County Employees' Association (ICEA or Association) represents 35-36 employees (the testimony varied on this number) working for the Thirtieth Judicial Circuit Court and the Fifty-Fifth Judicial District Court, both Courts serving solely in Ingham County. For perspective, the County, in all of its various departments and agencies, employs 1006 employees, down from a high of over 1100 employees before the County started an effort to contain costs via staffing reductions through attrition. Ingham County's unionized employees are represented by seventeen separate bargaining units. At the time of the hearing here thirteen of those seventeen units had reached agreement with the County on the contract period involved in this matter. The Courts and the County are co-employers of the members in this bargaining unit (Unit), with the County serving as the Courts' funding unit and, thus, having/taking responsibility for the financial aspects of the Courts' relationship with their employees. Reference to the Employers below is done to underscore that the Courts are also involved, although the

County is doing the negotiating here. The extent to which Court managers, including the Judges, may be involved is not known. Also, many references to the County are made as it is its financial condition that drives much of the Employers' negotiating positions.

The members of this bargaining unit consist of two employees of the 55th District Court, with the remaining 33-34 members being employees of the 30th Circuit Court, principally in the office of the Friend of The Court. Most of these are long-term employees, with most/many of them holding undergraduate or graduate degrees. With the exception of those whose jobs require the employees to hold law degrees, no evidence was presented regarding degree requirements from the employers for the other positions.

The most-recent Collective Bargaining Agreement (CBA) for this Unit expired on December 31, 2011. The Parties have negotiated extensively in an effort to reach a successor CBA, both prior to and after the expiration of the last CBA. They held seventeen separate full-day negotiating sessions and have undertaken four separate mediation efforts. After such significant efforts, the Parties remain locked in an impasse.

By law, the terms of the expired contract remain in effect and no step pay or benefit increases have taken effect since the expiration of the old CBA. Once a new agreement is reached employment terms regarding pay and seniority-based benefits contained in it will be addressed retroactively. In reality, the parties are negotiating, and thus this Report addresses, the terms of a three-year CBA, with its starting date being Jan.1, 2012 with its expiration being Dec. 31, 2014, absent agreement by the Parties to the contrary.

Both Parties filed for Fact Finding with the Michigan Employment Relations Commission (MERC), with the Association filing on March 22, 2012 and the Employers filing on April 2, 2013. The undersigned was appointed by MERC to serve as the Fact-Finder in this matter. Fact-Finding is a non-binding process before an independent and outside fact-finder through which the Parties present their positions and supporting evidence to the Fact-Finder at a hearing. Such a hearing was held in this matter, with the Parties submitting post-hearing briefs to summarize their views of the evidence and to argue their respective positions on the issues in dispute. The Fact-Finder issues a Report in which disputed factual issues are opined on and recommendations given. As stated above, this Report is non-binding on the Parties, but it gives them the opportunity to present their positions in a different forum subject to different procedures (often a cathartic experience) and presents them with an outside assessment of their competing positions as well as recommendations for a resolution of the impasse.

II. Analytical Approach

Analytically, the considerations in fact-finding in Michigan are, at least in common practice given a lack of statutory direction on this point, essentially the same as those in Michigan's statutory Act 312 compulsory police and fire arbitration, obviously without the "hammer" of the result being final and enforceable on the parties. This Fact-Finder determines to use the Act 312 factors herein, at least as applied to the issues raised

by the Parties, viewed through the "lens" of the reality that the Act 312 factors are designed for use in situations in which the result of their application is an involuntary and binding set of contract terms. Again, in Fact-Finding, this Report is advisory only. In relevant part, Act 312 states:

> Sec. 9. (1) If the parties have no collective bargaining agreement or the parties have an agreement and 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 new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:
> (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:
> (i) The financial impact on the community of any award made by the arbitration panel.
> (ii) The interests and welfare of the public,
> (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
> (iv) Any law of this state or an directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
> (b) The lawful authority of the employer.
> (c) Stipulations of the parties.
> (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:
> (i) Public employment in comparable communities,
> (ii) Private employment in comparable communities.
> (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
> (f) The average consumer prices for goods and services, commonly known as the cost of living.
> (g) The overall compensation presently received by the employees, including direct wage comparisons, vacations, holidays, and other exceed time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and other benefits received.
> (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.
> (i) Other factors that 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.
(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by the competent, material, and substantial evidence.

Other additional relevant statutes are those mandating that no Michigan county can operate under a budgetary deficit, MCL 141.436 (7) and MCL 141.437(2).

To the extent that this Report does not address any particular factor noted above indicates only that such factor(s) was/were not raised or addressed by the Parties and/or that no evidence was presented on such by them.

III. Ingham County's Financial Situation

Given the statutory, and frankly logical, importance of the fiscal position of the County in determining collective bargaining terms, whether binding or advisory, the Fact-Finder is of the opinion that Ingham County's financial state should be examined generally prior to addressing each of the issues between the Parties at this stage of negotiations. Complicating the fiscal analysis is the reality that the economic situation in the State of Michigan, as well as in Ingham County, has been a moving target during the time frame in which the Parties' negotiations occurred.

Generally speaking, it is found that the fiscal state of Ingham County declined significantly preceding and during this time frame, but there appear to be some indications that this trend may finally be reasonably anticipated to see some improvement, albeit perhaps not to the higher levels experienced by the County in past years. Remembering that the negotiations regarding the current CBA cycle began in late 2011, the negotiations began prior to the expiration of the old contract on Dec. 31, 2011. They continued through 2012 and into 2013. Mediation sessions were held during the same time frame. Thus, the Parties were dealing with a fiscal situation for the County that was in fact deteriorating during the time of their efforts to settle on a new CBA.

Further, it is found that Ingham County is in the situation that it cannot significantly increase its revenues due to restraints on revenue generation such as the Headlee Amendment and other state-imposed restraints.

