

**STATE OF MICHIGAN  
BUREAU OF EMPLOYMENT RELATIONS  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
CONSOLIDATED ACT 312 ARBITRATION AND FACT FINDING**

In the Matter of Combined Act 312 Arbitration  
and Fact Finding Between:

MERC FILE NO: D15 K-0948

Livingston County Board of Commissioners,

Employer,

and

Michigan Association of Police/Livingston County  
Lieutenant's Association,

Association.

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**Chairperson: Charles Ammeson  
Association Delegate: Ronald Palmquist  
Employer Delegate: Richard D. McNulty**

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMM  
DETROIT OFFICE

**ARBITRATION PANEL FINAL OPINION AND AWARD**

Date Rendered: September 28, 2016

**APPEARANCES**

**FOR THE EMPLOYER:**

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**FOR THE ASSOCIATION:**

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**ADDITIONAL APPEARANCES**

**FOR THE EMPLOYER:**

Ken Hinton, County Administrator  
Jennifer Palmbo, HR Director  
Cindy Catanach, Finance Officer

**FOR THE ASSOCIATION:**

Henry Winokur, Research Analyst  
Fred Timpner, Director  
James Lynch, Lieutenant

**REPORTED BY**

Maria Greenough, CSMR 0980.

**EXHIBITS**

100	Petition	Admitted
101	Current Collective Bargaining Unit	Admitted
102	Seniority List	Admitted
103	Union Last Best Offer	Admitted
104	Employer Last Best Offer	Admitted
105	Top Wages Lieutenant 2015	Admitted
106	Lieutenant Payroll Report	Admitted
107	Cost of Proposed Increase	Admitted
108	Percentage Wage Increases	Admitted
109	Compensation Comparison	Admitted
110	CAFR 2015	Admitted
111	CAFR 2014	Admitted
112	Livingston County Total Equivalent Taxable Value 2006-2015	Admitted
113	Livingston County Economic Indicators	Admitted
114	Livingston County Health Department & Drain Commissioner	Admitted
200	2013-2016 Comparison of Maximum Base Wages	Admitted
201	2013-2016 Comparison of Maximum Base Wages with Unaveraged Top Tiers	Admitted
202	2013-2016 Comparison of Maximum Base Wages with Unaveraged Lower Tiers	Admitted
203	Comparison of Across-the-Board Wage Percentile Increases 2014-2016	Admitted
204	Cumulative Change in Top Rate 2013-2016 Lieutenants Unit	Admitted
205	Seniority List	Admitted
206	MERS Employee Costs - Pension Summary	Admitted
207	Employee Health Insurance Cost	Admitted
208	Consumer Price Index, Detroit-Ann Arbor-Flint (January 20, 2016)	Admitted
209	2016 Budget	Admitted
210	2016 "Headlee" Inflation Rate Multiplier	Admitted
211	MERS Actuarial Report Spring 2015	Admitted
212	October 2015 Change of MERS Actuarial Assumptions and Increasing Fund Liabilities	Admitted
213	Summary of MERS Funding Policy and Assumption Changes	Admitted
214	Net 2016 Estimate of Taxable Value	Admitted
215	2014 Tentative Agreements	Admitted

216	Financial Review - General Fund Analysis	Admitted
217	Budget Expenditures of Any General Fund Excess	Admitted
218	History of Livingston County Taxable Value	Admitted
219	Cost of Union's Proposed Wage Increase	Admitted
220	Increase in 2016 of Net Jail Operations Cost (Estimated)	Admitted
221	General Fund Expenses by Activity	Admitted
222	Moody's Bond Rating for Livingston County	Admitted
223	Berrien POLC (with 2013-2015 and 2016-2018 Wage Scales)	Admitted
224	Ingham FOP Supervisory (2015-2017)	Admitted
225	Kalamazoo COAM/KCSSA (2013-2015 and 2016-2018)	Admitted
226	Monroe COAM (2013-2015 and 2016-2019 Wage Scales)	Admitted
227	St. Clair COAM (2013-2015 and 2016 Wage Scales)	Admitted
228	Saginaw COAM Unit III - Captains and Lieutenants (2015)	Admitted
229	Livingston County MAP (2014-2016)	Admitted
230	2016 MERS Blended Rate - Employer Portion	Admitted
231	Cumulative 2013-2016 Comparisons (Averaged/Top-Tier/Lower-Tier	Admitted

Exhibits were admitted without objection as set forth above.

