

Michigan Employment Relations Commission

Act 312 Arbitration in the Matter

of

Ingham County Sheriff -and- Michigan Association of Police

MERC CASE NO.: L13 K-1091

Act 312 Award

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Arbitration Chairperson

Ralph L. Maccarone

Delegate for the Employer:

Bonnie G. Toskey
Ingham County Sheriff

Delegate for the Union:

Ronald Palmquist
Michigan Association of Police

Findings and Award

Pursuant to the applicable laws and rules governing P.A. 312 of 1969 Arbitration Proceedings, as amended, the following Award is hereby made for the reasons stated below:

Background

Geography and Demographics

Ingham County ranks as Michigan's 3rd largest metropolitan area behind Metropolitan Detroit and Grand Rapids. The Ingham county seat is Mason. Lansing, the state capital of Michigan, is located within the county. With a land area of 556.12 square miles, Ingham County is included in the Lansing-East Lansing, MI Metropolitan Statistical Area¹ which includes the counties of Clinton, Eaton and Ingham. Ingham County is bordered by Clinton County to the north, Shiawassee County to the northeast, Livingston County to the east, Washtenaw County to the southeast, Jackson County to the south and Eaton County to the west.

¹ Designated by the Federal Office of Management and Budget for use in U.S. Census Bureau statistical data.

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According to the U.S. Census Bureau, Ingham County's population grew a 0.5% percent from 280,891 on April 1, 2010 to an estimated 282,234 on July 1, 2013. During that same period the U. S. Census Bureau estimated a 0.1% growth in Michigan's state population. The county's median household income for the period 2008-2012 was \$45,567.00 compared \$48,471.00 for the state.²

Political Administration

Ingham County is governed by a 14-member Board of Commissioners elected on a partisan basis for terms of two years from single-member districts that are approximately equal in population. The Board annually elects from its ranks a Chairperson, Vice-Chairperson and Vice-Chairperson Pro Tem by majority vote. The administration of the County, other than as delegated to elected officials, is guided by the County Controller who is appointed by a two-thirds vote of the Board of Commissioners and serves at its pleasure.

Administration of the County is divided by the Michigan Constitution among various statutory County officials, including the County Treasurer, County Clerk, Register of Deeds, Prosecuting Attorney, Drain Commissioner and Sheriff, who are elected at large for four year terms. The County Treasurer is the custodian of funds to local communities and school districts, and performs other duties concerned with interrelated fiscal affairs of County departments and agencies. The duties of the County Clerk include keeping and maintaining records of births, deaths, marriages and discharge of military personnel and serving as Clerk of the Board of Commissioners. The duties of the Register of Deeds include the recording of deeds, mortgages, surveys, plats, notices of liens and bills of sales. The Prosecuting Attorney prosecutes violations of state criminal law within the County and may represent the County in appropriate Courts. The County Drain Commissioner administers the location, construction and maintenance of drains in the County. The Sheriff's duties involve the charge and custody of the County Jail, the serving of processes, and law enforcement in unincorporated areas.³

The Office of County Sheriff

Article XVII, Section IV of the Michigan Constitution provides that each organized county shall elect a Sheriff, who shall serve for a four year term and whose duties and powers shall be provided by law. A County Sheriff is first and foremost, a peace officer under Michigan Law. By Constitution and statute, the

² Source: <http://quickfacts.census.gov/qfd/states/26/26065.html> U.S. Census Bureau Website.

³ Source: <http://www.ingham.org/Government/GovernmentStructure.aspx> Ingham County, Michigan Website.

Sheriff is charged with enforcing the laws enacted by the Legislature under the police power of the state, and with discharging the executive law enforcement power for the preservation of public peace within the county. A Sheriff has law enforcement authority throughout their county, including cities, villages, chartered townships and general law townships. Case law and statutes recognize the maintenance of law and order in those areas of their county not adequately policed by local authorities as one of the Sheriff's primary responsibilities. In all, there are over 50 state laws mentioning the responsibilities of the Office of County Sheriff.⁴

Among them, a County Sheriff has the responsibility to respond to and provide for the law and order needs of citizens within their county, including incorporated or chartered local government jurisdictions where local officials are either unable or unwilling to provide for such needs. Although a county Sheriff does not exercise supervisory power or control over law enforcement activities conducted by other units of government within their jurisdiction, the Office of Sheriff is almost always universally recognized as the chief law enforcement officer for their county.

