

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS

In the Matter of
Act 312 Arbitration
Between:

Capitol City Lodge No. 141, Fraternal Order
of Police, Labor Program, Inc.,
Union

MERC Case No. L14-J-1060
Panel Chairman:
Thomas W. Brookover

and

Ingham County Sheriff,
Employer

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMM.
DETROIT OFFICE

OPINION AND AWARD

Attendees:

For the Union:

Steven T. Lett, Esq., Attorney for FOP
Tom Krug, FOP Executive Director
Ryan Cramer, FOP Director (FOP Law Enforcement)
Mary Hull, Union President

For the

County:

Bonnie Toskey, Attorney for County and the Sheriff
Allen Spyke, Undersheriff
Tim Dolehanty, County Controller/Administrator
Travis Parsons, Human Resources Director for the County
Gordon Love, County Attorney

This is a binding arbitration under Act 312, of 1969, MCL 423.231 as amended by Act 116 of 2011. The Union filed a Petition on April 21, 2015 and I was

appointed the impartial arbitrator and chair of the arbitration hearing panel on May 7, 2015. A pre-hearing conference was held by telephone on May 14, 2015 and continued as an in-person conference on June 2, 2015.

The hearing in this matter was held on September 24; post-hearing briefs were provided to me on November 6 and 13, and I forwarded them to the parties on November 15, 2015. A draft Opinion and Award was provided to the panel members on January 3, 2016 and the panel decided it did not have to meet.

The City and the Union stipulated that the only issue is wages, for the years 2015, 2016 and 2017. They also agreed that the comparable cities which should guide the panel in making its decision are the same as used in an Act 312 Arbitration in 2014, which are Kalamazoo, St. Clair, Livingston, Berrien, Jackson, and Saginaw counties.

In an Act 312 Arbitration each side submits a "last best offer", or "LBO", on the issues to be arbitrated. With the economic issue, which we have here, the panel must award one or the other and cannot compromise or fashion a different award.

In this case, the County's LBO is:

- 2015: 0% increase and \$250 lump sum
- 2015: 1% increase with a wage re-opener
- 2016: 1% increase with a wage re-opener.

The Union's LBO is:

- 2015: 2.5% increase, retroactive to January 1, 2015
- 2016: Wage re-opener
- 2017: Wage re-opener

Both the Union and the County have agreed to delete a bifurcated wage schedule that has been in effect, so that is not at issue

Of note is that the Union fashioned its LBO as three separate offers on a year by year basis, while the County's LBO is one three-year package and cannot be considered on a year by year basis. The panel is not able to pick year one of the Union LBO and year two of the County LBO, since there is no "year two" County proposal. With this structure, I am forced to accept the County LBO as a whole, or the Union LBO as a whole.

The County stipulated that the total cost of the Union's proposal of 2.5% for the first year of the contract, in wage increases, is \$72,500.

EVIDENCE PRESENTED

UNION TESTIMONY

Tom Krug

The only Union witness, Tom Krug, works for the Capitol City Lodge No. 141, Fraternal Order of Police, Labor Program, Inc. and he put together the Union's 12 Exhibits which were stipulated to and admitted. He explained that although Ingham County is the fifth largest county in the state, it is the third largest metropolitan area. It is home to the State capitol and to several universities; consequently the daytime population is about a third more than the residential population.

Although there are about 52 members of the Union in the Sheriff's department, 18 of them work under contract, and are paid for by, Delhi Township and the Village of Webberville.

The employees were represented by a different union, the Michigan Association of Police, last year and there was an Act 312 arbitration for a wage re-opener. The FOP replaced the MAP and this arbitration is for a new contract for wages in 2015, 2016 and 2017.

Union Exhibit 5 is a wage scale for the comparable communities which shows that the Ingham County deputies are right in the middle of the other counties with respect to wages..