During the Fact-Finding process the Association has argued the professional nature of the Unit's membership and that they work in the Courts. Such is certainly recognized. Many/most of the members of this unit hold post-secondary education credits/degrees/diplomas with a number of them holding advanced graduate degrees, including law degrees. The members of this unit certainly serve in a critical area of Ingham County's governmental duties, the Courts. The Courts certainly perform many constitutionally mandated duties. These arguments, however, are generally appropriate considerations for establishing appropriate base salaries in the scales, but generally not for granting such employees more favorable annual-increase terms in any particular CBA than those for County employees in other units. As noted by the Employers, the County

has other departments in which employees must have advanced degrees, such as the Health Department with its professional nurses and departments that must have degreed employees such as engineers. The higher salary levels paid to County employees who perform difficult jobs and have a higher level of qualifications they must meet are where they should get their financial recognition. Periodic percentage increases give them more dollars on their higher salaries than those with lower base salaries. If an employee's base salary or place in the steps is considered inadequate, then such should be negotiated on an individual basis, not used as an argument to raise the entire Unit's CBA terms. In fact, it was noted at the hearing that this Unit already has a number of senior employees who are "redlined" as they are being paid above their seniority position on the steps, so it appears that particular employee recognition is already being done or was done in the past. This observation is made in the absence of any other explanation for these employees' remuneration, such as having been in place during past CBAs that were more generous than recent ones.

During the Fact-Finding process the County, as part of its standard ongoing budgetary planning, created its "2014 Controller Recommended Budget Summary", which was received into evidence during the hearing by agreement of both Parties as Joint Exhibit #1. Similar summaries were developed for budget years 2012 and 2013, but the import of the 2014 report is in its historical retrospective and financial projections, with such being the most current as of the time of the hearing. Obviously, the Parties did not have this Summary during their negotiations since it had not yet been prepared. However, the Parties and the Fact-Finder found it helpful during the hearing due to its recent analysis of the County's near-term future fiscal situation as well as its overview of the County's historical situation during the time since the expiration of the last CBA between these Parties.

In summary terms, recent years have not been kind to Ingham County, nor to the State of Michigan for that matter. The County lost significant revenue and experienced the double-hit of being subject to additional responsibilities and expenses. Some savings were achieved by reductions in staffing through attrition. That is a better short-term approach than laying off employees, but it eventually leads to a point of diminishing returns as service to citizens begins to deteriorate as the remaining staff become overwhelmed by the increasing workload created by not replacing the "attritted" employees and spreading the workload over the remaining employees in the affected departments. This is a department-by-department issue depending on where the departing employees came from.

One alternative that few in government employ like to discuss is the reduction or elimination of services not mandated by statute or constitution, but that argument was not developed at the hearing beyond brief discussion regarding the prioritizing of expenditures in very general terms, with the Courts and law-enforcement being mentioned as among those services more central to limited government than others offered by the County. It will not be used herein as a basis for any facts found regarding resolution of the Parties' disagreements for lack of development.

Rather than further bury the reader with extensive detail regarding the fiscal situation of Ingham County in the relevant time frame, the Fact-Finder finds that the County's position in bargaining with this unit regarding its poor financial situation and then-foreseeable prospects was supported by the facts and information *then known*. Joint Exhibit one, the 2014 Controller Recommended Budget Summary, is found to be a good summary of the County's recent financial difficulties and improving prospects and projections regarding such. It contains information and detail not available prior to its drafting. That Summary does see reason for hope in the near future, hopefully as early as 2014 or 2015, that various revenues, principally from real estate tax increases due to an improving real-estate market, increases in state liquor-taxes, a leveling of the steep increases the County had seen in employee health care costs and some increase in state revenue sharing. However, those increases appear to be in the time frame near the end of the currently negotiated CBA, not in its early years, so they are not support for improved terms in the time frame prior to the projections.

It is found that the County's financial state was, during the time covered by these negotiations, as stated by the Employers *during the hearing*. As pointed out by the Association, the County had, during the lengthy negotiations, overstated its fiscal problems during its interactions with the Association. Without going into the minutia of finance, the County would project financial problems that would, in time, turn out to be overstated. This, rightfully, undercut the Association's trust in the County's forthrightness. However, during the hearing the "art" (not science) of financial projection was satisfactorily explained, with the inaccuracies being shown to be the product of uncertainties and properly conservative budgeting rather than deliberate falsehoods. Joint Exhibit #1's discussion of the recent past explains this better than this Report can summarize. That Exhibit also explains the recent arrival of encouraging news relative to the County's expected/hoped-for financial improvement.

That the County had and has reserves, both general fund and unreserved, does not change its revenue stream. The reserves held by the County are a generally poor resource to draw against to meet current payroll and employee benefits with as they are finite and subject to exhaustion or excessive reduction. Prudent management requires that reasonable reserves be maintained to service unexpected expenses and those that are expected, but require saving towards such as significant capital expenditures. Certainly, if a public employer was amassing excessive reserves while pleading poverty to its employees, such should be exposed and corrected. However, it is found that the reserves held by Ingham County were not, and are not, excessive when viewed in the context of negotiating the current CBA. In point of fact, the evidence established that the fund balances, while sufficient for now, are facing significant depletion in the absence of appropriate fiscal restraint. That said, it is noted that the County's 2014 budget, as set out in Joint Exhibit #1, does use $3.5 million of general fund balance to balance that year's budget, largely on the expectation of improving revenues. Such use is found to be reasonable in light of the County's legal mandate to operate within its annual budget since such use is balanced by anticipated improvements in the revenue stream. This does not make these funds targets for continuing annual employee compensation and benefits obligations. Short-term use of these fund balances for specified temporary purposes is

considered reasonable in light of the fund balances and anticipated revenue improvements.

