

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
EMPLOYMENT RELATIONS COMMISSION

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In the Matter of Arbitration  
Under Act 312

Ionia County,

Employer,

-And-

MERC Case No. L12 D-0515

Police Officers Association of Michigan

Union.

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**OPINION AND**  
**AWARD**

Chairman of the Arbitration Panel:

Kenneth P. Frankland

County Delegate:

Sherry Katz-Hedrington

Union Delegate:

James DeVries

Representing County:

Sherry Hedrington

Representing Union:

James DeVries

Pre-Hearing Conference:

November 30, 2012

Hearing Held on April 10, 2013,

Briefs Received May 31, 2013

Opinion and Award: June 10, 2013

**STATEMENT OF THE  
CASE**

The Police Officers Association of Michigan (Union), filed a petition for arbitration pursuant to Act 312 of Public Acts of 1969 on October 29, 2012, regarding the expiring collective bargaining agreement with the County of Ionia – hereafter “County” (The unit consists of all full-time deputies). On November 20, 2012, MERC appointed Kenneth P. Frankland as the impartial arbitrator and Chairperson of the panel in this matter. A pre-hearing conference was held on November 30, 2012, and a report was generated by the Chair the same day. During the pre-hearing conference, the parties agreed there were only two issues, duration and wages. The parties ultimately agreed upon five comparable counties: Barry, Gratiot, Isabella, Newaygo, and Montcalm. Evidentiary hearing was held on April 10, 2013. Briefs were submitted on or after May 31, 2013 and this Opinion and Award ensues. As required by the Act, on economic issues, the panel is required to adopt the offer of one of the parties that most closely conforms to the requirements of Section 9(1).

**STANDARDS OF THE PANEL**

Act 312 of 1969, MCL 423.231, as amended by Act 116 of 2011 specifically

§9(1), contains nine factors upon which the panel is to base its opinion and award. Those are:

- (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, 2011PA 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 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 during the pendency of the arbitration proceedings;

(i) Other factors that 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.

(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.

Act 312 now requires that Last Best Offers be presented before the evidentiary hearing starts. The parties agreed to present two and three years offers and allow the Panel to select the duration and then select the best offer for each year, not as a package. The offers are as follows:

**County**

**Two Year Contract**

**Two year contract from January 1, 2013, through December 31, 2014.**

**A 2% bonus (not included in the wage scale) for both 2013 and 2014**

**Three Year Contract**

**A three year contract term from January 1, 2013, through December 31, 2015.**

**A 2% bonus (not included in the wage scale) for both 2013 and**

**2104 (the same as the COAM's contract). 0% for 2015 subject to a wage re-opener.**

**Union**

**First year (2013)**

**Effective the date of the award, all members of the collective bargaining agreement shall received a one-time lump sum payment equal to three percent (3%) of the 3 year step of a deputy.**

**Second Year (2014)**

**Effective January 1, 2014, a two percent (2%) increase to the wage scale at all steps for the classification of deputy.**

**Third Year (2015)**

**Effective January 1, 2015, a two percent (2%) increase to the wage scale at all steps for the classification of deputy.**

**Award on Duration**

The Parties could not agree on the length of a contract and the Panel is to determine that issue and will do so as condition precedent to consideration of wages.

While there is merit in either two or three years, the panel chair believes that the Section 9 factors suggest a **TWO YEAR** contract is best in this case.

While the chair generally supports the view that three years is typically the norm for public sector collective bargaining agreements, this may an atypical time in which to decide this issue. With the new amendments to Act 312, recent legislative

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enactments relative to health benefits and the adverse economic conditions relative to available revenue, this truly is not a normal environment.

Two new components in the Act 312 analysis, specific reference to internal comparables and the directive to give significance to ability to pay cast a very long shadow over 312 proceedings. Shorter duration seems logical to allow time for uncertainties.

The chair believes that in the context of duration, it is often best to look at internal units than to look only at external units. It is better to have as much consistency as possible when contracts expire for planning and budgeting purposes. It is better to compare what is happening with all other units within the County than to rely only upon external comparables as the best barometer.