The Ingham County Sheriff's Department

The Ingham County Sheriff's Department is located in the city of Mason. It ranks 7th largest in size out of 83 County Sheriff Departments in the state. The Ingham County Sheriff employees nearly 155 sworn officers and civilians who work in three divisions: Staff Services, Field Services and Corrections. These three divisions are reportedly further subdivided into 29 Specialized Units: Canine Unit, Central Records, Chaplain Corp, Civil Division, Community Policing, Corrections Assessment and Treatment, Correctional Kitchen Facility, Corrections Commissary, Corrections Inmate Receiving, Corrections Medical Department, Delhi Unit, Disabled Parking Enforcement, Dive Team, Education, Explorer Post 133, Field Training Officers, Forgotten Man Ministries, Heavy Rescue Unit, Honor Guard, Marine Unit, Motor Unit, Mounted Unit, Special Response Team, Traffic Services Unit, Training Unit, Transportation Unit, Tri-County Metro Narcotics Squad, Veterans Memorial Court Building and Victim Advocate Unit⁵.

The Ingham County Jail ranks 5th largest in size in the state, housing nearly 601 inmates.⁶

⁴ By way of example see: Article VII, Section IV, Michigan Constitution; Article VII, Section VI, Michigan Constitution; MCLA 51.75 – Custody of County Jail; MCLA 51.76 – Patrolling Roads & Law Enforcement & MCLA 45.407 – Civil Process Duties.

⁵ Disabled Parking Enforcement, Explorer's Post 133, Heavy Rescue Unit, Motor Unit, Mounted Unit and Victim Advocate reportedly utilize volunteer members.

⁶ Source: <http://sh.ingham.org/Home.aspx> Ingham County, Michigan Website.

Limitations of County Government to Tax

In 1979, the Headlee Amendment was passed. In 1994, Proposal A was passed. These proposals, combined, have placed a limit on every Michigan county's ability to levy property taxes. Proposal A creates a negative disparity between State Equalized Value, which used to be the basis upon which a county collected taxes, and Taxable Value, which now determines property taxation under Proposal A.

Most county and local units of government in Michigan share the same problem in that real property taxes are the mainstay of their revenue stream. The recent recessionary decline in property values and resulting lower real property tax receipts can only be recouped by municipalities at a maximum of 5% per year. And in general, the Michigan real estate market has yet to realize values to permit a recovery of taxes in real dollars anywhere near those that have been lost.

Other Post-Employment Benefits Liability

There is another factor impacting Ingham County finances, namely, the Governmental Accounting Standards Board (GASB) that has issued Statement No. 45 requiring governmental units to change the way they account for post-employment benefit liabilities. Many government units in Michigan, as apparently does Ingham County, use a "pay as you go" methodology to fund benefit obligations to retirees such as post-retirement health care. In other words, the benefits are funded when the obligation became due. GASB 45 changes this procedure. GASB 45 requires government with post-employment benefit obligations ("OPEB") of at least 200 plan members to conduct an actuary evaluation of their OPEB obligation every two years. These reporting obligations include medical, dental, hearing, vision and related benefits, post-retirement life insurance benefits, self-funded long-term disability benefits and legal benefits afforded to retirees. The valuation comes up with a dollar figure which establishes what Ingham County would need to contribute to its OPEB plan to keep the fund fully funded. Ingham County must either come up with the funds to fund those funds or record its unfunded OPEB obligation as a liability on its financial records. Based upon a comprehensive financial review, the latter could impact the ability of the County to borrow money when needed for County operations.

Later, GASB Statement 54 was implemented. The objective of this Statement was to enhance the usefulness of fund balance information by providing clearer fund balance classifications that can be more consistently applied and by clarifying the existing governmental fund type definitions. This Statement establishes fund balance classifications that comprise a hierarchy based primarily on the extent to which a

government is bound to observe constraints imposed upon the use of the resources reported in governmental funds. Statement 54 also provides for additional classification as restricted, committed, assigned, and unassigned based on the relative strength of the constraints that control how specific amounts can be spent.

The restricted fund balance category includes amounts that can be spent only for the specific purposes stipulated by constitution, external resource providers, or through enabling legislation. The committed fund balance classification includes amounts that can be used only for the specific purposes determined by a formal action of the government's highest level of decision-making authority. Amounts in the assigned fund balance classification are intended to be used by the government for specific purposes but do not meet the criteria to be classified as restricted or committed. In governmental funds other than the general fund, assigned fund balance represents the remaining amount that is not restricted or committed.

