

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

In the Matter between:

GENESEE COUNTY/  
GENESEE COUNTY SHERIFF  
Petitioner-Employer

FACT FINDING  
MERC Case No. D11 D-0408

-and-

POLICE OFFICERS ASSOCIATION  
OF MICHIGAN (Corrections Deputies)  
Respondent-Labor Organization

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APPEARANCES:

For the Employer:  
Richard W. Fanning, Jr.  
Keller Thoma, P.C

For the Labor Organization:  
Gary Pushee, Business Agent  
Police Officers Association of Michigan

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FINDINGS, OPINION AND RECOMMENDATIONS

## PROCEEDINGS

This Fact Finding case arises pursuant to a Petition file by the Employer on June 1, 2012. At the same time the Employer filed a petition for Act 312 Arbitration in a case involving the Genesee County Sheriff's deputies and paramedics. The Michigan Employment Relations Commission appointed the undersigned as the fact finder on July 27, 2012. The undersigned was also appointed as the impartial arbitrator and panel chairperson in the Act 312 arbitration case on July 12, 2012. The parties were signatories to a Collective Bargaining Agreement that covered the period from March 7, 2006 through December 31, 2009. The bargaining unit is described as: all regularly scheduled personnel employed by the Genesee County Sheriff's Department classified as Police Deputies, Corrections Deputies, and Cooks, but excludes the Sheriff, Under-sheriff, Corrections Administrator, Command Officers, confidential, temporary and seasonal employees, and all other employees.

The parties elected to proceed first with the Act 312 case before addressing the Fact Finding case. An Award was issued on the Act 312 case in February 2013. On March 4, 2013 the parties entered into a Letter of Agreement Regarding Fact Finding wherein the parties agreed that the terms of the Act 312 Award would apply to the non-Act 312 eligible positions in the bargaining unit with the exception of two Health Care issues which are the only issues subject to this Fact Finding proceeding.

A hearing was held on March 6, 2013 at the POAM offices in Redford, MI. The parties have stipulated that those portions of the Act 312 Award record pertaining to the County's ability to pay would apply in this Fact Finding proceeding. The record includes labor agreements for Correction Deputies from the external comparable Counties of Lapeer,

Macomb and Saginaw. In additions the record includes labor agreements with several other comparable Genesee County bargaining units.

#### DECISION MAKING CRITERIA

Fact Finding cases are conducted pursuant to Section 25 of the Labor Mediation Act 176 of 1939 as amended, MCL 423.25, and in accordance with the provisions of R 423.131 of the General Rules of the Michigan Employment Relations Commission. The Act does not provide for any specific criteria to be used in evaluating the positions of the parties or the basis for a fact finders recommendation. Consequently, many fact finders choose to apply the criteria set forth in Section 9 of Act 312 of 1969, as amended, MCL 423.239.

Unlike Act 312 arbitration, fact-finding is intended to review the facts as presented at the hearing with the realization that the report and recommendation is not binding upon the parties but may assist the parties in reaching a negotiated agreement. Toward that objective the undersigned will utilize some of the criteria of Section 9 as deemed appropriate to the issues in dispute and make recommendations to the parties based upon the evidence and facts that in the opinion of the fact finder reflect what the parties could reasonably have expected to negotiate.

#### ABILITY TO PAY

In any analysis of disputed economic issues the costs of the respective proposals and the financial resources available to meet those costs are of primary importance. In this case, as in the aforementioned Act 312 case, the Employer has presented evidence that indicates that the County has experienced a decline in general fund revenue while faced with increased operating expenses. The record evidence shows that for the fiscal year of

2007/2008, the County had \$103,968,219 in general fund revenue and in fiscal year 2009/2010 general fund revenue had declined to \$96,973,046. The budget for 2011/2012 estimated general fund revenue would decline to \$80,516,295. ( E-Exhibit 29)

Over the four-year period under review, the record shows a decline in general fund revenue of \$23,451,924 or approximately 20%. The decline in revenue is attributed to a decline in the taxable value of property in Genesee County. State shared revenue has also decline from \$9.8 million in 2010/2011 to \$7.6 million in 2012/2013. In response to the decline in revenue, the County enacted a hiring freeze in March of 2010 to bring expenditures in line with the decline in revenue.