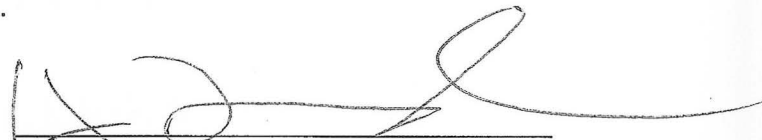
Of the nine internal unionized bargaining units, there is but one internal unit that has a contract beyond 2014, COAM, Deputies Command unit. (Expires December 31, 2015, E-16) In fact, the two most recent internal contracts are for two years. Two units, whose contracts start in 2012, are two years, expiring in 2014. Three units whose contracts start in 2013 are for one year, expiring in 2014. Thus, there has been a concerted effort to have as many internal contracts as possible expire in the same year, 2014. This argues well for this contract to also expire in 2014. Keeping the majority of Act 312 eligible units within reasonable expiration dates of each other can be desirable to avoid the whip-sawing effect of an earlier agreement/arbitration affecting other units. This argues in favor of a two year contract expiring in 2014 for this unit to avoid whip-sawing to the advantage or detriment of either party.


the parties apparently agreed to a one year contract.

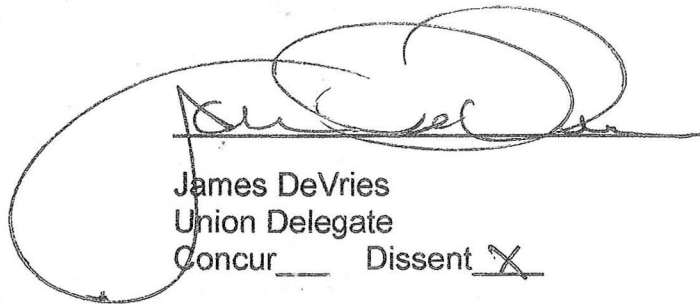
The County alleges an inability to pay for wages built into steps and offered information in support of that argument. However, little or no financial information was provided for 2104 or 2015. Without certain financial information as to the budget and the impact wage increases may have in the third year, it seems wise to err on the side of caution and opt for a two year contract. Frankly, it may also be in both parties' interests to have a better understanding of all the relevant economic factors as they may be in 2013-14 than exist now. There is obvious risk in just going with two years but on balance the chair believes that there is more risk and less certainty dealing with a third year of a new contract.

For the reasons stated above, the chair finds that a two year contract more closely conforms to the Section 9 factors.

Dated: June 7, 2013

  
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Kenneth P. Frankland  
Chairperson

  
\_\_\_\_\_  
Sherry Katz-Hedrington  
County Deleagate  
Concur  Dissent



James DeVries  
Union Delegate  
Concur \_\_\_ Dissent X

### Ability to Pay

The panel asked the parties to submit a cost analysis of their wage proposal as Section 9(a) (i) requires the panel to determine the financial impact on the community of any award.

The County states that 2% bonus, would cost \$14,790 per year without specifying whether based upon base or top pay of a deputy and how many deputies in the unit.

The Union, per an exhibit attached to its Brief, states the first year at 3% would cost \$1,372 per deputy at the top pay of \$45,739 x 13 deputies or \$17,836. When FICA and pension costs are added, the total is \$1,619 per deputy or \$21,047. My computation of the difference between the proposals is \$6,257. They claim that the County is using base pay and the Union top pay thus a small difference to begin with.

The Union does not indicate the actual cost in the second year as they again argue that the County is using base pay and the Union top pay. But they assert the difference should be about the same.

These numbers are not staggering and should be kept in mind as the reader follows the discussion on ability to pay.

The Panel recognizes that this proceeding is conducted after passage of several amendments to Act 312. In particular, the legislature added a new



subsection (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.”

Further, the legislature identified criteria for a panel to use in this context.

(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, 2011PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government’s expenditures or revenue collection.

Various views have been expressed as to the legislative intent but several observers have thought that the amendments were crafted to cure a perception that Panels may have awarded benefits in the past without considering the future financial impact of those awards as to available revenue streams. In other words, Panels are now to look at proposed benefit enhancements and actually determine, if awarded, that those benefits are affordable within projected employer revenue. The legislature, as viewed by some, wanted clear criteria and direction to Panels when the Act 312 proceedings involved proposals for benefit enhancements.

