

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

COUNTY OF MACOMB

-and-

MERC CASE NO. D09 D-0420

MACOMB COUNTY PROFESSIONAL DEPUTY
SHERIFFS ASSOCIATION

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

ASSOCIATION: JAMES R. ANDARY, ATTORNEY

EMPLOYER: TIMOTHY K. McCONAGHY, ATTORNEY

PETITION

DATA: PETITION FILED: JUNE 22, 2009
HEARING DATES: DECEMBER 10 AND 17, 2009
RECOMMENDATION DATE: FEBRUARY 20, 2010

FACT FINDER

RECOMMENDATION:

THE COUNTY PROPOSAL IS RECOMMENDED EXCEPT FOR THE FOLLOWING MODIFICATIONS;

- (1) A 5% SALARY REDUCTION IS TO BE EFFECTIVE IN THE PAY PERIOD FOLLOWING THE DATE OF THIS RECOMMENDATION AND REMAIN IN EFFECT FOR THE DURATION OF THE COLLECTIVE BARGAINING AGREEMENT DERIVED FROM THIS FACT FINDING;
- (2) THE COUNTY PROPOSED RETIREMENT CHANGES ARE TO BE APPLICABLE TO NEW HIRES AFTER THIS AGREEMENT IS IMPLEMENTED;
- (3) THE COUNTY PROPOSAL REGARDING COMPENSATORY TIME IS NOT RECOMMENDED.

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DEPUTY SHERIFFS ASSOCIATION

FACT FINDER'S REPORT AND RECOMMENDATIONS

BACKGROUND

Macomb County filed a Petition for Expedited Fact finding on June 22, 2009. The County cited the following reason for its Petition:

“The employer believes that publicizing the facts and recommendations would assist in resolving the issues in dispute due to the difficult, unprecedented economic challenges facing the County of Macomb.”

Hearings were held on December 10 and 17, 2009. At the conclusion of the Hearings, the respective Advocates elected to file Post-Hearing Briefs which have been received and considered. I have given careful consideration to all of the evidence and arguments submitted by the Parties, even though the Recommendations herein may not specifically reference each and every one of the above.

David Diegel, Finance Director, testified in regard to factors pertaining to the County financial situation. He first noted that many County services are required by State Constitution or Statute. With reference to discretionary services, the County has received \$3.90 for each

\$1.00 it spends from the General Fund. The County has implemented budget reductions in each year since 2006 with reductions in 2009 amounting to \$24.8 million – \$14.8 million as a result of cuts by the Board of Commissioners and \$10 million from projected Union concessions. The County has implemented various budgetary innovations, including the following – the County Library will operate under an agreement with Wayne State University so that, as County employees leave, their replacements will not be a County responsibility; operation of the Martha T. Berry Facility has been transferred to the Social Services Board via an Operating Agreement with the State Department of Human Services; the County will realize a \$1.40 return for each \$1.00 it spends on the County Health Plan; a \$1.1 million savings from a reorganized Senior Services Department. The total savings to the County from the above and other steps amount to almost \$6.1 million. Projected concessions from Union employees for 2009 and 2010 amount to \$10 million and \$10,436,800, respectively, as a result of reductions in wages, medical insurance and pensions. For the 2009 budget year, 135 positions have been eliminated – 25 the result of layoffs. Property tax collections amounted to \$133,582,874 in 2007 and are projected to decline to \$98,560,766 in 2012, even though the millage rate was increased from 4.2000 to 4.5685 in 2009. The decline in revenue has exacerbated a deficit in the County General Fund – a deficit of \$2.8 million in 2004 to an actual deficit of \$7.3 million in 2008 and a projected deficit of \$15.7 million in 2010. One of the main factors affecting revenue is taxable value which has changed from an average increase of 6.0% from 1996 to 2005 to a decline of 3.0% in 2009 and projected declines of 10.0% or more for 2010 to 2012. The County has received State revenue sharing payments of some \$16 million, but revenue for 2012 is uncertain because payments from a reserve fund will be exhausted and the State ability to make payment is in doubt. Residential

