

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

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**PETITIONING PARTY:**

**Police Officers Association of Michigan**

and

**RESPONDING PARTY:**

**Eaton, County of**

**MERC CASE NO.: L17 H-0812**

**COMPULSORY ARBITRATION**

Pursuant to Public Act 312 of 1969, as amended  
[MCL 423.231, *et seq*]

**Arbitration Panel**

Chair: Ralph L. Maccarone  
Employer Delegate: Gary P. King, Esq.  
Union Delegate: John T. Barr

**Advocates**

Employer Advocate: Gary P. King Esq.  
Union Advocate: Kevin Loftis

PETITION(S) FILED: April 25, 2018  
PANEL CHAIR APPOINTED: May 7, 2018  
SCHEDULING CONFERENCE HELD: May 21, 2018  
HEARING DATE(S) HELD: September 13, 2018 & October 31, 2018  
AWARD ISSUED: January 25, 2019

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DETROIT OFFICE



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- all stipulated to be “economic”.

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**WITNESS LIST**

- 1. Kevin Loftis, for the Union
- 2. John Fuentes, for the County
- 3. John T. Barr, for the Union

**1. INTRODUCTION AND BACKGROUND**

Relevant Proceedings to Date

This Act 312 Proceeding as to Act 312 Eligible Employees of the Bargaining Unit follows the case of Eaton, County of/Eaton County Sheriff and Capitol City Lodge Labor Program, Inc. (Command), MERC CASE NO.: L17 H-0814, compulsory arbitration, pursuant to Public Act 312 of 1969, as amended [MCL 423.231, *et seq*] conducted by the undersigned by appointment.

In addition, both Bargaining Units and the Employer/County have elected to have this Arbitrator serve as Fact Finder for the disputed issues as to their respective non-Act 312 eligible bargaining unit members, all being employees of the County.

An Act 312 award has been issued in the Command Bargaining Unit arbitration. Contemporaneously, a Fact Finding has been issued to its affected non-Act 312 unit members.

In this case, the Bargaining Unit, Police Officers Association of Michigan, has elected to proceed through an Act 312 Hearing with a separate date (currently scheduled for February 19, 2019) to conduct a Fact Finding Hearing for its non-Act 312 eligible members.

Following the last day of Hearing (October 31, 2018) and the filing of Post Act 312 Hearing Briefs, on December 18, 2018, the POAM submitted an Unfair Labor Practices complaint with the MESC, claiming as unlawful and/or prohibited, differences in the Employer's Position Statement and its later filed Last Offer of Settlement.

That ULP charging petition states in pertinent part:

*"The basis of this unfair labor practice charge pertains to the retroactive diminishment of accrued and vested compensation/benefits associated with the illegal demand to apply a "frozen FAC" in place of the existing "termination FAC" calculation."*

And, seeks relief in pertinent part:

*"4. That Respondents demand for a "Frozen FAC" be ordered removed from the compulsory arbitration proceeding.  
5. That MERC exercise its supervisory authority to direct the panel arbitrator to discontinue consideration of the Respondents "Frozen FAC" demand."*

With the exception of that ULP, the 'companion' proceedings of both the Capitol City Labor Program, Inc. and Police Officer Association of Michigan members all are set upon a framework of a sole employer, the County of Eaton. In that respect, similarities will be obvious in some parts of this Award. However, the respective submission of exhibits reviewed, testimony provided, and argument presented in these separate proceedings provided separate and distinct areas of consideration and have been given that deference in the conclusions that follow.

As to similar considerations:

The County of Eaton

Eaton County (population 109,027) has a land area of 575 square miles. It is located just west of the greater Lansing, Michigan area. The County seat is Charlotte which is located in the center of Eaton County. The county has 47,542 housing units, whose median household income in 2016 dollars was reported as \$56,472.00. The county has 2,092 employer establishments with reported total employment of 38,769 in 2016. 11.2% of its population (12,211 people) are reported to be in poverty under federal measurement.

Eaton County is a general law county governed by a 15-member elected Board of Commissioners.<sup>1</sup> The county board in general law counties has both legislative and administrative powers and duties. Traditional legislative functions include establishing policy through the passage of ordinances and resolutions, legislative oversight, and constituent services. Administrative functions performed by general law county boards include developing and monitoring the county budget, purchasing, personnel, building maintenance, reviewing audit reports with auditors, appointing and removing operating department heads, reviewing operational problems with department heads and investigating the applicability of new technology.<sup>2</sup>

Maintaining an office of a County Sheriff in each of Michigan's 83 counties is mandated. *Ref. Const. 1963, Art. VII, § 4* By law, each sheriff's department must provide the following services within the county in which it is established, and is the law enforcement agency primarily responsible for providing at a minimum, patrolling and monitoring traffic violations; enforcing the criminal laws of the state, violations of which are observed by or brought to the attention of the sheriff's department while providing the patrolling and monitoring; investigating accidents involving motor vehicles on county primary roads and county local roads within that county, except for those portions of the county primary roads and county local roads within the boundaries of a city or village; and, providing emergency assistance to persons on or near a highway or road patrolled and monitored. *Ref. MCLA 51.75* Each county Sheriff also has the charge and custody of the jails of their county and of its prisoners. *Ref. MCLA 51.76*

Accordingly, the Eaton County Sheriff's Office is responsible for general law enforcement activities throughout the County and provides contractual police services to Delta Township (population 33,023) and Oneida Township (population 4,107), as well as the Village of Vermontville. A satellite office is also located in Windsor Township and Olivet.

Delta Township contracts with the Eaton County Sheriff's Office for law enforcement protection. This contract establishes the Delta Patrol, which is housed within the Administration Complex of Delta Township. Delta Patrol is responsible for ensuring the safety of the community, investigating all criminal and civil complaints received and follows through with prosecution if warranted. Delta Patrol is also responsible for enforcing all traffic laws, with an emphasis on the school zones in Delta Township, responds to and investigates all traffic accidents reported, and has a Community Services Deputy assigned to work closely with school officials as well as the community, to solve problems that arise daily. Of interest is the testimony of Controller Fuentes that that 34% of the cost of these services are not covered in that contract and are left to be paid by the county's General Fund and other county funding sources. TR 56:21-25 & 57:1-8<sup>3</sup>

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<sup>1</sup> Statistical data source - [www.census.gov/quickfacts/eatoncountymichigan](http://www.census.gov/quickfacts/eatoncountymichigan)

<sup>2</sup> Source - *County Government in Michigan* - Citizens Research Council of Michigan (1989)

<sup>3</sup> Ref. MERC Case L17H0814 Transcript. This may be the result of sound reasoning, as about 1/3 of the county population lives in Delta Township.

Other significant venues where the County Sheriff routinely serves or can expect to be called to support law enforcement in special circumstances, include the cities of Charlotte (the county seat), Grand Ledge, Eaton Rapids, and Potterville; the villages of Bellevue, Dimondale, Sunfield, and Mulliken; and Charlotte Public Schools, Grand Ledge Public Schools, Eaton Rapids Public Schools, Olivet Community Schools, Potterville Public Schools, Bellevue Public Schools, and Maple Valley Public Schools; and Olivet College and Great Lakes Christian College, among other notable population concentrations.

The Eaton County Jail has a housing capacity of 374 inmates with nearly 5,000 admissions each year reported.<sup>4</sup>

### The POAM

Founded in 1970, the Police Officers Association of Michigan ('POAM') is a full-service labor organization formed to provide every labor related service from negotiations, grievance processing, legal and legislative representation to Act 312 arbitrations.<sup>5</sup>

## **2. STATUTORY CRITERIA**

The criteria to which this Arbitration Panel is bound in its decision is governed by the following Michigan statute:

***423.239 Findings, opinions, and orders; factors considered; financial ability of governmental unit to pay.***

*Sec. 9. (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 financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.*

*(b) The lawful authority of the employer.*

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<sup>4</sup> Source - [www.eatoncounty.org/departments/office-of-the-sheriff/119-departments/office-of-the-sheriff/200-corrections-division](http://www.eatoncounty.org/departments/office-of-the-sheriff/119-departments/office-of-the-sheriff/200-corrections-division)

<sup>5</sup> Ref. <https://www.poam.net/us/> - 'About Us'

- (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.*
- (j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.*
- (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.*

Here the County and the Union have presented differing views on reporting of the County's finances. For that reason, it is useful to review how that reporting has evolved.

#### How Does a County Report its Financial Condition?

Michigan is a state that has long enabled local units of government to run on a pay as you go basis. Only more recently has attention been drawn to legacy costs of employment. That became apparent when the notion of transparency in government finances was thrust to the forefront of public view by the Government Accounting Standards Board (GASB).