An additional issue that should be put under the County's "global" financial picture is its unfunded liabilities, as relevant here, pensions and retiree health care insurance. Under the expired CBA, and apparently those before it, retirees from this Unit receive single-subscriber health insurance coverage identical to that enjoyed by then-current employees. Additionally, employees in this Unit can retire at age 55 with 15 years of service or after 20 years of service regardless of age. The retirement benefit received is a MERS defined benefit plan with a B-3 (2.25%) multiplier and a FAC-5 (final average compensation). Apparently, the same or similar terms apply to all of the County's employees through their respective CBAs. It is found that these generous benefits present very significant unfunded liabilities for the County that are "real" financial obligations and must be paid, albeit over time given the nature of the benefits. While these obligations are due in the future, they are real debts that must be honored when due. Failure to pay for retiree health insurance or MERS obligations for pensions will have real impacts on retirees in the future as well as the County's credit rating. The Employers have contractual obligations to present and future retirees to assure that their bargained-for benefits are there when the retirees need them. The County has to manage its finances continually to assure that it will be able to meet its obligations to its employees and retirees. Spending too much in the present impairs the County's ability to meet its future obligations. As of the end of 2012, the last year for which full-year figures are available, the total unfunded obligations owed by the County amounted to $102,376,000.00. By any measure, this is a significant sum. While it is true that MERS would allow the County to pay the retirement unfunded debt over a span of years, such an accelerated payoff would deplete the revenues available to service County expenditures in those years, such as current employee salaries and benefits. It is found that the County must take steps to reign in the growth rate of these unfunded obligations.

That the County has been able to reach agreement with 13 of its 17 collective bargaining units on terms identical or similar to those offered to this Unit is further evidence that its positions on its current revenues, expenses and reserves is supportable, provable and accurate. Thirteen of seventeen units with the same employer would likely not have settled had the County's position on its fiscal position not have been satisfactorily proven in those negotiations.

At one point the Association presented its calculation of what the total cost per year would be to the Employers if all of its positions were adopted. While that calculation was relatively small in terms of immediate impact, it must be remembered that there are issues in play that have much longer impacts, such as retirement and retirement health care. Further, if an employer with many bargaining units to negotiate with approves unusually generous terms with one unit, that employer can rightly expect to face hard negotiations for similar terms from the other units in the next round of negotiations. Thus, there would likely be a "ripple effect" across the total employee pool with the consequence being a much more costly result than is seen when looking at one, relatively small, unit.

IV. COMPARABLES GENERALLY

As noted in the quotation from Act 312 above, comparison of the Parties' positions with comparable positions in comparable counties (external comparables/externals) and with comparable positions within Ingham County (internal comparables/internals) is proper evidence in fact-finding and Act 312 arbitrations. Here the Parties agreed on a list of other counties to be considered as comparable with Ingham County. They are the counties of Berrien, Jackson, Livingston, Ottawa and Saginaw. The internal comparables are the other bargaining units in Ingham County that had reached CBAs with Ingham County/their employers as of the date of the hearing.

Comparables are important as they provide some insight into how other public employers and units representing public employees in similar circumstances have resolved issues similar or identical to those present in the instant case. When there are no or few internal comparables, the externals become very helpful. On the other hand, when, as here, there are a significant number of internal comparables they become more persuasive as they present how other bargaining units who negotiated with the same funding unit have dealt with, assessed and resolved similar or identical issues for the same CBA cycle as are in dispute in the current negotiations here. In short, when faced with a situation like this one in regard to the comparables, the internal comparables carry significantly more weight than the external comparables. The externals remain relevant, but are of less import in the overall analysis.

Candidly, in situations such as are now presented in Ingham County, with the significant majority of the internal bargaining units having settled with the Employers on terms similar to the Employer's proffered terms here, the burden on holdout units such as this one is to persuasively argue why they shouldn't be treated the same as the units that have settled. The Employers have strong disincentives to reward holdout units with better terms as such will haunt them in future-year negotiations. Employee bargaining units/teams in the future will perceive that they shouldn't "fold" too early, but rather should hold out for better terms over time. Public employers, especially as they grow in size, must be not only reasonable, but also consistent in contract negotiations with their multiple bargaining units. When better terms are agreed to with one unit as compared with other units the employer needs to have clearly identifiable and defendable reasons for the more generous terms. Such reasons will be perceived subjectively by the members of the unit holding out for the better terms, but will be examined objectively by the employer and the members of the units that settled on terms not as advantageous as those sought by the holdout unit(s).

During the hearing in this matter, members of the employee bargaining unit testified regarding their concern over what they termed a two-tiered system that would exist if new-hires are treated differently, and generally on inferior terms, than existing employees in any resolution of the terms that the Parties have not yet agreed on. The same concern will exist, albeit outside the membership of this unit, if this unit receives notably better terms than members of other units that settled on less favorable terms. In

relatively large public employer situations, such as Ingham County, the County's managers need to be aware of the risks of inter-unit tensions since it is the norm that the members of different units will have cross-unit working relationships, often in the same building and frequently within the same office space. Concerns regarding intra-unit tensions arising from a two-tiered set of employment terms within a unit, such as the members of this unit are arguing against, involve a smaller number of employees for the County Managers to contend with. As long as there is relative consistency across units, with exceptions being clear and defendable, there should be peace in the workplace. Human nature being what it is, there will always be some "sniping" between employees and groups of employees. The goal is to minimize the valid reasons for such while providing fair, reasonable and sustainable terms of employment across the full breadth of the County's employee pool.

V. ISSUES

In their briefing and during the hearing the Parties clearly identified the areas they have been unable to reach agreement on. That said, it is understood that parties to any negotiation have priorities and may be willing to move or modify their positions issue-by-issue to reach an overall agreement that will satisfy them. Such flexibility is necessary in any negotiation, whether in the employment arena or in some other area of interaction between people or businesses. Such trade-offs are up to the Parties, and this Report will not attempt to resolve such prioritizing. The recommendations from this Report can be "bargaining chips" for the Parties to use in the give-and-take of their remaining negotiations.

The issues raised by the Parties will each be discussed individually, although this Report will address them a different order as compared to how they were arranged in the briefing of the Parties. The general ordering of this section of the Report will be to address the "larger" issues, then work down the list in the perceived importance or degree of contention the Parties seem to have attached to them.