building permits have declined from 5,252 in 2003 to 513 in 2008. In July 2009, the State informed the County of a projected decrease in excess of \$1 million in funding for the Jail Reimbursement Program. Revenue from the Register of Deeds declined from a high of \$12.3 million in 2003 to \$4.7 million in 2008. The Employer contributions to the Pension Fund for Sheriff's Department employees has remained relatively constant for 2008-2010 at \$4.5 million, whereas it has declined for General Fund Employees from \$12 million in 2008 to \$9.1 million in 2010 because of concessions by the latter group of employees. The County Fund Balance -- rainy day fund -- amounted to \$65.5 million in 2003, however, it has since declined to \$32.5 million in 2008 and is projected to decline further to \$19.3 million in 2010 because of continued declining property values. In December 2009, Moody's Investors Service informed the County its debt had been downgraded from Aaa to Aa1.

On cross-examination, Mr. Diegel agreed that the County projected a General Fund surplus of \$2.5 million in 2009 assuming the remaining unit in Act 312 proceedings is awarded the health care benefits and other changes as proposed by the County. The projected fund balance for 2009 is \$35 million, however, it is anticipated to decline to \$19.3 million in 2010. He further noted that the ideal fund balance is 10% to 15% of the operating budget. Macomb County has an operating budget of \$450 million so the Fund Balance should be \$45 to \$60 million.

Eric Herppich, Labor Relations and Human Resources Director, identified the current Employer Proposal for Fact Finding. The County Proposal includes the following:

- (1) No wage increase;
- (2) Eliminate the traditional Blue Cross/Blue Shield Plan and in its place provide

- coverage the same as that provided to the County Board of Commissioners;
- (3) Changes in retirement benefits including the elimination of overtime in Final Average Compensation and other changes for employees hired after January 1, 2008;
 - (4) Cancel longevity payments for two years;
 - (5) Eliminate the option of compensatory time;
 - (6) A wage reduction to match the six furlough days to which all other bargaining units accepted in 2009 and 2010.

On cross-examination, Mr. Herppich acknowledged that the Professional Deputy Sheriffs Association did propose operational changes in the Sheriff's Department. The Witness deferred the operational issues to the Sheriff.

Brian Schrier, Correction Deputy since June 1991 and Association President, outlined the duties and responsibilities of Correction Deputies (C/D). The C/Ds are required to have 160 hours of certified training and an additional 20 hours of training each month. The training includes self defense, mental health, computer skills, etc. The C/Ds perform booking on an arrest, determine if a mental health or other health issue is present, process paperwork and custody duties. The Witness noted the Jail population numbers 1,200 and it is a "24/7" operation. The C/Ds insure that inmates are properly housed and that they go to court as scheduled. Mr. Schrier described the Association Proposal as follows: C/Ds would have responsibility to transport inmates from the Jail to Station 3 – the lockup in the Court Building and the C/Ds would also transport inmates to other courts in Macomb County and to other jurisdictions. He stressed that the C/Ds earn approximately \$5.00 per hour less than the Road

Patrol Deputies. Mr. Schrier noted that in other counties – Wayne, Genesee, St. Clair – C/Ds perform transport duties. Mr. Schrier estimated the Association proposal would result in savings to the County in the range of \$600,000 to \$700,000 per year.

On cross-examination, the Witness acknowledged that the County and the Association had reached a Tentative Agreement, however, it was rejected by the membership. The Tentative Agreement contained many of the same provisions as now sought by the County in Fact Finding. It was Mr. Schrier's belief that the membership was willing to accept the commissioner Health Plan, but the other reductions caused the Association membership to reject the Tentative Agreement.

John Harder, C/D since 1978, has held a variety of Union positions and has been involved in bargaining since 1990. Mr. Harder noted the Association proposed a restructuring of the C/D wage scale so that a C/D would not reach the maximum wage until seven years rather than the current four years. He estimated the savings to amount to \$42,800 for 2010.

