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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Statutory Interest Arbitration between:

BAY COUNTY and  
BAY COUNTY SHERIFF,

Co-Employers

-and-

POLICE OFFICERS LABOR COUNCIL,

Union.

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MERC Case No. L08 K-3001

Hearing: July 27, 2011

Briefs filed by: September 6, 2011

ARBITRATION PANEL'S  
FINDINGS, OPINION and ORDER

Benjamin A. Kerner, Neutral Chair

John R. McGlinchey, Employer Delegate

Chet Kulesza, Union Delegate

Appearances:

For the Employer: John R. McGlinchey  
Abbott Nicholson, P.C.

For the Union: Thomas R. Zulch  
Police Officers Labor Council

Dated: September 23, 2011

Bay County

Present for some or all of the proceedings: Nancy Ciccone, Dawn Ciolino, Dan Gillman, Dennis P. Grenkowitz, Rick Hanover, Crystal Hebert, Cristen Lipinski, Chris Mausolf, Tim Quinn, Bob Redmond.

## BACKGROUND.

Bay County is at the base of the Michigan "Thumb" immediately north of Saginaw. The bargaining unit is composed of approximately 27 employees, and they are patrol officers of the Bay County Sheriff's office. The County bargains with the following additional groups of employees: Command Officers, Correction Officers, Bay County Professional Employees, Nurses, Central Dispatch Employees, Clerical employees-full time, Clerical employees-part-time, District Court employees, Probate Court employees, and Circuit Court employees. The Employer, as will be seen, makes comparisons with all of these organized groups of employees. The Union emphasizes other comparable groups of employees.

In prior proceedings under Act 312 and in this proceeding, the parties have agreed that the patrol employees of the following sheriff's offices have relevance as comparable employees, as defined by the statute, MCL.423.239(d): Allegan County, Eaton County, Calhoun County, Grand Traverse County, Lenawee County, and Midland County.

The petition in this matter was filed on December 1, 2010. It identified one issue in dispute at that date in the bargaining for a new contract effective January 1, 2009, through December 31, 2011. That issue is the Union's quest to increase the pension multiplier (prospectively only) from 2.5% to 2.8% under certain terms that have a protec-

tive effect against the County's having to pay additional payroll costs. It is the case that the parties have settled all other terms and conditions of employment applicable to sheriff deputies in the new contract's time period. The statement of the parties' Last Best Offers on the one issue (an economic issue) in dispute is as follows.

### LAST BEST OFFERS.

Union's Offer: Defined Benefit Pension Annuity Factor. (Article 26.3)

Effective upon the date of the 312 award, the retirement plan multiplier shall be increased from 2.5% to 2.8% for all years of service. The employees shall continue to pay the current 2% of compensation unless modified by paragraphs A or B below.

- A. If at any time should the Annual Actuarial Valuation Report for the Sheriff's Department pension indicate the pension funded ratio is below 110% but greater than 100%, the employee shall contribute an additional 1.83% of compensation (2% + 1.83% for a total of 3.83%). Should the pension funded ratio return to over 110%, the employee contribution shall return to the 2% level.
- B. If at any time should the Annual Actuarial Valuation Report for the Sheriff's Department pension indicate the pension funded ratio is below 100%, the employee shall contribute an additional 3.66% of compensation (2% + 3.66% for a total of 5.66%). Should the pension funded ratio return to over 100%, the employee contribution shall be reduced as required by paragraph A above.

Employer's Offer: status quo on Article 26.3, as follows.

The bargaining unit shall purchase, at their cost, the 2.25% multiplier for all years of service. The Employee shall pay for this benefit through payroll deduction which cost is 2.55%. The EMPLOYER shall have no obligation to pay for any portion of this pension improvement. This improvement shall be effective January 1, 1997.

Effective January 1, 2001, the employee's cost of the 2.25 multiplier (which cost is 2.55%) shall cease.

Effective as soon as possible after execution of this Agreement, the retirement plan multiplier shall be increased from 2.25% to 2.50%. The employees shall pay for this improvement not to exceed 2% of the cost of the improvement. In the

event that any other Bay County bargaining unit receives the increased multiplier at either no cost, or at a cost less than 2.0% of compensation, then the cost for employees covered by this Agreement shall be reduced accordingly under the terms noted below.

The contract language shall be interpreted to mean that a Bay County bargaining unit is defined as a unionized/ recognized bargaining unit in which the Bay County Board of Commissioners is the recognized Employer either wholly or as a Co-employer.