Unassigned fund balance is the residual classification for the government's general fund and includes all spendable amounts not contained in the other classifications. In other funds, the unassigned classification should be used only to report a deficit balance resulting from overspending for specific purposes for which amounts had been restricted, committed, or assigned. Governments are required to disclose information about the processes through which constraints are imposed on amounts in the committed and assigned classifications.

It is upon this general knowledge backdrop that the following observations are made.

'Uncommitted' Funds

Depending upon the body of government, various names are 'tagged' to what are essentially surplus funds, not committed for a specific purpose. In state government, what Ingham County calls its 'General Fund Unassigned Fund Balance' or 'General Fund Reserves', the state calls its 'Rainy Day Savings Account', more formally known as the 'Budget Stabilization Fund'. A healthy rainy day savings account gives citizens and businesses confidence that the state has planned for unseen changes. The state's Rainy Day Fund is designed to help the state weather challenging economic periods or unforeseen emergencies. During good economic times, money is put into the fund and, during bad times, money is withdrawn to fund government expenditures.

With respect to its current reserves for the General Fund, Ingham County views this 'rainy day' fund as a bridge in which to provide a source of funds until the structural deficit created by the convergence of the Headlee Amendment and Proposal A in a downturned economy can be corrected by reducing expenditures to a level to meet revenues. According to the County's projections, unless the structural deficit is eliminated quickly, the County's unreserved fund balance will be depleted before a full recovery of taxable values can return positive cash flow into the revenue vs. expenditure scheme. And therein lies a problem predicted when Headlee and Proposal A were introduced. They only 'work' in an "up" economic model. A prolonged economic downturn can spell disaster. This has always been known.

Ingham County's Unassigned Fund Balance of the General Fund

"The County's goal for the general fund is an unassigned fund balance of at least 5% of the general fund expenditures of the preceding year. The goal for the budget stabilization restricted fund balance is to maintain the legal maximum balance of 15% of the average of the last five years' budget or 15% of the current year's budget, whichever is less, but not less than 13%. The current reserves for the General Fund are at 25%, well above the policy limit."⁷ *[emphasis added]*

Ingham County Factors Affecting Financial Condition

"The stable and diverse economic base has made Ingham County an attractive employment and consumer market. Unemployment rates have been consistently below State averages, resident income levels are above regional norms for counties, and the labor force is bolstered by a sizeable student population with the presence of Michigan State University and Cooley Law School.

Property values for the County totaled \$14.8 billion based on the 2012 County Equalization Report. The values of real property decreased by 6.7% while the value of personal property increased by 3.7% resulting in an overall decrease of 6%. The total estimated "true cash value" translates to a state equalized value of \$7.4 billion. A 1994 amendment to the Michigan Constitution limits increases in the taxable value of most property to the lower of the rate of inflation or 5% until the property is sold. Upon sale,

⁷ Source: http://www.michigan.gov/treasury/0,4679,7-121-1751_31038_61583-278251--,00.html Ingham County's Comprehensive Annual Financial Report for the fiscal year ended December 31, 2012

the taxable value is set to the equalized value. The 2012 taxable value, used for the 2012 summer and winter tax levies, was \$7 billion. This is a 4.3% decrease over the 2011 taxable value.

In spite of significant financial challenges associated with declining property and state tax revenues, Ingham County's excellent employees continue to provide high quality of services to our 280,000 residents."⁸

County-Wide Financial Analysis

"As noted earlier, net position may serve over time as a useful indicator of a government's financial position. The following schedule is a summary presentation of Ingham County's assets, liabilities, and net position at December 31, 2012. 2012 beginning net position balances have been restated. See note 18 of notes to the financial statements for more information. The schedule shows the County's assets exceeded liabilities by \$221.1 million at the close of the most recent fiscal year."⁹

Effect of P.A. 54 of 2011

PUBLIC EMPLOYMENT RELATIONS (EXCERPT) Act 336 of 1947

423.215b Expiration date of collective bargaining agreement; wages and benefits; levels and amounts; retroactive levels and amounts prohibited; definitions.

