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STATE OF MICHIGAN  
Department of Licensing and Regulatory Affairs  
Bureau of Employment Relations

In the Matter of Statutory Arbitration between:

KALKASKA BOARD OF COMMISSIONERS,  
KALKASKA COUNTY SHERIFF,  
Employer,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN  
Union.

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MERC Case No. L11 I-1038 (Deputies, Detectives, and Dispatchers)

AND

KALKASKA BOARD OF COMMISSIONERS,  
KALKASKA COUNTY SHERIFF,  
Employer,

-and-

COMMAND OFFICERS ASSOCIATION OF MICHIGAN  
Union.

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MERC Case No. L11 I-1037 (Sergeants, Detective Sergeant, and Lieutenant)

Before a Panel in each case consisting of:

Benjamin A. Kerner, Neutral Chair  
Patrick Spidell, Union Delegate  
Peter A. Cohl, Employer Delegate

Appearances:

For the Employer: Sherry Hedrington  
Cohl, Stoker & Toskey, P.C.

For the Union: Patrick Spidell  
Police Officers Association of Michigan

Also present for all or part of the proceedings: Michael A. Buchanan, Brad Heikkila, Kevin Loftis, Stuart McKinnon, Tracy Nichol, Mark Nottley.

### OPINION AND AWARDS OF THE PANELS.

#### CHRONOLOGY AND BACKGROUND.

The Unions filed these two petitions on February 1, 2012. The Neutral Chair was appointed by MERC on March 19, 2012.

By Motion on February 21, 2012 the Employer sought to clarify the units that were slated by the petitions for Act 312 arbitration. Pursuant to the Union's stipulation of March 28, 2012, the petitions were clarified so as to exclude Corrections Officer, Court Officers, and Clerical members of the bargaining units from these Act 312 proceedings.

Pursuant to notice from the Neutral Chair, the parties and the Neutral Chair held a Pre-Hearing conference March 26, 2012, at which a number of important issues were discussed and at which the parties agreed to the following issues in dispute:

**For the Command Unit:**

1. Wages--first year, 2011 (economic issue)
2. Wages second year, 2012 (economic issue).
3. Sick /Accident Disability weekly benefit (economic issue) effective on date of award.

**For the Deputies' Unit:**

1. Wages—first year, 2011 (economic issue)
2. Wages –2<sup>nd</sup> year, 2012 (economic issue)
3. Sick /accident Disability Weekly benefit. (economic issue) effective on date of award.
4. Detective clothing allowance—amount (\$200 to \$400) and time of payment (from quarterly to annually) effective on the date of the award.

The parties proceeded to prepare their exhibits for exchange; to prepare their expert witness reports and testimony; and continued to bargain.

On June 1, 2012, the Neutral Chair convened a second scheduling conference at which it was determined that the following communities will be used as comparable communities: Antrim County, Benzie County, Cheboygan County, Crawford County, Missaukee County, Roscommon County, and Wexford County. The Neutral Chair was advised that a comprehensive proposal, pre-ratified by the Union, would be presented to the Board of Commissioners.

Last Best Offers were filed on July 12, 2012. Although the parties had previously agreed that the term of contract would be 2 years, and the definition of issues in dispute showed that the parties would submit last best offers on a two-year contract (2011 and 2012), the Employer filed an offer which contained a 3<sup>rd</sup> year wage increase. By conference call on July 16, 2012, this matter was addressed. The Chair suggested that the parties might re-submit last best offers for a third year, if the Union concurred in making an offer for a third year. That suggestion was not accepted. Accordingly, the Neutral Chair ruled that the Employer's third year wage offer would be stricken from the proceedings.

With that amendment, the Last Best Offers were as follows:

1. Sick/Accident Disability Weekly benefit. (Command Officers and Deputies units) Unions for both units: Raise cap from \$400 /week to \$550, ef-

- fective on the date of the Act 312 award. County: status quo for both units.
2. Wages first year (Command Officers and Deputies units) 2.5%; County: status quo.
  3. Wages second year (Command Officers and Deputies units) 1.0%; County: status quo.
  4. Detective Clothing Allowance. (Deputies unit): amount (\$200 to \$400) and time of payment (from quarterly to annually) effective on the date of the Act 312 award. County: status quo.