### THE EVIDENCE AND THE FACTORS.

The Panel has the job under the statute, 1969 P.A. 312, MCL 423.231 of deciding the issue based on factors or standards spelled out in the Act. The standards to be utilized by the Panel are spelled out at Section 9 of the Act. They are:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employee involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - i. In public employment in comparable communities.
  - ii. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) 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.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which 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.

MCL 423.231(a).

The parties agree that the Co-Employers have the lawful authority to employ sheriff's deputies and have the lawful obligation to bargain with the elected representative of the sheriffs' deputies, currently the Police Officers Labor Council.

In addition, the Co-Employers are bound to resolve labor disputes with the deputies' representative pursuant to Act 312 because the Co-Employers operate a "public police department" within the meaning of Section 2(1) of the statute, MCL 423.232(1).

MCL 423.231(b).

The parties stipulate that notwithstanding the notice of hearing in this case shows "Bay County" as the party-employer, the amended caption of the case should show that "Bay County and the Bay County Sheriff" are Co-Employers.

The parties stipulate that the sheriff's deputies of the following counties are comparable for the purposes of examining their wage, hours and conditions of work, including the asserted benefit which the Union seeks here: Allegan County, Calhoun County, Eaton County, Grand Traverse County, Lenawee County, and Midland County.

MCL 423.231(c).

The Co-Employers argue that:

The majority of the money the County expends on employee compensation, including pensions, derives from property taxes. [Exhibit 7, Transcript 49]. Tax revenues declined about \$1 million in 2010 over 2009 levels and, unfortunately, are expected to dramatically decline over the next several years.  
[Co-Employers' Brief, p. 9]

Exhibit 7, page 3 shows that property tax collections reached a peak in 2009 of \$17.5 million; declined in 2010 to \$16.4 million; and are projected to decline in 2011 to \$16.0 million; with subsequent annual declines to \$15.7, \$15.3, \$14.9, and \$14.6 through 2015. Just over 50% of the County budget comes from property taxes. [Tr. 49] Property tax collections are expected to decrease "by about \$300,000 each year" through 2016. [Testimony of Mr. Quinn, the personnel director and interim finance offices, Tr. 49] On the expenditure side, 63% of general fund expenditures go to wages and fringe benefits. [Mr. Quinn, Tr. 50 and Exhibit 7, p. 5]. Sheriff Deputy expenditures for pensions have been consistently higher than those shown for the general group. [Exhibit 5, p. 6]. Nevertheless, said Mr. Quinn, the County projects that, "With the stock market being the way it is, that we will probably not have to contribute to the sheriff's group [pensions] in the coming year." [Tr. 54].

With that assessment by Mr. Quinn, the personnel director and interim finance officer, the Union does not disagree. In fact, the Union says that based on the history and health of the sheriff deputies' pension plan, there should not be any increase in required funding throughout the term of the new contract or into the foreseeable future. [Testimony of Ms. Ciccone, Labor Analyst, Tr. 20-21]. In argument, the Union emphasizes:

The bargaining unit further protects the employer by paying the full 3.66% cost of the pension improvement, on top of the current 2% level, if the pension falls below the 100% funding level. The Employer has no liability for funding this pension improvement. The Employer has not had to pay any contribution in two previous multiplier increases. The bargaining unit has guaranteed the employer shall not have to pay for this proposed multiplier increase.  
[Union Brief, p. 4]

The Co-Employers pay currently and have paid historically 4% of payroll to a Voluntary Employee Benefit Association for the benefit of retirees' health care. The Co-Employers did not submit evidence of whether this amount is contractually required to be paid, and the evidence of record—the most recently expired collective bargaining agreement, Union Exhibit 4— does not contain any such undertaking. Nevertheless, attributing the 4% of payroll cost as the Co-Employers' cost of the pension program, there does not appear to have been any increase over the time period surveyed by the Union's evidence, 1997-2008, to the cost requirements of the deputy sheriffs' pension program.

Historically, the deputies have negotiated increases to their pension benefit in 1997 and in 2005. In 1997 they agreed to pay 2.55% of their wages for an increased pension benefit (from 2.0% to 2.25% pension multiplier); the Co-Employers did not experience an increase. In 2005, the deputies negotiated an increase in their pension benefit (from 2.25% to 2.5% pension multiplier) by agreeing to contribute 2.0% of wages; the Co-Employers did not experience an increase. Now, for the 2009-2011 contract, the Union seeks another increase in pension benefit, at a time when the annual actuarial valuation (Union Exh. 6, p. A-1) shows that the pension plan is funded at 134% above the normal costs, necessitating no contributions (but that increased contributions can be expected over time). By virtue of par. (A) and (B) of its proposal, the Union volunteers to protect the Co-Employers from these possible increases.