(2)the parties to a collective bargaining agreement shall not agree to, and an arbitration panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement. [emphasis added]

As amended by P.A.54 of 2011, eff. June 8, 2011

⁸ Id

⁹ Source: Management and Discussion Analysis - Ingham County's Comprehensive Annual Financial Report for the fiscal year ended December 31, 2012

The Criteria for an Act 312 Award

When the legislature enacted the provisions for binding arbitration in police and fire disputes, namely, Act 312 of Public Acts of 1969, the legislature provided in Section 9 that Act 312 Panels are to consider the following criteria when fashioning opinions and awards:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

MCLA 423.239

In addition to the enumerated criteria the Legislature, in setting forth Section 9(h), incorporated criteria sometimes used by fact finders in making recommendations as to collective bargaining agreements, which are not specifically enumerated in Section 9. This means that, in addition to the enumerated Section 9 criteria, an Act 312 Arbitration Panel can utilize criteria used by fact finders.

It also should be recognized that the particular circumstances may dictate that certain criteria may be emphasized more than other criteria.

Ability to Pay

Notwithstanding the Unions claim of “ambush”, ability to pay should be a consideration in whatever economic climate. The 45 year history of Act 312 award giving is replete with remarkable increases in compensation and other economic benefits to covered employees during banner economic years. In those days, employers would often do their best to shroud their success at generating revenues that resulted in surplus fund balances. And often, Arbitrators would look to the private sector union awards as a guide as to whether and how to spend that money.

In today’s economic climate the reverse is often the case. Private sector unions are reeling from shutdowns and diminished call for their skilled trades. Municipalities sometimes make desperate predictions and sometimes demonstrate hard facts to convince a neutral arbitrator what will later be referenced as an “inability to pay.”

Here, the Chairperson is focusing on Section 9(c) of Act 312, *“The interest and welfare of the public and the financial ability of the unit of government to meet these costs.”* But in addition, there is the reference in 9(e) to *the cost of living*. In evaluating these financial factors in the criteria, the Chairperson cannot overlook the economic atmosphere that is prevailing in Michigan. As the County’s Post Hearing Brief makes note of the Chapter 9 Bankruptcy of the city of Detroit¹⁰ the Chairperson notes that publicity surrounding that event seems to be singularly focused on two publicity points: The Detroit Institute of Art collection and Detroit Employee Pensions. Within the latter subset are pensions and benefits for Act 312 covered bargaining units.

In the Chairperson’s estimation, the reason that the parties are before this Panel are their differences with regard to the perception of the County's financial condition. On the one hand, the County suggests that it is headed towards a ‘fiscal crisis’ affecting its ability to pay. And that ‘fact’ must be the primary focus of this arbitration panel's deliberation and decision on the sole economic issue before it.

On the other hand the Union asserts that the County argument on ability to pay took it by surprise, and that the Union has given up too much to reap no gain in this bargained for 2014 wage reopener. Each

¹⁰ Ref. Employer’s Post Hearing Brief last page on Detroit Bankruptcy

party has made points for its respective position and the Chairperson finds a fair bit of truth in each of their positions as supported by the evidence. (TR 57:17 – 58:4)

Without going into great detail as the evidence itself relates, it is clear, at least to the Chairperson, that the County is not in a current fiscal crisis. But depending upon what happens in Lansing¹¹ and with the state's economy, a crisis could be in the making.

The Chairperson recognizes that Ingham County budgets conservatively on revenues and expenses. By its own account in the 2013 Annual Audit, it is not anticipating a deficit or the specter of a deficit any time soon. In addition, it appears undisputed that the Union has had a significant reduction in staffing levels that provide a large geography of the County's first responder and front line Ingham County Sheriff services.

The County points out and the evidence establishes that it has also substantially reduced the size of its non-public safety workforce. The County also points out that its elected officials have taken no wage increases over the past few years. Indeed, elected office comes with foreknowledge of what the job pays. And few, if any true public servants seek to serve in elected office for a paycheck beyond that advertised when they sought to be elected. In that regard, the Panel should join with the Chairperson in commending those elected officials for their noble pursuit.

But this leadership by example is not necessarily a restrictive covenant to be imposed upon the financial future of those who have chosen a career in street level government bureaucracy. This is particularly so when that career involves the providing of law enforcement service to the public.

In fact, so critical is the service provided by law enforcement officers¹² to public safety that Act 312 was created. It was primarily enacted to assure constant provision of service to the public in a field found by the People of Michigan to be so essential it cannot be diminished by work slowdown, walk-out, or strike.

Union Member Career Advancement Generally

As an observation regarding career advancement opportunities, Ingham County's law enforcement administrative personnel hierarchy model is not much different from that found in local law enforcement

¹¹ That is to say, "in the state Legislature and Governor's Office".