The hearing convened, as scheduled and noticed, on July 19, 2012, at the Kalkaska County Building. The Employer in preliminary business (after the swearing of the Neutral Chair but before the beginning of receipt of evidence) moved to have the panel strike the Police Officers Association of Michigan's 4 last best offers (in the case of the deputies' unit) and the Command Officers' 3 last best offers (in the case of the sergeants and lieutenant unit). The basis of the motion was the prohibition in 2011 P.A. 54 against the parties to a collective bargaining agreement agreeing to or an arbitration panel ordering any retroactive wage or benefit levels greater than those in effect at the expiration of the previous collective bargaining agreement. Sect. 15(b)(2). The Neutral Chair advised that he would take the motion under consideration; and the hearing proceeded to con-

clusion with receipt of evidence on all above-described and numbered items in dispute.

The parties have briefed the issues, with the exception of the Constitutional issue. The briefs were received on or before September 21, 2012, within 180 days of the start of the hearings on March 26, 2012.

#### CONTEXT OF ACT 312 PROCEEDINGS.

As is well known among labor lawyers and practitioners, the context of any Act 312 proceeding is an on-going attempt by the parties to resolve their contractual differences for a period of time often beginning with a past date (the previous contract expiration date) and extending 2, 3 or more years into the future. Bargaining is the preferred mode of settling disputes. Only when bargaining and mediation have not been successful in resolving the dispute may certain employees of police and fire departments petition for Act 312 arbitration. MCL. 423.233.

The caption of the act defines its object:

An Act to provide for compulsory arbitration of labor disputes in municipal police and first department, to define such public departments, to provide for the selection of members of arbitration panels; to prescribe the procedures and authority thereof; and to provide for the enforcement and review of awards thereof.

The Act has developed a considerable jurisprudence in the 43 years since its enactment. Commentators agree that the Act has been successful in averting strikes by public safety employees. Rather, the “alternate, expeditious, effective and binding procedures” of the Act (MCL 423.231) have been invoked and utilized to achieve contracts by compulsion of the duly selected arbitration panels. Over 42 years—until this last year—major changes in the Act have not been deemed necessary, amendments being confined to definitions of emergency service personnel and the like. Then, in 2011, the 96<sup>th</sup> Legislature passed two bills, one (2011 P.A. 116) providing for comprehensive changes in the definitions, timelines for Act 312 panels, and most importantly for the administration of Act 312, a statement that the financial ability of the unit of government to pay, which formerly had been one of 8 factors looked to as the basis for decision, is a factor of predominate significance, when that factor is supported by substantial evidence.

The other law is 2011 P.A. 54, which according to its caption is an amendment to the Public Employment Relations Act (PERA), MCL 423. 201-217. There is nothing in the caption of 2011 P.A. 54 that gives any notice that Sections of Act 312 are being amended.

## CONSTITUTIONAL LIMITATIONS.

The failure of the 2011 P.A. 54 to mention amendment of Act 312 in its caption has Michigan Constitutional dimensions. According to 1963 MI. Const. Art.

IV, Sect. 24:

No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

This Constitutional provision has, of course, also been the subject of a rich jurisprudence. The purpose of a statute must be indicated by its title. In other words, there must be title-object agreement. *Pohutski v. Allen Park*, 465 Mich 675, 691; 641 N.W.2d 219 (2002). To insist on expressing in the title the general purpose of a statute “prevents deceit and subterfuge.” *Pohutski, supra* at 691. The one main general object or purpose of a statute must be comprehensively declared in its title. *General Motors Corp. v. Dept. of Treasury*, 290 Mich. App. 355 at 388, 803 N.W.2d 698 (2010), *app. denied*, 489 Mich. 991; *cert. denied*, 2012 W.L. 171148. This requirement was stated as far back as 1884: “Under our Constitution the title of an act is significant, and usually controlling in determining its scope, and in this case is of some importance. The body of the statute must reasonably harmonize with it...” *McKellar v. City of Detroit*, 57 Mich. 158, 23 N.W.



621 (1884). To the extent that the general purpose of 2011 P.A. 54 is two-fold, to amend PERA and to amend Act 312 and given the fact that the intent to amend Act 312 is not stated in the title, the legislation is constitutionally defective for violating the “title-object agreement” rule.

The body of a statute must not contain provisions not pertinent to the object stated in its title. This is the “only one object” rule of the Michigan Constitution. Thus, in *State Mutual Rodded Fire Ins. Co. v. Foster*, 267 Mich 118, 255 NW 174 (1934) the Supreme Court held that the purpose of the Constitutional provision is “to prevent the bringing together into one bill subjects diverse in their nature and having no necessary connections....” 267 Mich at 121, 255 NW at 175. The object of 2011 P.A. 54, reading the brief text in its entirety is to amend the PERA so as to prevent “public employers” generally --not police and fire departments specifically-- from agreeing to wage and benefit levels retroactively beyond those in effect at the date of prior contract expiration. There is one provision in the statute that seems to depart from this overall purpose. That is Section 15(b)(2) as follows:

(2) Except as provided in subsection (3), the parties to a collective bargaining agreement shall not agree to, and an arbitration panel shall not order, any retroactive wage or benefit levels or amounts that are greater than

those in effect on the expiration date of the collective bargaining agreement.