A. THE ISSUE OF "TWO-TIERED" EMPLOYEES BASED ON DATE OF HIRE

In a number of the issues discussed below on their individual merits, the main issue in contention is the Association's response to the Employers' proposals to keep existing employees in the same general terms of employment, but placing newly-hired employees in a different set of employment terms. Some of the issues deal with dates of retirement rather than hiring, as appropriate to the particular issue. For ease of reference the issue will be addressed in this section in hire-date terms. The Association is strongly opposed to such and argues that doing so would create within the Unit two tiers of employees with differing employment terms, which the Association posits will create internal friction between the two groups resulting in negative employee performance. Since this issue is presented in many of the areas of disagreement between the Association and the Employers it will be dealt with here generally, then applied specifically issue-by-issue below.

In short, there is nothing new in the treatment of employees differently based on their dates of hire. In fact, the Ingham County has reached agreements with 13 of its 17 Units that do this very thing. Candidly, this approach is more protective of the existing employees than would be imposing the new, and generally inferior, terms on all employees, existing and new hires. After such a policy is put into place everyone applying for employment after the terms are set knows what they are getting if hired. They agree to such by accepting employment on such terms. Relevant CBA provisions become the terms of employment for new hires within the Units covered by them on all issues they cover. If the new hire becomes upset with the reality that she/he is working with more senior employees who have different terms, that is their "looking-in-the-rearview-mirror" problem. If such affects their employment performance it may impact the duration of their tenure. No one can be guaranteed a friction-free environment, be it in their employment or otherwise.

Times change and such changes have consequences. When change has fiscal impact on employers, those employers must decide how to handle them. If, as here, continuing to offer identical terms of employment to old and new employees proves to be beyond the employer's financial realities, the employer has to choose how to deal with such. In collective bargaining environments, the employees at least get a place at the table while such decisions are made. However, reality dictates outcomes. The Fact-Finder finds that the fiscal environment facing Ingham County during the time frame of these negotiations supports, as reasonable, the treating of new hires differently from existing employees, within reason. It is recognized that the Association is representing this Unit's existing employees as well as its future ones. Agreeing to reasonable two-tier employment terms protects the existing employees and sets firm terms for new hires. Such is, in general principal, recommended here.

B. WAGES AND STEP INCREASES

Generally, the most immediately important issue to any employee is the take-home cash component in the overall compensation/terms-of-employment package. Employees know that there are deductions that come out of their gross pay for a number of reasons, such as tax withholding, employee contributions to time-distant benefits and the like. Such are generally clearly itemized in the payroll check stub, unless the increasingly common use of direct-deposit banking has been opted for or imposed in which the employer provides its employees with periodic statements, which most employees often disregard, truth be known. Employers, on the other hand, know all too well that their labor costs include everything they are obligated by contract or law to pay for their labor force.

This Report has already addressed Ingham County's fiscal situation in the relevant time frame above. In short, the County was, and is, facing difficult times financially, although there is cause for near-term optimism for improvement. However, a fact-finding report must view the facts as such were known by the Parties during their negotiations, and here that view was not good. The reserves having been taken out of

the equation above, Ingham County was dealing with difficult times and needed to seek concessions from its employees. As noted, some savings were realized by staff reductions through attrition, but such was insufficient to resolve the County's fiscal difficulties. Through negotiations for CBAs for the current contract cycle (2012-2014), the County received concessions from thirteen of its seventeen bargaining units to help meet the economic problems it was facing.

The Employers' proposal to the Association is that the wages of the members of this unit be as follows during the CBA negotiated:

1. Base Wages:
   a. 2012 wages frozen at 2011 levels.
   b. 2013 wages reduced 1% from 2012 levels.
   c. 2014 wages frozen at 2013 levels.
2. Step Progression:
   a. No step increases during 2012, with a freezing of step increases statutorily imposed by 2011 PA 54 during the pendency of negotiations.
   b. Step increases restart in 2013, but at 2012 levels as of the latter of employee's anniversary date or the date of contract ratification by both Parties.

The Association countered with following terms:

1. 2012 base wages 0% increase, but with step increases on ratification, subject to PA 54.
2. 2013 base wages 0% increase, but with step increases on ratification subject to PA 54. Additionally, employees give back hours of vacation accrual as follows in 2013 only:
   0-5 years: 1 hour
   6-10 years: 2 hours
   11-15 years: 4 hours
   16-20 years: 6 hours
   20+ years: 8 hours
3. 2014 base wage 1% increase, with no vacation time return.

The internal comparables, being the bargaining units that have reached a CBA with the County as spelled out in the County's Exhibit 35, show that the units that have settled did so on terms generally very similar to those offered to this unit, with some variations. Some are truly identical to the above. A few have the 2013 decrease take effect on dates in March of that year rather than Jan. 1. Three provide for reopeners regarding wages for the last year covered by this negotiation, 2014. One specifies a 1% reduction from scale for new hires on or after Jan. 1, 2013 followed by a reopener for all unit members for 2014.

The external comparables show a range of wage freezes and increases. It is noted

that not all externals cover the same time period as we are dealing with in this negotiation. One covers 2010 through 2013. That county froze wages in all years and requires that new hires get a 2.5% reduction from the 2009 scale starting, apparently, in the first year of that contract, 2010. As for the other counties listed, two freeze 2012 salaries at 2011 levels, one gave a 1% increase, one gave a 1.75% "lump sum" payment on Oct. 1, 2012 and one gave a 2% increase. For 2013, one gave a 0.5% increase, one gave a 1.75% increase and two gave a 2% increase. For 2014, only three of the externals extended into that year. Of those three, one gave a 1.75% increase and two gave a 3% increase. Among these it should be noted that two units came from the same county and that this county was the most generous regarding wages. These two units differed only for 2012, with one getting a 1% increase and the other getting a 2% increase. They both received 2% and 3% for 2013 and 2014 respectively.