The County is not much different from other municipalities and school districts that must rely upon the property tax as the largest source of revenue. All are suffering from decreased revenue as the tax base has eroded since 2008 and combined with provisions of the Headlee Amendment the task to have a balanced budget as mandated by law, is

daunting. Statutory State revenue sharing has also been curtailed or eliminated in some cases. Most entities are making expenditure cuts, asking for concessions from Union contract terms and then using Fund balances, if available, to obtain the balanced budget. Ionia County is no different and has employed the same strategies.

I have carefully reviewed all the exhibits and note that the only financial information provided is the financial audit as of December 31, 2011. (E-2(a)) Budgets for the years at issue are not part of the record nor prior year audits for historical perspective. Thus, we are dealing with a paucity of and relatively stale financial data. But, E-2(a) is chock full of information useful to the Panel.

The taxable value for property taxes in Ionia County in 2011 was \$1,495,878,300 [it is noted that E-8 shows taxable value at \$1,485, 614, 584] and 4.6434 mills were levied (See, note K, p. 38) for general operating producing \$ 6,816,064 or 52% of total revenue of \$13,106,184. Page 47 indicates this was \$252,871 more than was budgeted. Ms Hurlburt testified that property taxes make up 58-59% of the County revenue. Union Exhibit 4 shows that Ionia was able to assess 6.77% in new tax revenues in 2010 through 2013.

E-5 shows that revenues fluctuated but remained relatively stable; 2008 - \$12,244,939; 2009 - \$12,964,109; 2010 - \$12,001,946 and 2011- 12,630,768. Viewing the County web page of public documents provides but one page regarding budget revenues. A document, calculated as of 6/30/2012, states the amended 2012 budget had \$11, 867, 531 in revenue and 2013 recommended budget \$11,631,900. While revenues seemed consistent, expenditures rose each year producing deficits in 2008 of \$66,904; 2010 of \$660,874 and 2011 of \$293,164. There is no record information as to 2012 budget or projections for 2013 or 2014. To achieve the legal mandate of a balanced budget, transfers

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from the Fund Balance were made each year.

As the note at page v of E-2(a) states, “a common financial management practice is to assign a portion of fund balance toward maintaining current services during unexpected, catastrophic events. A common suggested benchmark is 15 to 20% of expenditures, or about two months of services. At \$3.31 million, the Unassigned Fund Balance in the General Fund represents a 48% of the total Fund Balance.” Even with these transfers, Ionia still had a healthy Fund Balance as of 2011. Ionia claims that any increased expenditure without compensating revenue would cause reduction in services if not included in the budget. Yet, the budgets are not in the record. It is true that state revenue sharing has declined and property values have declined. But Ionia is postured in good position as E-2(a) states:

Net assets of the County increased by .52 percent during 2011  
The ratio of Current Assets to Current Liabilities is over 11 to 1  
The current debt load is only 10% of what is legally permitted  
Standard and Poor's affirmed the bond rating of AA

Further, E-2(a) at v states:

The County of Ionia continues to be committed to remaining financially strong. Steps are being taken to forecast our financial future, to implement cost-saving measures and maximize revenue sources.

Since the legislative amendments require consideration of unfunded liabilities, the County presented an argument regarding MERS underfunding. At Brief, p. 8, it claims that E-4 shows all plans are seriously underfunded with the exception of Command Officers. Yet, a review of Table 13 in E-4 shows the least underfunded is Administration at 67.4% and the overall funded percentage is 84.6% leaving 15.4% unfunded. The least funded, Administration has only one member and thus skews the average. If that unit was removed,

the average funding would be much higher. The panel is at a loss to discern the accuracy of the County claims of excessive underfunding. Frankly, this County has as good, or better, funding levels than many other entities based upon the arbitrator's experience in other Act 312 proceedings. Additionally, E-3, the Valuations for 2011, show about the same values for that year. It should also be mentioned that while the unfunded pension liability seems to be a large number, \$942,194 as of 2011, this is known as the UAAL and actuaries amortize the UAAL usually over 18-20 years when adding that portion to the normal rate to determine the annual County contribution rate. Thus, while it is an accurate number, it does not mean that the County must pay off that unfunded liability any time soon.

Very little attention was paid to retiree health care cost at the hearing and that category is usually the largest of the OPEB numbers. OPEB is not on the balance sheet and these numbers are usually not well known nor understood. The balances are usually amortized so that catching up does not have to occur immediately. Here, E-7 has a "post Retirement Benefits" column and that usually means health OPEB. It is uncertain how those numbers in that column impact on the County's ability to pay. The compensated absences column of E-7 represents the leave balances at the year end. Again, this number is large but is booked as accrued liability but may not be payable until the members actual leave the unit.