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## **BACKGROUND**

The parties are signatories to a Collective Bargaining Agreement ("CBA") (Exhibit 101), effective July 15, 2014 through December 31, 2016. The subject unit is comprised of six Livingston County Law Enforcement and Corrections Lieutenants. The Act 312 arbitration process concerns the three Law Enforcement Lieutenants, per a petition filed by the Association on February 2, 2016. The fact-finding proceeding concerns the remaining three Lieutenants assigned to Corrections duties. Initial wages are set forth in Article 35 of the CBA, and Article 35.4 of the CBA provides for a reopening of wage rates for 2016. The petition in this matter was filed August 21, 2015. The single issue before the panel is the 2016 wage rate for the Lieutenants' classification for the third and final year of the CBA.

The parties held a pre-hearing phone conference on March 30, 2016, after which the Chairperson issued a Pre-Hearing Conference Report, setting forth a schedule for the exchange of witnesses, exhibits and last best offers, and noticing hearing dates for June 13 and 14, 2016. The parties stipulated to a base set of comparables - being Berrien, Ingham, Kalamazoo, St. Clair and Saginaw Counties, and subsequently confirmed their stipulation to include Monroe County as well by including Monroe in their exhibits (See Exhibits 108 and 201). The pre-hearing exchanges occurred in a cooperative manner, and last best offers were received by May 13, 2016. The hearing commenced and concluded on June 13, 2016, being held at the Livingston County Administration Building in Howell, Michigan. At the commencement of the hearing, the parties stipulated that the bargaining unit consists of three Act 312 eligible Law Enforcement Lieutenants and three non-eligible Correction Lieutenants, and mutually requested the Chairperson to consider rendering decisions that treated all six Lieutenants consistently.

### **ISSUE**

2016 Wages – Per Wage Reopener Provision of Article 35.4 of the Collective Bargaining Agreement (Exhibit 1).

### **LAST BEST OFFERS**

The Association, as Petitioner, submitted a last best offer of a 2.25% wage increase across the board to both tiers and steps for members of the bargaining unit effective January 1, 2016 (Exhibit 103). The Employer submitted a last best offer of a 0% wage increase effective January 1, 2016 (Exhibit 104).

## TESTIMONIAL EVIDENCE

The Association commenced its presentation calling Henry Winokur (Winokur), a Research Analyst employed by the Michigan Association of Police (MAP). After explaining his educational background and confirming the last best offers, Winokur pointed out that the top wage for subject employees occurs after two years in rank, being two steps after hire, and that the top ranges for employees under the comparable contracts range from immediate ascension to top wages upon hire, to five steps. See Exhibit 105. Winokur confirmed his research that the Employer ranks second among all comparables in the top wage range at \$77,079.87, second only to Kalamazoo at \$86,070.40, and in excess of the average of all comparables ranging from \$74,058.78 to \$74,491.79, depending whether the Employer is included in the average. See Exhibit 105.

Winokur reviewed Exhibit 107, justifying his testimony that the cost of the Association's last best offer would amount to a \$13,771.10 addition for all six unit members for the year 2016. Winokur continued, reviewing Exhibit 108, confirming his research that Employer percentage wage increases for 2014 and 2015 exceeded wage increases for those years for all comparables, and that the wage increases for the comparables that have concluded increases ranged from 0% to 2.25% for 2016.

Winokur concluded his testimony sharing his research that, accounting for base wages and other benefits, the Employer's more complete economic package is \$90,734.87, ranking the Employer third among comparables, exceeded by Kalamazoo at \$100,277.52 and by St. Clair at \$92,749.80, with four comparables at a lesser comparable package ranging from \$73,422.12 to \$89,441.24.

Upon cross-examination, Winokur explained how he accounted for tier placement of unit members in his comparable rankings; that the Employer was 1/2 of one percent below the average of comparables prior to 2014, and was ranked fifth out of the seven comparables; that the Employer would rank third out of the seven comparables if a 0% wage increase was maintained for 2016; that the Employer would have effectuated the highest percentage wage increase of all comparables from 2014 through 2016 with a 0% wage increase maintained for 2016; that he did not research comparable employee contributions to pension funds or healthcare costs; and that he did not research allowed personal use of patrol vehicles amongst the comparables.