In looking at the externals, it is noted that, other than the Parties' stipulation on the list as presenting counties that are comparable, there is little specific information on these counties' finances. The Association's Exhibit 21, after charting the externals' revenues, total expenditures and judicial expenditures, both as a sum and as a percentage of total expenditures, gave the e-mail addresses for the summaries for the 2013 budgets in each comparable county. However, such detail was not covered during the hearing. Therefore such is not considered as in evidence and was not subject to testimonial explanation/examination or comparison to Ingham County's 2013 budget. Also, limiting the budgetary information to 2013, when the 2014 Summary for Ingham County was the one most relied on herein, limits the usefulness of that information.

It is the Fact-Finder's determination that the internal comparisons are much more useful here regarding wages than are the externals. Given such, and in light of all the relevant evidence received, the Fact-Finder recommends that the CBA for 2012-2014 for this unit should follow the pattern of the County's offer relative to wages and step increases set out above, but with a reopener on the wage issue for 2014 as such exists for some of the other units. The Association's offer of giving-back of vacation hours, while creative, is felt to inject a term differing from the internal comparables without sufficient benefit to the overall agreement to be adopted. The use of a reopener for 2014 seems to be one area that would give the Parties an opportunity to track with some of the other internal comparables and put this unit on an equal footing with those other units that will have the opportunity to examine the County's potentially improving financial prospects for that year.

C. RETIREE HEALTH CARE "WRAP-AROUND"

Under the expired CBA retirees receive, as a retirement benefit, single subscriber health care coverage equal to the full plan offered to existing employees. The Association argues for the continuation of those terms. The County is negotiating for the following terms:

"A. For employees who retire after January 1, 2013, once the retiree

becomes Medicare eligible age, he/she must apply for Medicare. Coverage may be supplemented with the Medicare Supplement Plan implemented as part of the Health Care Cost Containment Committee process. The Employer may change the Medicare Supplement Plan as part of the Health Care Cost Containment Committee process, with prior written notice to the retiree.

B. Employees hired on or after January 1, 2103 shall receive retiree health insurance as follows;

After 10 years of service	50% of the Employer's contribution for active employee single coverage.
After 15 years of service	75% of the Employer's contribution for active employee single coverage.
After 20 years of service	100% of the Employer's contribution for active employee single coverage

The Employer's contribution shall be capped at the above percentage amount of the existing contribution for single health care coverage. Employees shall not be eligible until they reach 60 years of age."

The County notes that three of the external comparables provide no retiree health insurance and even the Association acknowledges that none of the external comparables provide for wrap-around retiree health care. In the thirteen CBAs reached with the County's other Units all have agreed on the County's proposed terms. The comparables support the Employers' position. The Association's chief concern seems to be that it would like to see its members be able to choose a supplemental plan other than that chosen by the County's Health Care Cost Containment Committee. Apparently, the County is using the carrier Humana. The Association is critical of the level of benefits provided by Humana.

In support of arguing for changing the retiree health-care provisions of the CBA, the County observes that their current system has resulted in an unfunded retiree health care obligation in the range of $92,000,000.00, a sum that actually exceeded the County's unfunded obligation to MERS for retiree pensions as of that date. The fact is that the County's funded portion of its obligation for employee healthcare insurance is only at 67.8%. The issue of unfunded obligations has been discussed above. It is found that an unfunded retiree health care obligation of that level for Ingham County is unsustainable and steps must be taken to control and, ultimately, reduce that debt to manageable levels.

As noted, the comparables, especially the internals, support the Employers' offer. Without the help of supportive comparables, the Association's argument against Humana,

or inferentially similar coverage, is in the inflexibility of the Employers' proposal that locks the retirees into one plan option. No proofs were presented that indicated that providing flexibility, at the retirees' expense, in choosing such supplemental insurance would be unworkable or have hidden costs for the County. Therefore, it is the Fact-Finder's recommendation on this issue that the CBA provide for retiree choice of Medicare supplemental insurance with the provision that, if the premium for the insurance chosen exceeds the cost of the insurance approved by the County's Health Care Cost Containment Committee's chosen plan, it is the employee's responsibility to pay any such differential. The mechanics to implement such cost sharing would be left up to the creativity of the Parties. Options could include the employee paying the total premium directly, but getting a cash payment from the County equal to the premium of the plan approved by the Health Care Cost Containment Committee on proof of payment of the higher premium. Another option could be the County providing two or more plan options, with the employees being responsible for costs above the County's Committee's approved base plan. There may be other options, but then there may be factors not raised at the hearing that would render the options approach unworkable or financially unrealistic. The Fact-Finder's thoughts in this regard are simply that the Association's complaint that the rigid limitation to one supplemental plan as chosen by the Committee seems to have merit.

D. NEW-HIRE RETIREE HEALTH CARE CAPS

This issue is really an offshoot of the issue immediately above. It deals with the sliding-scale basis for the County's contractual obligations to assist retirees with their health care insurance premiums as spelled out in the Employers' proposal, paragraph B above. On the other hand, the Association wants to preserve the current contract language which gives retirees full single-subscriber health insurance equal to that of existing employees' coverage on retirement. The Association also asserts its position against having a two-tiered employee system based on hire date. On that point, see the discussion of that issue above.

The association points out that, under the current provision in the expired CBA employees can retire at age 55 for both pension and retiree health purposes while the Employers' position would deny health insurance contribution from the County until an employee retires at age 60, and then with only a 50% contribution by the County toward the premium. The County's position is that the unfunded obligations for retiree health care insurance require the changes and that 13 of 17 Units that have settled have agreed to these terms. The external comparables offer little assistance given the wide differences between them in this area. The internals support the County's position.

For the reasons discussed in the preceding section, the Fact-Finder finds that the County's unfunded health care obligations require that it take action to reduce its long term unfunded obligations. Like the preceding discussion, the County's proposal is limited to new hires, so the above discussion regarding such applies here also. New employees understand what they're getting when they hire in. That employees with more seniority have a more generous package is a product of the times. The Fact-Finder

recommends that the Employers' proposal on this subject be adopted.