The Panel has tried to digest the record and the above is just a snapshot of the evidence produced. The Panel believes it has given Section 9(2) appropriate significance based upon the evidence presented at the hearing and in the Briefs. The Panel is comfortable in saying that Ionia is extremely well run and has budgeted as well as can be expected given the economic turmoil and decreasing revenues from the property tax. It has

a good bond rating a measure of the community's fiscal strength and a testament to good stewardship and its bonded indebtedness is relatively small.

This is not a County on the brink of an emergency manager, far from it and not even close. In the Panel's view this is not the kind of case envisioned when Act 312 was amended and ability to pay was identified as the most important issue.

Ability to pay is always important but on this record the Panel finds that Ionia does have the wherewithal to finance what will be awarded herein. The Union illustrates this point by observing that the County offered two units, correction officers and correction supervisors, 2% bonuses for 2013 even though a wage freeze had been bargained for that year. If money is available for them, why not for us? While specific budgets are not part of the record, the County has a pattern and plan to pay for the costs of this contract and other units and has chosen to do so by use of the Fund balance to account for any deficits, clearly one component of ability to meet expenses. The Ionia Fund balance is well over the suggested benchmark and provides significant comfort in the event that other cost-cutting measures do not create a balanced budget.

This is not an inability to pay situation but rather desire to shift to a different methodology when paying wage increases, namely bonus or lumps sums not tied to step increases. This decreases the payouts on other benefits that are wage dependent, e.g. the County contribution toward pension liability, overtime pay, vacation pay, holiday pay. If the base always stays the same, the County avoids these "hidden" increases. While this is a sound accounting strategy, it may conflict with Act 312 ability to pay criteria. This case is a matter of competing views of how cost savings may be achieved not whether the assets are available to pay.

Applying Section 9 (1) a and 9 (2), the Panel finds that the County has not sustained its burden to show an inability to pay the increases proposed by the parties for two years of wages. Rather, the County does have the ability to meet the relatively small increases that are at issue.

### **DISCUSSION of ISSUES**

#### **Issue 1 - Duration**

This issue was discussed earlier and a two year contract from January 1, 2013 to December 31, 2014 was AWARDED.

#### **Issue 2 – Wages**

##### **Year One, 2013**

The County proposes a 2% bonus not included in the wage scale whereas the Union proposes a 3% bonus to be paid on the top pay at step 3.

The Union pegs the cost of its proposal to be \$21,047 including FICA and County pension contribution. The formula is top pay at step 3 as of 1/1/10, \$45,739 x 3% = \$1,372, plus 7.65% FICA of \$105 and pension contribution of 10.38% or \$142 adding up to \$1,619 x 13 deputies.

The County simply states the cost of a 2% bonus is \$14,790 without explanation. However, E-9 does show the \$14,790 figure and the arbitrator notes made on E-9 at the hearing says this number includes FICA and pension costs. Further, the current contract table of wages shows at 3 years, apparently the top step, the hourly rate is \$21.99. The same hourly rate of \$21.99 was used by the County in

E-11 that purports to be an analysis of the maximum base rates in the external comparables. This number was also used in E-22 when comparing cash compensation. The Union claims the County number is on the base wage, theirs on the top step. This may be a distinction without a difference. There is no indication if the Union and County agree on the membership of the unit and the record does not include a seniority list. E-3, MERS Valuations as of December 31, 2011 lists 14 active members; the chair assumes that the Union does know the correct number of members in the unit as being 13.

Irrespective of the methodologies employed, the cash difference would seem to be less than \$7,000.

The County argues that internal comparability favors its offer as all other collective bargaining units received a 2% one-time wage bonus for 2013 and the COAM unit has accepted the same for 2014. The County also argues that this unit receives some of the highest benefits in the County citing Uniform and Clothing allowances. (E-20) The unit also pays less in pension contribution of 3% versus an average of 4.05% for other units.

