

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

PETITIONING PARTY:

Capitol City Labor Program, Inc.
Supervisory Division
Ingham County Sheriff's Supervisors (Union)

and

RESPONDING PARTY:

Ingham County Board of Commissioners and
the Ingham County Sheriff (Employer)

MERC CASE NO. L15 H 0958

COMPULSORY ARBITRATION

Pursuant to Public Act 312 of 1969, as amended
[MCL 423.231, *et seq*]

Arbitration Panel

Chair: Steven B. Stratton
Employer Delegate: Travis Parsons
Union Delegate: Thomas Krug

Advocates

Employer Advocate: Bonnie G. Toskey
Union Advocate: Steven T. Lett

PETITION FILED:	March 24, 2016
PANEL CHAIR APPOINTED:	April 7, 2016
SCHEDULING CONFERENCE HELD:	April 19, 2016
HEARING DATE HELD:	August 2, 2016
AWARD ISSUED:	November 21, 2016

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WITNESS LIST

1. Thomas Krug for the Union
2. Travis Parsons for the Employer
3. Timothy Dolehanty for the Employer

1. INTRODUCTION AND BACKGROUND

This compulsory arbitration proceeding is between the COUNTY OF INGHAM (hereinafter “Employer”), the INGHAM COUNTY SHERIFF and CAPITOL CITY LABOR PROGRAM, INC., SUPERVISORY DIVISION, INGHAM COUNTY SHERIFF’S SUPERVISORS (hereinafter “Union”).¹

The Employer and Union are parties to a collective bargaining agreement (CBA) dated January 1, 2015, through December 31, 2017. This dispute arises pursuant to a 2016 Wage Reopener contained in Article 20, Section 4, of the CBA (at page 32). The parties entered negotiations on the wage reopener and failed to reach agreement. A bargaining session was conducted on February 18, 2016, with the assistance of a state-appointed mediator; yet, the parties were still unable to reach agreement. The Union filed a petition under Act 312 for binding arbitration on March 24, 2016. Steven B. Stratton was appointed as the impartial arbitrator and chairperson of the arbitration panel by letter dated April 7, 2016. A scheduling conference was held on April 19, 2016, followed by a hearing on

¹ The Union was formerly known as the Fraternal Order of Police, Capitol City Lodge #141.

August 2, 2016. A transcript of the hearing has been produced. The parties have each filed helpful post-hearing briefs. Arbitration panel delegates designated by the parties include Thomas Krug on behalf of the Union and Travis Parsons on behalf of the Employer.

Ingham County is the seventh largest County in the State of Michigan and is located in the southern one-half of Michigan's Lower Peninsula. The County population is approximately 289,895. Ingham County has within its borders the state capitol and the associated departments of the State of Michigan which call Lansing and the surrounding areas home. It is also the home of Michigan State University, Lansing Community College, Davenport University, Western Michigan Cooley School of Law as well as several satellite colleges and universities in the area. As a result of the various entities set forth above being located in Ingham County the population increases during the day which increases calls for service by public safety and other essential services.

Ingham County Sheriff's office is located in the city of Mason which is the County seat of Ingham County. Historically, Ingham County and in particular its largest city, Lansing, was largely dependent on an industrial base consisting of automobile industry and its suppliers, including Motor Wheel, Oldsmobile and Fisher Body Corporations. These companies which served historically as the tax base for Ingham County are literally no longer in existence.

The Sheriff's office has approximately 155 sworn and non-sworn members. The Union represents 24 supervisors of the Sheriff's office including Captains, Lieutenants and Sergeants. Three of the supervisors are paid through contractual services and are not paid from the County's general fund. The contractual services are with Delhi Township. The County's fiscal year runs from January 1 through December 31.

2. STATUTORY CRITERIA

Decisions of this Panel are premised upon the criteria set forth in Section 9 of Act 312. That Section, in its entirety, provides as follows:

Sec. 9. (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) 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 while the arbitration proceedings are pending.

(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.

Statutory Factors That Have Limited or No Significance in This Dispute

Since the Act requires examination of specific criteria when determining the outcome of these disputes, we can begin by eliminating the criteria that have no real significance in this dispute. By that I mean there was no testimony or evidence offered by the parties to cause any examination or consideration of these criteria. Therefore, it is my opinion that the following statutory factors can be eliminated as having no real significance to resolving this dispute:

Sec. 9(1) (a) (iv)

Sec. 9(1) (d) (ii)

Sec. 9(1) (f)

Sec. 9(1) (h)

Sec. 9(1) (a) and 9(2) - Ability to Pay

Since Sec. 9(2) of the Act requires the *“arbitration panel shall give the financial ability of the unit of government to pay the most significance,”* it follows that we resolve that criterion first. After all, if it’s found that the Employer does not have the ability to pay, the remaining factors are essentially rendered moot.