Exhibit 6 shows the wages for Detectives in the comparable counties, and Ingham County is again in the middle. Mr. Krug testified that some explanation is needed for Exhibit 6 because of the different treatment of detectives in the counties. In Ingham County, when a deputy becomes a detective, it is a promotion. In Kalamazoo County all detectives are sergeants. In Jackson County deputies are simply assigned as detectives, and it is not a promotion.

Exhibits 7 and 8 show the position of the County with respect to the external comparables if the Union's 2.5% increase is awarded, and these employees still remain in the middle of the pack.

Mr. Krug pointed to the 2014 arbitration award and a December 10, 2014 letter from the County Controller/Administrator Tim Dolehanty, (the "December Letter") to support the Union position that the County clearly has the ability to pay the Union's requested increase. He said that it appears that the County does have the ability to pay the requested increase.

He said that the County has not raised an inability to pay in negotiations.

In the December Letter, Mr. Dolehanty mentioned that :

"Several budget considerations recently turned in the County's favor, including an increase in property tax values, an increase in state liquor taxes, reasonable increases in employee health care expenditures, and a substantial increase in state revenue sharing".

The letter went on to say that the Government Finance Officers Association (GFOA) recommends, at a minimum, an unrestricted fund balance of 16.6% of operating expenditures. He wrote that the County's unassigned fund balance was \$19.1 million, or 33.4% of total general fund expenditures at the end of 2013. The December Letter projected the balance to be \$9.8 million. However, he added that the County does not rely solely on unrestricted fund balances for reserves. At the close of 2013 the Budget Stabilization Fund was 18.4% of the expenditure budget, and the Public Improvement Fund for capital improvements held another \$2.3 million. The letter said that "[t]he combined total of all three reserve funds amounted to 55.9% of actual expenditures at the end of 2013, a figure well above the GFOA-recommended minimum amount."

The Act 312 award in 2014 was for a 2.5% wage increase, but since the Award was in August, the employees only got the increase for the last four months of the year. The Arbitrator made the increase retroactive to the beginning of 2014, but the retroactivity has not gone into effect and is on appeal.

Significantly, he said, after the arbitration award the County gave almost all other groups of employees the identical 2.5% increase.

On cross examination he acknowledged that he was aware that the County has other unfunded liabilities, and that is why the FOP joined a healthcare coalition and has for years been helping with the costs of healthcare. He said the County employees are paying upwards of 25-26% of the cost of the health care plan, well above the 20% state requirement.

COUNTY TESTIMONY

Travis Parsons

Travis Parsons has been the Director of Human Resources for four years. Before coming to Ingham County he held a number of positions in human resources in cities and counties in Michigan, California and Florida. He has participated in all negotiations in the County, sometimes joined by the County Budget Director and Controller.

In the last two contract periods the county sought concessions in fringe and wage benefits and generally got a 1% reduction in wages or 1.2% additional contribution to the pension plan. Most of these concessions took effect in 2013.

The County has 19 bargaining units with approximately 1200 employees which includes employees added when the 911 operations of Lansing and East Lansing were consolidated in the County.

Mr. Parsons testified that when he arrived at the County the controller projected a deficit that, if not addressed, would continue to grow. The deputies and detectives were represented by the Michigan Association of Police during bargaining for the 2012, 2013, and 2014 years and wages were negotiated at zero for 2012 and 2013. The Union also agreed to make an additional 1.2% pension contribution beginning January, 2013. There were layoffs in this unit in 2008 through 2011, and maybe in 2012, equivalent to 39 general fund positions.

The 2.5% increase awarded in the 312 arbitration in 2014 served as the impetus and drove the bargaining for other units in the County. Although he said that the Board of Commissioners did not decide that it had the financial ability to

negotiate a 2.5% wage increase throughout the County, in fact as a matter of fundamental fairness it settled at 2.5% across the board.

On cross-examination Mr. Parsons explained that the contracts in 2012, 2013 and 2014 were concessionary contracts and the county asked for concessions on every element of the contract.