Established in 1984, the GASB is the independent, private-sector organization based in Norwalk, Connecticut, that establishes accounting and financial reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles (GAAP). These standards are recognized as authoritative by state and local governments,

state Boards of Accountancy, and the American Institute of CPAs ('AICPA'). The GASB develops and issues accounting standards through a transparent and inclusive process intended to promote financial reporting that provides useful information to taxpayers, public officials, investors, and others who use financial reports. The FAF supports and oversees the GASB.<sup>6</sup>

In 2009 a reflection on reporting changes made by GASB that began a decade earlier included the following observations:

***“Statement 34, 10 Years Later***

*The GASB was just a teenager when it issued Statement No. 34, Basic Financial Statements—and Management’s Discussion and Analysis—for State and Local Governments. The rather banal title of Statement 34 belied the nature of its contents. It vastly improved the value of the annual audited financial report, making it possible to comprehensively assess the overall financial health of a city, county, or other government for the first time. As we near the tenth anniversary of Statement 34’s issuance, this article briefly describes the major new features that it introduced to financial reporting and conveys some of what the GASB has learned about the Statement’s impact in the user community.*

***Statement 34 in a Nutshell***

*Fifteen years in the making ... and running hundreds of paragraphs, Statement 34 made important changes to the appearance and content of the governmental financial report. Perhaps the three most significant were the introduction of management’s discussion and analysis, government-wide financial statements, and major fund reporting.”<sup>7</sup> [emphasis added]*

In the beginning, it was Other Post Employment Benefits ('OPEBs') referring to the cost of benefits, other than pensions, that a state or local government employee receives as part of his or her package of retirement benefits, that were believed underreported in government financial statements. GASB Statements No. 67, *Financial Reporting for Pension Plans*, and No. 68, *Accounting and Financial Reporting for Pensions*, was implemented to substantially improve the accounting and financial reporting of public employee pensions by state and local governments that apply U.S. Generally Accepted Accounting Principles ('GAAP').<sup>8</sup>

Over time, that starting point has expanded to what has become an almost completely inclusive reporting format of the 'real cost' of government operations.<sup>9</sup> But even with the

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<sup>6</sup> Ref. <https://www.accountingfoundation.org/jsp/Foundation/Page/FAFSectionPage&cid=1176157790151>

<sup>7</sup> For the full text of "The User's Perspective" June 2009 Article go to:  
[https://www.gasb.org/jsp/GASB/GASBContent\\_C/UsersArticlePage&cid=1176156731408](https://www.gasb.org/jsp/GASB/GASBContent_C/UsersArticlePage&cid=1176156731408)

<sup>8</sup> Ref. <https://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176163528472>

<sup>9</sup> Although there are 90 GASB Pronouncements requiring reporting, many are refinements of prior ones.

reporting reality of 90 GASB reporting Pronouncements now used to ‘publicize’ the costs of government operations, more often than not, little saving for the inevitable costs of replacing equipment, resurfacing roads, and long-term maintenance funding for government buildings is an unattractive undertaking when a need worthy of public attention is funded.

A consequence of spending for today, what should be saved for tomorrow, this expanded reporting of underfunding of ‘legacy costs’ is often not a pretty sight. Today, units of government in Michigan that show deficits in their funding of promised benefits and pensions are often faced with draconian choices to bring those numbers into balance.

It is noteworthy that Michigan requires every unit of local government to have a balanced budget. Also worthy of note is that those forecasts are routinely modified throughout a fiscal year with funding for projects, programs, and/or purchases, not included (or fully funded) in an adopted budget, with words spoken in a resolution at some time before the close of the fiscal year, “...and that the budget be amended to reflect same.”

To the Chair’s knowledge, nothing in Michigan government budgeting standards requires a unit of government to be fully funded to meet all of its financial obligations at any point in time.<sup>10</sup> Powerful as transparency is, GASB is but a reporting requirement. It is not in and of itself a funding mandate. GASB shines a light. It is up to the body politic to provide a remedy for what GASB has shown.

In addressing this fact, the Michigan Legislature has enacted laws in part, to look towards a solution. In doing so, public awareness has been enhanced. As recently as March of 2018 news service WWJ on Detroit CBS Channel 62 reported in pertinent part:

*“Under a new law that requires local communities to report underfunded retirement benefits, the Michigan Department of Treasury revealed that more than 110 out of 490 local units of government have been identified as having an underfunded pension plan or retirement health care plan — or both....The report is meant to serve as a warning signal that it’s time for cities in distress to work with the state, and their employees, to make sure they deliver what was promised.”<sup>11</sup>*

It was also widely reported:

*Local units of government in Michigan — cities, counties, villages, towns, commissions, authorities, libraries, and hospitals — are collectively facing over \$18 billion in unfunded pension and retiree healthcare liabilities.*

With Michigan counties providing an umbrella of local government support and services within their boundaries, the funding of all Michigan municipalities is a fragile web.

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<sup>10</sup> See Michigan Uniform Budgeting and Accounting Act, Act 2 of 1968 for a complete reading.

<sup>11</sup> Ref. <https://detroit.cbslocal.com/2018/03/12/study-reveals-110-michigan-cities-have-underfunded-pensions>



Knowing about a financial shortfall and dealing with a financial shortfall are two very different exercises. Here, the Union has indicated that the County has 'cried wolf.' When evaluating the core component of an Act 312 Last Offer of Settlement, the issue of ability to pay is one that can be framed in many ways. Here, the Union provided the County's 2017 Audited Financial Statement. Comparing that to the County provided Budget and its projections. The Union pointed out differences that disclosed a better year end financial standing than predicted. And that point is not missed in this analysis.

But reviewing the fundamentals of Michigan's government funding scheme for its 83 counties is worth the time to do so. And testimony focused on it. On direct examination on Proposal A and Headlee, Controller Fuentes testified:

*' Q. ...could you give us just a brief synopsis of how those two provisions [Proposal A and Headlee Amendment] impact positively or negatively Eaton County?*

*A. Proposal A limits the annual growth in terms of the taxable valuations to an inflationary maximum that is determined by or published by the Department of Treasury. If the overall taxable valuations exceed that inflationary increase, then the overall tax rate either needs to be rolled back or returned to the property tax value.*

*Q. Okay. And have you had Headlee issues as well?*

*A. Throughout the -- throughout the -- since the 16 implementation of Headlee, yes, the County has experienced over time a total of 11 Headlee rollbacks.*

*Q. Are you expecting any more?*

*A. It's possible. It's dependent on the overall inflationary factor and the grosses in taxable value. Based on reports from our equalization director, we were not subject to one in 2018. He would predict that possibly in 2019 or '20 we may be subject to a rollback."*

TR 36:5-23

A historical perspective on this subject was given by Union witness John Barr's direct examination referring to Union exhibits 13 and 14:

*"...since 2007, the members of this bargaining unit have only received a 13 percent wage increase, for a cumulative total of 13.75 percent. However, Proposal A, Headlee increases -- the rate of inflation have increased 26.07 for a cumulative total of 28.99 percent. In essence, the members of this bargaining unit since 2007 have had their purchasing power reduced over 15 percent ..."*

TR 152:16-23

From their inception, the math was that these two components of government funding would succeed in good financial times, but following a downturn that reduced taxable values, recovery would be long and hard.

### Proposal A

Proposal A of 1994 amended the Michigan Constitution to reform how public education was funded in Michigan (moving away from local property taxes to the state sales tax and other taxes). Proposal A also superimposed a modified acquisition value method of determining the taxable value of property upon the existing property assessment system. For property assessments on or after December 31, 1994, annual increases in the taxable value of individual parcels of existing property are limited to the lesser of either five percent or the rate of inflation. There is where the general state of the economy as it affected property values posed the risk seen by some.

When ownership of a parcel of property is transferred as defined by law, the parcel is reassessed “at the applicable proportion of current true cash value,” which typically results in a one-time jump (commonly referred to as a “pop-up”) in the property’s taxable value. Additions and modifications to existing property and new property are placed on the tax rolls at 50 percent of current true cash value (referred to as state equalized value or SEV). The tax revenues collected by the federal and state governments are capable of recovering from recessionary conditions simply through growth of the tax bases; however, Michigan’s property taxes do not respond to post-recession expansion of the economy because of these tax limitations.

The property tax limitations instituted by the Headlee Amendment require a local unit of government’s tax rate to be adjusted downward when existing property in a jurisdiction increases faster than the rate of inflation. Thus, “pop-ups” in taxable values triggered by property tax transfers can often lead to Headlee rollbacks. This leads to situations where property tax revenues can decrease quickly and substantially during economic decline but increase at no greater than the rate of inflation (capped at 5%) once the economy starts expanding (especially for mature, built out local units).

### The Headlee Amendment

The 1978 Headlee Amendment to the 1963 Michigan Constitution did many things. One of the most honored was the provision that property taxes and other local taxes and state taxation may not be increased above certain limitations without voter approval. One of the most ignored was that the state could impose no new or the increase of an existing mandate upon a local unit of government (including a county) without appropriating the money to carry it out.

**STATE CONSTITUTION (EXCERPT)  
CONSTITUTION OF MICHIGAN OF 1963**

**§ 29 State financing of activities or services required of local government by state law.**

*Sec. 29. The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.*

For four decades there has been no recognized appropriation made under Headlee's Section 29 provision corresponding to this Constitutional mandate.

While legislating that local government do more, Section 31 of the 1963 Michigan Constitution prohibits units of local government from levying any tax rate not authorized by law or charter or from increasing the rate of an existing tax above the rate authorized by law or charter without voter approval.<sup>12</sup>

That means if local property tax revenues grow at a rate greater than inflation, then the millage rate for the unit will be decreased so that revenues cannot grow at a rate greater than inflation (commonly referred to as Headlee rollbacks) unless electors vote to keep the tax rate from decreasing (commonly referred to as Headlee overrides).

*"The recent recession caused a reduction in property values, which lead to lower property tax revenue for county and local units of government. Now, as property values have recovered, the Headlee Amendment and Proposal A have prevented property tax revenues from catching up. While Headlee and Proposal A are far from entirely to blame for many of the fiscal crises Michigan municipalities are facing, they certainly have not made it easier for local governments to deal with these challenges".<sup>13</sup>*

Revenue Sharing

Controller Fuentes testified:

*"... beginning in fiscal year 2012/13, when the County became eligible for receipt of state revenue sharing funds, the increases in the last four years have been approximately one percent annually based on the approval by the legislature."*

TR 37 6:10

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<sup>12</sup> For a comprehensive analysis of the Headlee Amendment's History, see State of Michigan - Final Report of the Legislative Commission on Statutory Mandates (2009)

<sup>13</sup> Excerpted from and for a more comprehensive review see: Michigan State University Extension article at: [https://www.canr.msu.edu/news/what\\_is\\_the\\_headlee\\_amendment\\_and\\_how\\_does\\_it\\_affect\\_local\\_taxes](https://www.canr.msu.edu/news/what_is_the_headlee_amendment_and_how_does_it_affect_local_taxes)

County Exhibit 19 illustrated that history:

SEVEN YEAR HISTORY OF  
STATE REVENUE SHARING

	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ESTIMATE	ESTIMATED
[1]	12/13	13/14	14/15	15/16	16/17	17/18	BUDGET
							18/19
STATE REV SHARING	1,691,108	1,773,810	2,212,318	2,216,201	2,237,826	2,260,204	2,270,770
INC/DEC		4.89%	24.72%	0.18%	0.98%	1.00%	0.47%

[1] - Prior to FY 12/13, County was not receiving revenue sharing payments from State, was utilizing advance tax collections used to create Statutory Revenue Sharing Reserve Fund. Became eligible to receive full revenue sharing from State in FY 12/13

Discussion

Michigan sends state collected revenues to counties to use at the discretion of the legislature. This is called 'Statutory Revenue Sharing'. Originally, all revenue sharing dollars were sent to local units of government on a per capita basis, but, since 1971, the state has attempted to give revenue sharing greater purpose by directing funds in the statutory revenue sharing program to the local governments with the greatest need, defined as the lack of capacity to fund services from locally collected revenue sources. Those are mostly real estate taxes.