Employer Position- Ability to Pay

The County argues that the Union has failed in its burden to prove the County has the ability to pay the Union’s last best offer. The County puts great weight in the testimony of County Controller/Administrator, Tim Dolehanty and the applicable exhibits. The primary source of funding for positions in the Union’s bargaining unit is the general fund. Dolehanty addressed the general fund budget stating the fund for the 2015 budget was approximately where it was in 2008. The County argues that its “Fund Balance” is being substantially reduced every year. It was 34 percent of expenditures in 2015. It would be reduced to 29.6% in 2016 and it’s projected that it will be reduced to \$21,870,284 or 25.6% of expenditures in 2017. By the early 2020’s, Dolehanty projects the County may have depleted reserves of any kind if they just continue as is (T157). While there are no projected staff reductions for the 2017 budget, department heads have been notified that the 2018 budget may include budget concessions (T158). The County does not have more in assets than obligations as assets include all capital owned by the County such as buildings, roads,

vehicles. Dolehanty testified that an Award in favor of the Union would likely be funded from the Contingency Fund which is funded at \$350,000 to pay for unanticipated expenses that come up during the budget year (T176 and Employer Ex. 26). He stated that “unplanned expenses, small expenses” come out of the contingency fund. Finally, Dolehanty stated that he had not calculated the cost of the Union’s proposal (T178).

Union Position- Ability to Pay

The Union argues that the Employer has the ability to pay for the Union’s proposal. Union witness Thomas Krug, Executive Director for Capitol City Labor Program, Inc., testified that the cost of the Union’s proposal would be approximately \$21,914 with a portion to be paid by the Delhi Township contract resulting in a net increase to the Sheriff’s office of a little over \$17,000 (T27, 28). The County’s unassigned fund balance increased from \$12 million in 2015 to just over \$16 million for 2016. In addition, the County has a budget stabilization fund of \$10,564,365.00. The total being approximately \$26,000,000.00 between the two funds.

ANALYSIS- Ability to Pay

Whether the amount to fund the Union’s proposal is a little over \$17,000 or \$21,914, I think it is readily apparent that the Employer has the ability to pay this amount. At no time did Dolehanty testify that the Employer did not have the ability to pay for the Union’s proposal. In fact, he stated that “*We have not calculated your proposal per se. That’s to say I haven’t looked at your unit, come up with a number and plug it in.*” (T178). He further testified regarding how the Union’s proposal would be funded from the contingency fund, “*For 2016, it would likely come out of that fund. For 2017...we would work it into the budget itself, so we wouldn’t have to go to a contingency or have a contingency allocation to do that.*” (T176).

Reviewing the specific components of Sec. 9(1) (a) *i, ii, iii* as those factors apply to the testimony and evidence I find no compelling testimony or evidence that the financial impact on the community or the interests and welfare of the public will be adversely affected if the Employer does not prevail in this proceeding, considering all liabilities, whether or not they appear on the balance sheet of the Employer. The proposal for 2016

would likely be paid from the contingency fund and for 2017 would likely be built in to the budget. Furthermore, the actual amount at stake is miniscule compared to the County budget as a whole; so miniscule in fact, that the Employer did not even calculate the cost.

Based upon the competent, material, and substantial evidence and considering the factors of Sec. 9(1) (a) *i*, *ii*, and *iii*, my conclusion is that the Employer has the ability to pay for the Union's proposal. However, finding the Employer has the ability to pay for the Union's proposal does not necessarily mean the Award must be in favor of the Union given the remaining factors that must be considered. Therefore, the remaining factors need to be examined and will be analyzed hereinafter.

3. STIPULATIONS AND PRELIMINARY RULINGS

At the evidentiary hearing, the parties stipulated to 11 Union Exhibits and 50 Employer Exhibits, contained in separate notebooks. Corrected copies of Employer Exhibits 15, 17 and 19 were submitted with the Employer's post-hearing brief. A wage increase for 2016 is the only issue. The Employer's Last Best Offer is 1% increase on the base for 2016. The Union's Last Best Offer is 1% increase effective January 1, 2016 and 1.50% increase effective July 1, 2016.

The Employer has raised the question of which party bears the burden of proof citing several decisions to support its position. After reviewing the citations, it appears those cases tend to discuss the burden of a party alleging a claim of anti-union animus in an unfair labor practice hearing; not an Act 312 proceeding. Act 312 decisions are constrained to the factors enumerated within Section 9. Each party has the burden to justify its position on each open issue, considering the Section 9 criteria. The panel considers the evidence in favor and the evidence against a certain determination in an effort to reach a reasonable conclusion that is supported by the competent, material and substantial evidence. So it isn't so much a burden of proof per se, as it is a burden of persuasion unlike in a discharge case where there is a clear burden of proof that the action was justified. Having said that, I do believe that the burden of going forward, as distinguished from the burden of proof, normally rests with the petitioning party absent extenuating circumstances or an agreement by the parties otherwise.