Admitting that he is not “the budget guy” he is aware that there has been a decrease in the budget deficit since he has been in his position, and up through this year he has seen some improvement.

Tim Dolehanty

Tim Dolehanty has been the County Controller and administrator since July 2013. He has had over 20 years of experience in similar positions at other counties in Michigan.

He countered Mr. Krug’s testimony and testified that throughout negotiations the County’s ability to pay has always been a foundational variable because if they can’t afford something, they could find themselves in a position of overcommitting.

Mr. Dolehanty admitted that revenue sharing from the state had increased about 16% from 2014 to 2015, and it “certainly was a positive impact on the budget”.

He responded to Union evidence that the County’s assets exceed its obligations by \$ 221 million. He pointed out that the term “assets” is a term of art, and includes all buildings, vehicles, and even roads that are considered assets of the County. He said they can’t sell the buildings, the Courthouse or the roads to get the money to pay wages.

He testified that while the December Letter spoke to budget considerations turning in the County’s favor, including an increase in property tax values, under state law the County is limited in the percentage of that increase they can realize. Even though taxable values could go up 5, 6 or 7%, the County is limited to an increase of the lesser of 5% or the rate of inflation. Since the rate of inflation has been 0.2% for this year, that is the limit on the County.

He also explained that the information in the letter on the fund balances does not provide the whole picture of an ability to pay.

Although at the end of 2013 the fund balance was 33.4% percent of expenditures, the projection was that it would decrease to 20.5% of general fund expenditures at the end of 2014. When the numbers came in, the actual fund balance at the end of 2014 was 15.7% percent.

After completing the fiscal year 2016 budget process, he testified that at the current pace the County will be entirely out of fund balance by 2020.

The County has set a minimum fund balance of 5%, and counties in Michigan range from fund balances under 1% in Kalkaska County to 30 to 35% in some counties. As set forth in the December Letter, the GFOA recommendation is 16.6%.

County Exhibit 11 shows that 55% of its revenue comes from taxes and that is typical of counties. Exhibit 14 shows the general fund budget since 2014 and shows us that 2008 provided an optimal level of services and even in 2015 we have not gotten back to that level.

He testified that the fact that Exhibit 15 shows \$34 million in unreserved balances is countered by the fact that the County also has \$95 million in unfunded health care obligations at the end of 2012 and \$109 million of unfunded pension obligation at the end of 2014. He explained, as set forth in the December Letter, that there are limits on use of the funds listed.

He testified that the alarming numbers on Exhibit 15 are the Unfunded Obligations, for Health Care and for Pensions, which total \$178 million. There are also \$27 million in unfunded obligations for the Road Department but they are funded separately.

He explained although these obligations have remained fairly steady, the Michigan Employees Retirement System (MERS) is changing its actuary formulas to reflect a lower assumed return on investment in the pension fund. As a result, the County will have to make larger payments for the pension plan, and will probably not be able to fund the healthcare obligation.

Exhibit 16 is a projection of revenues and expenditures over the next three

years and it shows a shortfall of revenues under expenses of \$2 million in 2017 and of \$1.3 million in 2018.

He repeated Mr. Parsons' comment that when the County authorized a 2.5% increase to other County employees after the 2104 Act 312 award, it was a "fundamental parity or equity situation", rather than due to a conclusion that it had the ability to pay that amount.

He talked about the trends in Property Tax Revenues in Exhibit 39, which shows those trends for 2009-2014 in Ingham and the comparable counties. In 2009-2014 the County's tax revenue declined 20%, significantly more than the comparable counties. He said that while it has improved, Ingham is not recovering at near the rate as the other counties. He went on to say "so when we got the award from last year, while that may have made parity with these other counties, it certainly didn't reflect the bottom line that Ingham County was experiencing." (Transcript at p. 146)

On cross-examination he admitted that Exhibit 39 shows that Ingham County has improved quite dramatically over the past five years, that property tax values have gone up, and that he anticipates they will continue to go up.