¹² and other first responders

throughout the United States.¹³ A career in law enforcement most often involves the opportunity to advance in rank (and pay) based upon the next command officer's retirement. Testimony indicates that this bargaining unit has seen a reduction in staffing in prior budget years. (TR 65:17 - 65:20)

Procedural Matters

Act 312 Hearing Request

This matter was brought to the Michigan Employment Relations Commission by means of Michigan Association of Police ("MAP"), as the representative Labor Organization ("Union"), being:

'all non-supervisory Act 312 eligible law enforcement officers employed by Ingham County ("Employer") and the Ingham County Sheriff, including deputies and detectives, but excluding corrections officers, supervisors and elected officials'.

Following mediation, pursuant to Public Act 312 of 1969, as amended, ("Act 312") the union filed its Petition for Arbitration dated December 17, 2013. Pursuant to the provisions of Act 312, the undersigned arbitration chairperson was appointed on February 7, 2014. On February 12, 2014 the first action in this arbitration occurred, being a scheduled teleconference with resulting preliminary orders. There it was agreed by the parties that the sole issue in this arbitration was limited to the unresolved issue listed in the Union's Petition, to wit: *"2014 Wage Reopener as an Economic Issue"*. It is undisputed, that all other issues not contained in the Petition were settled or waived and did not form a part of this Arbitration. Last Offer of Settlement on Economic Issues and other preliminary filings were made by the parties as follows:

Employers' Last Best Offer — 2014 Wage Reopener

Wages: 2014 Reopener — A 1% base wage increase would be added to the 2013 wage scales for Detectives and Police Officers beginning with the payroll period 12/13/2014 — 12/26/2014 to be paid on 1/2/2015.

¹³ In the field of law enforcement career advancement is typically a flat organizational structure. A flat organization has limited levels of hierarchy when it comes to administrative levels, resulting in proportionally limited opportunities for upward mobility.

Wage Supplement - Letter of Agreement per Board Resolution #13-438 for the \$150 wage supplement as follows:

All bargaining unit regular full-time and regular part-time employees, as defined in Article 1, Section 1, Definition of the Bargaining Unit, of the Collective Bargaining Agreement, that were employed in such positions on October 31, 2013, shall receive a one-time wage lump sum supplement to their contractual wages of one hundred fifty dollars (\$150.00). This one-time lump sum supplement payment will **not** be added to the contractual wage scales and shall be paid the first full payroll after the approval and execution of the Letter of Agreement by both parties.

Union's Last Best Offer:

Wages: A two and one half percent (2.5%) across the board wage increase to all classifications and steps for members of the bargaining unit effective January 1, 2014.

Consideration of Proofs

The arbitration hearing commenced and concluded on Monday, May 12, 2014 at the Ingham County Human Relations Conference Room in Lansing, Michigan.

Following the formality of stipulations set the stage for this arbitration the union brought an objection to the introduction of documents to be included as exhibits or testimony relating to those exhibits that were received "well past" the exhibit exchange eight set by the Chairperson.¹⁴ The gist of the Union's objection was that the County, for the first time in their wage reopener talks leading up to this hearing, raised the issue of ability to pay. Ironically, it has been the Chairperson's experience that in reality, it is the inverse of ability to pay that more recently has been the burden of the employer.

Although the Act speaks to 'ability to pay', it is now 'inability to pay' that is more often claimed. This is so because of more recent tough economic times rather than the more bountiful years before them. And that presents a problem for any arbitrator. We only get a glimpse of the economic picture of the employer and we have no crystal ball to divine what the future will bring. Underlying all of this is the reality that municipal budgets are amended all the time. Priorities change and decisions are reviewed, it is the fiscal year-end that forces a fully confirmed final and balanced budget.

¹⁴ Ref. (TR 6:1 – 12:10)

While fully entrenched in comparables and raw numbers, we do not get the big picture financial planning unless it is clearly stated. And if one is to make an argument of inability to pay, there should be a showing of commitment and need to spend elsewhere. As a practical matter, “parking” surplus municipal funds beyond policy guidelines can help with a bond rating, but can play havoc in labor arbitrations.