E. LONGEVITY

Longevity, when given, is the generally annual lump sum payment given to employees as a reward for long tenure with the employer. The Employers here refer to it as an antiquated form of compensation to public employees to offset their, historically, low levels of pay, a situation that the Employers argue no longer exists. The Association argues that longevity has become, in large part, the only raises its long-term members receive since they've exhausted their step increases and cost of living increases are rare these days. It further argues that employees have come to view these payments as their Christmas-shopping bonus. The Association also argues that its members, and future members, are taking a double hit by being asked to make pay concessions in negotiations while freezing longevity for existing employees and eliminating it for new hires.

Longevity, under the existing CBA, is a sliding scale starting at 3% of annual wages at four years of service to 9% at and over 16 years, with a $20,000.00 salary cap used. At maximum, this equates to $1,800.00 per year for the top wage earners, and in this unit there are a number of them. Such is not an inconsequential sum.

The Employers propose to freeze longevity for current employees until 2015, with employees eligible for their first longevity payment in 2012 receiving their payment in December, 2013 at the frozen rate, and to eliminate longevity for new hires. The Association wants to keep the current provision.

No evidence was presented to establish the reason(s) for longevity. It may be as argued by the Employers. It could also be a reward to long-term employees for staying on and reducing the Employers' turnover costs, such as training and reduced productivity generally received from new employees. The reality is that, when an element of compensation, whatever its genesis, is of long standing it becomes a relied-upon financial term of employment. As such, existing employees have a reasonable expectation of the continuation of their longevity pay, absent convincing facts and arguments to the contrary since, in the abstract, no employees are guaranteed long-term continuation of any particular term of employment. The same expectation, however, is not true for new hires. Whatever the reasoning behind the initial adoption of longevity pay, the issue is now being looked at through the lens of expense reduction in the face for a need for such. The Association argues that the savings are inconsequential, but when spread over all eligible employees in the County, the cost is not so.

The external comparables, again, are of little aid given the wide variety of practices in use. On the other hand, the internal comparables indicate that all 13 of the units that have reached agreement with the County have done so regarding longevity on the terms sought by the County. The County's financial state has been discussed above. The Fact-Finder finds, particularly in light of the terms in the 13 units that have settled, that the Employers' terms on this issue are warranted by its financial condition, particularly if all County employees are considered, and recommends their adoption.

Again, the outcome here for new hires follows from the same rationale noted above: they know the terms of employment when they hire in.

F. NEW HIRE RETIREMENT PLAN

The Employers' current CBA with this Unit provides its members with a MERS defined benefit retirement plan, the exact terms of which are not important to the discussion of this issue which deals only with new hires. Regarding the issue of providing new hires with employment terms different from and inferior to those of existing employees, the reader can review the above discussions of such.

The Employers proposes to provide newly hired employees with the following retirement benefits via amendment to the expired CBA, Sec. 26:

> "B. For employees hired on or after Jan 1, 2013, the Employer shall offer a MERS Hybrid Plan. The Plan will consist of a Defined Benefit (DB) component with a 1.25% Benefit Multiplier and a Defined Contribution (DC) component. The County and the Employee will contribute to the Defined Contribution (DC) of the Plan. The County and Employee contributions shall be a minimum of 1% of the Employees payroll, and the Employer will match the Employee's contribution up to 1.0% of payroll for the cost of the Defined Contribution (DC) component of the Plan. Employees will be allowed to make additional contributions as allowed under the plan, MERS regulations, and any applicable laws. Employees will be 100% vested for Employer contributions to the DC component of the Plan after five (5) years of service, and the DB component of the plan after six (6) years of service. The Hybrid Plan shall have a FAC 3 years as to the DB component. Full-time employees hired before adoption of the Plan may convert to the Hybrid Plan at their option in accordance with the terms of the Plan, pursuant to MERS requirements, and MERS Uniform Hybrid Program Resolution as adopted by the County Board of Commissioners."

The Employers argue that the CBA the Parties are currently operating under provides one of the best MERS DB plans with full retirement eligibility after 20 years of service. The problem, from the County's perspective, is that the cost of this plan is skyrocketing. The 2013 cost to the County for this Plan is 13.14% of payroll, with the 2014 cost going up to 15.06 % of payroll. The Employers emphasize that they are not trying to take this plan away from existing employees, but only want to change the plan that is offered to new hires. Cost is the driver of this proposal, as it is on virtually all the other issues in this matter. The County points out that, as of Dec. 31, 2012, its unfunded pension obligation owed to MERS is $102,376,000.00.

It should be noted that the Parties have stipulated that adopting the Employers' position on this issue would not have any impact on the already-accrued unfunded pension obligation of the County. It would, however, reduce the rate of its growth and

eventually provide other relief from that burden.

The Association offers several responses. It argues against the two-tiered staffing situation that would be created, but the discussions above have decided against that argument. One of the Association's main concerns is that, once a hybrid plan is established, MERS and the IRS do not allow for any change in the multiplier for the defined benefit component of the plan. That means that, if the Employers' proposal is adopted, the Parties could never change the DB multiplier of 1.25%, absent changes in the relevant MERS and IRS regulations. The Association points out that, if the Employers want to maintain flexibility they could agree to continue the existing DC plan, perhaps modified from that enjoyed by current employees when applied to new hires. The Association also points out that MERS would allow the County to pay off its unfunded obligation over 28 years. Given the large amount of that obligation noted above, quick math shows that such an effort would cost $3,656,285.71 per year for 28 years. Such an undertaking, in addition to the County's other fiscal obligations, is questionable.

The external comparables are a mixed bag, with some offering DB plans on varying terms, some offering DC plans on varying terms and one using the hybrid plan approach. The 13 internal comparables, however, uniformly adopt the Employers' proposal for a hybrid MERS plan on the terms offered by the Employers.

Sorting this issue out presents questions not resolved by analyzing the proofs. The bottom line is that the County needs to reduce its unfunded retirement obligations. The Fact-Finder finds that the most predictable, or at least most analyzed, approach is that offered by the Employers, thus finding it to be the best approach to this issue. That approach is found to be the most predictable, preserves the retirement benefits of the existing employees while giving new hires a retirement plan on firm terms. For those reasons the adoption of that approach is recommended. If prosperity returns to Ingham County the new hires can negotiate for more favorable terms on the DC side of the hybrid plan, even if they are locked into the DB multiplier. If MERS and the IRS change their rules regarding modifying the DB terms, the Parties will be presented with an important change of circumstances.