Michigan's system of state revenue sharing, as well as other programs of state aid (e.g., highway funding and court funding) were created as part of a specific state policy to contribute state-raised funds to the local government revenue structure and intended to provide some diversity in the revenue structure of local governments in place of local-option taxes. The problem with this system is that, though it works well when state revenues are strong, it has proven an easy funding source to cut when state revenues are declining, so that state government can use those revenue sharing dollars to fill state budget holes, leaving local governments scrambling to make up for their revenue shortfalls.

And counties bore the brunt of this. Unlike cities, townships and villages, Michigan counties do not receive Constitutional Revenue Sharing payments.<sup>14</sup> The Statutory Revenue Sharing Act of 1971, as amended by 1998 PA 532, defined full funding for Statutory Revenue Sharing to counties as 25.06% of 21.3% of sales tax revenue at the 4% rate. That law is always subject to change at the whim of a term limited legislature. Statutory Revenue Sharing payments to counties were generally distributed on a per capita basis, although a portion was based on single business tax revenue that had been earmarked to counties as repayment for making inventories exempt from the personal property tax.

<sup>14</sup> Those payments are embedded into the state Constitution.

As with cities, townships and villages, actual appropriations for Statutory Revenue Sharing to counties were routinely below the full funding guidelines; and Statutory Revenue Sharing payments to counties were temporarily suspended beginning in FY 2004-05. Counties were required by the state legislature to create reserve funds with own-source general operating revenue from which they were allowed to withdraw an annual amount in lieu of Statutory Revenue Sharing.

The annual authorized withdrawal for each county was its FY 2003-04 payment, adjusted for inflation. It was only when a county's reserve fund balance is exhausted, that it would again be eligible for Statutory Revenue Sharing payments equal to its final authorized withdrawal amount. In Eaton County's case, that exhaustion of funds happened, and revenue sharing resumed in 2012, but additional inflation adjustments were not applied.

Now, in FY 2018-2019 Eaton County can expect a .05% increase of \$10,256.00 over its 2017-2018 receipt of \$2,260,204.00<sup>15</sup> state revenue sharing payment for a total of \$2,270,770.00<sup>16</sup> that helps fund a 2018-19 budget showing a projected \$204,359.00 revenue shortfall.

#### Grant Funding

With all grant funding, one thing is for certain. Grants can come, and grants can go. Projecting a balanced budget using grant funding as a relied upon revenue source before it is awarded for that fiscal year can be a dangerous game. Grant funds are gifts, not promises. They can go away. And when they do, employees hired with those funds may go with them.

#### Assessing

The life blood of local government funding is most often real property taxes. County Equalization Departments assist their Board of Commissioners in equalizing the assessed value of the county. This is accomplished by adding to or deducting, if necessary, from the assessed value of each class of property in all of its assessing jurisdictions, in order to bring each to a common level of valuation. In theory each county's city, township and village assessors set values based upon state guidelines. Those values then convert in taxable amounts collected by the office of the Treasurer.

Testimony advised the Panel that the so-called "dark stores" method of evaluation had negatively impacted the County's finances. In essence, owners of 'big-box' stores in Michigan have long been allowed to use methods of assessment that dropped the taxable value of their property during poor economic times when vacant and then rely upon the slower recapture when a better economy returned.

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<sup>15</sup> Ref. State of Michigan FY2017-2018 Budget

<sup>16</sup> The comparable Counties share in 2018-19 will be Allegan \$2,304,639.00; Bay \$2,647,597.00; Calhoun \$3,070,661.00; Clinton \$1,367,123.00; Lapeer \$1,712,717.00; and Lenawee \$2,084,793.00. Source – Michigan Treasury - Projected Payments – Counties - FY 2019 Projected Bi-Monthly County Incentive Program Payments (2018 PA 207) updated 8/27/18

In fact, So-called “dark stores” method of evaluation that big box stores have used led to about \$100 million on lost local revenue since 2013, according to the Michigan Association of Counties<sup>17</sup>.

Controller Fuentes testified:

*“...big box retailers and/or concepts of dark stores. Those are -- we have continued to see or experienced reductions in taxable valuations from the Tax Tribunal in those areas.”*

TR 38: 20-22

*“Overall in terms of those adverse Tax Tribunal decisions, within the last seven to ten years, I think we have had approximately 40 to 50 of those reductions that have been approved or authorized by the Tax Tribunal.”*

TR 39: 12-15 [diminishing taxable values]

The record did not reflect the County’s efforts to revisit any of those under the Court of Appeals’ “big box” decision in *Menard Inc. v City of Escanaba*, 315 Mich. App 512 (2016), which the Michigan Supreme Court left standing on appeal without opinion, leaving a possibility of ‘judicial recapture’ of revenue.

#### Broken Promises

The city of Detroit seeking protection under Chapter 9 (Municipal Reorganization Bankruptcy)<sup>18</sup>, in the largest municipal bankruptcy filing in U.S. history by debt, estimated around \$18 billion, taught all who were paying attention that any government can run itself into the ground financially, and then shedding ‘debt’ by breaking promises made to those who long ago held up their part of the bargain.

What may not be such a ‘last’ resort for the city of Detroit, (Chapter 9’s can be repeated) having filed a municipal bankruptcy does little to instill loyalty or encourage longevity in its workforce. Only time will tell how long a city designed for 2 million people can survive on 670,000 living there.<sup>19</sup>

The gist of this is that any unit of government in a financial spiral can follow the path Detroit has blazed, now well-defined, that can break what before then had been pretty unbreakable; pensions, health care, and base wages common to a profession.

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<sup>17</sup> See *Supreme Court’s Rejection of ‘Dark Stores’ Appeal is Recognition of Problems in Property Tax System* Posted on October 20, 2017 by machlog2 at: <https://micounties.org/blog/?tag=dark-stores>

<sup>18</sup> In re City of Detroit, Michigan, Case No. 13-53846 (TJT) United States Bankruptcy Court, Eastern District of Michigan

<sup>19</sup> 1950 peak population of the C of D was 1.8million. 2017 census data counts it as 673, 104. Source [www.census.gov/quickfacts/fact/table/detroitcitymichigan,mi/PST045217](http://www.census.gov/quickfacts/fact/table/detroitcitymichigan,mi/PST045217)

### Mediation through MERC

Ideally, parties would find common ground when collective bargaining. Failing that, when they are Act 312 eligible, the chance each side takes is that their Last Offer of Settlement is one where Solomon has little, if any role.

Here, the parties have had the assistance and expertise of a highly regarded and skilled Mediator<sup>20</sup> assigned by the Commission. That shuttle diplomacy may have thinned the herd, but we are left with a number of troubling areas of disagreement. And that is unfortunate.

For it is the give and take of collective bargaining that can keep morale high among the workforce for gains made, engenders trust between labor and management, and allows a collective (no pun intended) collaboration to design solutions that Last Offers of Settlement rarely provide. If there must be give and take, it is surely easier to accept when the reason for it is personally understood, and any 'take' is a self-imposed concession.

It is against this backdrop of fact and theory, that the County/Employer painted a bleak picture of its own financial forecast in its presentation, looking for a principled outcome.

The consideration at the front of the line for analysis is:

#### Ability to Pay

'Ability to pay'<sup>21</sup>, or the lack thereof, is the order of the day in every Act 312 arbitration the Chair has heard. Indeed, it is a focal point in all of them. Which way the argument goes most often depends upon the speaker's perspective.

The various ways in which so-called 'comparable communities' operate and set their priorities can make it a challenge to compare an apple to an apple. More often than not, there is a fruit bowl to look at. It is much easier to compare a Sheriff's Patrol deployment practices to another Sheriff's Patrol deployment practices, than it is to compare the priorities of those two Sheriffs' Board of Commissioners and how they differ in their budgeting.

#### The Employer's Position on 'Ability to Pay'

The County argued:

*"Mr. Fuentes' testimony as to the County's financial condition begins with C. Ex. 17, which he described as a document that is compiled as part of the annual budget process, and "is a multiyear projection based on the most recent five years' worth of actual data." (Tr. p. 30).<sup>2</sup> The County's budget for the 18/19 fiscal year (October 1, 2018 – September 30, 2019)*

<sup>20</sup> Mediator and distinguished Labor Attorney, Thomas Zulch, joined MERC in 2017; his credentials, related experience, and professional reputation as a Mediator are unquestioned by the Arbitration Chair.

<sup>21</sup> Ref. MCLA 423.239 (1) (a) i.-iv.

appears as the fifth (5th) column from the right on C. Ex. 17 and shows projected revenue of \$35,012,744 and projected expenditures of \$36,299,658. In other words, the County will spend more than it takes-in during the upcoming period. Even given the County's "Historical Budget Margin," it will still be necessary to remove \$204,359 from the fund balance to balance the budget.

And the picture does not improve moving forward. In every fiscal year subsequent to the 2018-2019 year, the County's expenditures will exceed its revenue. By the 2022-2023 budget year, the County will no longer have sufficient funds in its fund balance to balance its budget. Rather, by that fiscal year, the County's fund balance reflects a NEGATIVE \$2,778,986".

