

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
BUREAU OF EMPLOYMENT RELATION

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STATE OF MICHIGAN  
**June 8, 2023**  
Employment Relations  
Commission  
Detroit Office

In the Matter of Act 312 Arbitration Between:

OAKLAND COUNTY SHERIFF'S OFFICE  
COMMAND OFFICERS' ASSOCIATION

Union

Panel Chairman:  
Thomas W. Brookover

-and-

MERC Case No. 21-G-1532-CB

OAKLAND COUNTY,  
Employer

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**COMPULSORY ARBITRATION**

Pursuant to Public Act 312 of 1969, as amended  
(MCL 423.231 *et seq.*)

**ARBITRATION PANEL**

Chair:	Thomas W. Brookover, Esq
Employer Delegate:	Craig Schwartz, Esq.
Union Delegate:	Robert Fetter, Esq.

**ADVOCATES**

Employer:	Craig Schwartz, Esq.
Union:	Robert Fetter, Esq Ryan Patee, Esq.

PETITION FILED:	September 9, 2022
PANEL CHAIR APPOINTED:	September 27, 2022
SCHEDULING CONFERENCE HELD:	October 10 and 20, 2022
HEARING DATES HELD:	February 27 and 28, 2023
POST HEARING BRIEFS FILED:	April 7, 2023
AWARD ISSUED:	June 7, 2023

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1. Introduction and Background
2. Statutory Criteria
3. Stipulations and Preliminary Rulings
4. Issues before the Panel

### **1. INTRODUCTION AND BACKGROUND**

This is an arbitration between Oakland County (County) and the Command Officers of the Sheriff's Department. The Oakland County Command Officers Association (Union) is the collective bargaining representative of a unit consisting of Sergeants, Detective Sergeant Specialists, Lieutenants and Captains in the Sheriff's office. As of 2021 there were 120 budgeted positions in the unit, of which 86 were assigned to Road and 34 to the jail.

The Oakland County sheriff's department may be the best trained, best equipped sheriff's office in the state, if not in the country. It has a number of special units including forensics, SWAT team and a dive team because of the number of lakes in the county.

The sheriff has made it a priority to provide the best training available and they train constantly. This is reflected in the low number of citizen complaints.

It has a number of special units including forensics, SWAT team and a dive team because of the number of lakes in the county.

The County has 1.2 million residents and the department contracts with 12 county communities for law-enforcement patrol services, and contracts with 27 communities for fire dispatch operations, police dispatch operations, or both. These activities are supervised by command officers.

Oakland County has a total equalized value of \$89 billion, which is substantially more than the two comparable communities, Wayne County, with \$66 billion and Kent County with \$37 billion.

There were a number of preliminary issues, including a determination of what comparables to use, and some motions with respect to pleadings and evidence. Those will be discussed below.

Although the parties negotiated earnestly, there were a number of issues left for arbitration.

### **WITNESS LIST**

For the Union:

Christopher Cole, Union President  
Howard Bunsis, Accounting Expert witness  
Anthony Brown, Union Chief Steward

For the County:

Julie Fischer, Manager of Human Resources

Hailey Matthews, Human Relations Analyst  
Heather Mason, Supervisor, Human Resources  
Michael McCabe, Retired Undersheriff  
Kyle Jen, Director, Management and Budget  
Curtis Childs, Undersheriff  
April Lynch, Deputy County Executive

## **EXHIBITS**

Numerous exhibits were offered and accepted into evidence. They are listed in the Transcripts.

## **2. STATUTORY FACTORS**

Section 9 of Act 312 PA 1969, as most recently amended in 2014, MCL 423.239, contains the following factors to be considered by the arbitration panel:

(1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

(i) The financial impact on the community of any award made by the arbitration panel.

(ii) The interests and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

(f) The average consumer prices for goods and services, commonly known as the cost of living.

(g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received. (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) Other factors that are normally or traditionally taken in 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.

### **3. STIPULATIONS AND COMPARABLES**

The parties did not agree on which comparables to use and so after a hearing and extensive briefs a decision was made to use two communities, Macomb County and Kent County.

The parties agreed that all of the issues in the arbitration are economic.

