

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

PETITIONING PARTY:
COMMAND OFFICERS ASSOCIATION OF MICHIGAN

RESPONDING PARTY:
ST. CLAIR COUNTY, SHERIFF'S OFFICE

MERC CASE NO.: D17 L-1114

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939 as amended)
[MCL 423.1 et seq.], and
Public Employment Relations Act (P.A. 336 of 1947 as amended)
MCL 423.201, et seq.]

Fact Finder
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BUREAU OF EMPLOYMENT RELATIONS
DETROIT, MICHIGAN

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WITNESS

Karry Hepting; St. Clair County Administrator/Controller.

INTRODUCTION and BACKGROUND

The parties are St. Clair County Sheriff Department (Employer) and St. Clair County Corrections Command Officers, Command Officers Association of Michigan [C.O.A.M.] (Employees/Union). There are 12 members in the Union, consisting of 11 Corrections Sergeants and one (1) Corrections Command Lieutenant. The Union is a non-Act 312 eligible bargaining unit.

Among the principal duties performed by the Employees is to assist in the operation of the jail by providing for the safety and welfare of the prisoners in the lock-up, as well as assuring the safety of Corrections Deputies who are members of a different bargaining unit but are subordinates of the Corrections Command Officers.

The parties are currently engaged in collective bargaining to reach agreement on a successor agreement and if the parties are successful in their current objective, they will create a

labor contract that will run through December 31, 2018, as well as include a wage reopener that may allow the agreement to be extended through December 31, 2019.

The bargaining that has occurred prior to now included two (2) sessions that were conducted in the presence of a State Mediator. As those prior efforts were unsuccessful in reaching an agreement, the Union submitted a petition to the MERC in March 2018 requesting authorization to engage in a Fact-Finding process. That Petition stated that wages was the sole unresolved issue between the parties, and as is always required before any Fact Finding can receive approval in Michigan, every Petitioner must submit his or her written response to the inquiry: *Why publicizing the facts and recommendations would assist in resolving the disputed issues?* In this case, the Union's response was: "Appointment of a qualified neutral to determine the facts and make appropriate recommendations permits the parties to resolve disparate perceptions, leading to the anticipated resolution of dispute."

The completed Petition, accompanied by the above Answer duly signed by Mr. Wayne Beerbower, the Business Agent for the C.O.A.M., was served on the County and the Michigan Employment Relations Commission (MERC) on or about March 23, 2018.

Finally, the Petition was certified by the MERC, and bears a bottom line declaration that the sole issue to be resolved is wages.

STATUTORY AUTHORITY and CRITERIA

The Michigan Labor Mediation Act (P.A. 176 of 1939 as amended) [MCL 423.1, *et seq*], and Public Employment Relations Act (P.A. 336 of 1947 as amended) [MCL 423,201, *et seq*] establishes the legal basis and parameters in which this Fact-Finding case must be decided.

STIPULATIONS AND PRELIMINARY RULINGS

None.

PARTIES' PRESENTATIONS and RESPONSES

At the heart of this dispute was a 2017 study, conducted primarily to identify instances when the County was paying its employees a different wage rate than was being paid for employees doing the same work in comparable counties. Mr. Gary Fletcher, the County Attorney and Union Advocate, explained that for years, various St. Clair County unions had been requesting equity adjustments or reclassifications, and such requests had numbered in the hundreds. He said those requests were driven by pent-up demand because the County unions believed that their wages had either fallen behind wages being paid in comparable Counties, or their jobs had changed sufficiently so that job reclassifications were called for. Mr. Fletcher further explained that during the years after the 2008/2009 "Great Recession" the County was in no position to grant equity adjustments or re-classifications and thus nothing was done relative to wages other than to just "stay afloat". Finally, he said that in 2016/2017 financial matters in the County had become sufficiently stable to afford wage-equity adjustments so the County undertook the wage study.

Ms. Karry Hepting, St. Clair County Administrator/Controller, was the principal witness for the County. She said the wage and reclassification study identified the instances when the County's pay rates did not adequately match with the average rates being paid in comparable Counties. As expected, the study showed that some St. Clair County wage rates were different than the average rate being paid in comparable counties. This misalignment of wage rates varied in degree with some were wide and others were narrow.