4. COMPARABLES

The parties stipulated to external comparable counties. They are, in alpha order:

Berrien County
Jackson County
Kalamazoo County
Livingston County
Saginaw County
St. Clair County

Sec. 9(1) (c) (d)(i)- Comparison With Other Employees in Comparable Communities

Employer Position- External Comparables

There is no legal requirement for Ingham County's Command Staff to hold a certain rank among comparable counties. Throughout the years, Ingham County has consistently maintained its relative well-paid, although not necessarily the highest paid, status among the comparable counties for all of the three positions at issue. For Sergeants, the County was the highest paid – 8.99% above the average salary of the comparables for 2015. (Employer Ex. 14). With the Employer's 2016 Last Best Offer of 1%, the County would remain at the highest paid of all Sergeant comparables (Employer Ex. 15 revised). For the Lieutenants, salaries were 2.75% above the mean or average of their counterparts (Employer Ex. 16). When the Employer's +1% Last Best Offer is added for 2016, Lieutenants' salaries remain 2.06% above the mean of their counterparts. (Employer's Revised Ex. 17). Finally, for the Captain, when the Employer's 1% Last Best Offer for 2016 is compared with the Captain's counterparts, the salary remains competitive, being less than 0.007% below the 2016 mean.

Union Position- External Comparables

When looking at the external comparables the Sergeants in Ingham County are at the top of the wage scale as set forth in Union Ex. 5. The Lieutenants are roughly in the middle of the wage scale, Union Ex. 6, and the Captains are close to the middle of the wage scale in Union Ex. 7. Thus the Supervisors for Ingham County are not head and shoulders above the other external comparables in this case. In order to maintain their relative

positions a 1% plus 1.5% increase is not out of the question and is reasonably supported by the evidence.

ANALYSIS- External Comparables

The Employer's argument is persuasive. The bargaining unit is in relatively good standing compared to the external comparables. A minor change upwards (or downwards) doesn't adversely affect the standing so as to justify a finding that the Union's position must be sustained.

Based upon the competent, material, and substantial evidence and considering the factors of Sec. 9(1) (c) (d)(i), my conclusion is that the bargaining unit classifications are paid in a manner consistent with the external comparables.

5. ISSUE BEFORE THE PANEL

There is but one economic issue before the panel and that is the wage increase to be granted for 2016.

Union's Last Best Offer: 1% increase effective January 1, 2016 plus
1.50% increase effective July 1, 2016.

Employer's Last Best Offer: 1% increase on the base for 2016.

Sec. 9(1) (e) (g) (i) - Comparison With Other Employees in the Unit of Government Outside the Bargaining Unit and Other Applicable Remaining Factors

Employer Position- Comparison With Other County Employees and Remaining Factors

The County intentionally has attempted to treat all of its bargaining units consistently and uniformly during the recent period of financial stress, and provides wage increases in a model that is consistent across all bargaining units within Ingham County. To the extent possible, no unit is treated differently than all the rest.

Ingham County Human Resources Director Travis Parsons, testified the Employer negotiates with 19 separate bargaining units, representing approximately 1,042 employees. Out of the 19 bargaining units, only two of the units, including the unit involved in this Arbitration, are Act 312 eligible. Mr. Parsons testified extensively to the efforts made to

achieve this goal. He carefully reviewed Employer Ex. 20, Internal Comps - 2016, which spreadsheet clearly illuminates the County-wide consistency in wage increases in 2016. Additionally, Parsons testified to the same consistency historically, especially from years 2012 through the present, 2016. As described above, in 2013 each Unit received either a 1% permanent reduction in wages or a 1.2% increase in its employee pension contribution. Then in 2014, wages were frozen, except that in an effort to avoid Act 312 in this Unit, Command Officers received a 1% increase but not until the last full pay period of 2014, which would not be paid out until the first payroll of 2015. This Unit also received a 1.5% increase effective after the first of the year in 2015 totaling 2.5% for the year. This Unit also received a \$250 lump sum signing bonus in 2015 (Employer Ex. 1, p. 32), which as Mr. Parsons testified to, was an additional incentive to settle the contract.

The "Managerial and Confidential Group" is also listed which includes all (138) management and non-union employees. That group also followed the exact same wage pattern as the unionized employees. Similarly, although not reflected in Exhibit 20, elected officials in Ingham County received the exact same wage increase as all other Ingham County employees over the same four year period. For the Arbitrator to award the Union's Last Best Offer to this Unit, a special exception would be carved out for a small number of employees resulting in an unwarranted inconsistency among the 1042 total County employees. Finally, the Command Unit has the only 3.2% pension multiplier in Ingham County.