Steve Smigiel, Accounting Manager-Finance Department, related that the 8.2% wage reduction sought by the County to take effect January 1, 2010 would have resulted in savings to the County in excess of \$770,000.

COUNTY PROPOSAL

1. Duration: January 1, 2008 to December 31, 2010 (3 years).
2. Wages: 0% for 2008
0% for 2009
0% for 2010
3. Healthcare: a. Elimination of BCBS Traditional for employees and future retirees.

- b. Healthcare proposal for employees received October 16, 2008

Employees hired after January 1, 2008 will have a monthly employee premium contribution of \$100-single contract or \$200-2 person/family contract.
- c. Employees hired after January 1, 2008 must work 25 years of actual service for healthcare for employee and spouse in retirement.
- d. Employees who retire after January 1, 2009 will have medical insurance coverage as determined by the Employer.
- e. Employees who have spouses actively employed by the County will be entitled to one insurance plan for both employees and all dependants. The spouse will not be entitled to the insurance bonus.

4. Retirement:

- a. Eliminate overtime from inclusion in Final Average Compensation for those who retire on or after ratification.
- b. Employees hired after January 1, 2008 must have 15 years of actual service to be vested.
- c. Employees hired after January 1, 2008 will have a Defined Benefit Plan as defined below:
 - Retirement eligibility is age 55 with 25 years of service or age 60 with 15 or more years of service
 - Final Average Compensation period - highest 5 consecutive years of last 10 years of service
 - 2.2% multiplier factor
 - Maximum pension shall not exceed 66% of an employee's FAC
 - 2.5% employee contribution

5. Longevity:

- a. Cancel Longevity payments for all eligible employees for the immediate two (2) consecutive years after contract

ratification (2009 and 2010 or 2010 and 2011).

6. Compensatory Time: The option of compensatory time shall no longer be offered to employees in the bargaining unit effective upon ratification of this agreement.
7. Effective as soon as possible after ratification, the Employer proposes a 5% reduction in wages.

ASSOCIATION PROPOSED FINDINGS AND RECOMMENDATIONS

- A) MCPDSA's economic and non-economic proposals would secure for the County the cost savings required to achieve a balanced budget for the year 2010.
- B) The proposed restructuring of the Correctional Deputies Wage Scale provides even further savings to the County.
- C) The County's table position and forced pattern bargaining upon the MCPDSA is impractical, excessive and punitive.

DISCUSSION AND FINDINGS

It can hardly be denied that Macomb County has been and will likely continue to be facing a period of serious economic difficulty. The above summarized data support a finding that the County's financial condition has been in continuing decline.

Between February and April 2009, 15 bargaining units ratified agreements which provided no wage increases for the years 2008, 2009 and 2010; cancellation of longevity payments; six dock days; benefit plan changes; and a change in the 70 point retirement for employees hired after January 1, 2002. One bargaining unit -- POAM Juvenile Justice Center -- accepted a 3.5% base pay reduction effective May 2, 2009 and a 2.3% base pay reduction effective January 1, 2010 in lieu of six dock days -- the Juvenile Center is a 24/7 operation. The above agreements have been referenced as Tier 1.

In the period June-August 2009, five additional bargaining units ratified agreements with the same provisions in the Tier 1 except the Health Care Plan – the Commissioners Health Care – has higher co-pays and deductibles.

Another bargaining unit – Police Officers Labor Council, representing Captains, Chief of Staff and Jail Administrator – ratified an agreement in December 2009 which provides for 0% wage increases in 2010 and 2011; cancellation of longevity pay; three dock days and 3 unpaid Holidays; Benefit Plan changes; changes in the vesting schedule for retiree health care including spouses; retirement after 25 years or 15 years and age 60; and elimination of compensatory time.