Subsection (2) invokes Act 312's arbitration panels without saying so. Clearly the limitations of Section 15(b)(2) apply to arbitration panels appointed and functioning under Act 312. The reference to "arbitration panel" cannot, in context, refer to anything else.

But the attempt to amend Act 312 as shown in Section 15(b)(2) above is defective for the reason stated: 2011 P.A. 54 is *about amending PERA*, both in its text and in its title, and is not about amending Act 312; no notice is given to the reader by the title of 2011 P.A. 54 of any intended purpose to amend Act 312. To this extent, there is a second Constitutional infirmity in 2011 P.A. 54. It violates the "only one object" clause of Art. IV, Sec. 24.

These observations are offered because the Neutral Arbitrator has been sworn to uphold the Michigan Constitution in his Oath of Office [Tr. 6]. He has also sworn to apply Act 312 and its amendments fairly and impartially. It is my opinion that to apply the provisions of 2011 P.A. 54, as I will do below, without noting the Michigan Constitutional infirmities would be to do less than my Oath of

Office requires. As peace officers know, one doesn't have to agree with a statute to enforce it.

### DETERMINATION ON THE MOTION.

In conclusion on the Motion, it appears that 2011 P.A 54, notwithstanding its deficiencies noted above, is intended by the drafters to apply to arbitration panels, specifically Act 312 arbitration panels, and prevents them from making retroactive awards on wages or benefit levels that are more than those in effect on the expiration date of the previous agreement, or (Subsection 3) for an agreement that has expired before the effective date of the statute (like this one) retroactive increases in wages or benefits levels are limited to the amounts in effect on the effective date of the statute (June 8, 2011).

The Unions argue that Act 312 was also amended by 2011 P.A. 116, which overhauled numerous provisions of the statute, but left standing the provision for retroactive grant of wages and benefits, Section 10, in part as follows:

Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute or charter provisions to the contrary notwithstanding...MCL 423.240

The overhaul of Act 312 (2011 P.A. 116) was passed on July 20, 2011. Thus, say the Unions, it is obvious that the amendments to Act 312 contained in 2011 P.A. 116 do not disrupt the provision of Act 312, Section 10 quoted above, since the Legislature took a comprehensive look at the provisions of Act 312 in passing 2011 P.A. 116, but chose not to alter the provisions of Section 10. Neither do the provisions of 2011 P.A. 54—passed on June 8, 2011, before 2011 P.A. 116-- alter the efficacy of Act 312, Section 10, say the Unions.

This argument has some appeal to it. But it presumes that a later legislature cannot write a different prescription than an earlier legislature. I decline to draw the negative pregnant inference that the Union invites me to draw here. However, it is obvious that there is a conflict between Section 10 of Act 312 [allows retroactive benefits, any other statute notwithstanding] and 2011 P.A. 54 [parties may not agree to and an arbitration panel may not order retroactive benefits] This conflict must be resolved by the courts. For this case, I choose to apply 2011 P.A. 54 as written.

I will apply 2011 P.A. 54 to find that the wages of employees in the Deputies unit and Command Officers' unit for 2011 are frozen by the wages in effect

under the expired collective bargaining agreements. Similarly, the POAM's and Command Officers' wages for 2012 are frozen.

For the two non-wage issues that the POAM has proposed for the Deputies unit, and the one non-wage issue that the COAM has proposed for the Command Officers unit, the period *of the offer* starts at the date of the Act 312 award.

There is no problem with retroactivity there.

THE EVIDENCE ON WAGE INCREASES FOR 2011 [Deputies and Command Officers units].

The Panel grants the Employer's motion in regard to 2011 P.A. 54.

In addition, the Panel finds that the evidence supports the County's status quo offer for 2011.

The Employer has presented evidence that it has experienced a decline in taxable value of real estate in its jurisdiction as follows:

Year	Taxable Value	% change
2010	730,838,805	-4.9%
2011	725,164,635	-1.0%

[Exh. 26, p. 2]

The County's financial expert, John Axe, in his October 25, 2011, Report to the Board of Commissioners, opines that, "Kalkaska County has experienced a

substantial drop in its tax revenues between the years 2009, when the total taxes collected were \$4,446,930, to 2010, when the collections had fallen off to \$4,085,431. This is a decrease in one year of 8.13%. Over the same period of time, the County's total revenues were down from \$6,609,318 to \$6,557,558, which was a decrease of only .78%" [Exh. 26, p. 2]

The County's figures for personal property taxes have likewise declined. There was a decline in state grants from \$995,000 in 2009 to \$922,000 in 2011 ( a decrease of 7.3%). [Exh. 3].