The Sheriff's office contracts with several units of government to provide police and law enforcement services. The County proposed to offer evidence of their ability to pay. The Union objected and filed a Motion in Limine to exclude such evidence, which was granted.

Before and during the proceeding the parties TA'd a number of issues. All of them are incorporated in and made a part of this award.

## **4. ISSUES**

The issues are:

Wages

Educational Incentive

Command Floating days

Service Retention Pay (Longevity)

### **DISCUSSION OF ABILITY TO PAY AND USE OF TOTAL COMPENSATION**

#### **Ability to pay**

As shown above, Section 9 of the applicable act requires the arbitrator to base its opinion on a number of factors, and the first factor listed is “the financial ability of the unit of government to pay”

Later in that section, the statute re-emphasizes that by saying that “The arbitration panel should 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.”

Although in many arbitrations the ability to pay is hotly contested, here the County admitted that it is not contesting its ability to pay. The Union called a financial expert on that issue, Howard Bunsis, and he noted that Oakland has a AAA bond rating, and while the ratio of expenditures to fund balance is generally set at 10% as a goal, Oakland County’s goal is 25%, but in fact it has a 51% ratio of expenditures to fund balance.

In my decision about which counties were comparable, I stated that “no other community even comes close to Oakland County, in size, wealth, and scope”.

The County’s ability to pay is supported by competent, material and substantial evidence. Thus we must accept that the County has the ability to pay with respect to all of the issues in this hearing.

#### **Total Compensation**

A preliminary matter to be determined is whether the Panel should analyze economic issues on a “total compensation” basis when comparing wages and benefits to comparable communities. In other words, the Panel should not compare wages with wages, sick leave with sick leave, longevity with longevity, and the like, but look at the total package.

The County argues that it should. The Union disagrees.

One debate is whether the statute permits or contemplates that the “total compensation” or “overall compensation” can be utilized. But a preliminary analysis makes that question moot.

The County argues that the total economic package of one community should be compared to the others when considering union demands for improved wages and benefits.

But that is a complex analysis. The difficulty of using “total compensation” is demonstrated by the testimony of Kyle Jen, the County Director of Management and

Budget, who was called by the County to make those comparisons. He prepared Exhibit 45 to illustrate the compensation the County with the two comparables.

He said that Macomb County has had a defined benefit pension plan and Kent County still has one, while the vast majority of Oakland County employees are now in a defined contribution plan. Although retirement benefits are a huge element in benefits, with major costs, he did not consider them in his analysis of “total compensation” because, Mr Jen said “I just left that out because it was too hard to try to get an apples to apples comparison”. (Tscpt p 523). He added that employers with a defined benefit plan are taking on more financial risk while Oakland County, with a defined contribution plan is taking on less.

He also left out healthcare costs and benefits, also a major element in compensation for the same reason. For instance, where, in Oakland county employees pay a portion of the premium, up to \$2500 per year, in Macomb county, they do not.

While a comparison of total compensation between the counties might be appealing, it must be done with “total compensation”, without leaving some elements out. It must be supported by assigning values to every benefit received, or the cost of that benefit to the employer.

(In its brief the County also looks at elements of “total compensation” of retirement benefits, sick days, personal days, short term disability, and healthcare contributions. The difficulty of comparing all of those is well illustrated in the County’s brief. Most Union members are in a defined contribution plan and most in Macomb are in a defined benefit plan. But many of the Union members also participate in a 427 Retirement plan with a County match. For the Macomb members of a DC plan the employer paid between 6% and 8%, while Oakland pays 10%.

Macomb officers get 12 sick days at 100% of pay but no short term disability. Oakland gives 5 personal days and a short term disability plan that pays 60%.

Macomb officers do not contribute to their health care while most Oakland officers pay \$85 bi-weekly. There is no deductible in Oakland’s plan, but \$3,000 or \$4,000 in Macomb.)

## ISSUE 1: WAGES

The first issue to look at is wages although in actuality the parties are not that far apart.

The LBO's are as follows:

Fiscal year	Union	County
2022	7%	5%
2023	4% with a me-too	4% with a \$3,250 lump sum
2024	3% with a me-too	3% with a me-too
2025	3% with a me-too	2% with a me-too

Both parties agree that the wage increases will be retroactive to the termination date of the predecessor contract.