Thus, the conclusion of the Panel is that the costs of the Co-Employers in some personnel areas, including health care and other benefits have risen and will continue to rise; however, there is no demonstrated ill affect on the County general fund from the

increase in pension multiplier proposed here by the Union. Simply put, although there may be diminutions in the County's property tax collections and other sources of income, and there may be increases in some personnel costs, this is not one of them. Thus, the County's financial ability to pay the increase of pension multiplier has not been shown to be a limiting or determinative factor in this proceeding. A contrary determination would not be supported by competent, material, and substantial evidence on this record.

MCL 423.231(d).

The Co- Employers argue in two parts that the deputies are paid at least as well as other employees of the County and receive as great a pension multiplier as is found among Bay County employees. Secondly, argue the Co-Employers, in regard to deputy sheriffs at the agreed comparable communities, these Bay County deputies have a pension plan that is at the top.

The Union without saying so explicitly treats the other employee groups of Bay County as of little interest. In regard to comparable external employees, the Union says that the Bay County Sheriffs' deputies have fallen in rankings across the board on a number of relevant factors, such that in the "current collective bargaining agreement, they have dropped from average to over \$2,000.00 below average in total economic compensation." [Union Brief, p. 2].

The evidence supports a finding that many of the other Bay County employee groups, including the unionized groups identified above at p. 2 at one time had a 2.0% pension multiplier. In separate negotiations, many of these groups attained a 2.25% multiplier, and it was at that time (in 2000) that the deputy sheriffs' contributions to their



pension plan ceased. [Testimony of Union President Rick Hanover, Tr. 27]. Today, as shown in Co-Employers' Exh. 4, all the County unionized groups have pension multipliers of either 2.25% or 2.5%. There are no unionized groups that enjoy a benefit of 2.8% pension multiplier.

In addition, argue the Co-Employers, employees in other job classifications are paid as much as or in a few cases more than Bay County Deputy Sheriffs. The other categories who are paid more include Sheriff Command Officers; one job classification of Corrections Officers; and 3 job classifications of nurses. It is undisputed that Bay County Deputy Sheriffs are near the top. What is not shown however, in the Co-Employers' rendition of the evidence is to what degree employees in the other classifications are alike or different than deputy sheriffs. It could well be argued, for instance, that public health nurses have an entirely different professional background; different educational requirements; different responsibilities in interacting with the public; and different career paths and career options. Thus, the wage levels of County nurses do not really help us determine the applicability of a benefit in the Sheriff's Department.

Since there was a dearth of evidence on the subject of the purported similarity of corrections officers and nurses to Sheriff Deputies, the Panel draws no conclusion from the asserted relevance of the other County employees' wage levels.

However, turning to the subject of external comparables, the parties have stipulated that the sheriff deputy employees of the 6 counties identified at p. 5 are relevant to the determination here. The evidence shows that Allegan County deputies have an annuity factor of 2.5%. The Calhoun County deputies have an annuity factor of 2.5%. The

Eaton County deputies have an annuity factor of 3.2%. Grand Traverse deputies have an annuity factor of 2.5% (but is 2.8% from retirement until age 65.) Lenawee County deputies have an annuity factor of 2.5. And Midland County deputies currently have an annuity factor of 2.6%, rising to 2.7% in the next contract year. (New employees are on a defined contribution plan.) [Union Exhibit 5, p. 2 and Employer Exhibit 1]. In short, the evidence would support a finding that two of the 6 comparables have annuity factors in excess of 2.5; and one (Grand Traverse County) has a temporarily higher annuity factor for the early retirement years.

The Panel concludes that an annuity factor of 2.8% is neither unprecedented nor rare among the comparable communities. It is one whose equities depend on other factors.

MCL 423.231(e).

There was no evidence on the average consumer prices or any measure of the cost of living. This factor is inapplicable.

MCL 423.231(f).

Overall compensation was featured in the Union's' recitation of the degree to which Bay County deputies have fallen behind other, comparable communities. This aspect of the evidence in this case is treated below under factor (h).

MCL 423.231(g).

The parties have not pointed out any changes in the foregoing circumstances during the pendency of the arbitration proceedings. This factor is inapplicable.

MCL 423.231(h).