The County has unfunded liabilities to the MERS retirement system of \$2,136, 730 [Exh. 41]. It has additional unfunded liabilities for retiree health care benefits of \$605,000 [Exh. 26, p. 7]

In order to balance the budget in recent years since 2008 the County has borrowed money from its Tax Revolving Fund, as follows;

2008	\$263,500
2009	\$263,500
2010	\$263,500
2011	\$ 90, 951

[Exh. 40]

In order to balance the budget currently, writes Mr. Axe, the County must "re-duce appropriations for non-mandated services that are not covered either by an

extra voted millage or other outside resources that do not come from the county's General Fund." [Exh. 26, p. 16] He goes on to say that the Board must reduce appropriations to the County Sheriff's road patrol and place extra millage on the 2012 ballot "allowing voters to reinstate this service." [Exh. 26, p. 16] Otherwise, "There is no real chance to operate on a balanced budget in 2012 and beyond." [Exh. 26, p. 16]

The Union presented evidence of wage adjustments in internal employee groups, including the Teamsters, who received a 2.5% increase in 2011, and the 46th Circuit Court unit, which received a 2.0 % increase in 2011.

The Union also presented evidence that the pattern of bargaining among the agreed comparables evidences a 4.32% average increase in 2011 wages over 2009 wages. In the last program year here considered (2011) the amount of the wage increase was 2.0% in Crawford County; 2.5% in Missaukee County; and 3.0 in Benzie County. But Cheboygan and Antrim Counties had no increase for 2011.

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The Panel finds that there is a verified fiscal crisis in Kalkaska County; that it is fueled significantly by the appropriations which have been going to the road patrol service of the Sheriff's office, and that the general need to adopt a balanced

budget necessitates cut-backs in the Sheriff's road patrol. That is, the financial impact of a wage increase granted to Deputies and others in the POAM unit as well as the Command Officers would have a significant impact on the community, a negative impact on the community generally, despite a positive impact for the Deputies and Command Officers. In reliance on Act 312 Sect. 9(2) the arbitration panel finds that it must give the financial ability of the unit of government to pay the most significance and adopt the County's Last Best Offer (Status quo).

THE EVIDENCE ON SICK/ACCIDENT DISABILITY WEEKLY BENEFITS for the period Award to Dec. 31, 2012 (Deputies and Command Officers units).

The two bargaining agents offer a change in the sick /accident disability provisions for a benefit that increases from \$400 per week to \$550 per week. This is a prospective Last Best Offer only: it does not implicate the terms of 2011 P.A.

54. The County offers the status quo.

The evidence shows that 6 of the 7 comparable bargaining units have benefits in the \$500 to \$700 range. Only 1 has less: Roscommon County at \$250 per week. The comparables of Antrim, Benzie and Wexford have sickness/ accident plans that are uncapped. While the Employer points out that some of the compar-



ables do not provide benefits for 52 weeks (as does the Employer), the Unions point out that other comparables have virtually unlimited duration of benefits.

There is obviously some financial impact in buying insurance with an enhanced benefit; but it is felt that the Union-proposed benefit is not such a significant benefit increase as to implicate the predominant factor of the financial ability of the unit of government to pay. Given that comparable sheriff's department units enjoy the enhanced benefits, the panel in reliance on Section 9(d) determines that the POAM's Last Best Offer on this subject for the Deputies unit and Command Officers' Last Best Offer for the Command unit are supported by the Act 312 factors and are adopted as Awards of the Panels.

THE EVIDENCE ON DETECTIVE CLOTHING ALLOWANCE for the period  
Award to Dec. 31, 2012 (Deputies unit).

The POAM offers a change in the Detective's clothing allowance from \$200, payable quarterly to \$400, payable annually. This offer is effective from date of award until December 31, 2012. The County offers status quo.

The evidence shows that Detective clothing allowances in comparable counties varies from \$450 (Cheboygan County) to \$800 (Wexford County) with

the mean being between \$400 and \$525. It appears that this benefit in the comparable counties supports the claim of the POAM. It is not felt that the amount of this benefit (currently applicable to one individual) would so seriously implicate the predominant factor of the financial ability of the unit of government to pay as to invalidate the offer or render its support in the comparable communities less than persuasive. Thus, in reliance on Act 312, Section 9(d) the panel adopts the POAM's Last Best Offer on the subject of Detectives' clothing allowance (including the time of payment--annually).