Union Position- Comparison With Other County Employees and Remaining Factors

It is important from the Unions point of view to maintain a sufficient pay gap between the Non-Supervisors and Supervisors to encourage the Non-Supervisory personnel who aspire to be command personnel to apply for and take the test to be promoted. For the last two years the Supervisors received a 2.5% increase in 2014 and 1% increase in 2015, (T15). The Supervisors have fallen 1.5% behind the Non-Supervisors unit because the Non-Supervisory unit filed for 312 Arbitration in both 2014 and 2015 and were awarded a 2.5% increase each time. Prior to the most recent CBA, the Supervisory Unit made concessions to the County which, by the County's computations, equaled approximately a 1% reduction. The Supervisors gave back sick time and vacation time to

come up with the necessary give back in those times to equal 1% for the County. The reduction in the sick and vacation time is ongoing and unless future contract negotiations are successful in increasing the sick time and vacation time that 1% reduction is permanent. The bargaining unit also previously took a zero percent wage increase as did other Union members in the County. Supervisors contribute a substantial amount towards health care which should be considered.

ANALYSIS- Comparison With Other County Employees and Remaining Factors

Attempting to maintain internal consistency of wage increases is commendable and is certainly a valid *bargaining goal* for an Employer to pursue but, that alone, is not sufficient reasoning to find in favor of the Employer given the facts of this dispute. Arbitrator Brookover addressed this same point at page 16 of the Act 312 Award in MERC Case No. L14 J-1060. Brookover stated, *"I reject this logic. These employees are not responsible for what the County does with respect to other employee groups. Whether the County grants equivalent increases to other groups is entirely within the control of the County - not this Union."* I agree with Arbitrator Brookover's conclusion, particularly if that were the only argument put forth by the Employer; however, I do find that the Employer's attempt to maintain internal consistency of raises is one relevant factor to consider in the overall examination of the Act's criteria for resolving this dispute. I can envision where maintaining internal consistency might be the sole factor under a different set of facts. For example, if the Union was seeking internal consistency where the Employer had negotiated all other employees a 2.5% increase but the Employer was proposing only a 1% increase for this unit, a different conclusion might be appropriate.

I also give weight to the higher pension multiplier enjoyed by this bargaining unit compared to other County employees outside the bargaining unit. That is a significant benefit to bargaining unit members. The pension benefit is specifically outlined in Sec. 9(1) (g) of the Act. This cannot be ignored when considering the overall compensation presently received by County employees as the language of the Act requires.

The Union argued that its members pay an inordinate share of the health care obligation but I don't believe there is enough hard evidence before me to determine that it is out-of-line with other County employees.

The testimony regarding recent bargaining concessions involving the wage increases and vacation and sick time reductions are likewise not compelling. It appears that outcome was negotiated and ratified by the parties. The compromises reached were apparently reasonable to the parties at that time so I won't revisit that aspect of the parties bargaining history.

The Union's argument that a sufficient "pay gap" must be maintained between the supervisors and non-supervisors is a valid contention but I do not find compelling evidence that employees have refrained from competing for supervisory positions. Perhaps that argument will need to be visited by the parties in the future but lacking hard evidence that it is a problem at this time, I must reject that argument.

After having analyzed the competent, material, and substantial evidence and considering the factors of Sec. 9(1) (e) (g) (i) my conclusion is that there are no compelling reasons to find in favor of the Union's proposal.

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FINDINGS

1. The Employer has the ability to pay for the Union's proposal.
2. Bargaining unit classifications are paid in a manner consistent with the external comparables.
3. The Employer's last best offer is justified considering the overall compensation of other employees of the County outside the bargaining unit.

ORDER

Based upon the competent, material, and substantial evidence and considering the factors of Sec. 9(1) (2) of the Act, the Employer's last best offer is awarded.

Steven B. Stratton 11/21/16
Steven B. Stratton, Arbitration Panel Chair Date

Thomas Krug
Thomas Krug, Union Delegate Date

Dissent Concur

Travis Parsons
Travis Parsons, Employer Delegate Date

Dissent Concur

6. SUMMARY OF AWARD

ISSUE	AWARD
Wages for 2016	The Employer's last best offer of 1% across the board wage increase effective January 1, 2016.

FINDINGS

1. The Employer has the ability to pay for the Union's proposal.
2. Bargaining unit classifications are paid in a manner consistent with the external comparables.
3. The Employer's last best offer is justified considering the overall compensation of other employees of the County outside the bargaining unit.

ORDER

Based upon the competent, material, and substantial evidence and considering the factors of Sec. 9(1) (2) of the Act, the Employer's last best offer is awarded.

Steven B. Stratton 11/21/16

Steven B. Stratton, Arbitration Panel Chair Date

_____ Dissent Concur
Thomas Krug, Union Delegate Date

_____ Dissent Concur
Travis Parsons, Employer Delegate Date

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