Upon re-direct examination, Winokur explained the difference between date of hire and date of promotion and its effect on the seniority list (Exhibits 102 and 103), pointing out that all of the unit members fall under the first tier of Article 35.1 and 35.2 of the CBA (Exhibit 101), all being hired prior to June 30, 2011.

The Association continued its presentation by calling James Lynch (Lynch), having been employed by the Employer since 1998, and as a Lieutenant since 2007. Lynch explained the organizational structure of the Sheriff's Department and the promotion/progression procedures to attain Lieutenant rank. Lynch contrasted the Lieutenant responsibilities for road patrol/law enforcement as to jail/corrections, also describing the positions as upper administration - being paid on a salary basis without overtime. In that regard, Lynch confirmed his review of the comparable collective bargaining agreements, and offered that the only other salary-based Lieutenants were in Kalamazoo County, all others being hourly and eligible for overtime.

Lynch concluded his testimony offering that there are no Captains with the Employer.

Upon cross-examination, Lynch reviewed Exhibit 109 and conceded that all unit members are receiving \$2,200.00 in longevity based upon date of hire, and not the \$770.80 amount at two years in Exhibit 109; that Lieutenants with the Employer get personal use of a squad car to drive to and from home and personal use within 100 miles; that Lieutenants with the Employer are allowed compensatory time off on a one and-a-half flex time basis per overtime hour worked; that during the 2013 negotiations, the CBA (Exhibit 101) went from five tiers to three tiers (eliminating two tiers), and that change brought the unit to comparable wages with the agreed comparables in regard to base starting wage; that an additional Lieutenant was added because of a jail expansion within the last two years; and that the Lieutenants with the Employer work assigned day shifts.

Upon re-direct examination, Lynch confirmed all Employer Lieutenants get longevity pay and a car, pointing out that the Lieutenants are on-call outside their normal day shift in association with the car usage. Lynch also pointed out that there are caps of 250 hours on compensatory time in Article 36.3 of the CBA (Exhibit 101); and that compensatory time must generally be used and not carried forward, except in small amounts, somewhere between 20 and 40 hours.

Upon further cross-examination, Lynch confirmed that Lieutenants with the Employer contribute five percent of their salary toward pension and ten percent toward healthcare insurance premium/cost; that Lieutenants with the Employer may use

compensatory time instead of vacation, and may be paid out unused vacation, after which the Association rested its presentation.

The Employer called Ken Hinton (Hinton) as its only witness. Hinton confirmed his position as Livingston County Administrator since June 2015, with prior experience as a County Administrator and Licensed Certified Public Accountant, mostly with private employers.

Hinton reviewed his budget preparation process for 2016, being required to establish a balanced budget. Hinton characterized the revenue between 2015 and 2016 as flat, explaining the impact of real property tax revenue, Proposal A and the Headlee Amendment, as contributing causes. Hinton also offered that during 2014 and 2015, the Employer had across-the-board 3.1 percent increases for employee wages, as evidenced by Exhibit 219; a jail expansion in 2014 as evidenced at page 6 of Exhibit 209; and expected increased pension costs due to under-funding, all adding stress to the budgeting process, but noting that the County has an AAA bond rating.

Hinton testified that he recommended a 0% wage increase for all employees within the County for the 2016 budget, and none of the employee groups received anything above 0%.

Upon cross-examination, Hinton acknowledged that the 2014 and 2015 wage increases were negotiated and not arbitrated; that the Employer offered the same proposal to all employees; that the County is self-funded for healthcare costs; that increased jail costs are covered in part by an approximate 1.3 million dollar estimated U.S. Marshall Contract for housing U.S. Marshall prisoners; that building permits in Livingston County increased significantly; that Livingston County has the highest



median income among all 83 Michigan counties; that Exhibit 209 indicates a \$21,278,085.00 ending fund balance budgeted for 2016; and that an approximate \$240,000.00 increase in real property tax revenues was anticipated to take place in 2016.

Upon re-direct examination, Hinton offered testimony that he recommended a fund balance of about fifty percent of revenues essentially be maintained for 2016; and that revenues have still decreased from pre-recession levels, as have taxable values.

After clarifying questions by the Chairperson regarding a number of exhibits, the Employer rested its presentation.