Because there was an increase to 5% for other employees for 2023, the Union's me too proposal would be triggered and be 5%. Note that the County proposal for 2023 does not have a me-too, but instead offers 4% with a lump sum.

And in 2024 both parties propose the same 3% with a me-too.

Looking at internal comps, over the last 5 years most employee groups, other than those in the Sheriff department, have had substantial wage increases. And for 2023 most other employee groups received 5%....as shown by the triggering of the me-too of the Union's proposal.

The Union argues that from 2019-2023 its members had a 4.04% increase and with the County proposal will see a 13.61% increase while with the Union proposal they will have a 16.89% increase. In comparison, ten classifications of employees had more than a 50% increase, 100 more than 40%, 250 over 30% and 600 at least 20%.

The County....

Although it varies, inflation using the Detroit CPI increased by 7.9% in 2022 and Mr. Bunsis testified it is expected to increase by 5.5% in 2023 and 3.1% over 2024.

Since the County fiscal year ends in late September and the Macomb and Kent fiscal years are calendar years, comparing wages becomes difficult.

Currently for Sergeants Oakland is behind Macomb and Kent. The Union argues that if its proposal was accepted, Sergeants would wind up more than Kent but less than Macomb .

The Union also argues that if its proposal is accepted, Lieutenants and Captains would both still be behind Macomb and Kent.

These analyses leave out two matters. Macomb has two classifications for Sergeants, with one paid significantly less than the other. Twenty-six Sergeants are paid the higher rate and 13 at the lower rate. The County would average the rates of the two categories of Sergeants for comparison purposes.

Secondly, the Union comparison omits the fact that the County is offering in the 2023 contract, a lump sum of \$3,250, although that does not increase the wages for future computations.

The County breaks down the Macomb Sergeants wages into three periods: two months from September 25, 2021 to November 26, 2021, one month from November 27 to December 31, and five months from January 1, 2022 to May 27, 2022.

Comparisons are difficult, and even the County's budget expert, Kyle Jen, concluded that at January 1, 2022 Macomb Sergeants would be paid 3% more. In its brief the County backs off that by noting the difference in fiscal years and the presence of Macomb's two sergeant classes.

### **CONTRACT YEAR 2022**

The following figures are taken from Exhibit 45 which was introduced by the County

For Sergeants, for contract year 2022, the County proposal is base salary of \$93,469 and the Union proposal is \$95,249. The County proposal is lower than either Kent or Macomb and the Union's is between Kent county at \$94,435 and Macomb at \$96,596.

Even when the County tried to use its computation of total compensation, its LBO is between the two comps and the Union's is just above Macomb.

For Lieutenants and Captains for year 2022, both LBO's are lower than Macomb and Kent.

### **AWARD:**

For contract year 2022 I award the Union LBO of 7%

### **CONTRACT YEAR 2023**

The Union LBO for 2023, includes a me-too provision. Since other groups have been awarded 5%, the me-too would be triggered and is included. The County proposal did not include a me-too for 2023.

For Contract year 2023, the County proposal for Sergeants, including the \$3250 bonus, is \$100,458, which is between Kent and Macomb, and is just \$446 above the Union proposal.

For Lieutenants, base salary would be \$106, 929 in the County's proposal, and \$110,013 for the Union, compared to \$110,438 for Kent and \$111,632 for Macomb. Thus without the bonus, both LBO's are lower than either of the Comps. With the bonus, compensation for Lieutenants would increase to \$110,179, which is still lower than Macomb or Kent.

Base salary for Captains would be lower than Macomb or Kent under either proposal, and the bonus would not change that. The Union proposal results in slightly higher compensation even when the bonus is added to the County proposal.

### **AWARD:**

For contract year 2023 I award the union LBO of 4% with a me-too.



#### **CONTRACT YEAR 2024**

Both the Union and the County agreed on a 3% increase with a me-too so there is no dispute

#### **CONTRACT YEAR 2025**

April Lynch the Deputy County Executive and chief negotiator testified that they proposed 2% for the fourth year of the contract because they were uncomfortable doing anything else because of the uncertainty of the economy. She did say that if they were in a different financial situation “we can take a look at it again in ‘24” Tscpt, p 553. The County’s proposal did not include a reopener.