[Noting that ]"While the Union will argue that property tax revenue increased by over \$1 Million in fiscal year ending September 30, 2017, this represents an increase in all County millages, many of which cannot be used for general operating expenditures (Tr., p.134)"

The County's Post Hearing Brief went on to say,

"This scenario represents the very definition of a "structural deficit".<sup>22</sup>

County Post Hearing Brief at p 6

#### The Union's Position on 'Ability to Pay'

For its part, the Union says:

"The County has exaggerated its situation in an attempt to portray its economic condition as worse than reality shows, as evidenced by its 2017 Audited Financial Statement. The Financial Statement shows a General Fund Balance of \$6. 6 million, which equals 20% of total expenditures. The Treasury Department for the State of Michigan recommends at least a 10%-15% General Fund Balance. The Government Finance Officers Association (GFOA) recommends maintaining at least a two-month General Fund Balance, which equates to 16.67%. The County's 20% General Fund Balance obviously exceeds any of the recommended fund balances.

.... The Union presented the 2017 Audited Financial Statement (U. Ex. 12) which shows the following:

1. The General Fund Balance increased by \$819,873.
2. Property tax revenue increased by \$1,074,874. The County also received an additional \$400, 000 from the State for personal property tax reimbursement payments.

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<sup>22</sup> "Structural Deficit" is fairly defined as, 'A budget deficit that results from a fundamental imbalance in government receipts and expenditures, as opposed to one based on one-off or short-term factors.'



*3. Total salary costs were decreased by approximately \$1,280,000 due to personnel reductions.*

*4. The County's actual Public Safety expenditures were \$533,317 less than the final budget.*

*5. The County's actual total expenditures were \$2,265,377 less than the final budget."*

Union Post Hearing Brief at pp 6 & 7

And, in general, the Union posed that,

*"...the audited financial numbers do not support the County narrative of a dire financial situation."*

Union Post Hearing Brief at p 8

### **3. STIPULATIONS AND PRELIMINARY RULINGS**

Employer Exhibit Nos. 1 through 66, and Union Exhibit Nos. 1 through 11 were marked and stipulated as admitted prior to commencement of the hearing, with the exception of Employer Exhibit No. 24, which was not stipulated to. *TR 8:5-9 & TR 155:21-23*

Following that, the transcript reveals stipulations that seem to provide sound footing for this Award to include Last Offers of Settlement ('Last Best Offers') now challenged in part in the ULP now filed, that now appears as an unsettled matter.

At this writing, no direction from MERC has been made to alter deliberation and/or the scheduling of this Award.

### **4. COMPARABLES**

Pursuant to the stipulation of the parties through their respective Arbitration Panel Delegates, and following briefs in support of their respective proposed comparable counties, the Chair selected four external comparable counties to be used in the Panel's consideration in the outcome of outstanding issues to be presented. Calhoun and Clinton Counties<sup>23</sup> were on both parties' lists and were automatically chosen. The six external comparable counties considered in this arbitration are Bay, Calhoun, Clinton, Jackson, Lapeer and Lenawee.

These comparables offered an array of variables for consideration in terms of the issues being decided here. But again, as with all elected bodies, each of these counties is controlled by elected officials empowered to debate and vote the direction the majority decides is right for the programs, priorities, and future of their constituents' county. Michigan's more recent trend towards transparency in government has given the public a wide array of tools to judge the state of finances and performance in a wide array of categories and units of governance. Navigating that data can be a challenge. Drawing

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<sup>23</sup> Both Calhoun and Clinton Counties are adjacent to Eaton County.

from sources available to the public, the following illustrates the respective standing of the comparables compared against all of Michigan's 83 counties.

Comparables Fiscal Health Comparison

Overall rank: 76		
Eaton County		
Population: 109,160		
Category	Rank *	Value**
General fund health	73	\$53
Pension liability	68	\$615
Debt per capita	58	\$499
Taxable value per capita	59	\$30,756

Overall rank: 74		
Calhoun County		
Population: 134,386		
Category	Rank	Value**
General fund health	79	\$35
Pension liability	33	\$268
Debt per capita	54	\$409
Taxable value per capita	74	\$25,646

Overall rank: 73		
Jackson County		
Population: 158,460		
Category	Rank *	Value**
General fund health	66	\$61
Pension liability	47	\$341
Debt per capita	52	\$406
Taxable value per capita	72	\$26,989

Overall rank: 46		
Bay County		
Population: 104,747		
Category	Rank *	Value **
General fund health	33	\$133
Pension liability	2	\$-175
Debt per capita	69	\$636
Taxable value per capita	73	\$26,556

Overall rank: 34		
Lapeer County		
Population: 88,340		
Category	Rank *	Value **
General fund health	40	\$114
Pension liability	30	\$256
Debt per capita	25	\$133
Taxable value per capita	61	\$30,618

Overall rank: 29		
Lenawee County		
Population: 98,504		
Category	Rank *	Value **
General fund health	62	\$65
Pension liability	24	\$179
Debt per capita	11	\$63
Taxable value per capita	52	\$32,424

Overall rank: 4		
Clinton County		
Population: 77,888		
Category	Rank *	Value **
General fund health	19	\$174
Pension liability	10	\$36
Debt per capita	6	\$21
Taxable value per capita	48	\$33,269

Notes –

\*Rank of 1 is highest

\*\* Values are per capita. Under "pension", a negative number means the pension liabilities are overfunded.

Source: Ranking the Fiscal Health of Michigan's 83 counties - <https://www.bridgemi.com/public-sector/search-michigan-counties-biggest-budget-shortfalls-2-20-2018> with data from <https://mi-treasury.data.socrata.com/dataset/Financial-Metrics/nz55-nag5>

For a more comprehensive look at the concerns for Michigan local units of government see THE FISCAL HEALTH OF MICHIGAN'S LOCAL GOVERNMENTS, Fall 2018, by Michigan Department of Treasury<sup>24</sup>.

In a relevant part, for issues to be decided in this Arbitration at page 18, it says,

*“Legacy costs are the costs of ensuring that active and retired employees receive the pension and retiree health care benefits they have been offered and promised. These are essentially a form of deferred compensation. Michigan local governments are paying nearly \$1.5 billion annually in costs to maintain these programs and this cost is rising rapidly, in many cases faster than revenues. Beyond this \$1.5 billion, governments should be paying several hundred million more to fully pre-fund retiree health care benefits.”*

Of course, when considering such issues, they must be evaluated for the respective unit of government. And in that respect, the above chart offers some benefit.<sup>25</sup>

## **5. ISSUES BEFORE THE PANEL**

The County has provided prior Act 312 Award making rationale for consideration:

*a. the “realities of voluntary collective bargaining” required the panel to consider (just as the parties would) the other elements and costs in the total package. Charlevoix County Sheriff’s Department, 1999 MERC FF/Act 312, 358, 378-9, 381 (Ann T. Patton)*

*b. the costs of other provisions awarded (and to be awarded) City of Muskegon, 1999 MERC FF/Act 312, 62, 72-73 (Teddy J. Baird), etc.*

*c. the neutral must be careful not to grant more than the parties would have been able to gain in the actual bargaining process. County of Kalamazoo, 1997 MERC FF/Act 312, 431, 440 (Richard E. Allen)*

*d. the award should try to replicate the settlement the parties themselves would have reached had their negotiations been successful. City of Livonia, 1998 MERC FF/Act 312 409, 411 (Theodore J. St. Antoine)*

County Post Hearing Brief at p 5

These are all noble concepts. But to apply them requires that the Last Offers of Settlement set a framework for each to be applied. For in last offer forced selection there can only be a 'blend' of what is on the table. It is but one precisely made last offer in

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<sup>24</sup>[https://www.michigan.gov/documents/treasury/Fiscal\\_Health\\_of\\_Michigans\\_Local\\_Governments\\_2018\\_638566\\_7.pdf](https://www.michigan.gov/documents/treasury/Fiscal_Health_of_Michigans_Local_Governments_2018_638566_7.pdf)

<sup>25</sup> From another vantage point, one can compare the “Dashboard” of the comparable counties with that of Eaton County at [https://www.eatoncounty.org/images/Dashboard/2017/2018\\_Dashboard\\_slides.pdf](https://www.eatoncounty.org/images/Dashboard/2017/2018_Dashboard_slides.pdf)

each category that must be chosen. And, post-recession<sup>26</sup> it is more and more difficult to divine what the parties would have agreed to in the available selection of outcomes. For its part, the Union contends on some of the basic premises under review:

*“The Union continues to assert that the County's FOS on the issues of Pension and Duration are defective and should not be considered by the panel. To consider the County's FOS would be extremely prejudicial to the Union. To grant the County's FOS would cause irreparable harm to the Union since the Municipal Employees Retirement System (MERS) would prohibit the Union from ever attempting to recoup these benefits since the County's retirement system is not 100% funded.” [Emphasis Added]*

Union Post Hearing Brief at p 6

*“... the audited financial numbers do not support the County narrative of a dire financial situation”. [Emphasis Added]*

Union Post Hearing Brief at p 7

*“Mr. Fuentes testified that the County is not in compliance with P.A. 202 due to underfunded OPEB liabilities (retiree health care) (C. Ex. 15)..... [but on cross examination testified that] the County is in compliance for Pension Funding ratio.” [Emphasis Added]*

Union Post Hearing Brief at p 8

*“...in its Command Officers' Act 312 post-hearing brief (pg. 19), writes that the County's pension costs are expected to rise from \$3,328,053 to \$5,065,605 over a five (5) year period. The Union was unable to locate those figures in the MERS annual valuation report (C. Ex. 22), therefore, we do not accept the validity of those numbers”. [Emphasis Added]*

Union Post Hearing Brief at p 9

The parties could not be farther apart on such basic premises.