His December Letter set the total of all reserve funds at \$55.95 million, and although he could not speak to the number as of the date of the hearing, he said the value of those reserves has not changed dramatically, and remains three times higher than the GFOA recommended minimum.

He testified that the State might reduce or eliminate revenue sharing in the future, depending on what it does with legislation to fix the State's roads.

Exhibit 16 projects a \$2.7 million increase in expenditures for wages and fringes from the proposed 2015 adopted budget to the 2018 projection. He testified that he does not know whether it took into consideration the MERS projection (in Exhibit 19) that, using the most conservative assumptions, the required contribution to the pension plans would increase from \$20.7 million to \$25.2 million over that five years.

The Law

Act 312 of 1965, MCL 423.231, *et seq*, provides for compulsory arbitration of labor disputes of municipal police officers and fire departments. Section 8 of Act 312 states in relation to economic issues that:

. . . As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.

Section 9 dictates:

(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 proposed 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 any 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 proceeding 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 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.

(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 competent, material and substantial evidence.

Section 10 of Act 312 provides that the decision of the arbitration panel must be supported by "competent, material and substantial evidence on the whole record. . . ."

Analysis and Discussion

I have reviewed the testimony and exhibits presented by both the Union and the County. I have also reviewed the Findings and Award by Arbitrator Ralph Maccarone in the 2014 case (MERC Case No. L13 K-1091) dated August 1, 2014.

The situation with LBOs in this case is interesting. Originally the County offered two LBOs, allowing the Union to choose one. One LBO is as stated above (0% and \$250 lump sum for 2015, and 1% and wage reopeners in years 2016 and 2017). The other one was an immediate 2% increase plus a \$250 lump sum payment, then 0% increases for years 2016 and 2017. The immediate 2% increase was not retroactive to the beginning of 2015.

At the hearing the Union objected to this approach, and ultimately the County adopted the LBO as set forth above.

UNION BRIEF

The Union asserts that the December Letter is determinative of whether or not the County has the ability to pay its requested increase. The County's revenue from property taxes is increasing and has been on an upward trend.

The Union argues that Mr. Dolehanty's testimony supported what he had said in the December Letter, and that taxable values have increased, the pension obligation has held steady, the County was basically back to 2001-2008 levels of income, and the three reserve funds are about the same as they were last December.

The Union points out that the cost of its LBO is only \$72,500, and since a portion of that is paid by Delhi Township and the Village of Webberville under contract, the actual cost to the County of the Union's LBO is just \$48,000.

The Union acknowledges that the other employees in the County received a 2.5% increase for 2015, and that if its LBO is adopted, since it is retroactive, the Union employees will have, in effect, a 5% increase for 2015. It argues that when looking at internal comparables this should not be significant, since it has bargained for and been awarded the increase in 2014. It says that what the County now does with the other units is between the County and those bargaining units.

In prior years the Union had agreed to concessions, including a 1.2% pension contribution, which continues.

The Union points out that while its members are right in the middle of wages of the external comparables, even if its 2.5% LBO is awarded, they will remain in the same position. It also says that the internal comparables are not very instructive, since after the Union's Act 312 Award in 2014, the County granted other employees the same increase.

THE COUNTY BRIEF

The County made an interesting argument that since the Union was the petitioner they have the burden of proving that its LBO should be adopted. Apparently the argument is that if the Union did not sustain its burden of proof, by default the County LBO should be adopted. It asserts that the Union did not present any evidence that the County had the ability to pay.

It cites several cases in support of its proposition, but none of the cases deal with arbitrations under Act 312.

With respect to internal comparables, the County brief argues that it intentionally implements wage increases in a manner which maintains consistency and fairness among all employees, and said that "this Unit is the driving force behind a County-wide wage increase." Brief at p. 9.