### **ASSOCIATION POSITION**

The Association posits that the total cost of their proposal of 2.25% would only be \$13,771.10 for all six Lieutenants, and that awarding no increase (0% offered by the Employer) would adversely affect the Livingston County Lieutenants' standing with external comparables. The Association suggests that the Employer, as a whole county, has an extremely healthy fund balance, well in excess of those carried as a rule of thumb. Recognizing that the Union and the Employer negotiated wage increases for 2014 and 2015 to remedy the Employer's poor standing among agreed upon comparables, the Association posits that it is senseless to destroy the gains agreed upon and intended to be made and maintained, particularly when there are anything but exigent economic circumstances. Finally, the Association points out that, of the three units of employees who work for the dual Employer of the County and the Sheriff, the Sergeants have received a P.A. 312 Award of a 2.25% wage increase for 2016 and the

Deputies and Detectives have received a draft of a P.A. 312 award of a 2.5% wage increase for 2016. Not only are these two units internal comparables, but they are internal comparables and subordinates in the same department as the Lieutenants in this case with the same County/Sheriff dual employer. If the Panel awards the Employers last best offer of 0% wage increase for 2016, it will have a drastic effect on the morale of the Lieutenants and seriously undermine their authority with their subordinate Officers.

### **EMPLOYER POSITION**

The Employer commences with the observation that Public Act 116, effective July 20, 2011, added a significant provision which requires the Panel to give financial ability to pay the most significance in resolving Act 312 matters. Addressing that factor first, the Employer posits that wages are the most significant stressor to the Employer; that there have been and are other expected stressors that must be guarded against; that its revenues and expected revenues do not justify a wage increase; and that its healthy general fund position is economically prudent, all leading to the conclusion that the Employer does not have excess revenues or funds to spend on wage increases beyond making the Employer competitive in the market.

Turning to external comparability, the Employer posits that it moved the salary ranking of the Livingston County Lieutenants from fifth position to third or second position among comparables during the first two years of the present CBA (depending on calculations), asserting not only that external comparability in no way justifies a wage increase, but that comparability in no way requires a precise maintenance in ranking,

being at best a single component of any analysis. Moreover, the Employer points out that Livingston County Lieutenants enjoy significant benefits not afforded comparable units, and not accounted for in the comparability analysis, which buttress the more objective conclusion that Livingston County Lieutenants compare favorably to the agreed upon comparables.

The Employer concludes its argument observing that the factors concerning internal comparables and cost of living also support its proposal of no wage increase, the majority of internal comparability having been uniformly maintained, and the cost of living having been appropriately accommodated over the term of CBA, noting that despite the fact that the Sergeants have received a P.A. 312 award of a 2.25% wage increase for 2016 and the Deputies and Detectives have received a draft of a P.A. 312 award of a 2.5% wage increase for 2016, the facts remain (as to non-union and those units who are not eligible for Act 312) that Livingston County has uniformly maintained a 0% across the board wage increase for 2016. Moreover, the basis for the Deputy and Detectives draft award is fact-specific, based upon a much different record, and stands in stark contrast to the evidence and record in this matter. Here, the record establishes that all of the unit Livingston County Lieutenants have a County hire date well before 2011 and, as such, are within the first (or higher) tier of wages. As a result, the Lieutenants are at the very top of the comparable counties for both wages and total compensation, and even with a 0% increase in 2016, the Livingston County Lieutenants' top wages will have improved from slightly below average in 2013 to over 2% above average in 2016.

## **DISCUSSION**

Public Act 312 of 1969 provides for compulsory arbitration of labor disputes in municipal police and fire departments. Section 8 of the Act provides that the Arbitration Panel shall adopt the last offer of settlement on each economic issue, which most nearly complies with the eight factors upon which the panel's decision must rest. Those nine factors include:

- (1) Interests and welfare of the public and the financial ability of the unit of government to meet those costs;
- (2) The lawful authority of the employer;
- (3) Stipulations of the parties;
- (4) 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 and (ii) in private employment in comparable communities;
- (5) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question;
- (6) Average consumer prices for goods and services, commonly known as the cost of living;
- (7) 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;
- (8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and

(9) Such other factors, not confined to the foregoing, which as 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). Adherence to the eight factors is mandated, as outlined by the Michigan Supreme Court in City of Detroit v. Detroit Police Officers Association, 498

Mich 410 (1980):

[A]ny finding, opinion or order of the panel on any issue must emanate from a consideration of the nine listed Section 9 factors, as applicable.