One of the factors that is commonly taken into consideration in compensation and benefit calculations is the degree to which the subject employees' overall compensation is higher than or lower than the same measure of other, comparable employees and how that relationship has changed through time.

In this case the Union presented evidence that in 2004, looking at deputies' base wage rates, Bay County at \$44,658 was 3rd in the group of 7 comparable communities; that eroded through time until in 2011, Bay County deputies were 6<sup>th</sup> among the group of 7 comparable communities [Union Exh. 5, p. 4]

Looking at the amount of wage increase across time, and comparing Bay County deputies with deputies in comparable counties, the Union showed that for the years 2004-2009, Bay County experienced an increase of 10.02%, whereas the average increase of the remaining 6 comparable counties was 15.14%, a difference of just over 5%. [Union Exh. 5, p. 5] Looking further at the increases bargained for the years 2004 through 2011 cumulatively, Bay County deputies experienced an increase of 10.02%, whereas the average increase of the remaining 6 comparable counties was 17.19%, a difference of just over 7%. [Union Exh. 5, p. 5] In other words, Bay County was 5% below the average for the first 5 years of this retrospective; after two more years are add-

ed to the retrospective, Bay County is 7% behind the comparables. Its comparative position has worsened in the last two years.

In part, says the Union, these figures are due to the fact that the Union agreed to a zero-percent wage increase for contract years 2009, 2010 and 2011. The Bay County deputies are now (as of January 1, 2011) \$2,489 behind the average of the other six comparable communities. [Union Exh. 5, p. 4]. Not only were base wages the subject of a tentative agreement on terms demanded by the Employer. But also the 85 /15% split on health care premiums and other items proposed by the Employer were accepted by the Union. [Testimony of Rick Hanover, Tr. 25]. In view of the "stand pat" agreement on wages, argues the Union, some additional improvement in the pension benefit should be considered acceptable, particularly in light of the fact that the Union's proposal does not cost the Employer anything out-of-pocket. This is, in other words, a history of negotiation type argument; and is supplementary to the Union's position on how it has fallen behind other comparable communities.

The panel must conclude on these points that the Bay County deputies have fallen behind their peers in other, comparable communities and that one reason for that result is the acceptance of a "stand pat" agreement with no wage increases in any of the three years of the contract.

It does not follow that an improvement in the pension benefit is required; but it is one way of improving for the deputies the results of bargaining for the present 3-year agreement (2009-2011) and of bringing those results into alignment with the comparable communities.

## CONCLUSIONS.

The Employer has not shown that the benefit desired by the Union is outside the realm of what might be found in the comparable communities. In fact, three of the six comparables (counting Grand Traverse) have annuity factors higher than 2.5%.

The Co-Employers' resort to internal comparables does little to advance its case, because there was no proof of the degree to which internal positions should be regarded as comparable to the deputy sheriffs. Furthermore, with regard to "ability to pay" the Employer has not shown -- however dire the current economic conditions are for Bay County-- that the predicate or cure for those conditions involves no new pension improvements. There is no showing even that the new pension improvement would have a direct, adverse impact on the Co-Employers' economic situation. Moreover, there is no evidence of an indirect impact, namely of pension costs in other bargaining units, such as the Command Officers' unit. Without such evidence, the Panel cannot hazard a guess what that indirect impact might be.

In short, the most persuasive argument is the Union's last one, that it has fallen behind other comparable communities; and, that it offers to have a pension improvement which by its terms—under today's conditions—does not cost the Co-Employers any money. The Panel recognizes that conditions may change, and yet, the Union's proposal seems eminently reasonable in its insistence on protecting the Co-Employers against increased payroll costs.

When viewing the statutory factors and the evidence in support and in opposition to each factor, as identified above, the Panel makes the following Order.

ORDER

A majority of the Panel adopts the last best offer of the Union on the subject of Article 26.3, Pension Annuity Factor.



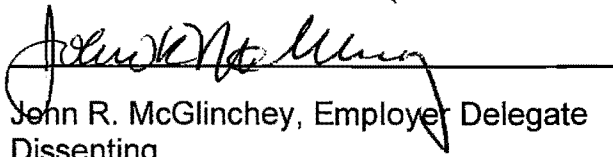
Benjamin A. Kerner, Neutral Chair

Dated: Sept. 23 2011



Chet Kulesza, Union Delegate  
Concurring

Dated: Sept. 22 2011



John R. McGlinchey, Employer Delegate  
Dissenting

Dated: Sept. 22 2011

at Detroit, Michigan