The Parties herein reached a Tentative Agreement which basically conformed with the above agreements. One difference was an 8.2% reduction in pay for 2010 instead of dock days and elimination of longevity pay. The Tentative Agreement was rejected by the membership. The County has stressed that because of the rejection it has lost significant anticipated savings.

For its part, the Association strongly argues that it has proposed operational changes – C/Ds performing transport duties – which would result in a savings to the County of \$600,000 to \$700,000 per year. It is also noted that the proposal to restructure the wage scale would also provide a savings to the County of some \$42,800 for the years 2010-2013. The Association urges that the County insistence that it make the concessions demanded is unwarranted given that the General Fund is projected to have a \$2.5 million surplus in 2009. In that connection, the Association states that the change to a lesser Health Care Plan – Commissioners Health Care – is not an obstacle to an agreement. It does strenuously object to further concessions which it says are “impractical, excessive and punitive.”

The first item for discussion is the MCPDSA’s proposal relative to the restructuring of

the Department so that its members would perform prisoner transport duties. Your Fact Finder is not the elected Sheriff and he has no expertise so as to justify any recommendation to the Sheriff as to how he should operate his Department. The Proposal is beyond the scope of consideration which is appropriate in a Fact Finding proceeding.

The restructuring of the wage scale is within the purview of a Fact Finder. The savings which would result pale in comparison with the need identified by the County. Although the County will have a projected surplus of \$2.5 million in 2009, that does not negate the projected deficit of \$15.7 million in 2010.

I fully appreciate that the C/Ds have a difficult job. The Collective Bargaining agreement which is the subject of this Fact Finding has a duration to December 31, 2010. If the County financial condition improves, the MCPDSA will be in a position to recoup lost wages and benefits in the negotiations relative to an Agreement which will become effective on January 1, 2011.

My review of the County Proposal does not lead me to conclude that it is “impractical, excessive and punitive”. If the Proposal pertained to this Bargaining Unit alone, I would agree with the MCPDSA’s characterization. The County Proposal has been implemented with all Bargaining Units in the County with exception of the MCPDSA and the POAM Deputies and Dispatchers who are in Act 312 proceedings. This is not a situation where this Bargaining Unit is being selected for more concessions than the other County Bargaining Units.

Given the above considerations, I regretfully conclude that the County Proposal should be adopted with the exception of the following modifications. I recommend a 5% salary reduction effective the pay period following the issuance of this Recommendation for the duration of the

current Collective Bargaining Agreement. While the amount of money is somewhat less than 6 Dock Days accepted by other Bargaining Units, the Recommendation is deemed fair because the other Units had 4 days of choice relative to the selection of dock days. Presumably they were able to make their selections based on convenience etc. I recommend that the County Proposed changes relative to Retirement benefits be applicable to those hired after this Agreement is implemented. Evidence provided at the Hearing reveals that 12 C/Ds have been hired since January 1, 2008. Moreover, most of the savings to be derived from the County Retirement Proposal will accrue in the future rather than provide an immediate savings. The Proposal regarding Compensatory Time is not recommended because that was not a provision accepted by any other Bargaining Unit except for the POLC. It further appears that this is an item of minimal savings since the Agreement currently provides: "Employees may not, under any circumstances, accumulate more than one hundred (100) hours of compensatory time."

I realize that the Recommendation herein is difficult for the affected employees and their families but the reality of the economic conditions in Michigan and in Macomb County at the present time dictate the unpleasant conclusion herein.

RECOMMENDATION

The County Proposal is Recommended except for the following modifications:

- (1) a 5% salary reduction is to be effective in the Pay Period following the date of this Recommendation and remain in effect for the duration of the

Collective Bargaining Agreement derived from this Fact Finding;

- (2) the County Proposed retirement changes are to be applicable to new hires after this Agreement is implemented;
- (3) The County Proposal regarding Compensatory Time is not recommended.



JOSEPH P. GIROLAMO FACT-FINDER

Dated: February 20, 2010