This Chairperson is also fully mindful that since the above observation by the Court, the Legislature has clarified that the Panel shall give the financial ability of the Employer the most significance. See MCL 423.239(2). As such, the Chairperson will save the third and most significant factor for last, except to observe that this Panel is also well aware of the requirement that it must consider the interest and welfare of the public as a whole. That interest requires a proper balance of adequate law enforcement protection as a whole, which is reasonably and comparably affordable for the community.

Neither party at the hearing suggested that the Sheriff’s Department was either under or over-staffed with command officers; that the Department was functioning less than optimally; or that either of the last best offers would seriously affect the interest and welfare of the public as a whole, or the proper balance between adequate law enforcement protection and fiscal responsibility.

Examining the other factors in a preliminary fashion, neither party suggested that the issues at hand are not within the authority of the Employer, or that the stipulations made by the parties are contrary to any of the other factors.

Skipping to the impact of cost of living, the relevant evidence appears to be limited to Exhibit 208, which suggests that the cost of living increase for 2016 was a possible decline, and most certainly relatively flat, there being no evidence that the cost of living increases experienced in 2014 and 2015 exceeded the Lieutenants' pay increases. As such, it appears from the evidence that either last best offer reasonably comports with or exceeds the cost of living expectations.

Regarding overall compensation, the Employer presented evidence and argued that certain non-monetized benefits, such as the personal value attributable to having a Department vehicle available for personal use made employment with the Employer more attractive. The Association countered that a countervailing stress associated with such benefit is the detriment of being on call 24/7. This Chairperson observes that all Lieutenants essentially work a day shift, which may counter-balance such detriment.

In contrast, the Association presented additional evidence and argued that the "salary pay" status of Lieutenants, as opposed to the "hourly" pay status of many comparables, is a limiting factor affecting overall compensation with the elimination of overtime opportunities. The Employer countered that the Lieutenants benefit from a liberal compensatory time arrangement which offsets such limitation.

All in all, it is apparent to the Chairperson that assessing overall compensation on an apple-to-apple basis is an exhausting, perhaps never-ending and inexact endeavor. Observing the overall costing of comparables set forth in Exhibit 109, it is this Chairperson's observation and conclusion that Livingston County Lieutenants are afforded a similarly comprehensive overall economic package, suggesting that the fringe benefits and continuity and stability of employment received by unit members are

comparable among the external comparables (as well as internal comparables) not requiring a measurable adjustment to base wages.

The factor upon which the parties mostly focused was internal and external comparables, to which the Chairperson will turn in more detail, as did the parties, it being this Chairperson's experience that the Panel need not give all factors equal weight. Thus, other than the directive that the Panel is to give ability to pay primary significance, it is for the Panel, with the assistance of the parties, to decide the relative importance of the other factors.

Turning to the external comparables, the evidence in that regard is compelling that unit members are paid comparably in regard to the agreed upon comparables. As of 2015 (per Exhibits 109 (total compensation) and 105 (base wages)), Livingston County Lieutenants ranked third and second, respectively, among the seven comparables. Livingston County Lieutenants were paid 3.5% above the average base wage. Livingston County Lieutenants were paid 3.7% above the average in terms of total compensation.

With a 2.25% wage increase, as proposed by the Association, Livingston County would maintain its respective rankings among the seven comparables. Livingston County Lieutenants would be paid 3.9% above the average base wage. Livingston County Lieutenants would be paid 4.2% above the average in terms of total compensation.

With a 0% increase, as proposed by the Employer, Livingston County would fall to a fourth ranking among the seven comparables. Livingston County Lieutenants

would be paid 2.0% above the average base wage. Livingston County Lieutenants would be paid 2.2% above the average in terms of total compensation.

The evidence regarding internal comparables is not significantly in dispute. The evidence seems to demonstrate that the Employer has chosen to maintain relative internal comparability in its bargaining with Employer unions and its treatment of non-represented employees with across-the-board wage increases. Initially, all evidence pointed to the conclusion that a 0% wage increase is what all other Employer unions received. However, during the course of proceedings, such evidence changed, impacting the seventh factor to be considered by the panel.