### The Issues Being Awarded

#### **a. Duration (Economic Issue)**

The County offer is:

***It is the position of the Employer that the Agreement should run from the date of the Act 312 Award to September 30, 2021, with any changes***

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<sup>26</sup> In 2008 the world economy faced its most dangerous Crisis since the Great Depression of the 1930s. The contagion, which began in 2007 when sky-high home prices in the United States finally turned decisively downward, spread quickly, first to the entire U.S. financial sector and then to financial markets overseas. The casualties in the United States included a) the entire investment banking industry, b) the biggest insurance company, c) the two enterprises chartered by the government to facilitate mortgage lending, d) the largest mortgage lender, e) the largest savings and loan, and f) two of the largest commercial banks. Source: <https://www.britannica.com/topic/Financial-Crisis-of-2008-The-1484264>

*to the contract not being retroactive, other than those specifically set forth in No. 7 below.<sup>27</sup>*

The Union proposes:

*The Union's offer is that the Collective Bargaining Agreement will be for a three (3) year period from October 1, 2017 through September 30, 2020.*

Here, the Union's position is that the County's Last Offer of Settlement as to Duration should be discarded without consideration. The Union's Post Hearing brief states in pertinent part:

*"The Employer's Position Statement dated June 15, 2018 states that the County's position was that the agreement will expire on September 30, 2020. Both the Union and the County agreed in their respective Position Statements that the agreement would expire on September 30, 2020.*

*Without any notice to either the Arbitration panel or the Union, the Employer now proposes that the CBA will expire on September 30, 2021.*

*The Union asserts that the County's Final Offer of Settlement cannot be accepted by the Panel since the County's FOS is drastically different than the agreed upon date... "*

Union Post Hearing Brief at p 10

In summary,

*"The Union continues to assert that the County's FOS on the issues of Pension and Duration are defective and should not be considered by the panel." [Emphasis Added]*

Union Post Hearing Brief at p 6

In a prior ruling on that point, the Chair stated in its Opinion,

*"..., there is no express authority for an Arbitrator to eliminate a Last Best Offer from consideration. To the opposite, the Act, "requires the panel to choose one of the parties' last offer of settlement".<sup>28</sup> Hence, an LBO that arguably falls within the range of a permitted "Issue" appears eligible for consideration.<sup>29</sup> Had the Legislature intended otherwise, it would have provided a remedy (penalty) for submitting a Last Best Offer that differs<sup>30</sup> from, "A statement of the party's issues setting forth the*

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<sup>27</sup> No. 7. is the issue of Wages,

<sup>28</sup> MCL 423.238

<sup>29</sup> However, any difference between the content of a Position Statement and a Last Offer of Settlement can be the subject of and opposing party's inquiry and/or argument at a Hearing.

<sup>30</sup> e.g., in whole or in part, and/or materially and/or substantially, and/or being substantially prejudicial to a party.

*specific changes in the collective bargaining agreement proposed by the party.*"<sup>31</sup>

*To determine a Last Best Offer as (fatally) "defective" or "ineligible" (for consideration) requires authority not expressly granted by law or rule.<sup>32</sup> And, to order such extraordinary relief (akin to entry of a default judgment in a court proceeding) would require clear legal authority. id The In-Person Hearing is to recommence on October 31, 2018 as scheduled.*

*All of the Last Best Offers submitted by the parties are to be considered therein. The Union's request to strike is hereby denied.*"<sup>33</sup>

Setting aside the legal argument before MERC in the Union's pending ULP as to this issue, the Union's Post Hearing Brief goes on to argue from a practical standpoint,

*"The County's actions have prevented the Union from submitting a Final Offer of settlement for a fourth (4th) year of the CBA since the Union was never notified that the County would be proposing a four (4) year CBA."*

Union Post Hearing Brief at p 11

The County's Post Hearing Brief addressed Duration in pertinent part, in this way:

*"The County's Last, Best, and Final Offer is for the contract to commence on the date of the Act 312 Award and expire on September 2021.*

*The Union, on the other hand, would have the new contract commence on October 1, 2017, and expire on September 30, 2020.*

*"The Union leaves the County and the Arbitration Panel to merely conjecture as to why the parties would create a document which (by its terms) would be effective on October 1, 2017 when none of the outstanding proposed modifications to the contract (absent some retroactive pay) will take effect until the new contract is established. One purpose of any contract is to memorialize the parties' bargaining history. Simply stated, the parties should not have a contract dated October 1, 2017, which contains provisions that did not take effect until the latter part of 2018. The parties' most recent collective bargaining agreement (C. Ex. 1) did not commence on October 1st. Moreover, in this regard, the County is asking no more than what has been done by three (3) other bargaining units in the county. (C. Exs. 7, 9, and 11).*

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<sup>31</sup> Rule 423.507 (3)(a)(i)

<sup>32</sup> Const. 1963, Art. I, § 17, Eff. Jan. 1, 1964

<sup>33</sup> Opinion and Order on Union's Motion to Strike Employer's Last Best Offers of 'Duration of Contract' (Economic Issue) and 'Pension' (Economic Issue) dated October 19, 2018.

*As to the termination date (September 30, 2020 vs. September 30, 2021), it is not at all clear why the Union would object to a longer, rather than a shorter, duration. The pension issue alone exemplifies why a longer contract makes more sense."*

County Post Hearing Brief at p 14

Duration is of consequence whether or not one sides with the Union theory that the County has overstated its pending financial distress.

*"The County has exaggerated its situation in an attempt to portray its economic condition as worse than reality shows, as evidenced by its 2017 Audited Financial Statement".*

Union Post Hearing Brief at p 6

Having reviewed the record as a whole and considering the County's presentation on its budget and budget projections compared with the 'competing' results provided by the Union as reported in the County's 2017 Audited Financial Statement, variances described in the Union's Post Hearing Brief (including in particular on pages 7 and 8) are all public and have been considered one can argue the future in equal measure.

The County projects its own financial instability ('structural deficit') by 2021 as currently budgeted.<sup>34</sup> The Union points to the fact that funding projections are askew from the 2017 audited results. Even if correct, that latter view is not one that can reliably project beyond the short term. The County has evidenced being only one-tenth of one percent from structural deficit in its 2017 PA 202 Health Care OPEB Report.<sup>35</sup>

When, as is likely, that threshold is crossed, financial decision making begins to leave local control behind. And with that, a myopic approach will begin taking shape in at least that financial planning category to the likely detriment of others. Here, preservation of an appropriately staffed law enforcement force is a serious concern.

Here, there are diametrically opposing points of view when it comes to the fiscal future of the County. The parties' offer of the available award choices reflect a set that make the Award as a whole, a mosaic dependent upon the proofs as one perceives them.

Taking into account that financial projections are subject to a variety of factors that can affect future results, the issue of Duration is best left to a shorter term than longer one.

That may allow both sides to see in which financial direction the County of Eaton is headed. From there, the parties can more trustingly evaluate the ultimate impact of their respective future bargaining demands on the issues where agreement cannot be reached.

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<sup>34</sup> For what that may mean see - *A Review of Michigan's Local Financial Emergency Law* - MSU Extension (2017) at [www.canr.msu.edu/uploads/resources/pdfs/michigan\\_em\\_law\\_review.pdf](http://www.canr.msu.edu/uploads/resources/pdfs/michigan_em_law_review.pdf)

<sup>35</sup> Ref. County Exhibit 15

**Award – Duration (Economic Issue)**

Award of the Union's Last Best Offer on Duration is hereby made.<sup>36</sup>

Signed: Ralph L. Maccarone  
Ralph L. Maccarone  
Arbitration Panel Chair

Dated: January 25, 2019

Concurring  Dissenting

Signed: Gary P. King, Esq.  
Gary P. King, Esq., Panel Member  
Employer Delegate

Dated: 1/25/19

Concurring  Dissenting

Signed: John T. Barr  
John T. Barr, Panel Member  
Union Delegate

Dated: 2-1-19

**b. Wages (Economic Issue)**

The County makes the following offer:

*It is the position of the County that the wages set forth in Appendix A of the parties' contract be increased as follows:*

*Effective October 1, 2018 1.00% (retroactive to October 1, 2018)*  
*Effective October 1, 2019 1.00%*  
*Effective October 1, 2020 1.00%*

The Union's Last Best Offer is:

*2017 Wages: The Union's offer is a 2.5% increase for all steps contained in the Collective Bargaining Agreement. The wage increase will be retroactive to October 1, 2017 for all hours compensated.*

*2018 Wages: The Union's offer is a 2.5% increase for all steps contained in the Collective Bargaining Agreement. The wage increase will be retroactive to October 1, 2018 for all hours compensated.*

*2019 Wages: The Union's offer is a 2.0% increase for all steps contained in the Collective Bargaining Agreement.*

<sup>36</sup> And hereby excluding all of the Employer's LBO's awarded below which were offered to go beyond the Duration awarded.



## Discussion

Touching upon external comparables, the County Post Hearing Brief at page 31,

*"As to the external comparables, a review of the 2017 wages rates contained in C. Ex. 45 reveals that Eaton County lands in the "middle of the pack" in base wages. The same conclusion holds true when one examines Total Direct Cash Compensation (C. Ex. 51).<sup>12</sup> Moreover, the County submits that this is precisely the position it should occupy among the comparables when one considers Population (C. Ex. 38), Taxable Value (C. Ex. 39), Population Density (C. Ex. 41), and Taxable Value Per Capita (C. Ex. 42)."*

And the record confirms internal comparables have shed cost to the County of late.

Looking to the rate of inflation as determined by the Michigan Department of Treasury, the Union Post Hearing Brief at page 12 remarks,

*"...since 2007, the years covered by County Exhibit 64, the rate of inflation has increased by 26.07% while the members of this bargaining unit have only received wage increases of 13%. Even if the Panel were to award the Union all three (3) years of their FOS proposed wages, the total increases would only be 20% for that time period. The 20% in wage increases would still be less than the 26.07% rate of inflation, which indicates that the members of this bargaining unit would still have lost over 6% in purchasing power."*

and,

*"... that County Exhibit 64 shows that since 2007 the Command Officers have received a total of 15. 5% wage increases while the Deputies in this bargaining unit have only received 13% in wage increases."*

Of particular attention for review on this issue's determination was the Union's indication on page 18 of its Post Hearing Brief regarding Wages, that,

*"The County attempts to indicate that the Act 312 eligible members involved in this matter are compensated at a higher rate than the Deputies in the comparable communities. As was pointed out during the hearing, the exhibits have major flaws by intentionally excluding the areas of compensation specifically enumerated in Act 312. (TR II 1 pgs. 126-130)."*

Given the lack of consensus as to the County's financial standing, the question presented in this determination of wages is, which side has made a better case in light of the financial impact to both on the remainder of the issues being awarded? If one looks to what is on the table in the 5 other categories, it is a difficult choice. Favor the past and present for the Union, or favor the future as the County asks?