When it discusses external comparables, it points out that Ingham County has maintained a position in the middle. It argues that with the County's LBO, it will maintain that position.

With respect to the County's ability to pay, it emphasizes that while property tax revenues are increasing, the County is limited to increasing revenue the lesser of 5% or the rate of inflation, which is currently 0.2%. It concedes that the "financial numbers" are slowly improving.

The County brief points out the projections of budget shortfalls in the next two years, with a concomitant reduction in the fund balance, and projects that the fund balance will be completely depleted by 2020. The brief also points to the

County's \$204 million in unfunded liabilities for pension and health care, and projected budget short falls in 2017 and 2018

DISCUSSION

ABILITY TO PAY:

As stated many times by the parties, the County's ability to pay is to be given the most significance in making an award under Act 312.

Mr. Krug, for the Union, referring to his Exhibit 10, pointed out that there has been a 5.8% increase in tax fund revenues in 2015, which was confirmed by Mr. Dolehanty, as well as an increase of three quarters of a million dollars in revenue sharing from 2014 to 2015.

County Exhibit 17, although showing a decrease in General Fund Revenue starting in 2008, also demonstrates that the decrease bottomed out in 2012-2013, and has increased significantly since, to the point where now it is almost at the peak 2008 level.

Mr. Dolehanty expressed concern about how the legislature would address the issue of road funding, which has been a hot topic in Lansing, but after the hearing the legislature acted, and it appears that the road funding proposal will have no immediate impact on the County finances.

There is inconclusive testimony with respect to the financial projections. While Mr. Dolehanty testified at p 119 that projections are that 'we will be out of fund balance by 2020', his County Exhibit 16, entitled "Multi-Year Projection", projects that the "unreserved general fund and budget stabilization fund" in 2018 will be almost exactly what was adopted in 2015, and the budget short fall will be less in 2018 than in 2017. It also projects a decreasing use of the fund balance, from about \$3.1 million in 2015 to \$1.7 million in 2018.

Clearly there are unfunded pension and healthcare liabilities, as there are in most communities. But as Mr. Dolehanty testified, the liabilities have not increased and have remained relatively steady.

Interestingly, with respect to the County's argument, is the fact that going into the hearing the County's LBO was for a 2% increase, plus a lump sum payment of \$250. That is remarkably close to the Union's LBO of a 2.5% increase.

I find that the County has the ability to pay the Union's LBO.

EXTERNAL COMPARABLES:

The County argues that for many years it has maintained its deputies and detectives in about the middle of the pack with respect to the counties chosen as comparable counties. It argues that I should choose its LBO, because it would keep the County in that same position.

The Union points out that if I select its LBO, and grant the 2.5% increase, it will still be in the middle of the pack with respect to the comparable communities.

Both arguments are correct. Whichever LBO is chosen, the County's relative position with respect to comparable communities will not change.

The County's own Exhibit 8, comparing the 2015 maximum base wage for road patrol deputies of the seven comparable counties, shows that Ingham County is 2.7% below the mean. The County's Exhibit 9 shows that new hires are 1.9% below the mean of comparable counties.

INTERNAL COMPARABLES:

Comparing the wages of the Union employees with those of other employees of the County raises an interesting issue. After the 2014 Act 312 Arbitration awarded the Union a 2.5% wage increase, the County used that as the template for all other County employees. The County says that this Union was "the driving force behind a County-wide wage increase" and virtually all employees received a 2.5% increase in 2015.

If the Union is the leader, then any comparison would be adverse to them.

The County witnesses emphasized that the County did not make the decision to grant other employee groups a 2.5% increase based on a belief that it had the ability to pay that increase, but rather out of a sense of equity or parity. Apparently

the County is arguing that it did not have the ability to pay those increases. It is arguing that the County, knowing that it could not afford them, granted them anyway out of a sense of fairness. I cannot accept this conclusion. If I did so I would have to conclude that the County was reckless in granting the increases. Instead, I can accept that ability to pay was not the driving force, and equity was. That does not, however, require a finding that the County did not have the ability to pay.