Ultimately, the County Board of Commissioners decided that payroll adjustments needed to be made basically throughout the County employment and payroll rolls. This led to consideration of three (3) options for accomplishing that. The first option was to merely switch from the misaligned rate to the appropriate wage rate identified by the study. The second option was to put in place a traditional “red-circle wage change” policy, and the third option was to use what I am terming a “*modified* red-circle wage change” policy.

Mr. Fletcher explained the modification. He said its purpose was to eliminate what he described as unfair losses of the sums of wage raises money employees for “no fault of their own” because they were red-circled. Apparently, due in part to a likely increase in the number of red-circled employees in the payroll system, the modification was going to pay the red-circled employees the amount of “raise money” they would have received if they weren’t red-circled. Those payments were not going to be shown in the County’s official payroll registers and the red-circled amount would continue to appear in the County’s official payroll records.

In the Union’s Opening Statement to begin the Hearing, as well as in its brief, the Union had declared that because of the study result, “numerous” bargaining units had received additional wages in 2017, but nowhere in the record, including in the exhibits, is an exact or approximate number provided. [Whatever the number was never become a point of contention in this case.]

Somewhat related to the preceding point, however, the Union observed that Union Exhibit 4 shows that in 2017, nine (9) of the County’s 20 bargaining units got the County’s standard 2% across-the-board raise, including the Corrections Command Officers, and the County Road Patrol got a 4% raise.

The County challenged the information in Exhibit 4 as not being complete for all bargaining units, but it agreed that it could generally be said that some bargaining units got higher raises because of the result of the study.

Mr. Loftis pointedly questioned Ms. Hepting about whether other bargaining units received bargaining demands from the County similar to what the Corrections Command unit had received. Ms. Hepting testified that she did not have enough specific information on that issue to give a precise answer but her testimony ended with her acknowledged she did not know of other bargaining units receiving proposals seeking wage like those presented to the Corrections Command Officers.

COMPARABLE COMMUNITIES

Although this case does not involve Act 312 arbitration, both parties proposed a group of communities they wanted to serve as the comparables for this case. Also, most of the communities they proposed had been used in prior Act 312s or fact-findings from previous Act 312s and fact-findings in which these two bargaining units were the parties.

The Union also observed that the County, in identifying its proposed group of supposedly comparable communities, included naming a city rather than using all counties like the parties had used in their past Act 312s together. Also, the Union had pointed out that a noticeably larger county was used in the County's proposed, to which the County said that use done to create a larger sample size. There was overlap between the two proposed groups, but all in all, no noteworthy lingering disputes arose and no formal objections were lodged asserting that a particular community should be excluded from use.

The Union took the strong position that it could not agree to the two-tier wage system because it opposed an officer having to accept lower pay for doing the same work, and the Union

took an equally strong position that it needed to stop paying excessive wages to have St. Clair County employees perform the same work being performed in comparable communities for less wages. This is where the parties were at loggerhead and needed to change the situation if they were going to get a settlement from this fact finding forum.

Ms. Hepting acknowledged that vendors with the requisite qualifications and experience to conduct the County's wage study existed, but she testified that the cost of utilizing their services would be \$100,000, possibly as high as \$150,000. Because of that, she said the County decided to conduct the study "in house" using the County's human resources personnel.

The County used Mr. Fletcher, MGT Consulting Group, and Amy Sullivan, the County designated these three (3) "experts" because they had done a lot Act 312s, or put together studies for Act 312s. Also, County Administrators were cited as in-house people involved in the vetting, noting that their contributions were "more in-depth analyses" due to their knowledge of similarities in job duties being performed and not just similarities in of job titles.

Ms. Hepting also testified that following the County Administration's input, the results of the vetting up to that point were given to Department Heads to offer suggestions, and that step was followed by presenting the materials to the unions for suggestions. And then everything was presented to the County Board of Commissioners where it received a recommendation for full and immediate implementation and its recommendation was adopted by the County. In sum, the County's brief characterized Ms. Hepting's testimony as harmonizing with the outcome of Employer Exhibit 4's contents which showed that some previously underpaid job titles received large and costly pay increases because of the study's conclusion.

On page 7 of its brief, the Union said that the County's study was flawed and not a true judge of comparable counties. It alleged that the counties that were selected for use in

conducting the study failed to comport with the comparables accepted by previous Act 312 arbitrations and fact finders. The County disputes the Union's claim but acknowledged it added some bigger Counties, but did so to create a bigger a sample.