Here it appears the better choice to award higher wages, which taking into account that retirement planning can be done outside of their employer plan, the employee can decide how best to spend.

### Award – Wages

Award of the Union's Last Best Offer on Wages<sup>37</sup> is hereby made.

Signed: Ralph L. Maccarone

Ralph L. Maccarone  
Arbitration Panel Chair

Dated: January 25, 2019

Concurring  Dissenting

Signed: Gary P. King, Esq.  
Gary P. King, Esq., Panel Member  
Employer Delegate

Dated: 1/28/19

Concurring  Dissenting

Signed: John T. Barr  
John T. Barr, Panel Member  
Union Delegate

Dated: 2-1-19

### c. Pension (Economic Issue)

Given the dynamics of all else that is before the Panel, and having conceded an impactful result in wages, the issue of Pension is now reviewed with the choices of:

The County –

*It is the position of the Employer that Article 15, Section 10 be revised such that, effective February 1, 2019, the pension multiplier shall be bridged to 2.00%, with Final Average Compensation being calculated on the basis of the Frozen FAC method, maximum benefit of 80% of FAC at termination of employment, base wages plus a maximum of 80 hours of overtime included in FAC, and COLA frozen for service prior to February 1, 2019. Effective with the institution of this bridged pension multiplier, employee contributions toward pension to be reduced from 13.70% to 11.70. Effective October 1, 2019, employee contributions toward pension to be further reduced from 11.70% to 10.70%.*

<sup>37</sup> For the duration of the contract now awarded ending September 30, 2020 (i.e. excluding the Employer's LBO increase of 1.0% effective 10-1-2020, and other such provisions which are beyond the term of the effect of this Arbitration's awards on all issues).

The Union –

*The Union's Offer is to maintain the status quo.*

Discussion

The County's pronouncement on page 6 of its Post Hearing Brief is,

*"In every fiscal year subsequent to the 2018-2019 year, the County's expenditures will exceed its revenue. By the 2022-2023 budget year, the County will no longer have sufficient funds in its fund balance to balance its budget. Rather, by that fiscal year, the County's fund balance reflects a NEGATIVE \$2,778,986.*

*This scenario represents the very definition of a "structural deficit."*

*While there are a number of factors that have caused this trend, none may be more relevant than the cost of pensions."*

During the course of this Arbitration is the fact of a pair of settlements with the Municipal Employees Retirement System ("MERS") for MERS' 'underfunding' of pension contributions, which left the County short on its pension funding beyond any expectation. (numerous citations omitted)

That deficit is argued by the County to be all but insurmountable without fundamental change in its employee pensions. The Union is claimed by the County to have been a party to that set of ill-fated settlements. The Union points blame at the doorstep of the County. Pages could be dedicated to the points and counter points made in testimony and exhibits on this pair of ill-fated settlements.

In its Post Hearing Brief, the Union says,

*".....that the County's Final Offer of Settlement proposes to add four (4) economic changes to the Defined Benefit pension plan (bridging to a lower pension multiplier, changing the FAC to a Frozen FAC method, capping the number of hours of overtime which can be included in FAC, and a Frozen COLA), which drastically diminish the benefits of the bargaining unit members involved in this hearing." p 3*

And, as an apparent part of its previously referenced ULP says,

*"The pension diminishment listed by the County in its Final Offer of Settlement are totally opposite from a Defined Contribution pension plan which they listed in their Position Statement." p 3*

*The first County proposed diminishment is to bridge the current 3.2% pension multiplier to 2.0% for service after February 1, 2019. p 25*

*“The second County proposed diminishment is to change from the current “Termination FAC” to a “Frozen FAC” for service after February 1, 2019.” p 26*

*“The third County proposed diminishment is to no longer allow COLA benefits for benefits accrued after February 1, 2019. The members currently have a 2.5% COLA for its pension benefits.” p 29*

*“The fourth County proposed diminishment is to cap the amount of overtime included in FAC to maximum of 80 hours. There is currently no cap on the amount of overtime included in FAC.” p 30*

*“On the basis of the supplemental valuations alone, the Employer's Final Offers of Settlement on its pension issues should be rejected on their face as the Supplemental Valuations used improper data and is not supported by competent, material, and substantial evidence.” p 32*

*“There are numerous errors contained in Employer Exhibits 24 and 25, the Supplemental Valuations for the Employer pension issues, which render Exhibits 24 and 25 of no value. As such, the exhibits cannot serve in support of an award of the Employer's final offer on the issues.” p 32*

*“On the basis of the merits alone, the Employer's Final Offer of Settlement on its pension issue should be rejected on its face as the offer is not supported by the merits provided by the Employer”. p 39*

It is fair to say that the Union doubts the accuracy of the County's calculations.<sup>38</sup>

The County has provided what it believes best supports its view.


Although, a comparative analysis of internal comparables may favor the Union's position regarding pension funding, it is the whole of the County's financial standing and future in that category that deserves careful attention if pensions for this (and other) bargaining unit membership of the present and past, is to be sustained. Here, taking the awards on the issues now made herein as a whole, the County's LBO on pensions is a better choice than maintaining the status quo.

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<sup>38</sup> In his Post-Hearing review of the proposed text of the Award in lieu of Executive Session, Delegate Barr for the Union reiterated that point in advising, “The Union exhibits and the County's own pension actuarial show this bargaining unit is better funded than most of the other divisions.” And this caused the Chair to again review testimony on that point and its relevant exhibits.

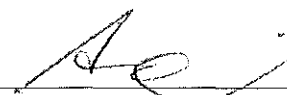
**Award – Pension**

Award of the Employer's Last Best Offer on Pension is hereby made.

Signed:   
Ralph L. Maccarone  
Arbitration Panel Chair

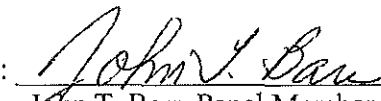
Dated: January 25, 2019

Concurring       Dissenting

Signed:   
Gary P. King, Esq., Panel Member  
Employer Delegate

Dated: 1/28/19

Concurring       Dissenting

Signed:   
John T. Barr, Panel Member  
Union Delegate

Dated: 2-1-19

**d. Employee Health Insurance (Economic Issue)**

Here, the County offers,

*.... that the Act 312 Award should clarify Article 15, Section 1(a) such that the base health insurance coverage is BC/BS CB12, in which the employee will be automatically enrolled unless he or she elects the BC/BS CB 6 Plan, with two (2) re-opener for health insurance, one for the 2020 medical benefit plan year, and a second re-opener for the 2021 medical benefit plan years:*

*The Employer shall continue to provide health insurance for each employee and his family. Coverage for eligible employees shall begin on the first day of the month following thirty (30) days of employment or the first day following their date of employment that allows them to have continuous coverage from previous employment. Coverage ends upon an employee's separation from employment.*

*All eligible regular full-time employees shall be covered by a health insurance plan, which is currently the Blue Cross and Blue Shield of Michigan Community Blue 6 12 Plan, as attached hereto as Appendix C, in which the employee shall be automatically enrolled unless he or she*

*elects the Blue Cross/Blue Shield Community Blue 6 Plan as set forth below.*

~~*Effective as soon as practicable after the effective date of the new contract. The County shall offer as an option, the Blue Cross/Blue Shield Community Blue 12/20% 6 Plan, with deductibles of \$1000/\$2000, 20% co insurance, co insurance maximums of \$2500/\$5000, \$20 OV, \$10/\$40/\$80 Rx, as attached hereto as Appendix D.*~~

*This section of the contract shall be re-opened twice for negotiations, once of the 2020 medical benefit plan year, and a second time for the 2021 medical benefit plan year.*

*In addition, effective with the 2019 medical benefit plan year, the County will cover the cost of maintaining the current optical insurance.*

*An employee, whose spouse has comparable group health insurance from another source, must secure coverage for the spouse from that group. The comparable coverage must also cost the spouse less than \$1,200.00 annually), effective January 1, 2011. The spouse may be covered by the Employer's group health coverage upon becoming ineligible to be covered by the other source or if the alternate coverage does not continue to be comparable to the coverage provided by the Employer. When a spouse has coverage, as described above, any other eligible family members will be covered according to the Order of Benefit Determination Rules, i.e., coverage is the coverage plan of the parent whose birthday is earlier in the calendar year.*

*If an employee does not agree with the County's determination of comparable coverage, they may submit the issue for an independent third-party review. The independent third party will be mutually agreed to by the Union and the County. The decision made by the independent third party shall be final and binding on all parties and not subject to the Grievance Procedure.*

In contract, the Union's Last Offer of Settlement is,

*The Union's offer is to maintain the status quo.*

A part of the testimony of the County Controller was,

*"Q. All right. Look at issue number 3, health insurance. Generally overall, this is listed as a clarification?*

*A. Yes.*

*Q. Why are you seeing this as a clarification?*

*A. The proposal included on page 2, in item number 3, does not propose to change or modify the eligible or the applicable benefit – health insurance benefit offerings.*

*It is – it is intended to clarify that an employee is enrolled in a health insurance program that has no premium sharing responsibility under the appropriate statute – statutes the County can offer that, unless the employee elects to make a contribution and receive the enhanced benefit program. So this is, again, in my view to clarify what is actually occurring with respect to the language the way it was added to the contract.*

*Q. So if a new employee enters the ranks and becomes eligible for health insurance, they are enrolled in the Community Blue, it is 12, plan automatically –*

*A. Yes.*

*Q. -- unless they specifically elect to go to Community Blue, is it 6? I'm working off memory here.*

*A. Yes, 6 and then pay –*

*Q. And then pay the additional cost associated with it?*

*A. That is correct.*

*(Tr. pp. 58-59)."*

Employer Post Hearing Brief pp 17-18

*"One of the points made by Mr. Fuentes in his testimony was that the BC/BS Community Blue 6 Plan remains under the PA 152 "hard cap," and therefore is provided at no cost to the employee."*