Turning to changes during the pendency of the arbitration proceedings, the Chairperson initially noted that contracts for the comparable parties may have been effectuated or modified for 2016 wages during the interim, and that these were reflected in Exhibit 105. The Chairperson addresses the impact of those changes in his analysis of comparables. More significantly, the Chairperson also noted that an interim award pertaining to the Employer and another unit was rendered in MERC Case No: D15 L-0850. Thus, the Chairperson convened the panel, and changes in circumstances were discussed, resulting in a stipulation as follows, regarding the other two units with the dual Employer of the County and the Sheriff:

Sergeants Unit - The arbitrator has issued a 312 award as to law enforcement sergeants ordering, and a fact-finding recommendation as to corrections sergeants recommending, a 2.25% increase for 2016. The County is, as required by law, implementing the 312 Award and has scheduled continued negotiations regarding the corrections sergeants.

Deputies, Detectives and Corrections Officer Unit - The arbitrator has issued a draft 312 award as to law enforcement deputies and detective ordering, and a fact-finding recommendation as to corrections officers recommending, a 2.5% increase for 2016.



Accordingly, although the last best offer of 0% increase would be consistent with 2016 increases for non-union employees and Court, Dispatcher and Emergency Medical Services bargaining units, they would contrast significantly with the increase for the Sergeants Unit and the expected increase for the Deputies, Detectives and Corrections Officer Unit. This Chairperson is certainly mindful that a 0% increase for the Lieutenants, while Sergeants receive and Deputies, Detectives and Corrections Officers may receive a significant increase for 2016, will be a "hard pill to swallow", so-to-speak, for the Lieutenants and the other employees and units receiving a 0% increase, having a definite impact on morale, as clearly put forth by the Association.

Addressing internal and external comparability together, in light of changes during the pendency of the proceedings, the evidence demonstrates that during the term of the CBA (Exhibit 101), the parties made significant strides toward improving comparability of the Lieutenants externally. As conceded by Winokur at the hearing, the Employer was one-half of one-percent below the average of comparables prior to 2014, and was ranked fifth out of the seven comparables. The Employer would have effectuated the highest percentage wage increase of all comparables from 2014 through 2016 under either of the last best offers for 2016. The fact that over the course of the CBA the Lieutenants went from one-half of one-percent below average to 2% above average, even with a 0% wage increase for 2016, is a significant factor to be considered, and reasonably compelling to the Chairperson. The Chairperson cannot find compelling reason to support the need to further increase the Livingston County Lieutenants' standing, in terms of external comparability, to a position that provides them pay in an amount of 4% above comparable averages. The main comparability

evidence that warrants serious consideration of a significant wage increase for 2016 is the morale impact as to the Sergeant Unit's increase, and the probable significant increase for the Deputies, Detectives and Corrections Officers Unit, countered by the fact that non-union employees and Court, Dispatcher and Emergency Medical Services bargaining units received a 0% increase.

As a final comment regarding comparability, the Chairperson is well aware that most other comparable units received wage increases for 2016. However, it must be noted that during the term of the CBA (Exhibit 101) when Livingston County received 3%-plus increases, Ingham, Monroe, Saginaw and St. Clair received 0% increases for one or both of those years. Berrien and Kalamazoo Counties, which received wage increases for all 3 years (2014-2016), received total increases over the three years of 4 to 4.25%, approximately 2% less than Livingston County Lieutenants for the full 3-year period.

Addressing the last factor, neither party offered evidence of circumstances normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining (the eighth factor) which would not fall within the purview and assessment/analysis of the other factors. The Chairperson has interacted with and spent much time with the parties, and is comfortable that the parties are not complicated by other factors which would impede or negatively impact their rich bargaining history and continued bargaining relationship.

Finally, and most significantly, the Panel must turn to and evaluate the Employer's assertions regarding the first statutory factor relating to the Employer's financial ability to pay, and all subparts of such factor. See MCL 423.239(1) (a) (i-iv).

Turning to the economic circumstances of the Employer, the Employer focuses its ability to pay assertions primarily upon significant MERS' underfunded liability exceeding 41 million dollars, and the levelling impact the total structure of real property taxation has upon county revenues. It is this Chairperson's observation that the MERS' underfunded liability, although not necessarily a controlling factor that would over-ride the other factors, is a legitimate concern, and is being dealt with by the Employer across the board, and not singularly at the expense of the subject unit. It would be thoughtless for the Employer or this Panel not to give credit to that concern. Addressing the underfunding will well serve the interests of the Employer, the Lieutenants and the community as a whole.

