STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

ALLEGAN COUNTY and
ALLEGAN COUNTY SHERIFF,

Petitioners/Co-Employers

-and-

MERC Case No. L12 I-1158

POLICE OFFICERS LABOR COUNCIL
(Road Patrol Deputies Unit)

Respondent/Union

____/

Panel of Arbitrators

Thomas L. Gravelle, Chairperson
Peter H. Peterson, County Delegate
Thomas R. Zulch, Union Delegate

PETER H. PETERSON, ESQ.
For the Co-Employers

THOMAS R. ZULCH, ESQ.
For the Union

OPINION AND AWARD

INTRODUCTION

The hearing of this matter was held in Allegan, Michigan on June 14, 2013.

One issue is before the Panel: Pension benefits for new hires.

This issue is economic. Under the law, the Panel is required to accept the last offer of settlement ("LBO") made by one or the other party on this issue. In deciding which LBO to accept, the Panel is to consider the applicable factors set forth in Section 9 of Act 312 PA 1969, as amended. Section 9 as amended stresses ability to pay, and adds internal comparability as an express factor:

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

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

(g) The <u>overall compensation</u> presently received by the employees, <u>including direct wage compensation</u>, 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.

(2) <u>The arbitration panel shall give the financial ability of the unit of government to pay the most significance</u>, if the determination is supported by competent, material, and substantial evidence.

STIPULATIONS

The parties have stipulated that the issue before the Panel arises under a reopener provision in their current collective bargaining agreement ("CBA").

The parties also have stipulated that the following counties are comparable counties: Barry, Eaton, Grand Traverse, Kalamazoo, Lenauwee, Ottawa and Van Buren.

FACTUAL BACKGROUND

Allegan County and the Allegan County Sheriff are co-employers. The County is responsible for finances and the Sheriff is responsible for supervising the Sheriff Department. They are referred to below as "the County."

The Police Officers Labor Council (the "Union" or "POLC") represents all deputies of the County Sheriff's Department, excluding command officers, reserve officers, elected officials, dog warden, all part-time employees, including deputies and all other employees of the County.

In the County , there are 11 bargaining units represented by labor organizations:

1. Road Patrol Deputies
2. Telecommunicators
3. Telecommunicator Supervisors
4. Court Hourly Employees
5. Court Salaried Employees
6. Circuit Court Family Court Supervisors
7. Assistant Prosecuting Attorneys
8. Road Patrol Command Officers
9. Corrections Officers
10. Corrections Command Officers
11. General Employees

The County also has non-union professional, administrative employees.

Section 15.7 of the parties' 2013-2014 CBA includes a reopener on the issue of pension benefits for new hires:

> A. Employees shall have the MERS B-4 plan with the 50/25 rider, the 55/15 rider, the FAC-3 rider, the E-2 rider, and an employee contribution of 8% of gross earnings.

> B. The parties agree to <u>a reopener</u> beginning January 7, 2013, regarding pension benefits for new hires. If no agreement is reached by the parties and no valid Petition for Act 312 Arbitration is filed regarding the reopened issue by April 1, 2013, the reopener shall immediately end and the Employer's last proposal to the Union on the reopened issue shall become part of ths CBA. If no agreement is reached by the parties, and a valid Petition for Act 312 Arbitration is filed regarding the reopened issue before April 1, 2013, the issue shall be resolved as determined through the Act 312 arbitration process.

On March 4, 2013, the County filed a petition for Act 312 arbitration on the following economic issue: "Pension benefits for new hires."

At the hearing, the County expressed its interest in issuing bonds "sufficient to eliminate [its] unfunded pension liability," as referred to in Act 329 of 2012. (County Ex. 1, Tab 13, Sect. 518 (4) (b)). Section 518 (1) of the Act provides for such funding

> in connection with the partial or complete cessation of accruals to a defined benefit plan <u>or</u> the closure of the defined benefit plan to new or existing employees, and the implementation of a defined contribution plan, <u>or</u> to fund costs of a county ... that has already ceased accruals to a defined benefit plan ...

THE PARTIES' FINAL OFFERS OF SETTLEMENT (LBOs)

The County's LBO is to modify Section 15.7 by changing subsection "B" to read as follows:

> Beginning on [DATE OF AWARD], the Employer shall have the right to adopt a defined contribution ("DC") pension plan. If such a DC plan is adopted, all employees hired on or after the effective date of the DC plan shall be subject to the DC plan and not the defined benefit ("DB") plan applicable to existing employees. Existing employees shall have the one-time option to switch permanently to the DC plan. The Employer shall contribute a fixed contribution of four percent (4%) of an eligible employee's gross wages toward the DC plan. Eligible employees shall be

permitted to contribute an additional amount up to the limits set forth in the plan. The Employer shall match, on behalf of each employee, up to six percent (6%) of earnings for the plan year for each plan year that such employee has contributed up to six percent (6%) of earnings. Contribution rates will occur in whole percentage amounts only (i.e., 0%, 1%, 2%, 3%, 4%, 5% or 6%).