As to external comparability, the County argues this bonus would place this unit within .36 per hour of the average wage of the comparables. (See, E-11). The overall benefits and wage package is superior to the comparables as most don't pay uniform allowances and this unit receives 13.5 paid holiday time versus an average of 11 in the comparable counties. (E-14). Further, this unit pays 3% pension contribution while the average is 5.5% in the comparables.

The Union presentation centers on U-4 that illustrates that the Ionian top step

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since January 1, 2010 has been \$45,739 and four external comparables made more on that date. The average in the comparables was \$46,236 at that time, \$497 greater than this unit. As of January 1, 2013, only Gratiot was making less than Ionia. The average difference in the comparables had grown to \$1,377 or 3% greater than Ionia. Three received increases to their wage scale from 2010 to 2012 and Isabella received a bonus payment of \$250. January 1, 2013, Newaygo and Montcalm received wage increases and Isabella received an Act 312 Award of \$900 bonus.

The Union also states that the cost to Ionia will be minimized as four of the deputy positions are fully funded from other sources and another position is \$20,000 underwritten by participation in a Central Michigan Narcotics team.

The Union argues that the County contention that total compensation for this unit per E-13 is superior to external comparables is flawed. It claims that the allowances in the exhibit are not the amount given to any of externals for uniforms but is in addition to the uniforms issued to a deputy. Gratiot receives \$150 for footwear and Isabella receives \$200. These are cash disbursements subject to income tax.

The Panel must consider the internal and external comparability and total compensation factors in Section 9 to resolve this issue. In doing so, the Panel is free to give greater or lesser weight to any individual subsection. The monetary difference between 2% and 3% is nominal, less than \$7,000. In this context, the Panel is impressed by the Union argument that this unit has been at the top step of \$45,739 since January 1, 2010; was behind comparables communities in cash wage and has fallen further behind since.

This fact is compelling but what is the best way to narrow the gap, if that is



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possible in a two year contract. In the first year, the parties are limited in that a Panel cannot make a retroactive pay increase and thus the parties here and in almost all other 312 eligible units receiving awards, have devised a bonus or lump sum approach in the first year of an expired contract. A bonus that does not change the steps or base does nothing to lessen the difference between these deputies and those in external comparables. The steps would remain the same. The Panel is of the opinion that the Union offer, stated as a bonus and not applied on each step, is necessitated by Act 54 of 2011 constraints. The Union simply would like a few more dollars in the members' pockets in year one given they have had no pay increases in the expiring contract.

The most relevant Section 9 factor in this first year of the contract is internal comparability. **The 2% bonus approach has been accepted by all the other bargaining units in the County.** This is extremely significant. Maintaining internal consistency is extremely important and recent amendments to the Act to specifically reference internal comparables shows the legislative intent to emphasize that factor. The Panel is impressed with this fact and it would not seem wise to deviate from this internal pattern and especially if the superiors of the deputies have accepted the 2% bonus. It is usually not wise policy to give subordinates a larger percentage boost than the bosses even if the bosses have a larger wage scale upon which to base the lower percentage increase.


The current contract has no pay increases in any year and why this is so is not explained in the record. If this was a Union concession what did the Union get in return? A bonus will not change the top pay and will still place this unit inferior to the


external comparables but internal consistency trumps external considerations in this first year. However, the second year will be a different story.

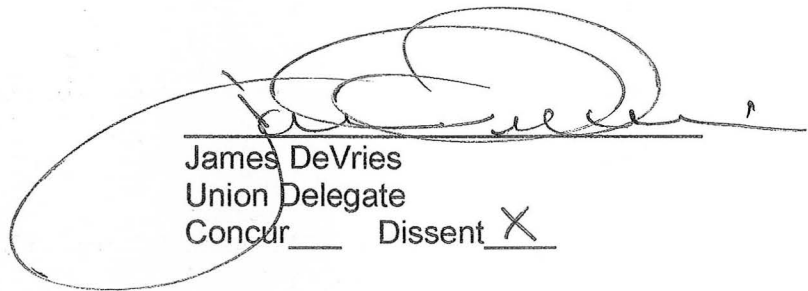
For the above reasons, the Panel adopts the County offer of a 2% bonus not included in the pay scale as being more consistent with the pertinent Section 9 factors.

The County offer is AWARDED.