Here, argument of inability to pay revolved around pension and retiree health care costs. (TR 66:5 – 66:8) These are numbers easy to exhaust the casual observer with their staggering amounts in any municipal government. Albeit some municipalities, such as Oakland County have taken advantage of relatively new legislation¹⁵ to ‘superfund’ these prospective costs by engaging in money management of specially borrowed funds, most municipalities continue to fund towards the future in a fashion that will never achieve balance. The simple truth is that today, health care and pension costs are separable and should be treated differently. Pensions need to be affordable; and if there is anything ‘affordable’ under recent federal health care legislation, it is yet to be seen with any clarity and predictability. The long and the short of it is that any argument on ability to pay wages as opposed to retiree health insurance and pension benefits are an ‘apples and oranges’ comparison unless the employer shows a definitive plan for reduction of these pending and future post-employment costs.

And the County has done that. Ingham County capably addresses these very issues:

Unfunded Liability for Retiree Health Insurance Costs

“Steps have been taken to address the unfunded liability for retiree health insurance costs. Ingham County has begun to address this issue by continuing to commit \$3.2 million of fund balance in the general fund for this purpose and setting aside 0.5% of payroll in 2006 and 1% in 2007 through 2012 which has accumulated to \$3.9 million as of December 31, 2012. During 2013, the County increased the contribution to 1.75% of payroll.”¹⁶

The 2014 County Budget

“The 2014 budget was also increased to address the County’s legacy costs. Legacy costs include the unfunded portion of employee pensions and retiree health insurance obligations. According to the 2012 Comprehensive Annual Financial Report (CAFR),

¹⁵ See PA 329 of 2012 amending PA 34 of 2001

¹⁶ Id

the County's unfunded liabilities in these two areas totaled \$169.7 million, including \$87.4 million in pension obligations and \$82.3 million for Other Post-Employment Benefits (OPEB).

Aware of the situation, Ingham County is taking strides to meet our fiscal obligations in this area. A long-term cost reduction strategy was implemented last year through collective bargaining provisions that place new hires into a less-costly hybrid pension plan. Investment of Retiree Health Care Trust Fund dollars following an approved asset allocation and diversification plan was initiated in 2012 in order to maximize return on investment. This strategy resulted in a gain of \$201,000 in assets after one year. Finally, the 2014 budget includes an allocation of \$1.5 million for OPEB contribution, which is an increase over the 2013 allocation of 1.75% of payroll to an allocation of 2.65% of payroll. Ideally, as funds allow, the County would continue to increase its annual contribution each year until it reaches the 9% of payroll necessary to fully fund this liability.

The 2014 Budget calls for use of \$3.25 million in unassigned fund balance. While significant, use of fund balance at this level is reasonable when measured against current reserve levels and projections that calendar year 2013 will be the last year of property tax revenue decline. Furthermore, it is not logical to disrupt continuity in service levels through reductions in 2014 only to reinstate those levels in 2015. This recommendation falls within established parameters of Ingham County financial policies that establish appropriate levels of uncommitted reserves to protect against emergencies and economic downturns.

The 2014 Budget is balanced based on a set of assumptions that can be accomplished with a relative sense of certainty. While less than ideal in some instances, this budget does not project the necessity for dramatic expenditure reductions experienced in the recent past.”¹⁷

*Excerpt from 2014 Budget Transmittal Letter to
Ingham County Board of Commissioners from
Ingham County Controller/Administrator*

¹⁷ Ref. (TR 66:5 – 66:25) mentioning County Audit and Budget.

At 312 does not mandate a panel to make predictions in a wage reopener. Depending upon the audience, municipal governments can tout an economic recovery, or look to the limit placed upon real property taxation recovery by Headlee and Proposal A and bemoan the pitfalls of relying on property tax collections. In Michigan, an economic recovery for the private sector does not equate with a proportional recovery for the municipal sector. And taken as a whole, this appears to be the argument of the County. Testimony of the County's Budget Director confirmed an unassigned general fund balance "of 25%" and that a reduction of this Union's workers from 78 to 52 occurred over the past 10 years. (TR 70:1 - 70:24)

This wage reopener was bargained for in a negotiated setting between the parties now in arbitration. Other issues were resolved presumably with each agreeing to discuss the issue of wages for one year when that year came. But a review of documents of the County within the public domain indicates no budget entry for the contingency of granting a wage increase of any kind to this bargaining unit in fiscal year 2014. Rather, the County's last best offer is to take effect for fiscal purposes beginning January 1, 2015. If it was the strategy of the County to make its case on inability to pay, the Chairperson having written annual municipal budgets and reviewed and consulted on others including counties larger than Ingham, would have expected to see something less than 25% of uncommitted general fund dollars where the County policy calls for a mere 5%. And as to the County claims of extraordinary deficit in its postretirement and pension liabilities, an actuary's report giving some background to those unfunded accrued actuarial liabilities and how they had been determined would have been welcomed.