The Union's LBO is to amend Section 15.7 to read as follows:

A. Employees hired before [insert date of award] shall have the MERS B-4 Plan with a 50/25 rider, the 55/15 rider, the FAC3 rider, the E2 rider, and an employee contribution of eight (8%) percent of gross earnings.

B. Employees hired after [insert date of award] shall have all benefits and riders listed in Section A except the multiplier shall be 2.25% times years of service. The employee contribution shall be eight (8%) percent of gross earnings.

ABILITY TO PAY

Act 312 as amended stresses that the following factor be considered: "The financial ability of the unit of government to pay."

A publication by the County dated 2012 – *A Public Guide to County Finances* – (County Ex. 1, Tab 14) includes the following information:

- In 2012, the County had total general fund revenues of $30.4 million, a 4.9% decline from 2009.

- In 2012, the County had general fund expenditures of $32.4 million, a 2% increase over 2009.

- In 2012, 62.5% of the County's revenues were from real estate taxes and amounted to $19 million, a 7.8% decline from 2009.

• In 2012, "transfers in" to the County included State shared revenue; and was slightly less than in 2009.

• In 2012, the County's general fund balance was $3.44 million. This represents a general fund balance of <u>10.6%</u> of 2012 general fund expenditures and <u>11.3%</u> of general fund revenues.

The *Public Guide* also states that "Allegan County does a very good job of budgeting and has maintained an adequate fund balance for the past five years."

Since 2006, Robert J. Sarro has served as the County Administrator. He testified at the June 14, 2013 hearing.

Mr. Sarro has published a document entitled *State of Allegan County 2012*, dated June 1, 2012. (County Ex. 1, Tab 15). This document includes the following information:

> The third goal is to MAINTAIN OUR FINANCIAL STABILITY.... The County's overall finances continue to be strong and stable as a result of many difficult and responsible decisions. Allegan County maintains an unreserved General Fund-balance of <u>10%</u> of General Fund budgeted expenditures. Additional liquidity is available in the budget stabilization fund which is funded at its statutory maximum of approximately $4.5 million. ...
>
> Historically, the County has experienced an approximate average of 3-5% overall revenue growth with years as high as 7% prior to the latest economic downturn. <u>The past few years have demonstrated unprecedented declines in tax revenues.</u> ...
>
> **2012 Budget**
>
> ... The Board allocated up to $750,000 from the budget stabilization fund to be transferred as revenue into the general fund. ...
>
> ... The final deficit was reduced through collaborative efforts of all departments resulting in a balanced FY 2012 budget. (p. 7).
>
> ...

Financial Challenges:

- Personal Property Tax (PPT) – The potential elimination of PPT would reduce County General Fund revenue by $1.6MM annually.

- State Revenue Sharing – The continued loss or reduction of Revenue Sharing to the Counties continues to be a threat. ...

- Continued decrease in property values and increase in foreclosures.

- Unfunded Mandates:

  ○ Unfunded State mandates combined with population growth have continued to place a high and increasing demand on many County Services. (p. 8).

...

[O]ver the past several years law enforcement agencies across the state have been forced to reduce services. Allegan County itself has gone from a high of 61 law enforcement deputies in 2003 to 46 in 2011. ... (pp. 13-14).

In September 2011, Public Act 152 was enacted, capping public employer contributions to employee health care plans for active employees.

The State of Michigan recently amended the law governing personal property taxes. It likely will be detrimental to local units of government, including the County.

A general fund balance of 10% (as here) is around the minimum balance as a sign of fiscal stability.

The Panel concludes that the County and its employment groups appear to have worked together to keep the County's overall finances in acceptable condition.

THE EXISTING DB PLAN

Two employee groups – the Union and the Sheriff's Road Patrol Command Officers – have a defined benefit ("DB") plan. In 1999, a defined contribution ("DC") plan replaced the DB plan for new hires in the County's other bargaining units, and for new hires in non-union positions. All plans are administered by the Municipal Employees' Retirement System of Michigan ("MERS").

The MERS *Annual Actuarial Valuation Report December 31, 2012 Allegan County* (County Ex.1, Tab 11) includes the following information:

• For 2013 and 2014, the County's "minimum required employer contributions" to the DB plan for the Patrol Union members is 27.88% of wages. (For Command, the percentage is 43.13%.) The Report also states: "The above employer contribution requirements are in addition to the member contributions, if any, shown in Table 2." [1] (p. 5).