Dated: June 10, 2013

  
\_\_\_\_\_  
Kenneth P. Frankland  
Chairperson

  
\_\_\_\_\_  
Sherry Katz-Hedrington  
County Delegate  
Concur  Dissent

  
\_\_\_\_\_  
James DeVries  
Union Delegate  
Concur  Dissent

**Year 2 – 2014**

The County offer is a 2% bonus not included in the wage scale; the Union offer is 2% increase in the wage scale at all steps.

In the second year of the contract, the Panel is not constrained by Act 54 and may consider an offer that includes an increase at each step of the wage scale. All of the information above applies here. Particularly important is that these deputies have

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worked since January 1, 2010 at the same top wage of \$45,739.

The Ionía top rate is 5<sup>th</sup> out of six, only Gratiot paying less as of December 31, 2012. Montcalm is the leader and is at \$51, 054 on 1/1/13 and will get 1% increases through 1/1/15 and be at \$51,565. (See, U-1, U-3). A 2% increase will bring Ionía to \$46,653 at the top rate but this will still make Ionía 5<sup>th</sup> and still almost \$1560 behind the next closest, Isabella.

The pattern of increases in the external comparables is sketchy with no significant wage increases other than 2% in Newaygo in 2011 and 2% and 2.75% in Montcalm in 2011 and 2012. Barry has a wage reopener in 2014, Isabella has the \$900 bonus for 2013 but that contract expires the same year. Thus, other comparables will be considering wage proposals and the possibility of even further gaps may develop unless something is done to narrow the gap in Ionía in 2014.

Internally, only the COAM unit has an increase for 2014, 2% not included in base wage. Four units have wage reopeners in 2014. Central Dispatch has 0% for 2014. Contrary to 2103, there is no significant precedent internally for or against the proposals on the table. Thus, the Panel will give little weight to internal comparability.

As to total compensation, the Panel is also not persuaded that this factor would outweigh the external comparable factor. The County produced several exhibits purporting to show that with total compensation included, this unit is not far off from the external comparables. The Panel gives those exhibits little weight in this discussion as in many cases, it is as the Union suggests, "picking cherries". It is always hard to do comparisons as it is akin to comparing apples to oranges.

There are so many variables that to just pick numbers from contracts and put

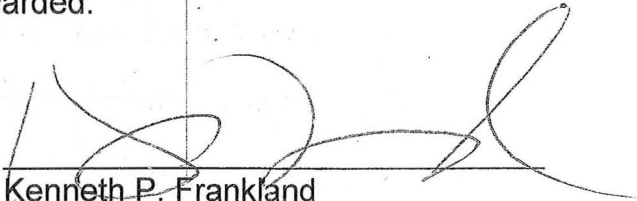
them on a table and compare does not lend much evidentiary value in the eyes of the chair. For example, The County argues the most critical component of overall compensation is the pension benefit and that the 3% contribution level of this unit is below the average of 5.5% in the comparables and arguably puts more money into their pockets. Well that may be the rates in the contracts, but, there is no explanation for the 3% level – what was the basis for that level? why isn't it higher? Why has the County not negotiated for more? And, we have no information as to how and why the various rates were negotiated in the comparables.

Further, the County argues that it has a defined benefit plan and the comparables do not save one, thus increasing Ionia's costs if increases in steps are granted. Yet, E-15 shows that Montcalm has a continuing defined benefit by ordinance and the other four still have defined benefit plans for older members as the defined contribution plans only apply to new hires after certain dates. And we have no information on how many new hires there may have been in any of the comparables and one could reasonably suggest that, like Ionia, many deputies as still in the defined benefit plan.


When all this information is distilled, the Panel believes that the Union offer more closely comports to the Section 9 factors and gives the greater weight to the external comparability factor.

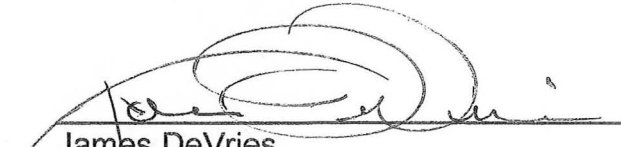
Accordingly, the Union offer is Awarded.

Dated: June 10, 2012



Kenneth P. Frankland  
Chairperson

  
\_\_\_\_\_  
Sherry Katz-Pedrington  
County Delegate  
Concur  Dissent

  
\_\_\_\_\_  
James DeVries  
Union Delegate  
Concur  Dissent