Regarding the Employer's concerns pertaining to tax revenues and other costs, those concerns are concerns for all employers, and as regards the present Employer, it is this Chairperson's observation that economic realities facing this Employer (although challenging as they are for all municipal employers) are not extraordinary or unexpected. In other words, it is this Chairperson's observation that the Employer has done a reasonable job of addressing, anticipating and planning for its fiscal needs and responsibilities, including its focus on the MERS funding. However, given the totality of circumstances, this Chairperson cannot reasonably conclude that the Employer's ability to pay is a determinative factor in this matter. The Employer has the full ability to pay either last best offer, and either last best offer would only affect the Employer's economic circumstances negligibly, at best.

Thus, as stated in In the Matter of the Act 312 Arbitration Between: COUNTY OF WAYNE and the WAYNE COUNTY SHERIFF, Employer and SEIU LOCAL 502, Union, MERC Case No. D04 A-0110, at page 9 (January 2008):

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the awards, and internal comparables, as well as with other similarly situated public and private employees. In other words, the economic realities of the situation must be considered.

The economic realities facing the present parties are, at best, complex and uncertain. Even though the amount at issue between the last best offers is less than 1/10th of 1% of the budget attributable to Department activities which the Lieutenants supervise, including the jail, and alone would not jeopardize the financial stability of the Employer; and even though it is the Chairperson's opinion that the Employer is not experiencing extenuating financial difficulties; and even though a 0% increase for the Lieutenants, while Sergeants receive and Deputies, Detectives and Corrections Officers may receive a significant increase for 2016 will have a definite impact on morale for Lieutenants, it remains this Chairperson's observation and the Panel's conclusion and determination that the last best offer of the Employer is the more responsible and informed option, aligned with the remaining eight factors.

The Employer's last best offer of 0% falls within the current experience of cost of living; leaves the Lieutenants reasonably comparable in base pay and total compensation to the comparable units, and, in fact, above average; provides a comparable overall compensation package; and maintains a certain, although not complete consistency internally with other units and non-represented employees. All in all, it is the determination of this Panel that the Employer's last best offer of a 0% wage

increase for 2016 is in the best interest and welfare of the public, as between the two alternative proposals; and best comports with the evidence before this panel, this panel not being fully informed by the process of all the distinctions which should be drawn between this Act 312 and other Act 312 awards for internal units.

In closing, this Chairperson is compelled to comment that he carefully considered the change in circumstances presented by the other Act 312 award. Significant to this Chairperson is the fact that he is not fully privy to all the particular external comparables or other distinguishing evidence in other awards, the external comparable evidence in the present matter not persuading this Chairperson that a pay increase is warranted to maintain external comparability. Also significant to this Chairperson is the fact that there is a MERS underfunding, and this Chairperson is persuaded that the Employer is committed to addressing that underfunding and this Chairperson has every expectation that it will do so as a priority, which would be an equitable use of funds for all interests to be considered, employees new and old; the Employer; and the public. Also significant to the Chairperson is the fact that negotiations for 2017 for the subject unit are either underway or impending, and if there are other factors that require remediation of internal inequities, they will be best addressed by the parties directly.


### **ACT 312 AWARD**

The Panel adopts the Employer's Last Best Offer on Wages, being a 0% wage increase for 2016 by majority vote as assented and dissented below. The views expressed in the Opinion are the views of the Chairperson, and do not necessarily represent the views of the Delegate voting with the Chairperson.

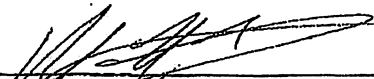
**FACT FINDING RECOMMENDATION**

The Chairperson, acting as Fact Finder, consistent with the Act 312 Award, independently recommends a 0% wage increase for the 2016 wage re-opener.

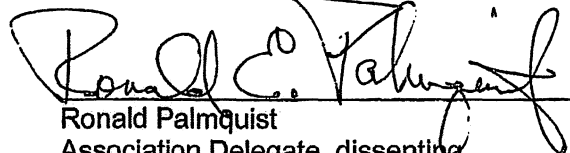
Dated: September 28, 2016

  
\_\_\_\_\_  
Charles Ammeson  
Chairperson

Dated: September 29, 2016

  
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Richard D. McNulty  
Employer Delegate, assenting

Dated: September 29, 2016

  
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Ronald Palmquist  
Association Delegate, dissenting