• The 2012 funding experience was a 5.4% return on investments which was less than the 8% actuarial assumption: "On average this will result in increases in computed employer contributions." In addition, "[t]he ratio of the Valuation Assets to the Actuarial Accrued Liability for Allegan Co in aggregate is 71%; last year's ratio was 74%." (p. 6).

• The Patrol DB plan is only 61.4% funded, with unfunded accrued liabilities ("UAL") of $6.35 million. (For Command, the numbers are 59% and $5 million.) (pp. 19-20).

• Countywide, UAL is $16.8 million. (p. 21).

• Between 2006 and 2012 UAL has almost doubled, with UAL in 2012 being 321% of County payroll. (p. 22).

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[1] Table 2 shows an employee contribution rate of 4.91%. In their 2013-2014 CBA, the parties agreed to raise the employee contribution rate to 8%.

COMPARABILITY

Act 312 requires that panels compare the compensation of other employees of the County and of comparable employers. The key comparison before the parties involves pension plans.

Internals: As explained by County Administrator Robert Sarro, prior to 1999 all County employees had a DB plan for retirement. In 1999 this was changed for new employees to be hired in nine of the eleven bargaining units and in the non-union area. In other words, except for the Patrol and Command bargaining units, new employees are no longer covered by a DB plan but instead have a DC plan.

The POLC Command CBA contains the following "me too" provision:

> If an employee is hired into this bargaining unit from outside the County, and new hires into the POLC Deputies Unit are covered by a plan other than a defined benefit plan (i.e., defined contribution or hybrid plan) at that time, the employee will be covered by a plan of the same type with equivalent provisions.

Externals: County Exhibit 1, Tab 7 is a three-page document showing the retirement plans for road patrol deputies in the parties' seven stipulated comparable counties. This exhibit shows the following:

• Four of the seven comparable counties have DC plans for road patrol deputies hired after a certain date: Grand Traverse (since 2000); Kalamazoo; Lenawee (since 2005); Ottawa (current). The maximum employer contribution for these DC plans is: 9% Grand Traverse; 5% Lenawee; 6% Ottawa. Although Kalamazoo is currently contributing 16%, it is seeking to contribute 10% on base wages for new hires.

• The County's proposed 10% maximum County contribution compares favorably with the above comparable counties. Further, its contribution (together with Grand Traverse, Lenawee and Ottawa) is based on gross wages rather than base wages.

• Van Buren County has a DC plan for employees hired before 2001, and a DB plan for employees hired in 2001 or later. The DB plan has a 2% multiplier.

• Barry County has a hybrid (part-DB, part-DC) plan for new employees hired beginning in 2012.

• The seventh comparable – Eaton County – has a DB plan to which employees contribute 13.7% of their wages.

REASONS

The Panel offers the following reasons in support of the County's LBO:

● The County's DB plan unfunded accrued liability is very large ($16.8 million) and is increasing. (County Ex. 1, Tab 11, pp. 22-23).

● While the County has the financial ability to meet the terms of the Union's LBO (at least for the first few years), the County's LBO will promote fiscal stability and long-term financial planning.

● The County intends to issue bonds to eliminate its unfunded pension liability under Public Act 329 of 2012.

● Other than the POLC Deputies and Command, County employees hired since 1999 have had a DC plan rather than a DB plan. New employees covered by the DC plan include the POLC Corrections Officers in the Sheriff's Department.

- On balance, the comparable counties stipulated by the parties support the County's LBO.

- The County has prepared a projection based on somewhat conservative assumptions (e.g., 6% annual rate of return, 1% annual wage increases) that with maximum contributions under its LBO (County 10%, employee 6%) at the end of 30 years, the new employee will have accumulated more than one million dollars. (If a new employee were permitted to contribute more, the accumulation would be higher.)

- County Sheriff Blaine Koops has stated his support for the Union's LBO because it will help in recruiting and retaining new patrol deputies, and will insure a satisfactory pension when they retire, optimally in their early 50s. Perhaps a more direct factor employees consider when deciding whether to accept an offer of employment is wages. A chart prepared by the County shows that the County is at a competitive advantage on the issue of wages. (County Ex. 1, Tab 8). This exhibit shows that among the comparable counties, the County ranks third based on road patrol deputy maximum annual wage base. For the County, the amount is $57,396 whereas the average of the seven comparable counties is $53,359, a differential of about 8%. "Overall compensation ... including direct wage compensation" is a Section 9 factor. Even in the public sector, DC plans for new employees are becoming increasingly common.

AWARD

The Panel adopts the County's LBO.

PANEL SIGNATURES

Case No. L12 I-1158

Dated: October 1, 2013

Thomas L. Gravelle
Thomas L. Gravelle, Chairperson

The Co-Employers *concur.*

Dated:

/s/
Peter H. Peterson

The Union *dissents.*

Dated:

/s/
Thomas R. Zulch