Employer Post Hearing Brief p 18

The Union's position in pertinent part is that,

*".....the membership is fully capable of determining which health insurance plan option they wish to enroll in. There is no detriment to the Employer to maintain the status quo since the Employer has chosen the P.A. 152 "hard cap" premium share option. If the employee's select Community Blue Plan 6, they are required to pay any costs above the allowable "hard cap" amounts.*

*The County's FOS also includes contract re-openers for the 2020 and 2021 medical benefit plan years. The County provided no insight as to what direction it would take if the parties were unable to agree on benefit plans for 2020 and 2021. The Union asserts that health care is a mandatory subject of bargaining. Therefore, if the parties could not agree on new health insurance plans, the parties could be forced to avail themselves of additional Act 312 hearings to resolve the County's proposed health insurance re-openers. The Union further asserts that this*

*Act 312 proceeding is designed to resolve all of the outstanding contractual issues, not require future additional Act 312 hearings on a mandatory subject of bargaining.*

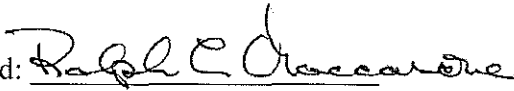
*The Union also submits that the County's FOS is defective since the County seeks to have this Act 312 panel order a reopener for health insurance negotiations for the 2021 medical benefit plan year."*

Union Post Hearing Brief p 19-20

The Union's Post Hearing Brief expressed some uncertainty as to the "true intent" of the County's proposal on Health Insurance. And, that proposal does leave open the need for further negotiations on this fluid market representing a major benefit for its membership.


**Award – Employee Health Insurance**

Award of the Employer's Last Best Offer on Employee Health Insurance is hereby made.

Signed:   
Ralph L. Maccarone  
Arbitration Panel Chair

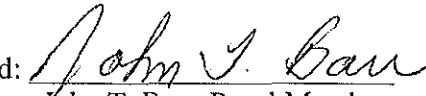
Dated: January 25, 2019

Concurring       Dissenting

Signed:   
Gary P. King, Esq., Panel Member  
Employer Delegate

Dated: 1/25/19

Concurring       Dissenting

Signed:   
John T. Barr, Panel Member  
Union Delegate

Dated: 2-1-19

**e. Retiree Health Savings Plan (Economic Issue)**

On this, the County has offered,

*Effective January 1, 2019, Article 15, Section 3 be revised (a) to change the Employer's contribution from 2% of the employee's salary to a flat dollar amount of \$50.00 per pay, (b) to increase the employee's mandatory contribution from 1% to 2%, and (c) to eliminate any matching Employer contributions.*



As to the Union,

*The Union's offer is to maintain the status quo.*

Discussion

The County takes a position in support of its proposal based on the statement the:

*"Members of the bargaining unit hired after April 1, 2007 are not covered by the County insurance, but rather are eligible for the Health Care Savings Program (HCSP). (Id., pp. 46-47). Where one might think that such a program should result in an OPEB Report showing more than adequate funding, as was previously discussed, that is simply not the case. (C. Ex. 15).*

*Given the fact that such post-employment benefits are merely 22% funded (Id.), the County's Last, Best, and Final Offer and Factfinding Position in this case are entirely reasonable. Mirroring the current program for active employees, the County proposal would provide a retiree health insurance plan at a cost below the PA 152 hard cap, with a retiree choice to be covered by a more expensive plan, with the retiree paying the cost over and above the less expensive plan.*

*Moreover, the County's proposal would have the County immediately paying for retiree spousal coverage upon the employee's retirement, displacing the current system that provides such coverage at the sole expense of the County only after six (6) years following the employee's retirement, and the County paying for optical insurance for the retiree. Again, the County awaits the Union's Post-Hearing Brief as to why the Union opposes such benefit increases.*

*The County's proposal also compares more than favorably to the retiree health insurance plans in the comparable counties. C. Ex. 60 reveals that Lenawee County provides no retiree health insurance, and retirees in Lapeer County receive only a monthly stipend of \$100 or \$200, depending upon date of hire. None of the external comparables provide an option to obtain spousal coverage at no cost to the retiree."*

County's Post Hearing Brief at pp 22 & 23

The Union's Post Hearing Brief offered historical perspective to support its proposition that 'status quo' prevail.

*"Members hired after April 7, 2007 are not eligible for any County paid retiree health insurance. At the time that the language indicating that new members would not receive retiree health insurance was negotiated, the parties agreed that in lieu of retiree health insurance the Employer would*

*contribute 2% of the employee's salary, which includes overtime, into a Health Care Savings Program (HCSP) for members hired after that date. The members are required to contribute 1% of their salary into the HCSP. The parties also negotiated that the County will match the additional contribution by the employee for any amount over 2% and up to 4%.*

*The Employer's FOS would change the Employer contribution from a percentage of the employee's salary to a flat dollar amount of \$50 per pay. Obviously, the flat dollar amount does not factor in inflation or contributions for overtime worked. In addition to the Employer seeking to diminish the amount it pays into the HCSP, their FOS also seeks to increase the employee's mandatory contribution from 1% to 2%.*

*The Employer's FOS also seeks to eliminate any matching Employer contributions.*

*A review of Employer Exhibits 6 and 7 for the Animal Control Division, Exhibits 8 and 9 for the Operating Engineers, and Exhibits 10 and 11 for Circuit Court Youth Facility shows that these bargaining units, which are not Act 312 eligible, have the exact language as the current agreement in the instant case. The Employer reached voluntary settlements with these three (3) bargaining units and did not reduce the benefits in those agreements, yet it is seeking to diminish the benefits for this bargaining unit."*

pp 23 &24

And, again demonstrating the distance between the parties said,

*"The County failed to provide any relevant evidence indicating the number of employees effected, the impact to those employees, or the projected cost savings for their FOS."*

p 24

Here, a small universe of membership is affected, and the County has reasonable opportunity alternatives for cost savings in future negotiations.

THIS SPACE INTENTIONALLY LEFT BLANK

**Award – Retiree Health Savings Plan**

Award of the Union’s Last Best Offer on Retiree Health Savings Plan is hereby made.

Signed: Ralph L. Maccarone

Ralph L. Maccarone  
Arbitration Panel Chair

Dated: January 25, 2019

Concurring  Dissenting

Signed: Gary P. King, Esq.  
Gary P. King, Esq., Panel Member  
Employer Delegate

Dated: 1/28/19

Concurring  Dissenting

Signed: John T. Barr  
John T. Barr, Panel Member  
Union Delegate

Dated: 2-1-19

**f. Retiree Health Insurance (Economic Issue)**

On the issue of Retiree Health Insurance, the County proposes,

*...that the Act 312 Award amend Article 15, Section 2(a) to provide that, for those hired prior to April 1, 2007 and who retire after the issuance of the Act 312 Award, the Employer will provide one (1) health insurance option at no cost to the retiree, the illustrative rates for which are below the “hard cap” amounts of Public Act 152, and that an additional option will be offered, which if selected by the retiree, will require the retiree to pay the difference between any applicable illustrative rate for such coverage and the applicable illustrative rate for the insurance which is below the “hard cap” amounts of Public Act 152:*

*For those retiring after the issuance of the Act 312 Award, and effective with the 2019 medical benefit plan year, the Employer agrees to provide the same health insurance coverage, the illustrative rates for which are below the “hard cap” amounts of Public Act 152 as it does for active employees, if available, for all eligible employees with the Employer paying the appropriate health insurance premiums. Such retirees may elect an additional option, which if selected by the retiree, will*

*require the retiree to pay the difference between any applicable illustrative rate for such coverage and the applicable illustrative rate for the insurance addressed in the preceding sentence. For those retiring after the issuance of the Act 312 Award, and effective with the 2019 medical benefit plan year, the County will also provide, at no expense to the retiree, the same optical insurance covering active employees, as that insurance is amended from time to time. Retirees are required to apply for Medicare (Parts A and B) when they are eligible to do so. The County health care will supplement Medicare Parts A and B. An eligible employee is one who:*

*1. Has twenty-five (25) years of Municipal Employees Retirement System (MERS) service credit with Eaton County (prior to military service time or any other type of MERS service credit purchased before October 1, 1998 in accordance with policy can be included in the 25-year requirement); and is at least fifty-five (55) years of age; and has not had any lapse in group health coverage.*

*2. Is retired due to duty disability as determined by MERS, or*

*3. Is an employee who retires with twenty-five (25) years of service (as defined in (a) (1) above); and has not attained the age of (55) and who maintains group health coverage. When said employee reaches age 55, he becomes eligible for the Employer's paid group health coverage as provided herein, provided, the employee can document continuous group health coverage from the date of retirement.*

*It is further the position of the Employer that the Act 312 Award amend Article 15, Section 2(d) (Spouse Coverage) as follows:*

*An eligible employee may include health insurance coverage for his spouse with ~~under the following conditions:~~*

*~~(1) From the date of the employee's eligibility for paid health insurance for the initial twelve (12) month period, the Employer will pay 50% of the premium difference required to include the spouse with the employee paying the remaining 50% of the premium difference.~~*

~~(2) For the next twelve month period, the Employer will pay for 60% of the premium difference required to include the spouse with the employee paying the remaining 40% of the premium difference.~~

~~(3) For the next twelve month period the Employer will be responsible for paying 70% of the premium difference required to include the spouse with the employee paying the remaining 30% of the premium difference.~~

~~(4) For the next twelve month period the Employer will be responsible for paying 80% of the premium difference to include the spouse with the employee paying the remaining 20% of the premium difference.~~

~~(5) For the next twelve month period the Employer will pay 90% of the premium difference required to include the spouse with the employee paying 10% of the premium difference.~~

~~(6) The Employer will be being responsible for the entire premium payments made thereafter, subject to the provisions of sub-section (a) above.~~

*In the event of the employee's death, the spouse (at the time of retirement) may continue coverage as described in this Section at the Employer's expense. (For all employees hired after October 1, 2000, the coverage will be provided at the spouse's expense.)*

*In the event of the death of the employee's spouse (at the time of retirement) and if the employee remarries, the new spouse may be covered at the employee's expense.*

For its part,

*The Union proposes to maintain the status quo.*

#### Discussion

The Union's Post Hearing Brief views this issue from a different perspective, saying:

*"The County's FOS proposes drastic diminishment in retiree health insurance coverage and costs. The FOS provides "one (1) health care option at no cost to the retiree ... " The FOS does not identify any health insurance plan coverage that the retiree would receive. The proposal would also require the retiree to pay any premium costs which exceed the*

"hard cap" amounts of P.A. 152. As indicated above, the current CBA does not require any premium sharing costs. The Union submits that P.A. 152 specifically excludes "individuals retired from a public employer" (15.562e) from any "hard cap" amounts. The FOS also eliminates Spouse Coverage for employees hired prior to October 1, 2000 and appears to cover the retiree only.... " p 21

"The County failed to provide any relevant evidence indicating the number of employees effected, the impact to those employees, or the projected cost savings for their FOS. The Employer's FOS would expose retirees on a fixed income to absorbing high premium share amounts if included in the "hard cap," along with the costs of the retiree providing health insurance for their spouse." p 22

The Union goes on to say that three internal comparable bargaining units have the 'exact language as the current agreement in the instant case'.