Among the assorted observations and claims made about comparables, the Union opined that a common accepted standard in labor hearings is that a comparable should at least maintain its ranking at the end of a CBA's term that it had at the start.

A review of the wages listed on page 9 of Exhibit 14 reveals that the 8 counties' wages listed show that St. Clair Corrections Sergeants' pay would place 4th, with 3 counties above and 5 below St. Clair County.

The Union complained that the County either did not provide, or only tardily provided, some requested information the Union said it needed to create some of its exhibits

I find that the record does not contain an example of any two-tier wage scale now being used St. Clair County government employment situations, or that was ever used before.

ISSUE BEFORE THE FACT FINDER: WAGES

"Ability to pay" was not raised as an issue in this case. As the parties know, an ability to pay claim made by an employer usually means the employer is complaining that the union has made a wage demand the employer says is too expensive and paying it will harm the employer's operations. An ability to pay claim made by a union usually means the employer is being challenged to to pay a higher wage to it employees because the union says it can afford to do so due to the current financial position of the employer.

I believe the lack of an ability to pay argument made by an employer leads to less contention over identifying comparable communities and wages. Further, I find that each party

in this case experienced that very thing and proposed two reasonable groups of communities to serve as the comparable communities, all of which I felt could have been used had the issue of the appropriateness of some of the proposed communities had been challenged, which did not happen as is explained elsewhere in this report.

The County claims its proposal would lessen the Corrections Sergeants wages by \$997 per year. The Union opposes this and includes on page 2 of its brief the following assertion: “The main issue preventing an agreement is the County proposal seeking a **wage reduction** for future members of the bargaining unit.” [The bold-faced type shown in this quote is exactly as it appeared in the Union brief.] And the scenario set forth on page 3, and repeated a few paragraphs below in this report) further reminds that two officers could find themselves working side by side, required to perform the same job duties, subject to the same responsibilities, yet one officer could be “making far more money” than the other officer.

Union Exhibit 4 shows that in 2017, nine (9) of the County’s 20 bargaining units got the County’s standard 2% across-the-board raise, including the Corrections Command Officers bargaining unit, plus reflecting that the Act 312-covered Sheriff Road Patrol unit received 4%. The County agreed that concerning the contents of that exhibit it could generally be said that some bargaining units got higher raises because of the result of the study but others got nothing extra above the 2% across-the-board raise for all county employees, and that the information in that exhibit had come directly from bargaining agreements. The Union also pointed out that the contents of that exhibit was not a full report on all bargaining units. The Union also complained that the County either did not provide, or only provided very tardily, the responses to some requested information that the Union said it wanted for creating some exhibits.

The Union brief declared that its members cannot accept the County's proposed two-tier wage proposal and dramatized its reason for that position in a short scenario describing a situation where two bargaining unit members who hold the same rank are working side-by-side, bearing the same responsibilities, but are under the two-tier pay scale policy with one of the members making much more money than his or her fellow member.

With regard to the quality of the information gleaned from the County's study, it claimed that the reports and the methodology used in its study are correct.

Further, with respect to the County's assertion that portions of the vetting of the study was conducted by three (3) individuals who were "experts," I rejected that because I found the claim for not provided with a a sufficient amount of proofs to qualify those who did the work were "true experts" for that level of certification. However, on the basis of three letters received "outside" firms attested to the adequate quality of the vetting work that had been done by I credited the vetting as being a high quality process and delivering the assurances that had been sought.

Finally, the proposal submitted by the Union will provide the bargaining members a 1% raise for 2018 and a wage reopener for 2019, and according to the County brief that will raise the top Sergeant's pay to \$63,626 and the top Lieutenant's pay to \$68,817.

The Union proposal does not require the parties having get to together real soon to agree on a major changing the payroll policies and practices of the County and Union.

The record does not contain enough detailed information on what the County's proposed two-tier system would likely need changing in the payroll system procedures and recordkeeping, and without that additional knowledge I cannot recommend that that the payroll change proposal

be approved at this time and serve as part of a recommendation for the settlement of this case. Such a thing would not satisfy the standard of care I find that Fact Finder for the MERC must satisfy,

FACT FINDER'S RECOMMENDATION **MERC CASE NO.: D17 L1114**

Adopt the Union wage proposal that provides for a 1% wage increase for 2018 and a wage reopener for the 2019 calendar year.

Roger N. Cheek September 10, 2018
Roger N. Cheek, Fact Finder Date: September 6, 2018