It isn't necessary to recite the entire financial history of the County in this case. The record clearly indicates the County is faced with a serious financial challenge.

#### DISPUTED ISSUES

As noted earlier, the parties have agreed to apply the terms of the Act 312 Award to the non-Act 312 eligible positions in the bargaining unit with the following exceptions:

1. Sections 18.8, 18.9, 19.3, 19.4, 19.8 and 19.9 – Retiree Health Care – Defined Benefit and Defined Contribution – Retiree Health Care Plan and Contributions Changing with Active Employees, being County Issue No. 26 in the Act 312 proceeding.
2. Sections 19.3, 19.4, 19.8 and 19.9 – Defined Contribution Plan Retiree Health Care years of Service Requirements, being County Issue No 27 in the Act 312 proceeding.

EMPLOYER'S POSITION: ISSUE 26

The Employer is proposing to amend the identified provisions of Section 18.8, as follows:

“ Employees retiring on or after the effective date of the Fact Finding Recommendations in Case No. D11 D-0408 will receive medical and prescription drug coverage that is in effect for active employees, including any premium contributions, deductibles and co-insurance, as may be changed from time to time pursuant to law or agreements negotiated by the parties. Thus, subsequent changes to the active employee's medical and prescription drug coverage including premium contributions, prescription contributions, deductibles and co-insurance, will apply to retirees who retire on or after the effective date of the Fact Finding Recommendations in Case No. D11 D-0408. If such coverage is not available for retirees, the Employer and Union will meet to negotiate an alternative. Retirees and/or beneficiaries receiving a pension check under the defined benefit plan shall have their health care premium contribution payments, if applicable, taken from their pension check.”

The balance of the Employer's proposal is related to this basic change and need not be recited at this time. The existing contract language requires the Employer to provide retirees with the insurance coverage that was in effect at the time of separation of employment. The Employer argues that such a requirement is a burden since it requires the continuation of multiple types of insurance coverage in effect at the time of retirement.

In support of their proposal, the Employer cites the fact that they have negotiated such a change with a number of other County employee bargaining units that are not eligible for Act 312 arbitration.

#### UNION POSITION

The Union is opposed to the proposed change in favor of the existing contract language. The employees in question are included in the same bargaining unit as the patrol deputies and subject to the same contract provisions. The Union argues that the external comparables do not support the proposed change since only one of six jurisdictions has such a requirement as proposed by the Employer. Moreover, the recent Act 312 Award for the Police Deputies/Paramedics of the bargaining unit maintained the existing contract provisions.

#### RECOMMENDATIONS: ISSUE 26

The record evidence does indicate that most of the non-Act 312 County bargaining units have agreed to adopt the County's proposal, however, none of the County law enforcement units have such a requirement. It is also a fact that only one of the six external comparable jurisdictions has such a requirement as proposed by the County.

The record also includes testimony that many of the Corrections Officers are sworn deputies with paramedic training and are transferred back and forth between the Police Deputies/Paramedic division and the Corrections division as manpower needs require and they are all subject to the same labor agreement.

For the reasons cited above, the undersigned is of the opinion that the evidence supports a recommendation that the parties adopt the same provision included in the Act 312 Award regarding County Issue 26:

I recommend the parties adopt the current contract language. However, this recommendation is based upon the acknowledgement by both the Employer and the Union that the current contract language will require those members of the unit who were hired prior to March 23, 2011 (and their spouses and dependants as applicable) to continue to pay in retirement any health insurance and prescription premium contributions, including those required by the Publicly Funded Insurance Contribution Act, being Public Act 152 of 2011, MCLA 15.561 *et seq.*, which are in effect at the end of employment.

EMPLOYER'S POSITION: ISSUE 27

The Employer is proposing to amend the provisions of Section 19.3, 19.4, 19.8 and 19.9 by increasing the years of credited service from 20 years to 25 years. The Employer argues that all of the internal County bargaining units have a 25 year credited service requirement as is proposed for the Corrections Officers. In addition, five of the six external comparable jurisdictions have a 25 year credited service requirement. Moreover, the recent Act 312 Award for the Police Deputies/Paramedics awarded the identical County proposal.