G. NEW HIRE VACATION ACCRUAL

Preliminarily, the Association remains opposed to any two-tiered approach as such would create two "classes" of employees in the Unit: current employees and new hires. As to that issue the reader is referred to discussions above on this argument which does not adopt the Association's position on this generally. However, that does not end the analysis on the vacation-accrual issue.

As a fall-back position, the Association argues for a vacation-accrual schedule that would have new hires reach the same level of vacation accrual as existing employees after ten years of service, the same as the vesting requirement for pension purposes. The

Employers' position is for a vacation accrual schedule that would have the new hires meet the existing employees' accruals after 20 years of service. The Employers propose no change in vacation accrual for existing employees, a position the Association agrees with. The disagreement regarding vacation accrual is limited to the accrual rate for new hires. The Employers' proposal is best summarized in their Exhibit 20 in which the presentation is summarized as: "new hires after 1/1/2013 -16 hour reduction in annual accrual at each vacation level. At 20 yrs. or more, no reduction." The Employers' and the Association's proposals for new hires, compared with each other and the expired CBA in tabular form, are as follows:

Year(s):	CBA:	Employers:	E. Diff:	Assn:	A/E Diff:	A. Diff:
One	88 hours	72 hours	-16	80 hours	+8	-8
Two	96 hours	80 hours	-16	80 hours	-0-	-16
Three	104 hours	88 hours	-16	80 hours	-8	-24
Four	128 hours	112 hours	-16	112 hours	-0-	-16
Five	128 hours	112 hours	-16	112 hours	-0-	-16
Six	128 hours	112 hours	-16	112 hours	-0-	-16
Seven	128 hours	112 hours	-16	136 hours	+24	+8
Eight	128 hours	112 hours	-16	136 hours	+24	+8
Nine	136 hours	120 hours	-16	136 hours	+16	-0-
Ten	152 hours	136 hours	-16	152 hours	+16	-0-
Eleven	152 hours	136 hours	-16	152 hours	+16	-0-
Twelve	152 hours	136 hours	-16	152 hours	+16	-0-
Thirteen	152 hours	136 hours	-16	152 hours	+16	-0-
Fourteen	152 hours	136 hours	-16	152 hours	+16	-0-
Fifteen	168 hours	152 hours	-16	168 hours	+16	-0-
Sixteen	168 hours	152 hours	-16	168 hours	+16	-0-
Seventeen	168 hours	152 hours	-16	168 hours	+16	-0-
Eighteen	168 hours	152 hours	-16	168 hours	+16	-0-
Nineteen	168 hours	152 hours	-16	168 hours	+16	-0-
Twenty plus	176 hours	176 hours	-0-	176 hours	-0-	-0-

CBA = expired CBA Parties are working under.
Employer = Employers' proposal
E. Diff = Difference between CBA and the Employers' proposal
Assn = Association's proposal
A/E Diff = Difference between Employers' proposal and Association's proposal
A. Diff = Difference between CBA and Association's proposal

The external comparables are, again, a mixed bag in terms of making precise comparisons. Two of the comparable units (being in the same county) started treating new hires differently from existing employees on January 1, 2007. The others appear to not have provisions for treating new hires differently from existing employees regarding vacation accrual. Two counties address vacation in terms of weeks. Three units (two in the same county) address vacations in terms of days only. One uses hours calculated into

days. Finally, one uses a detailed calculation of decimal values of hours worked, translated into weeks and after ten years adds days to the weeks calculated. Comparing these units to the Unit in question here is complicated by the varying definitions of work days/weeks, some apparently using eight-hour days/40 hour weeks while others use 7 ½ hour days, which calculates to a 37.5 hour week. Ingham County appears to use an eight-hour workday and 40-hour work week.

Given the comparisons of the Employers' proposal with the external comparables, it appears that the Employers' proposition for new-hires is in the range of most of those comparables, although in the mid-lower area. The Association's proposition would bring the comparison more into the mid-high area, as well as accelerating the new hires' position in the first ten years.

Turning to the internal comparables, the one constant is the reduction in accruals applying to the new hires only, with the existing employees retaining the "old" accruals. The internals, however, use two levels of accrual reduction: 8 hours and, as the Employers propose for this unit, 16 hours. Six units have eight-hour reductions and seven have sixteen-hour reductions. The Fact-Finder is not privy to the reasons behind the differences, assuming that there is/are reasons other than the dynamics of negotiations and compensation/responsibilities/qualifications, but it appears that the units getting the higher accrual reductions are *generally* units in which their titles seem to imply a higher level of such, but there are no direct proofs on this.

Having such mixed considerations, it is the Fact-Finder's recommendation that the Association's proposal be adopted here, primarily to offset to some degree the "hits" they've taken regarding the other issues in contention. Also, if the County's agreeing to the more generous accruals with some of the units is based on identifiable bases, such as levels of responsibilities, qualifications for employment and the like, this is one area of compensation that may warrant doing the same for this Unit.

H. NEW HIRE SICK LEAVE ACCRUAL

The CBA the Parties are still operating under provides that employees shall earn sick leave based on the ratio of 4.5 hours for each eighty compensated hours (Ingham County apparently uses a two-week pay period) and pro-rated increments thereof. The Association's position is that provision should be retained as is, while the County proposes that new hires accrue sick leave based on a ratio of 3.9 hours per 80 compensated hours, with all employees accruing sick leave based on the 4.5 hour accrual after ten years of employment.

The CBA the Parties are operating under provide that employees can accrue a maximum of 1,920 sick-leave hours, with apparently no annual maximum. That provision is apparently not in contention.

The Association argues against adopting a two-tier employee situation as to this issue as it has on other issues. However, for the reasons addressed above the Fact-Finder

recommends that this argument not be adopted.