The County also argued that it truly did not have to ability to pay the 2014 Arbitration award, a position that is belied by its prompt extension of the same increase to other County employees.

THE LAST BEST OFFERS:

These employees received a 2.5% increase as result of the Act 312 Award in August 2014 after a series of concessionary years. The Arbitrator made that increase retroactive to the beginning of 2014, but the retroactivity was challenged by the County, is in litigation, and has not been paid. The employees have had the increase for about 15 months.

The Union LBO would award a 2.5% increase retroactive to January 2015. If I do that, these employees would, in fact, have a 2.5% increase starting in August, 2014, with an additional 2.5% increase starting January 1, 2015, for a total of a 5% increase over their wages in 2014. In addition there would be a wage reopener for each of the next two years, although without any guaranteed minimum.

On the other hand, the County LBO would leave the employees with the 2.5% increase awarded in the last Arbitration though the end of 2015, a lump sum payment of \$250, with a 1% increase beginning in 2016, and a wage reopener for 2016. The lump sum amounts to something under one-half percent of the current average pay. In January 2017 there would be an additional 1% increase, plus a wage reopener. So the employees would be guaranteed a 1% increase for the next two years and the possibility of more through negotiation.

The Union LBO treats each year separately. The County LBO is a single package. If the County proposal was offered on a year-by-year basis, then I could

make three separate awards, one for each year. However, under the proposals as submitted, I cannot do that. I have to choose either the County position in total, or the Union position in total. Nor am I able to grant the Union's 2.5% increase prospectively and not retroactively.

It cannot be ignored that the County's original proposal, of alternate LBO's, included an offer of a 2% wage increase plus a \$250 lump sum. Other than the retroactivity, that is remarkably close to the Union's LBO of 2.5%

The County's proposal of 1% for each of the next two years plus a wage reopener shows that it is willing to give a total of a 2% increase over the next two years. The Union proposal of a 2.5% increase now and no guaranteed increase over the next two years is clearly more generous to the Union workers, especially since it is retroactive. If the union proposal was not retroactive I would have an easier time making this decision. But retroactivity makes sense to avoid holding wages hostage to the amount of time it takes to negotiate.

The County has emphasized that the Union is the driving force behind a County-wide wage increase. The County states that it "intentionally implements wage increases in a manner which maintains consistency and fairness among all employees" (Brief at p. 8, emphasis in the original).

The County seems to argue that this fact should be taken into consideration when evaluating the County's ability to pay any award.. Apparently the logic is that I should consider not only the cost to the County of paying a wage increase to this unit, but also the cost of paying an equivalent increase to other County employees.

I reject this logic. These employees are not responsible for what the County does with respect to other employee groups. Whether the County grants equivalent increases to other groups is entirely within the control of the County - not this Union.

The parties stipulated that the total cost of the Union's LBO is \$72,500. Since a number of the employees are paid by other communities under contract, the actual cost to the County is about \$48,000. The Union's LBO includes wage reopeners for the next two years, but unlike the County's reopeners does not include any minimum increase.

AWARD

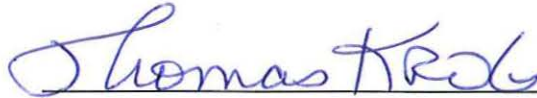
After careful consideration of the law, the testimony, the exhibits, and the arguments of the parties, and consideration of each of the statutory factors, I award the Union's LBO.

Date: Jan. 18, 2016



Thomas W. Brookover, Arbitrator and Panel Chair

Date: 1-22-16



Tom Krug
Union Delegate, Concurring / Dissenting

Date: 1-25-2016



Travis Parsons
County Delegate, Concurring / Dissenting