County published reports lead one to an another point of view made for public consumption:

"A long-term cost reduction strategy was implemented last year through collective bargaining provisions that place new hires into a less-costly hybrid pension plan. Investment of Retiree Health Care Trust Fund dollars following an approved asset allocation and diversification plan was initiated in 2012 in order to maximize return on investment. This strategy resulted in a gain of \$201,000 in assets after one year. Finally, the 2014 budget includes an allocation of \$1.5 million for OPEB contribution, which is an increase over the 2013 allocation of 1.75% of payroll to an allocation of 2.65% of payroll. Ideally, as funds allow, the County would continue to increase its annual contribution each year until it reaches the 9% of payroll necessary to fully fund this liability."

*Excerpt from 2014 Budget Transmittal Letter to
Ingham County Board of Commissioners from
Ingham County Controller/Administrator, supra*

But ability to pay is but one of the criteria to be considered. And the evidence supports the fact that the County has uncommitted funds giving it a present ability to pay.

Cost of Living

Cost of living in the region has risen each year. And the most recently reported cost of living for the Lansing-East Lansing, MI Metropolitan Statistical Area found by the Chairperson is above that for the state.¹⁸

Comparables

External county Sheriff Department wage comparables were agreed upon by the parties. These included Berrien, Jackson, Kalamazoo, Livingston Saginaw and St. Clair County compared against Ingham.

Depending upon how averages are calculated, Ingham County Sheriff's deputies appear less favorably compensated than the average deputy taking into account Ingham's higher pension contributions and health care costs than their external comparables.

A complete and comprehensive analysis of internal comparables is complicated by the disparity in types of services provided by the various bargaining units. With the exception of the apparent ability of the Sheriff to exchange staffing between this Union, which provides investigative and road patrol duties, and corrections officer duties (handling jail facilities under a separate collective-bargaining agreement)¹⁹ uniformed and non-uniform worker comparisons are always a challenge.

In considering exhibits proposed at the hearing and thereafter the Chairperson notes that neither party filed exhibits on their due date as proposed in the preliminary hearing scheduling order²⁰. That being said, one purpose of Act 312 is to hear testimony and consider exhibits submitted, giving each such weight it deserves in considering what is competent, material and substantial in determining a fair result.

¹⁸ CPI for Lansing-East Lansing, MI Metropolitan Statistical Area is 88 and State of Michigan is 85.

¹⁹ An analysis of the worth of that "cross-training" is beyond the scope of this arbitration. Its wisdom is left to the County Sheriff who by all accounts, is a well-seasoned expert and provides a robust array of law enforcement related services to the people of Ingham County.

²⁰ This was an objection brought by the Union when the County sought to bring in Budget data that the Union claimed an unfair surprise.

In a post hearing memo, the County objected to testimony by the panel member for the Union. In considering that objection sans any memorandum of law or brief in support, the Chairperson considered that testimony to be credible, but not a persuasive part of the proceedings in making this Award.

The Michigan Revised Uniform Arbitration Act ("RUAA") includes a provision that says:

(4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection is subject to both of the following:

(a) This subsection does not apply to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding.

(b) This subsection does not apply to a hearing on a motion to vacate an award under section 23(1)(b) or (c) if the moving party establishes prima facie that a ground for vacating the award exists.

MCL 691.1694 (4)

But to this writer's knowledge, that provision has yet to be tested in an Act 312 proceeding after such an objection has been overruled. And the question of an Act 312 Panel Member's competency to testify is believed by the Chairperson to be beyond the scope of authority for him to rule upon. As whatever was said without objection at the time did not persuade the Chairperson in forming this Award, the issue of whether that testimony being stricken would change the result is moot.

And post hearing a Fact Finding Report for another bargaining Unit was received. This report was read but does not form a part of the Chairperson's rationale for the Award made herein.

Concluding Remarks

The deadline imposed for the rendering of this Award experienced a brief delay for the reason that the volume of materials and arguments presented required additional and often repeated review of the transcript and the nearly 2,000 pages submitted that were needed to come to a firm and final decision.