"The Employer reached voluntary settlements with these three (3) bargaining units and did not reduce the benefits in those agreements, yet it is seeking to diminish the benefits for this bargaining unit." p 22

Again, a small universe of membership is affected, and the County has reasonable opportunity alternatives for cost savings in future negotiations.

### Award – Retiree Health Insurance

Award of the Union's Last Best Offer on Retiree Health Insurance is hereby made.

Signed: Ralph L. Maccarone

Ralph L. Maccarone  
Arbitration Panel Chair

Dated: January 25, 2019

Concurring  Dissenting

Signed: Gary P. King, Esq.  
Gary P. King, Esq., Panel Member  
Employer Delegate

Dated: 1/25/19

Concurring  Dissenting

Signed: John T. Barr  
John T. Barr, Panel Member  
Union Delegate

Dated: 2-1-19

**g. Calculation of Accrual of Personal Days (Economic Issue)**

The County asks, *that Article 13, Section 1 be revised to read as follows:*

*All employees who have completed their probationary period shall be eligible for three (3) personal leave days per year based upon the hours equivalent of the employee's assigned shift schedule. If an employee becomes eligible for personal leave days in the first (1/2) half of the calendar year, he shall receive three (3) days in that year. If an employee becomes eligible for personal leave days in the second half (1/2) of the calendar year, he shall receive one (1) personal leave day in that year, and three (3) thereafter for each subsequent year.*

**The Union's offer is to maintain the status quo.**

Discussion

The County's Post Hearing Brief at pages 15 and 16 included the following testimony on concluding observation,

*"Mr. Fuentes testified to the ... nature of the County's proposal:*

*A. Okay. Prior to – I believe it was the contract that expired in 2009, the identification of personal days was defined in terms of – it was defined in terms of days. A day was a day. However, due to differences in shift, the actual hours that were applicable to members varied based on their shift assignment; between 24 and 36, depending on eight-hour, ten-hour, and twelve-hour shifts.*

*Q. Okay.*

*A. There was a change in the administration and eligibility to utilize personal time. That was approved as part of the 2010 contract, which allowed members to use personal days in less than a one-day increment. They could use them in half-day increments. Prior to that, they had to be used in eight, ten or twelve-hour increments.*

*When that change in the eligibility to utilize personal days went into effect, the language was also changed inadvertently, at least in my view, to reflect 36 hours of personal time. So to state it simply, it enhanced the benefit from three personal days to four personal days for anyone working an eight-hour shift. There was no change in its applicability for twelve-hour shift employees.*

*Q. Okay. And you would like to get that corrected.*

*A. Yes."*

*(Tr. pp. 57-58).*

*“Simply stated, the County’s position here is that the accrual of personal days should “match” the employee’s work schedule.”*

The Union’s Post Hearing Brief at pages 19 &20 argues,


*“The Employer presented no exhibits on this issue. The only testimony regarding the issue came from Mr. Fuentes, who stated that the language was changed inadvertently in 2010 to reflect 36 hours of personal time. The Union notes that there was no apparent attempt to change the language in the multiple CBA 1 s which have been negotiated since 2010. The Union also notes that the County prepared the language in each and every CBA since 2010 and must adhere to the language that the County authored. The Union also submits that the Command Officers receive four (4) days as opposed to the three (3) days proposed by the County for the members involved in this hearing.*

*The County did not propose to lower the number of Personal Leave Days in the current Command Officer Act 312.”*

The County has made a request that appears reasonable on the record.


#### **Award – Calculation of Accrual of Personal Days**

Award of the Employer’s Last Best Offer on Calculation of Accrual of Personal Days is hereby made.

Signed:   
Ralph L. Maccarone  
Arbitration Panel Chair

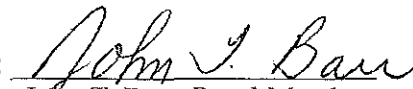
Dated: January 25, 2019

Concurring                       Dissenting

Signed:   
Gary P. King, Esq., Panel Member  
Employer Delegate

Dated: 1/28/19

Concurring                       Dissenting

Signed:   
John T. Barr, Panel Member  
Union Delegate

Dated: 2-1-19



**6. SUMMARY OF AWARD**

<b>ISSUE</b>	<b>AWARD</b>
Duration	The Agreement covers the three-year period, beginning October 1, 2017 and in effect through September 30, 2020. [Ref. f.n. 36 & 37 for limiting effect]
Wages	<p>2017 Wages: A 2.5% increase for all steps contained in the Collective Bargaining Agreement. The wage increase will be retroactive to October 1, 2017 for all hours compensated.</p> <p>2018 Wages: A 2.5% increase for all steps contained in the Collective Bargaining Agreement. The wage increase will be retroactive to October 1, 2018 for all hours compensated.</p> <p>2019 Wages: A 2.0% increase for all steps contained in the Collective Bargaining Agreement.</p>
Pension	Article 15, Section 10 is revised such that, effective February 1, 2019, the pension multiplier shall be bridged to 2.00%, with Final Average Compensation being calculated on the basis of the Frozen FAC method, maximum benefit of 80% of FAC at termination of employment, base wages plus a maximum of 80 hours of overtime included in FAC, and COLA frozen for service prior to February 1, 2019. Effective with the institution of this bridged pension multiplier, employee contributions toward pension to be reduced from 13.70% to 11.70. Effective October 1, 2019, employee contributions toward pension to be further reduced from 11.70% to 10.70%. [Ref. f.n. 36 & 37 for limiting effect]
Employee Health Insurance	<p>Article 15, Section 1(a) is modified such that the base health insurance coverage is BC/BS CB12, in which the employee will be automatically enrolled unless he or she elects the BC/BS CB 6 Plan, with <del>two (2)</del> a re-opener for health insurance, <del>one</del> for the 2020 medical benefit plan year, and <del>a second re-opener for the 2021 medical benefit plan years:</del></p> <p>The Employer shall continue to provide health insurance for each employee and his family. Coverage for eligible employees shall begin on the first day of the month following thirty (30) days of employment or the first day following their date of employment that allows them to have continuous coverage from previous employment. Coverage ends upon an employee's separation from employment.</p> <p>All eligible regular full-time employees shall be covered by a health insurance plan, which is currently the Blue Cross and Blue Shield of Michigan Community Blue-6-12 Plan, as attached hereto as Appendix C, in which the employee shall be automatically enrolled unless he or she elects the Blue Cross/Blue Shield Community Blue 6 Plan as set forth below.</p>

<p>Employee Health Insurance (cont'd.)</p>	<p><del>Effective as soon as practicable after the effective date of the new contract</del> The County shall offer as an option, the Blue Cross/Blue Shield Community Blue 12/20% 6 Plan. with deductibles of \$1000/\$2000, 20% co-insurance, co-insurance maximums of \$2500/\$5000, \$20 OV, \$10/\$40/\$80 Rx, as attached hereto as Appendix D.</p> <p>This section of the contract shall be re-opened <del>twice</del> for negotiations, <del>once</del> of the 2020 medical benefit plan year, <del>and a second time for the 2021 medical benefit plan year.</del></p> <p>In addition, effective with the 2019 medical benefit plan year, the County will cover the cost of maintaining the current optical insurance.</p> <p>An employee, whose spouse has comparable group health insurance from another source, must secure coverage for the spouse from that group. The comparable coverage must also cost the spouse less than \$1,200.00 annually), effective January 1, 2011. The spouse may be covered by the Employer's group health coverage upon becoming ineligible to be covered by the other source or if the alternate coverage does not continue to be comparable to the coverage provided by the Employer. When a spouse has coverage, as described above, any other eligible family members will be covered according to the Order of Benefit Determination Rules, i.e., coverage is the coverage plan of the parent whose birthday is earlier in the calendar year.</p> <p>If an employee does not agree with the County's determination of comparable coverage, they may submit the issue for an independent third- party review. The independent third party will be mutually agreed to by the Union and the County. The decision made by the independent third party shall be final and binding on all parties and not subject to the Grievance Procedure. [Ref f.n. 36 &amp; 37 for limiting effect]</p>
<p>Retiree Health Savings Plan</p>	<p>The Retiree Health Savings Plan shall remain status quo for the duration of the Agreement.</p>
<p>Retiree Health Insurance</p>	<p>Retiree Health Insurance shall remain status quo for the duration of the Agreement.</p>
<p>Calculation of Accrual of Personal Days</p>	<p>Article 13, Section 1 shall be revised to read as follows:</p> <p>All employees who have completed their probationary period shall be eligible for three (3) personal leave days per year based upon the hours equivalent of the employee's assigned shift schedule. If an employee becomes eligible for personal leave days in the first (1/2) half of the calendar year, he shall receive three (3) days in that year. If an employee becomes eligible for personal leave days in the second half (1/2) of the calendar year, he shall receive one (1) personal leave day in that year, and three (3) thereafter for each subsequent year.</p>