UNION'S POSITION: ISSUE 27

The Union would prefer to maintain the existing contract language.

RECOMMENDATION: ISSUE 27

The record evidence of both the internal comparables and external comparables clearly supports the proposal of the Employer. In applying the same logic used in Issue 26, there is nothing in this record that would justify maintaining a different years of service standard for the Corrections Officers from that of the Police Deputies. Therefore, I recommend the parties adopt the Employer's proposal as follows:

Section 19.3 – Medical Benefits for Employees hired prior to January 1, 2000.

The Employer shall provide retirees, their spouse and dependents with medical, dental and optical coverage, including any premium co-payments, equivalent to the coverage and premium co-payments which were in effect for the employee at the time of separation of employment. If such coverage is not available for retirees, the Employer and Union will meet to negotiate an alternative.

Retirees shall also be required to pay for Medicare Supplement Part B.

Such benefits shall be provided as follows:

- (1) After 25 years of credited service, regardless of age.
- (2) At age 60 with at least eight (8) years of credited service.
- (3) When twenty-five (25) years of credited service would have been completed for employees who were hired prior to January 1, 1988 and who separate employment after eight (8) years of credited service.



- (4) When twenty-five (25) years of credited service would have been completed for employees who were hired on or after January 1, 1988 and who leave after fifteen (15) years of credited service.

Retirees that are not Medicare eligible shall be allowed to switch medical coverage during the regular annual open enrollment period, provided coverage is available to retirees. Dual coverage shall not be allowed for retirees.

Section 19.8 – Medical Benefits for Employees hired on or after January 1, 2000, but before March 23, 2011.

- i) Subject to the other provisions of this Section and Section 19.9, the Employer shall provide retirees, their spouse and dependents with at least twenty-five (25) years of credited service with medical, dental and optical coverage, including any premium co-payments, equivalent to the coverage and premium co-payment which were in effect for the employee at the time of separation of employment. If such coverage is not available for retirees, the Employer and Union will meet to negotiate an alternative.

Retirees shall also be required to pay for Medicare Supplement Part B.

Retiree dependents who are receiving medical, dental or optical coverage under this provision, shall continue to receive such coverage upon death of the retiree as long as the Beneficiary is otherwise eligible, pursuant to the

terms and conditions of the carrier and with the same provisions as described above.

- ii) Employees who retire with at least fifteen (15) years of service but less than twenty-five (25) years of credited service may elect to be provided medical coverage as stated in the above paragraph provided the retiree is at least age sixty (60) and provided the retiree pays the required participant premium contribution of 25% to the Employer no later than the 20<sup>th</sup> of each month prior to the month the premium is due. The retiree shall hold the Employer harmless if the retiree fails to timely pay such premiums resulting in the cancellation of coverage.

Retiree dependents who are receiving medical, dental or optical coverage under this provision, shall continue to receive such coverage, upon death of the retiree as long as the Beneficiary is otherwise eligible, pursuant to the terms and conditions of the carrier and with the same provisions as describe above.

Retirees that are not Medicare eligible shall be allowed to switch medical coverage during the regular annual open enrollment period, provided coverage is available to retirees. Dual coverage shall not be allowed for retirees.

Section 19.9 – Miscellaneous Provisions for Employees hired on or after January 1, 2000,  
but before March 23, 2011.

- (a) An employee who is found eligible to retire with a duty disability retirement, will be entitled to medical, dental and optical coverage as outline in paragraph (i) above, as if the employee retired with at least Twenty-five (25) years of credited service
- (b) In the event an employee dies as a result of an injury or disease arising out of employment with the County, the beneficiary of the employee will be entitled to medical, dental and optical coverage as outlined in paragraph (i) above, as if the employee retired with at least twenty-five (25) years of credited service.
- (c) An employee who has at least fifteen (15) years of credited service who dies, not in the line of duty, shall be considered to have retired on the day before the death. The beneficiary of the employee will be entitled to continue medical, dental and optical benefits coverage as provided in paragraph (ii) above, as long as the beneficiary remains eligible, pursuant to the terms and conditions of the carrier.

Respectfully Submitted by:

C. Barry Ott, Fact Finder

Dated: \_\_\_\_\_