The Chairperson was impressed with the credible testimony and courteous demeanor exhibited by all persons participating in these proceedings. Both opposing views were well presented. The County's

counsel elicited testimony that presented the facts as they were. She did so impeccably well. And for the Union, their role was well cast and played in bringing to light their position.

An argument was made that it was the burden of the Union to show ability to pay. And that can be true. But here, from the onset of the in-person hearing, the County chose to disprove that ability. (TR 65:21 – 66.4)

The County addressed in differing context the very issues it raised when claiming its “inability to pay”. Ingham County has a plan to address present and future health care and retirement costs. It is following its plan.

Albeit the Chairperson questions the wisdom of a mere 5% uncommitted general fund balance policy, it is the County’s elected officials decision. Retaining 5 times that amount as uncommitted funds creates tremendous difficulty is arguing present inability to pay. And even if asked to look into the future, the County has utilized staff reductions and attrition to weather the storm to where in its own words,

“While significant, use of fund balance at this level is reasonable when measured against current reserve levels and projections that calendar year 2013 will be the last year of property tax revenue decline.”

*Excerpt from 2014 Budget Transmittal Letter to
Ingham County Board of Commissioners from
Ingham County Controller/Administrator*

Perhaps concluding this round, the parties can select a panel to review future circumstances to engender a trusting relationship that focuses on a singular round of negotiations where all parties can agree to the nature and extent of the conditions present and reasonably forecast to assure a result less fraught with that found in an adversarial proceeding even as politely as this one unfolded.

The Chairperson says this for the reason that he is impressed with the administration of the County. It is an administration that can certainly adopt policies and budget projections that fit the need for suiting up a more compelling case to hold wages below even cost of living increases. He is likewise impressed with the analytical capabilities of the Union. All should be able to agree when the time is right for change beyond what occurred today and moreover what that change should be.

Therein lies the problem in this single issue winner takes all proceeding. There is nothing else to consider.

The comparables taken as a whole were not persuasive in giving a firm conviction that would permit granting the County's Last Best Offer of effectively a zero wage increase in the year 2014 in this bargained for wage reopener. The Chairperson's review of all comparable contracts supports a modest increase in wages in 2014 or whatever part of that year is left open to an award of it. For whatever reason the money is available and an award in favor of the Union will not seriously diminish the fund from which it can be drawn.

The decline in real property tax revenues has reportedly stopped. At some point a modest return to 'normal' labor costs must begin.²¹

It may be that the next round of negotiations will bring into focus the wisdom or fault with this award. As with all future events, only the passage of time will tell. But for the moment, the award made here and now appears on the record as the fair and just result given the forced choice selection that must be made.

The evidence presented in testimony and comparables, coupled with the County's ability to pay a fractional amount of its surplus as the increase requested in the Union's Last Best Offer²² compared with zero for an entire year where a prior agreement was in part made by leaving a wage reopener is the fairer of the two results from which one must be chosen.

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²¹ Albeit a 'new normal'.

²² A 2.5% increased having been reduced from a prior 6% demand.

Act 312 Arbitration in the Matter

of

Ingham County Sheriff -and- Michigan Association of Police

MERC CASE NO.: L13 K-1091

Act 312 Award

Taking into account a reading of the entire transcript of proceedings, all internal contracts, all external comparable contracts, all submissions of exhibits and other writings, the discussion of panel members in executive session and giving each the weight it reasonably appears to deserve; and attributing credibility to all testimony given in equal measure, it is the decision of the Chairperson to Award the Union's Last Best Offer, to be paid as provided by law.

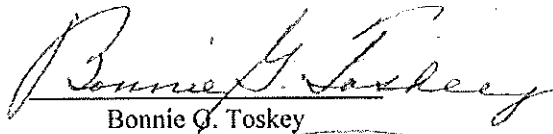
Signed:

Arbitration Chairperson


Ralph L. Maccarone

Dated: August 1, 2014 for immediate effect

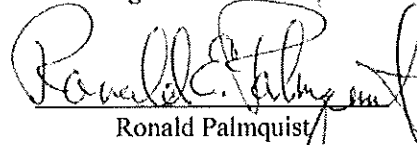
Delegate for the Employer:


Bonnie G. Toskey

Concurring Dissenting
[Strike One]

Dated: 8/14/2014

Delegate for the Union:


Ronald Palmquist

Concurring ~~Dissenting~~
[Strike One]

Dated: 8/7/2014