THE EVIDENCE ON WAGE INCREASES FOR 2012. (Deputies unit and Command Officers units)

The Panel grants the Employer's Motion with regard to 2011 P.A. 54 for the time period January 1, 2012 through date of Award.

In addition, the Employer presented evidence of the continued deterioration of its financial condition. The Taxable Value of property has continued to decline, showing a 0.9% drop for 2012. [Ex. 2]. Personal property tax revenues dropped \$38,500 for 2012 [Exh. 3]. State grant monies have continued to decline, showing a drop of \$68,000 for 2012 [Exh. 3]. Revenue sharing funds have de-

clined \$329,000 for 2012 [Exh. 39]. In addition to revenue declines, the overall financial picture for the County is affected by unfunded liabilities, as shown above.

The Union presented evidence of comparable communities that have increased wages by 2.0% in some cases (Crawford and Missaukee Counties), by 1% in two other counties (Wexford and Roscommon); and by no increase in yet another county (Cheboygan) [Exh. 101]. The Union computes that the average wage increase for the comparable communities for 2012 was 1.2% [Exh. 102].

The Union also presented evidence of wage adjustments in internal employee groups, specifically the 46<sup>th</sup> Circuit Court, whose employees received a 2 % raise in 2012. [Exh. 106].

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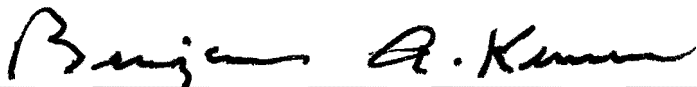
The Panel finds that the fiscal crisis in Kalkaska County continues during the current year; that the need for moderation in wage increases continues unabated; that some cut-backs in the Sheriff's road patrol from some source will probably need to be made if the County is going to balance its 2012 budget; and that the financial ability of the Kalkaska County government to pay any wage increase is severely diminished by its current condition. Given the statutory mandate of Sec-

tion 9(2) the Panel concludes that the financial condition of the unit of government is the most significant factor in the wage picture for 2012 and bars any increase in the Deputies' or the Command Officers' salaries.

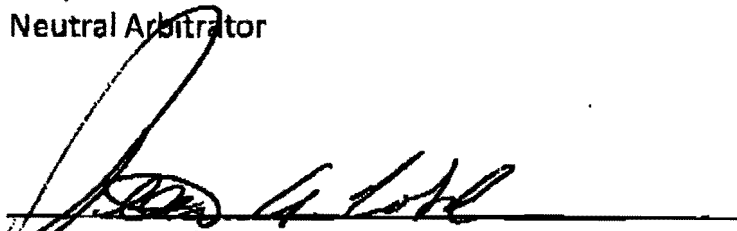
### ORDERS OF THE PANEL.

1. It is the Order of the Panel in the Police Officers Association of Michigan--County of Kalkaska case and the Command Officers Association of Michigan--County of Kalkaska case that the Last Best Offers of the County are accepted for the wage item for 2011.
2. It is the Order of the Panel in the Police Officers Association of Michigan--County of Kalkaska case and the Command Officers Association of Michigan--County of Kalkaska case that the Last Best Offers of the Unions on the subject of Sickness/Accident disability weekly benefits are accepted for the time period date of Award to December 31, 2012.
3. It is the Order of the Panel that the Last Best Offer of the Police Officers Association of Michigan for the Detective Clothing Allowance item is accepted for the time period date of Award through December 31, 2012.

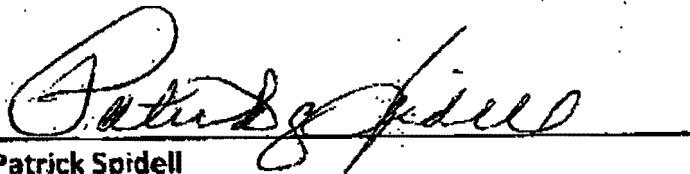
4. It is the Order of the Panel in the Police Officers Association of Michigan--County of Kalkaska case and the Command Officers Association of Michigan--County of Kalkaska case that the Last Best Offers of the County are accepted for the wage item for 2012.



Benjamin A. Kerner  
Neutral Arbitrator



Peter A. Cohl  
Delegate in both cases for the Employer  
Concurring in Orders 1 and 4  
Dissenting from Orders 2 and 3



Patrick Spidell  
Delegate in both cases for the Unions.  
Concurring in Orders 2 and 3  
Dissenting from Orders 1 and 4.

*DISSSENT AS TO DETERMINATION ON MOTION*

Dated: October / , 2012