Howard Bunsis testified that the Michigan Senate and House fiscal agencies have a regular “revenue estimating conference” and the most recent one estimated inflation into 2024 as between 3.7% to 5%.

#### **AWARD:**

For contract year 2025 I award the union LBO of 3%

### **ISSUE 2: EDUCATIONAL INCENTIVE**

Both the Union and the County propose an incentive to encourage members to further their education. It has been shown that better educated law enforcement officers perform better, especially in stressful conditions and with far fewer instances of inappropriate use of force.

The Union proposal in short, is as follows

For an Associate’s degree, \$250 in July, 2022; \$375 in July 2023; and \$500 in each July thereafter.

For a Bachelor’s degree, \$500, \$750 and \$1,000 at the same times.

For an advanced degree,( Masters, PhD, JD etc.) \$800, \$1,000 and \$1,500 at the same times.

The County proposes an annual payment of \$250 for an associates, \$500 for a Bachelor’s and \$800 for an advanced degree. The payments would start in July 2023.

Now there are 8 officers with advanced degrees, 40 with Bachelor’s, and 27 with Associates.

Kent has no educational incentive. Macomb offers for credit hours in addition to \$250 for an Associate’s, \$500 for a Bachelor’s and \$800 for a Masters.

#### **AWARD:**

I award the County LBO

### **ISSUE 3: COMMAND OFFICER FLOATING DAYS**

The Union proposes to add 3 floating days while the County proposes to add 1. It is agreed that these jobs are stressful and the ability to take time off is essential to maintain mental health.

There was a lot of debate about the how to count days off among the County and the two comparable counties. The County says the Union members get 50 paid days off including vacation, holidays, current Command Officers Floating days and others. It says Macomb officers get 48.5 paid days off and Kent officers get a maximum of 46 days off.

The Union disputes the methodology, claiming that Oakland is significantly behind the other counties. The County omitted sick leave in its calculations, in spite of the fact that it is bankable and paid out.

The Union argues that Command Floating Days are good for the County because they do not cost it anything.....they cannot be cashed out, they cannot be used if it would cause overtime, and the only cost is the loss of productivity for that day.

The County counters by saying that there are six small contracted communities which only have one or two command officers and public safety would be compromised.

#### **AWARD**

I award the Union LBO of three additional Command Floating Days.

### **ISSUE 4: SERVICE RETENTION PAY**

The Union proposes \$600 be paid annually after 10 years of service, \$800 after 15 years, and \$1,000 after 20 years of service.

The Union is concerned not only that payments are needed to keep command officers, but also that there is a decrease in the number of deputies who apply for open positions, and this will encourage applicants. It says Macomb does provide for such payments.

The County points out that the Macomb contract eliminated payments for anyone hired after 2012.

I find that there does not seem to be a retention problem for command officers, and I doubt that a retention payment would constitute much of an incentive for deputies to apply for a supervisory position.

#### **AWARD:**

I award the County's LBO of no service retention pay.

## SUMMARY OF AWARDS

### ISSUE 1. WAGES

AWARD THE UNION LBO ON EACH YEAR

### ISSUE 2 EDUCATIONAL INCENTIVE

AWARD THE COUNTY LBO

### ISSUE 3 COMMAND FLOATING DAYS

AWARD THE UNION LBO OF 3 ADDITIONAL FLOATING DAYS

### ISSUE 4 SERVICE RETENTION PAY

AWARD THE COUNTY LBO OF NO CHANGE

Dated: June 7, 2023



Thomas W. Brookover, Panel Chair

Dated:

Craig S. Schwartz, Employer Delegate  
Concurring as to awards in favor of the County  
Dissenting as to awards in favor of the Union

Dated: June 8, 2023



Robert D. Fetter, Union Delegate  
Concurring as to awards in favor of the Union  
Dissenting as to awards in favor of the County

## SUMMARY OF AWARDS

### ISSUE 1. WAGES

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### ISSUE 2 EDUCATIONAL INCENTIVE

AWARD THE COUNTY LBO

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AWARD THE COUNTY LBO OF NO CHANGE

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