Two of the external comparables provide for no sick leave independent of other forms of paid leave, while the rest do on varying terms. Review of the sick-leave provisions for the external comparables, some of which provide no paid sick leave outside of their general paid time off, indicates that this CBA provides more than competitive terms when viewed overall. The annual accruals are generous and the rates of accrual, including the proposal by the Employers, are competitive. The internal comparables support the Employers' proposal, with seven providing for a total of 12 days of sick leave accrual per year without reference to dates of hire. This is what the Employers are proposing for new hires for their first ten years. Six of the internal comparables, including what the Employers have referred to as this Unit's "sister" units, have agreed to the terms proposed by the Employers here. The terms offered by the Employers here are actually more generous than the terms of the seven internal comparables that have agreed to a maximum accumulation of twelve sick days per year since these terms do give the new hires the opportunity to, after ten years of service, accrue sick leave at the rate enjoyed by existing employees, something not provided for in the contracts of those seven units.

The Association also argues that the stressors on members of this Unit, due to the nature of their responsibilities, places then at greater risk of illness than in other units. Thus, the Association argues, that members of this Unit, regardless of dates of hire, need the full 4.5-ratio accrual. Also, new hires not having the same number of sick days as existing employees may create situations where a new hire may either not have sufficient sick days or choose not to use them such that they will come in to work while ill, risking spreading their illness with other Unit members. Such are creative arguments, but absent any proofs on them the arguments cannot serve as support for the Association's positions. Further, pitting units against one another as to which are most likely to have work-related stressors such that they are at greater risk than members of other units is a path best left untraveled.

The County's fiscal condition is the reasoning behind the Employers' argument for the change. That condition has been discussed above and findings made regarding it. Such analysis is adopted as to this issue as well. Cost containment is an objective that these Employers face and have to deal with. Without pummeling this deceased horse further, the Fact-Finder recommends that the Employers' position be adopted. The Association has protected its existing members while obtaining terms certain for its future members.

I. NEW HIRE SICK PAY CASH-OUT AT SEPARATION

The CBA the Parties are operating under provides, as relevant to this issue, that employees can accumulate up to 1,280 hours of paid sick leave. On separation, due to retirement or death only, employees can receive in cash 50% of their accumulated, but unused, sick leave, that being 640 hours at whatever their hourly rate is. The Employers are proposing that the cash payout to new hires be limited to 25% of the accumulated

hours, which would reduce the cap to 320 hours. The reason underlying the Employers' proposal is the County's financial condition, about which the Fact-Finder has made findings above. In short, the Employers are justified in seeking concessions, while they may or may not have a good argument for such on a point-by-point analysis.

As a matter of consistency, the Association argues against the two-tiered system. That argument has been dealt with above and rejected. Additionally, the Association argues that the Employers' proposal will result in Unit members working while ill rather than use up their accrued sick leave. This argument is that accrued sick leave is a matter of compensation and that employees, particularly when their accrued sick leave is restricted, would prefer to accumulate such for a cash payout at retirement or their untimely demise. Affirmatively, the Association proposes to have the new hires achieve the 50% payout of unused sick leave after ten years of service.

Looking at the external comparables by reviewing the Parties' relevant exhibits which summarize the policies of the externals, one has no provision for payout and those with broad-brush "paid time off" (PTO) have no separate provision for sick leave payout separate from PTO. The remaining externals provide for lower accumulation of sick leave for payout purposes and/or have more restrictive provisions on accumulation of sick leave anyway such that there is a smaller amount of it to be paid out by any relevant provision.

The internal comparables show that twelve of the thirteen units that have settled to date agreed to the Employers' proposals on the payout of sick leave, with the exception being a unit that one would expect to receive the occasional better provision.

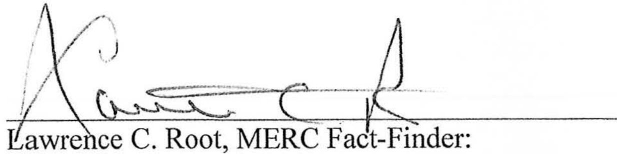
The Employers argue, and not without merit, that sick leave is supposed to be a benefit for the sake of employees to minimize their losses of income when they are ill. As contrasted with the longevity benefit, that such is the purpose for sick leave is really not open to dispute. The payout of unused sick leave is, frankly, from a policy perspective, a two edged sword. On the one hand, it does not serve the initial purpose of sick leave, that being preservation of employee cash flow during periods of illness. On the other hand, providing for a payout of unused sick leave incentivizes employees not to squander their sick time when they are not sick or are "under the weather", but well enough to work. Without resolving the underlying policy issues, the Fact-Finder recommends that the Employers' proposal on this subject be adopted.

J. CLOSING

That the greatest portion of the Fact-Finder's recommendations above favor the Employers is likely not unexpected. The recommendations arise not from any bias one way or the other, but address a fiscal situation that impacts everyone in Ingham County. Times are truly tough and such negatively impacts the revenues of many/most counties, Ingham County included. When revenues fall, budgetary decisions need to be made. There are reasons that the vast majority of Ingham County's employee bargaining units have settled their CBAs for the period covered by these negotiations on terms put forward

by these Employers. From personal experience this Fact-Finder knows that the managers who must work with affected employees take no joy in having to offer them the best of bad options. Hopefully, the economy will right itself, Ingham County's fiscal picture will improve such that the privations of these lean years can be put behind the Parties and the losses of the past mitigated if not righted totally.

The Parties are wished well as they discuss this Report and work to reach terms on the new CBA. The Courts are public service institutions and the people they serve are likely dealing with many, if not most or all, of the hardships being experienced by the County. They understand that the employees of their Courts have needs and likely wish them well in their negotiating efforts. But these folks also pay the taxes to provide the money that support those who perform the services of the Courts. The Parties are urged to resolve their differences, mutually hope for the return of good times and move forward in service to the Public.



Lawrence C. Root, MERC Fact-Finder: Dec. 28, 2013
Date: