

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:

Eaton, County of/Eaton County Sheriff

and

RESPONDING PARTY:

Capitol City Lodge Labor Program, Inc.

MERC CASE NO.: L17 H-0814 (Fact Finding)

Fact Finding for non-Act 312 Bargaining Unit Members

FACT FINDER'S REPORT

Public Employment Relations Act (P.A.336 of 1947 as amended)
[MCL 423.201, et seq]

Fact Finder

Ralph L. Maccarone

Advocates

Employer Advocate: Gary P. King, Esq.
Union Advocate: Timothy J. Dlugos, Esq.

PETITION(S) FILED: August 24, 2018

PANEL CHAIR APPOINTED: October 29, 2018

SCHEDULING CONFERENCE HELD: November 6, 2018

HEARING DATE(S) HELD: August 23, 2018 (in companion Act 312 Hearing)

REPORT ISSUED: December 10, 2018

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1. John Fuentes, Eaton County Controller – lone witness

1. INTRODUCTION, PROCESS, AND BACKGROUND

Introduction

In this case, an arbitrator was assigned to hear testimony and evaluate evidence presented in a Michigan Public Act 312 of 1969 (‘Act 312’) Arbitration concerning the Eaton County Sheriff’s Command Staff who are sworn law enforcement officers represented by Capitol City Lodge Labor Program, Inc. (‘CCLP’)

In that proceeding, an Award has been issued in the 6 areas where the parties could not agree. That Award will be a part of the contract which will replace their last, expired bargaining unit agreement. The union for Act 312 members in the Eaton County Sheriff’s Command Officers, CCLP also has non-Act 312 eligible members in that bargaining unit.

By stipulation of the Employer (‘County’) and the Union, the same Act 312 Arbitrator was assigned as Fact Finder to address by report and recommendation the disputed issues remaining for these non-act 312 members. The basis of that report will be the testimony at the Hearing in the Act 312 Arbitration, all exhibits received into evidence, briefs filed by the parties and Position Statements submitted by the Employer and the Union, now being specifically focused on the non-Act 312 members of CCLP.

In view of the fact that the members affected by this writing may not know the source, beyond the baseline of being a MERC Arbitrator and Fact Finder, suffice it to say that this author's life experience has included being an Act 312 bargaining unit member, and later in life, the chief elected official responsible for a municipal employer's positioning in Act 312 and non-Act 312 employee contract proceedings.

As the arbitrator was co-assigned as Fact Finder and no separate proceeding per se was conducted to specifically address the relative positions of the parties as to non-Act 312 eligible bargaining unit members, one who reads both this Report and Recommendation and the Act 312 Award will see similar considerations made in this author's rendering both. Now in the role of Fact Finder, the content below is tailored to persuade, rather than award. The difference is substantial, but the outcome of both will have major impact. The direction in which that flows will be made known over time, but from what it appears from the proofs, in short order.

Process

As suggested above, the distinction between Act 312 and members affected by this Fact Finding Report are significant.

The Public Employment Relations Act¹ ("PERA") is one of Michigan's primary labor laws. It applies to public employees. PERA includes the basic requirement for public sector employers and their employees (typically represented by a union) to bargain in good faith. That law also prohibits public sector employers from interfering with certain protected activities of their employees.

Public employees do not have the right to strike because Michigan's legislature determined that public services are valued too greatly to be subject to periods of interruption due to strikes.

Act 312 of 1969 requires select police and fire service employees to resolve disputes over contract terms through binding arbitration.

Those subject to Act 312 binding arbitration are limited to those prescribed by law:

MCL 423.232 "Public police or fire department employee," "emergency medical service personnel," and "emergency telephone operator" defined; provisions inapplicable to certain persons.

Sec. 2. (1) As used in this act, "public police or fire department employee" means any employee of a city, county, village, or township, or of any authority, district, board, or any other entity created in whole or in part by the authorization of 1 or more cities, counties, villages, or townships, whether created by statute, ordinance, contract, resolution, delegation, or any other mechanism, who is engaged as a police officer, or in fire fighting or subject to the hazards thereof;

¹ Act 336 of 1947

emergency medical service personnel employed by a public police or fire department; or an emergency telephone operator, but only if directly employed by a public police or fire department. Public police and fire department employee does not include any of the following:

- (a) An employee of a community college.*
- (b) An employee of a metropolitan district created under 1939 PA 147, MCL 119.51 to 119.62.*
- (c) An emergency telephone operator employed by a 911 authority or consolidated dispatch center.*
- (d) An employee of an authority that is in existence on June 1, 2011, unless the employee is represented by a bargaining representative on that date or a contract in effect on that date specifically provides the employee with coverage under this act. An exclusion under this subdivision terminates if the authority composition changes to include an additional governmental unit or portion of a governmental unit. This subdivision does not apply to terminate an exclusion created under subdivisions (a) to (c).*

(2) "Emergency medical service personnel" for purposes of this act includes a person who provides assistance at dispatched or observed medical emergencies occurring outside a recognized medical facility including instances of heart attack, stroke, injury accidents, electrical accidents, drug overdoses, imminent childbirth, and other instances where there is the possibility of death or further injury; initiates stabilizing treatment or transportation of injured from the emergency site; and notifies police or interested departments of certain situations encountered including criminal matters, poisonings, and the report of contagious diseases. "Emergency telephone operator" for the purpose of this act includes a person employed by a police or fire department for the purpose of relaying emergency calls to police, fire, or emergency medical service personnel.

Significantly, although the ‘end game’ in failed Act 312 negotiations is an arbitration award, Act 312 does not replace the duty to bargain or any other obligation under PERA; but it adds that an arbitrator will decide the terms of the parties’ contract if they cannot reach an agreement on their own.

For non-Act 312 bargaining unit members, Fact Finding is typically the third phase of a collective bargaining process. If the parties are unable to reach an agreement after negotiating directly with each other; and after using a mediator, either may file a petition for Fact Finding with the Michigan Employment Relations Commission (MERC).

MERC will then appoint a neutral third party to hold a hearing at which the parties present their proposals with supporting evidence. Albeit a bit different in that a fact finding specific hearing was not held, the Fact Finder as arbitrator was aware of their dual role in the Act 312 proceedings and considered testimony and evidence for both.

In Fact Finding, after the hearing the Fact Finder releases a public finding of facts and a non-binding recommendation to assist the parties in reaching an agreement for a new contract.

Although the Fact Finder's recommendation is not binding on the parties and does not set a precedent, it provides an unbiased suggestion for how they may settle their unresolved issues. To encourage that, PERA requires the parties to meet and bargain at least once in the 60 days after the fact-finder issues the report and recommendation.

Unless Act 312 applies, this is the final required opportunity for the parties to resolve their contract issues. If the parties are unable to resolve their differences at the final mandatory bargaining session, or in subsequent voluntary negotiations, a public sector employer may unilaterally implement the terms of a contract, as discussed below.

For bargaining unit members not covered by Act 312 (for lack of a better term, 'civilian employees') public sector employers have a powerful tool: the option to unilaterally impose their position on issues that remain unresolved after bargaining, mediation and fact finding. Imposed terms are combined with previously agreed upon terms to create the parties' contract. This can be a two-edged sword.

As a practical matter, a workforce that has a contract of only employer-imposed conditions may be neither the most motivated, or the most reliable in terms of retention.

Most civilian employees in government law enforcement support services have skill sets that are transportable to other employment. Both government non-law enforcement and private sector employers can benefit from the skill sets acquired by 'civilian employees' forming this part of the bargaining unit. That can make them strong candidates for lateral hiring by other employers. This is a factor that the County may want to consider in its bargaining after this Report's publication. After all, it serves the County's interest to conclude with a contract that is both financially sound and directed towards retention of those who have proven skills to meet the goals and objectives of their supporting roles.

On the other hand, it serves the bargaining unit members well to concede where fiscal reality may make a gain at best, a very short term one.

Although a substantial part of the basis for this fact finder's report and recommendations will be based upon its hearing testimony and reviewing exhibits presented in the Act 312 case presentation, consideration has been given to the unique position that these 'civilian' bargaining unit members hold.

Portions of what this Fact Finder sees as important considerations noted in the Act 312 Award are reflected in this writing. It is worth repeating that this Report and Recommendation is not an edict and is not binding.

It is a public document, however, and the parties are free to disseminate it as they see fit. Since public-sector labor relations are conducted in the public eye, publicizing the report may have a persuasive effect on the parties.

Background
Negotiations

The Union advises,

“The negotiations for this bargaining unit began in July 2017, According to the Employer's initial proposals made on July 11, 2017, it was seeking to:

- *close the Defined Benefit program and move all employees to a MERS Defined Contribution plan;*
- *change Retiree Health Insurance;*
- *change Health Insurance coverage plans for current employees, to also exclude coverage for spouse;*
- *reduce the Salary Scale by 5%; and,*
- *implement a Retiree Health Savings Plan restricting Employer contributions to a flat dollar amount, and requiring employee contributions with no Employer matching.*

In its Petition, the Employer identified the same issues, with the addition of the issue of Duration.”

Union FF Position Statement, page 2

Both parties have since provided position statements of more recent vintage, September 24, 2018, which will be addressed below.

Background, continued

Venue

Eaton County (population 109,027) has a land area of 575 square miles. It is located just west of the greater Lansing, Michigan area. The County seat is Charlotte which is located in the center of Eaton County. The county has 47,542 housing units, whose median household income in 2016 dollars was reported as \$56,472.00. The county has 2,092 employer establishments with reported total employment of 38,769 in 2016. 11.2% of its population (12,211 people) are reported to be in poverty under federal measurement. Eaton County is a general law county governed by a 15-member elected Board of Commissioners.² The county board in general law counties has both legislative and administrative powers and duties. Traditional legislative functions include establishing policy through the passage of ordinances and resolutions, legislative oversight, and constituent services. Administrative functions performed by general law county boards include developing and monitoring the county budget, purchasing, personnel, building maintenance, reviewing audit reports with auditors, appointing and removing operating

² Statistical data source - www.census.gov/quickfacts/eatoncountymichigan

department heads, reviewing operational problems with department heads and investigating the applicability of new technology.³

Capitol City Lodge Labor Program, Inc. is a union representing about 700 people employed in positions of police officers, correctional officers, 911 dispatchers, parking enforcement and related police work. Its members work for local or county government in Clinton, Eaton, Ingham and Jackson counties. The union represents supervisory and non-supervisory employees.⁴

2. STATUTORY CRITERIA

The Michigan Public Employment Relations Act⁵ ('PERA') authorizes either a bargaining representative or a public employer to request Fact Finding through the Employment Relations Commission for disputes related to new contracts, contract renewals, and grievances. Ref. MCL 423.207(1); Mich. Admin Code, R 423.121 The Fact Finder's Report typically includes, "*Reasons and basis for the findings, conclusions and recommendations.*" Ref. Mich. Admin Code 423.137(d)

In the testimonial part of what is being used as a basis for this Report and Recommendation the live testimony of the sole witness (for the County) was credible. The Union's cross examination of him was helpful to a better understanding of many nuances within the factual setting upon which an award will be made.

The exhibits admitted for consideration further helped form an entire record that was well presented, competent, material, and substantial to the issues under review.

To have a better understanding of how public service employees are paid, calls for a brief review of how Michigan local unit of governments, and in particular Eaton County, is funded. In that regard, it is fair to say that the state of Michigan has been unkind to its subordinate units of government. Eaton County is no exception.

The Headlee Amendment

In referring to County Exhibit 19, a chronology of taxable value changes under Proposal A (discussed below), Controller Fuentes testified:

One of the things that has not occurred from 2009 as going forward as we have recovered is the County has not been subject to Headlee rollbacks because of their rates of growth. Equalization did report to the Board of Commissioners that for 2018 we would not be subject to a Headlee rollback; however, based on the trends we do expect that in – likely in 2019 we will be subject to a further Headlee rollback than what was experienced in the past. Over this the time – the length of this exhibit, the time period,

³ Source - *County Government in Michigan* - Citizens Research Council of Michigan (1989)

⁴ Source - <http://cclp.us/>

⁵ Act 336 of 1947

the County has experienced Headlee rollbacks totaling just over a quarter of a mill in total.

TR 60:25 & 61:1-12

Discussion

The 1978 Headlee Amendment to the 1963 Michigan Constitution did many things. One of the most honored was the provision that property taxes and other local taxes and state taxation may not be increased above certain limitations without voter approval.

One of the most ignored was that the state could impose no new or the increase of an existing mandate upon a local unit of government (including a county) without appropriating the money to carry it out.

**STATE CONSTITUTION (EXCERPT)
CONSTITUTION OF MICHIGAN OF 1963**

§ 29 State financing of activities or services required of local government by state law.

Sec. 29. The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

For four decades there has been no recognized appropriation made under Headlee's Section 29 provision corresponding to this Constitutional mandate.

And, while legislating that local government do more, Section 31 of the 1963 Michigan Constitution prohibits units of local government from levying any tax rate not authorized by law or charter or from increasing the rate of an existing tax above the rate authorized by law or charter without voter approval.⁶

That means if local property tax revenues grow at a rate greater than inflation, then the millage rate for the unit will be decreased so that revenues cannot grow at a rate greater than inflation (commonly referred to as Headlee rollbacks) unless electors vote to keep the tax rate from decreasing (commonly referred to as Headlee overrides).

⁶ For a comprehensive analysis of the Headlee Amendment's History, see State of Michigan - Final Report of the Legislative Commission on Statutory Mandates (2009)

Proposal A

In answering a question regarding the County Equalization Department’s appraisals for real property taxable values, the witness replied:

They feel they are maximizing the increases under Proposal A, yes.

TR 55:18-20

Exhibit 19 provided a graph that tracked taxable values dating from 1980 to 2018, inclusive. With Proposal A’s 5% annual increase limitation, the County’s past five years’ experience is:

<i>Year</i>	<i>Taxable Value</i>	<i>Total Change</i>	<i>Percentage Change</i>
2014	3,278,204,542	23,987,581	0.74%
2015	3,353,542,662	75,338,120	2.30%
2016	3,357,399,826	3,857,164	0.12%
2017	3,448,054,657	90,654,831	2.70%
2018	3,612,437,369	164,382,712	4.77%

Discussion

Proposal A of 1994 amended the Michigan Constitution to reform how public education was funded in Michigan (moving away from local property taxes to the state sales tax and other taxes) and also superimposed a modified acquisition value method of determining the taxable value of property upon the existing property assessment system. For property assessments on or after December 31, 1994, annual increases in the taxable value of individual parcels of existing property are limited to the lesser of either five percent or the rate of inflation.

When ownership of a parcel of property is transferred as defined by law, the parcel is reassessed “at the applicable proportion of current true cash value,” which typically results in a one-time jump (commonly referred to as a “pop-up”) in the property’s taxable value. Additions and modifications to existing property and new property are placed on the tax rolls at 50 percent of current true cash value (referred to as state equalized value or SEV). The tax revenues collected by the federal and state governments are capable of recovering from recessionary conditions simply through growth of the tax bases; however, Michigan’s property taxes do not respond to post-recession expansion of the economy because of these tax limitations.

The property tax limitations instituted by the Headlee Amendment require a local unit of government’s tax rate to be adjusted downward when existing property in a jurisdiction increases faster than the rate of inflation. Thus, “pop-ups” in taxable values triggered by property tax transfers can often lead to Headlee rollbacks. This leads to situations where property tax revenues can decrease quickly and substantially during economic decline but increase at no greater than the rate of inflation (capped at 5%) once the economy starts expanding (especially for mature, built out local units).

Revenue Sharing

Controller Fuentes testified:

...in exchange for giving up revenue sharing in the past, the County changes its tax collection date, created a revenue sharing fund and was able to withdraw funds from the – to replace the revenue lost through revenue sharing until those reserves were exhausted. Fiscal year '12-'13 is when the County exhausted its revenue sharing reserve and started – started to again receive revenue sharing payments from the state, which over the last four years have increased at a maximum rate of one percent...

TR 62:15-25

Michigan sends state collected revenues to counties to use at the discretion of the legislature. This is called 'Statutory Revenue Sharing'. Originally, all revenue sharing dollars were sent to local units of government on a per capita basis, but, since 1971, the state has attempted to give revenue sharing greater purpose by directing funds in the statutory revenue sharing program to the local governments with the greatest need, defined as the lack of capacity to fund services from locally collected revenue sources. Those are mostly real estate taxes.

Michigan's system of state revenue sharing, as well as other programs of state aid (e.g., highway funding and court funding) were created as part of a specific state policy to contribute state-raised funds to the local government revenue structure and intended to provide some diversity in the revenue structure of local governments in place of local-option taxes. The problem with this system is that, though it works well when state revenues are strong, it has proven an easy funding source to cut when state revenues are declining, so that state government can use those revenue sharing dollars to fill state budget holes, leaving local governments scrambling to make up for their revenue shortfalls.

And counties bore the brunt of this. Unlike cities, townships and villages, Michigan counties do not receive Constitutional Revenue Sharing payments.⁷ The Statutory Revenue Sharing Act of 1971, as amended by 1998 PA 532, defined full funding for Statutory Revenue Sharing to counties as 25.06% of 21.3% of sales tax revenue at the 4% rate. That law is always subject to change at the whim of a term limited legislature. Statutory Revenue Sharing payments to counties were generally distributed on a per capita basis, although a portion was based on single business tax revenue that had been earmarked to counties as repayment for making inventories exempt from the personal property tax.

As with cities, townships and villages, actual appropriations for Statutory Revenue Sharing to counties were routinely below the full funding guidelines; and Statutory Revenue Sharing payments to counties were temporarily suspended beginning in FY 2004-05. Counties were required by the state legislature to create reserve funds with own-

⁷ Those payments are embedded into the state Constitution.

source general operating revenue from which they were allowed to withdraw an annual amount in lieu of Statutory Revenue Sharing.

The annual authorized withdrawal for each county was its FY 2003-04 payment, adjusted for inflation. It was only when a county's reserve fund balance is exhausted, that it would again be eligible for Statutory Revenue Sharing payments equal to its final authorized withdrawal amount. In Eaton County's case, that exhaustion of funds happened, and revenue sharing resumed in 2012, but additional inflation adjustments were not applied.

Now, in FY 2018-2019 Eaton County can expect a .05% increase of \$10,566.00 over its 2017-2018 receipt of \$2,260,204.00⁸ state revenue sharing payment for a total of \$2,270,770.00⁹ that helps fund a 2018-19 budget showing a projected \$204,359.00 revenue shortfall.

And with all of this, recently, a well-known 'think tank' looking to the inability of many cities, townships and villages to sustain even their basic services due to lack of funds, suggested that counties could be the answer.

Our witness, County Controller Fuentes, will surely shudder when he reads:

'Counties could provide many back-office functions and play stronger roles in such things as tax collection, elections, assessing property, maintaining roads, and aspects of planning and land use. County sheriffs can assume enhanced responsibilities for policing. Changing the local government service delivery model to allow counties to provide more services would free up resources for the vital services that remain with cities, villages, and townships, including developing the identity and place making that will make their communities attractive. This realignment of service delivery should be done in conjunction with local tax restructuring'

*Diversifying Local-Source Revenue Options
in Michigan, Citizens Research Council
Report #399 (February 2018)*

'Local tax restructuring' can be read to mean, voter approved increased taxes.

Proposing that impact on voters is a political decision.

⁸ Ref. State of Michigan FY2017-2018 Budget

⁹ The comparable Counties share in 2018-19 will be Allegan \$2,304,639.00; Bay \$2,647,597.00; Calhoun \$3,070,661.00; Clinton \$1,367,123.00; Lapeer \$1,712,717.00; and Lenawee \$2,084,793.00. Source – Michigan Treasury - Projected Payments – Counties - FY 2019 Projected Bi-Monthly County Incentive Program Payments (2018 PA 207) updated 8/27/18

Grant Funding

With all grant funding, one thing is for certain. Grants can come, and grants can go. Projecting a balanced budget using grant funding as a relied upon revenue source can be a dangerous game. Here's an example of why:

In 2017 the Federal Office of Community Oriented Policing Services, which had awarded more than \$115 million to local jurisdictions to hire more police officers was under consideration for defunding. Another program mentioned for potential cutting is the Office of Violence Against Women that provides funds to address domestic violence and sexual assault, a typically reliable and important source of funds for law enforcement agencies.

Whether these programs continue remains to be seen, but it's important to know that grant funds are gifts, not promises. They can go away. And when they do, employees hired may go with them.

Controller Fuentes' testimony gave a developing example of this:

*The County has received a grant for the implementation of the first four standards that will be required by the **Indigent Defense Commission**, which purportedly will cover the increased cost to the County for the first year. The future threat remains that there are eight, potentially nine additional standards which will be adopted over the next two years by the **Michigan Indigent Defense Council – or Defense Commission** that because we are not aware what the standards are yet or what – they don't exist yet, we have no idea what the impact on the potential increase in expenditures may or may not be going forward.*

TR 52:4-16

Assessing

The life blood of local government funding is most often real property taxes. County Equalization Departments assist their Board of Commissioners in equalizing the assessed value of the county. This is accomplished by adding to or deducting, if necessary, from the assessed value of each class of property in all of its assessing jurisdictions, in order to bring each to a common level of valuation. In theory each county's city, township and village assessors set values based upon state guidelines. Those values then convert in taxable amounts collected by the office of the Treasurer.

Testimony advised the Panel that the so-called "dark stores" method of evaluation had negatively impacted the County's finances. In essence, owners of 'big-box' stores in Michigan have long been allowed to use methods of assessment that dropped the taxable value of their property during poor economic times when vacant and then rely upon the slower recapture when a better economy returned.

In fact, So-called “dark stores” method of evaluation that big box stores have used led to about \$100 million on lost local revenue since 2013, according to the Michigan Association of Counties¹⁰.

Controller Fuentes testified:

*Big-box retailers are – are what – and that’s – that’s a continuing and ongoing threat on the revenue side of the budgetary equation. They are utilizing what is referred to at least in the media and publicly as a **dark store theory** in terms of the assessment of property taxable valuation. And they’re proceeding and petitioning the Michigan tax tribunal for reductions in their taxable value, which results in a decrease in the count – property tax revenue that the County is entitled to receive for those types of facilities. TR 52:25; 53 1-10 ... there were approximately between 40 and 50 over the last five years. [that reduced their assessable value in Eaton County].*

TR 54:17-18

The record did not reflect the County’s efforts to revisit any of those under the Court of Appeals’ “big box” decision in *Menard Inc. v City of Escanaba*, 315 Mich. App 512 (2016), which the Michigan Supreme Court left standing on appeal without opinion, leaving a possibility of ‘judicial recapture’ of revenue.

Broken Promises

The city of Detroit seeking protection under Chapter 9 (Municipal Reorganization Bankruptcy)¹¹, in the largest municipal bankruptcy filing in U.S. history by debt, estimated around \$18 billion, taught all who were paying attention that any government can run itself into the ground financially, and then shedding ‘debt’ by breaking promises made to those who long ago held up their part of the bargain.

What may not be such a ‘last’ resort for the city of Detroit, (Chapter 9’s can be repeated) having filed a municipal bankruptcy does little to instill loyalty or encourage longevity in its workforce. Only time will tell how long a city designed for 2 million people can survive on 670,000 living there.¹²

The gist of this is that any unit of government in a financial spiral can follow the path Detroit has blazed, now well-defined, that can break what before then had been pretty unbreakable; pensions, health care, and base wages common to a profession.

¹⁰ See *Supreme Court’s Rejection of ‘Dark Stores’ Appeal is Recognition of Problems in Property Tax System* Posted on October 20, 2017 by macblog2 at: <https://micounties.org/blog/?tag=dark-stores>

¹¹ In re City of Detroit, Michigan, Case No. 13-53846 (TJT) United States Bankruptcy Court, Eastern District of Michigan

¹² 1950 peak population of the C of D was 1.8million. 2017 census data counts it as 673, 104. Source www.census.gov/quickfacts/fact/table/detroitcitymichigan,mi/PST045217

Mediation through MERC

Ideally, parties would find common ground when collective bargaining. MERC's mediation 'shuttle diplomacy' may have thinned the herd, but we are left with a number of troubling areas of disagreement. And that is unfortunate. For it is the give and take of collective bargaining that can keep morale high among the workforce for gains made, engenders trust between labor and management, and allows a collective (no pun intended) collaboration to design solutions that outside decision makers rarely provide. If there must be give and take, it is surely easier to accept when the reason for it is personally understood, and any 'take' is a self-imposed concession.

It is against this backdrop of fact and theory, that the County/Employer painted a bleak picture of its own financial forecast in its presentation, looking for a principled outcome. The consideration at the front of the line for analysis is –

Ability to Pay

'Ability to pay'¹³, or the lack thereof, is a significant factor to be considered in any Fact Finding. That is, one can recommend whatever is asked, but to actually pay that amount when funds are insufficient to do so may reduce the number of employees being paid.

The Employer's Position on 'Ability to Pay'

In summary the Employer argues:

In the present case, County Controller and Personnel Director, John Fuentes, testified at length at the hearing.

Mr. Fuentes' testimony as to the County's financial condition begins with C. Ex. 18, which he described as a document that is compiled as part of the "annual budget process, which includes or incorporates a long-term future forecast into the discussion related to the annual budgeted development itself." (Tr. P. 41).² The County's budget for the 18/19 fiscal year (October 1, 2018 – September 30, 2019) appears as the fifth (5th) column from the right on C. Ex. 18 and shows projected revenue of \$35,076,427 and projected expenditures of \$36,629,907. In other words, the County will spend more than it takes-in during the upcoming period. Even given the County's "Historical Budget Margin," it will still be necessary to remove \$462,350 from the fund balance to balance the budget.

And the picture does not improve moving forward. In every fiscal year subsequent to the 2018-2019 year, the County's expenditures will exceed its revenue. By the 2021-2022 budget year, the County will no longer have sufficient funds in its fund balance to balance its budget. Rather, by that fiscal year, the County's fund balance reflects a NEGATIVE \$1,234,423.

¹³ Ref. MCLA 423.239 (1) (a) i.-iv.

This scenario represents the very definition of a “structural deficit.”

Employer’s Post Hearing Brief at p.6

The Union’s Position on ‘Ability to Pay’

In response, the Union says:

As for the County’s financial projections, history has demonstrated the County’s process tends to undervalue its financial picture each year. For instance, the Union’s Rebuttal Exhibits compare the County’s “Projected Fund Balance” to its “Actual Fund Balance” annually between 2008 and 2017, using the County’s own year-end audited reports. The figures reflect how inaccurate the County has been in its projections over the last ten years. In each instance, the County’s fund balance has been larger than projected, with those projections being off by over \$2 million in some years. This calls into question the legitimacy of the County’s purported projections in Employer Exhibit 18.

Union’s Post-Hearing brief at p. 4

And,*The fact that the Employer has agreed to economic benefit increases to this bargaining unit, as well as with other employee groups within the County, undermines any claim that it is in any sort of financial crisis. The offers of improvement made in their Last Best Offer are not representative of a municipality in dire straits.*

Lastly, there is no record evidence to indicate the overall financial status of the County. For instance, the Employer has not offered its most recent Comprehensive Annual Financial Report (CAFR) as evidence it is in a financial crisis.

Without such evidence, it must be presumed the County is financially stable.

Id. at p.5

3. STIPULATIONS AND PRELIMINARY RULINGS

The manner of appointment and method of proceeding in this Fact Finding were all without objection, and any irregularities fairly appear to have been waived.

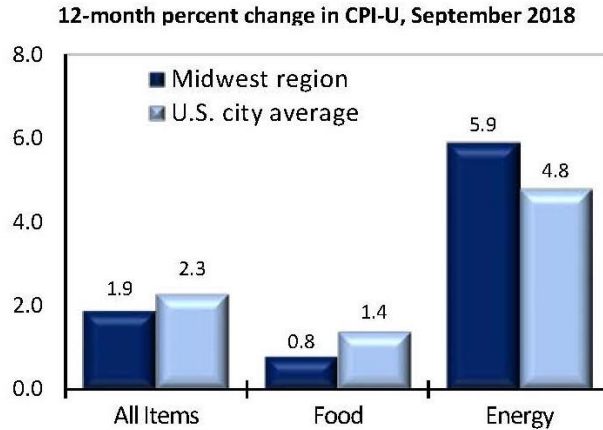
4. COMPARABLES

An impressive array of over 700 pages of exhibits on both internal and external comparables (some being duplicates) were provided and reviewed. Comparing and contrasting County exhibits 38 through 44 covering Taxable Values (Ex. 38), Population (Ex. 39), Per Capita Income (Ex. 40), Taxable Value per Capita (Ex. 41), Population-Square Mile-Population Density (Ex. 42), Median Family Income (Ex. 43), and Median Household Income (Ex. 44), all for years 2012-2016 gave some insight as to how what is done elsewhere has bearing.

The Union provided helpful context in their exhibits.

Closer to ‘home’ (Eaton County in this case), one must ask what the effect of more recent changes in living expenses have on a wage question. And there, the internal comparables provided give a snapshot of how others in Eaton County’s employ are faring.

Over-the-year change in the prices paid by urban consumers for selected categories



BLS Lansing Area Economic Summary 11-7-2017¹⁴

With its own prediction of insolvency in the form of a projected negative fund balance of \$1,234,423 in FY 2021-2022 the County has little time to seek outside intervention. And with that ‘all hands onboard’, whether paid elected officials, Act 312 or PERA governed, or non-unionized appointees/employees, are all due to see reductions of employment wages and benefits that are likewise predictably to be beyond the pale. And that says nothing about the taxpayers, residents, businesses and visitors who rely every day upon both essential and ancillary county government services. The scope and breadth of mounting accrued actuarial deficits in pension obligations may well pay the way for wholesale change in those benefit promises, both past and present.

With so many related factors going into the equation of solvency, or in this case employer predicted, but not uncontested (by the Union) insolvency, the judgment to be made on this contested issue is one of future consideration after reviewing all of the data available to the Panel.

The parties have laid out impressive cases for and against their counter positions regarding pensions. Indeed, they have done so with each of their issues. In viewing the County as a whole, it is clear That they have a lot in common with their comparable counties that were reviewed. And then, there are notable differences.

¹⁴ The BLS ‘Lansing Area’ is comprised of Eaton, Ingham and Clinton Counties.

Clearly, the County Commissioners should be made aware of all that was made known in this record to avoid the insolvency predicted in their own budget projection. And short of that state oversight is not unforeseeable.

Recent legislation¹⁵ requires local governments to pre-fund retiree health benefits for new hires and retiree premiums. It mandates more reporting to the state beginning in 2018.

Plans short of funding 40 percent of future health care obligations and 60 percent of pensions would be subject to extra scrutiny by the Treasury Department and municipalities that don't receive a state waiver would be overseen by a three-member Michigan Stability Board made up of people appointed by the governor.

The board could reject plans put forth by local governments to fix their finances to fund retiree healthcare costs. Lawmakers could not agree on whether to allow the board to make changes to benefit plans or other actions for communities struggling to resolve financial problems.

The upshot of all of this is that if Controller Fuentes' projections prove true, the County's finances will be in the hands of those who may care less for the desire of the voters and their priorities and be more concerned with balancing a budget by any means.

5. ISSUES.

a. Duration [Economic].

Employer's Position Statement on Duration

'It is the position of the Employer that the Agreement should run from the date it is ratified by both the Union and the Eaton County Board of Commissioners to September 30, 2021, with any changes to the contract not being retroactive.'

Union's Position Statement on Duration

'It is the position of the Union that the Agreement cover a three-year period, beginning October 1, 2017 and in effect through September 30, 2020.'

Discussion

Both parties have much at stake in terms of the accuracy of the revenue and expenditure projections compared to the actual experience of the county budget at each fiscal year end. The state of Michigan is reported as being in transition from financial lethargy to better economic times. But it is also facing a change in its state governance. Although 'election day' 2018 settled the question as to 'who' will govern the next four years. It may be years before the 'how' they govern will yield any marked change the financial future of local units of government for better or worse.

¹⁵ See among others, P.A. 202 of 2017, MCL 38.2801

For most of Michigan's municipal budgets, amendments are routinely made to balance at year end. In Michigan two things are important, 1. have a balanced budget at the beginning of the fiscal year, and 2. close out the fiscal year with a balanced budget.¹⁶ What happens in between are transfers of funds, program changes and other matters that affect reported real time revenues and spending. A review of the record suggests that Eaton County is no different. In this arbitration, the County projects its own financial instability (*'structural deficit'*) by 2021 as currently budgeted.¹⁷ The Union points to the fact that increases have been given to others in the face of that.

How long should this Award be in force?

And, should retroactivity be curtailed where permitted by law as the County proposes?

Taking the record as a whole, with every bit of deference to the County's own predicted financial distress looming in the near future, a shorter contract period will afford the County's fiscal realities to better guide the parties in their next round of negotiations, when the accuracy of these predictions will be known.

The Union's Last Best Offer on Duration is considered by the Fact Finder to be the better choice.

b. Health Insurance [Economic].

Employer's Position on Health Insurance

'It is the position of the Employer that the Fact Finder's Recommendation should clarify Article 16, Section 1(a) such that the base health insurance coverage is BC/BS CB12, in which the employee will be automatically enrolled unless he or she elects the BC/BS CB 6 Plan, with two (2) re-openers for health insurance, one (1) for the 2020 medical benefit plan year, and a second re-opener for the 2021 medical benefit plan year:

The Employer shall continue to provide health insurance for each employee and his family. Coverage for promoted employees shall be continuous following their promotion. Coverage ends upon an employee's separation from employment.

All eligible regular full-time employees shall be covered by a health insurance plan, which is currently the Blue Cross and Blue Shield of Michigan Community Blue 6 12 Plan, as attached hereto as Appendix C, *in which the employee shall be automatically enrolled unless he or she elects the Blue Cross/Blue Shield Community Blue 6 Plan as set forth below.*

¹⁶ Ref. *Uniform Budget and Accounting Act*, Act 2 of 1968, MLCA 141.421, et seq

¹⁷ For what that may mean see - *A Review of Michigan's Local Financial Emergency Law* - MSU Extension (2017) at www.canr.msu.edu/uploads/resources/pdfs/michigan_em_law_review.pdf

~~Effective as soon as practicable after the effective date of the new contract~~
The County shall offer as an option, the Blue Cross/Blue Shield Community Blue 12/20% 6 Plan. ~~with deductibles of \$1000/\$2000, 20% co-insurance, co-insurance maximums of \$2500/\$5000, \$20 OV, \$10/\$40/\$80 Rx.~~

This section of the contract shall be re-opened twice for negotiations, once of the 2020 medical benefit plan year, and a second time for the 2021 medical benefit plan year.

In addition, effective with the 2019 medical benefit plan year, the County will cover the cost of maintaining the current optical insurance.

An employee, whose spouse has comparable group health insurance from another source, must secure coverage for the spouse from that group. The comparable coverage must also cost the spouse less than \$1,200.00 annually), effective January 1, 2011. The spouse may be covered by the Employer's group health coverage upon becoming ineligible to be covered by the other source or if the alternate coverage does not continue to be comparable to the coverage provided by the Employer. When a spouse has coverage, as described above, any other eligible family members will be covered according to the Order of Benefit Determination Rules, i.e., coverage is the coverage plan of the parent whose birthday is earlier in the calendar year.

If an employee does not agree with the County's determination of comparable coverage, they may submit the issue for an independent third-party review. The independent third party will be mutually agreed to by the Union and the County. The decision made by the independent third party shall be final and binding on all parties and not subject to the Grievance Procedure.'

Union's Position on Health Insurance

'It is the position of the Union that the health insurance provisions in Article 16, Section 1 remain status quo for the duration of the Agreement decided upon by the Act 312 Panel.'

Discussion

The County looks to their proposal as one of clarification, rather than change. Here is how Controller Fuentes explained it on direct examination:

Q. Okay. Okay. I think I have only one other question for you, sir, and it involves the County's last best and final offer with respect to health insurance. You don't have that document. It's part of the record. I'll

place it in front of you. Okay. And we utilize the word clarify the contract with respect to that provision.

A. Currently, the contract provides for both the Blue Cross Blue Shield CB 12 benefit and the Blue Cross Blue Shield CB 6 benefit. The CB 6, I'll refer to as the C 6 plan, was added to the contract with the implementation or the adopt – with the enactment of Public Act 152 with the intent of providing the – a benefit level that would not require employee contributions under Public Act 152. So it's a –

Q. Under the hard cap.

A Under the hard cap, yes. It's a -- it's referred to as the hard cap. Based on the language that was included at the time I believe it's confusing as to which benefit program is the base plan and which one will become an election to the employees at their election to make the necessary or required employee contributions.

So this – our proposal does not change benefit coverage benefit provisions. It only in my mind clarifies the order in which the benefit is given and then in election to contribute to improve the benefit that the -- the members receive.

Q. So a new employee to the bargaining unit would be, for lack of a better word, automatically signed up to community blue 6 unless that person chose to go to the higher plan; is that fair?

A. That -- that is correct.

Q. And that's how it operates.

A. That's how it operates and frankly, that's how it has to operate because in order for them to go into the CB – excuse me, the greater plan, we have to have an authorization to do a payroll deduction to accomplish that, so.

TR 81:13-25 81:1-25 83:1-4

The Union presents more of an objection to form and substance of the County's Last Best Offer as inconsistent with an act 312 Award:

...the Employer wants to lock everything else in place for a four-year term, but then require the Union to bargain healthcare concessions only in that period. The Employer's offer is per se inappropriate because it is contrary to the underlying principles of Fact Finding processes. Both processes are intended to be the final step towards resolving the parties' differences. As a result, these procedures should not allow for an issue to be merely kicked down the road to then expose the parties to additional Fact Finding procedures within the active period of the contract itself.

Union's Post Hearing Brief at pp. 7-8

The Employer’s Position on Employee Health Insurance, but without a re-opener after September 30, 2020, being the recommended term of Duration of this contract, is the better choice.

c. Retire Health Insurance [Economic].

Employer’s Position on Retiree Health Insurance

‘It is the position of the Employer that the Fact Finder’s Recommendation amend Article 16, Section 2(a) to provide that, for those hired prior to April 1, 2007 and who retire after the ratification of the new collective bargaining agreement by the Union membership and the Eaton County Board of Commissioners, the Employer will provide one (1) health insurance option at no cost to the retiree, the illustrative rates for which are below the “hard cap” amounts of Public Act 152, and that an additional option will be offered, which if selected by the retiree, will require the retiree to pay the difference between any applicable illustrative rate for such coverage and the applicable illustrative rate for the insurance which is below the “hard cap” amounts of Public Act 152:

For those retiring after the effective date of this contract, and effective with the 2019 medical benefit plan year, the Employer agrees to provide the same health insurance coverage, the illustrative rates for which are below the “hard cap” amounts of Public Act 152 as it does for active employees, if available, for all eligible employees with the Employer paying the appropriate health insurance premiums. Such retirees may elect an additional option, which if selected by the retiree, will require the retiree to pay the difference between any applicable illustrative rate for such coverage and the applicable illustrative rate for the insurance addressed in the preceding sentence. For those retiring after the effective date of this contract, and effective with the 2019 medical benefit plan year, the County will also provide, at no expense to the retiree, the same optical insurance covering active employees, as that insurance is amended from time to time. Retirees are required to apply for Medicare (Parts A and B) when they are eligible to do so. The County health care will supplement Medicare Parts A and B. An eligible employee is one who:

1. Has twenty-five (25) years of Municipal Employees Retirement System (MERS) service credit with Eaton County (prior to military service time or any other type of MERS service credit purchased before October 1, 1998 in accordance with policy can be included in the 25-year requirement); and is at least fifty-five (55) years of age; and has not had any lapse in group health coverage.
2. Is retired due to duty disability as determined by MERS, or

3. Is an employee who retires with twenty-five (25) years of service (as defined in (a) (1) above); and has not attained the age of (55) and who maintains group health coverage. When said employee reaches age 55, he becomes eligible for the Employer's paid group health coverage as provided herein, provided, the employee can document continuous group health coverage from the date of retirement.

It is further the position of the Employer that the Fact finder's Recommendation amend Article 16, Section 2(d) (Spouse Coverage) as follows:

An eligible employee may include health insurance coverage for his spouse with:

~~(1) From the date of the employee's eligibility for paid health insurance for the initial twelve (12) month period, the Employer will pay 50% of the premium difference required to include the spouse with the employee paying the remaining 50% of the premium difference.~~

~~(2) For the next twelve month period, the Employer will pay for 60% of the premium difference required to include the spouse with the employee paying the remaining 40% of the premium difference.~~

~~(3) For the next twelve month period the Employer will be responsible for paying 70% of the premium difference required to include the spouse with the employee paying the remaining 30% of the premium difference.~~

~~(4) For the next twelve month period the Employer will be responsible for paying 80% of the premium difference to include the spouse with the employee paying the remaining 20% of the premium difference.~~

~~(5) For the next twelve month period the Employer will pay 90% of the premium difference required to include the spouse with the employee paying 10% of the premium difference.~~

~~(6) The Employer being responsible for the entire premium payments made thereafter, **subject to the provisions of sub-section (a) above.** An employee whose spouse is not immediately covered from the date of the employee's eligibility for paid health insurance because of alternate coverage as specified in (c) above, and who subsequently becomes eligible shall enter the Employer's payment schedule based on the date of the employee's eligibility **be eligible for** paid health insurance **as set forth above.**~~

In the event of the employee's death, the spouse (at the time of retirement) may continue coverage as described in this Section at the Employer's expense.

An employee who retires, and has never had more than single coverage during his employment with the County, is eligible to have the County pay for spouse coverage if they marry (one time).

In the event of the death of the employee's spouse (at the time of retirement) and if the employee remarries, the new spouse may be covered at the employee's expense.'

Union's Position on Retiree Health Insurance

'It is the position of the Union that the retiree health insurance provisions in Article 16, Section 2 remain *status quo* for the duration of the Agreement decided upon by the Act 312 Panel.'

The County summarized its position in its post Hearing Brief:

Those members of the bargaining unit hired after April 1, 2007 are not covered by the County insurance, but rather are eligible for the Health Care Savings Program (HCSP). (Id., pp. 45-46)¹⁸. Where one might think that such a program should result in an OPEB Report showing more than adequate funding, as was previously discussed, that is simply not the case. (C. Ex. 16)¹⁹.

Given the fact that such post-employment benefits are merely 22% funded (Id.), the County's Last, Best, and Final Offer and Factfinding Position in this case are entirely reasonable. Mirroring the current program for active employees, the County proposal would provide a retiree health insurance plan at a cost below the PA 152 hard cap, with a retiree choice to be covered by a more expensive plan, with the retiree paying the cost over and above the less expensive plan.

Moreover, the County's proposal would have the County immediately paying for retiree spousal coverage upon the employee's retirement, displacing the current system that provides such coverage at the sole expense of the County only after six (6) years following the employee's retirement, and the County paying for optical insurance for the retiree. Again, the County awaits the Union's Post-Hearing Brief as to why the Union opposes such benefit increases.

The County's proposal also compares more than favorably to the retiree health insurance plans in the comparable counties.

On Retiree Health Insurance the Union's Post Hearing Brief contends:

¹⁸ Ex. 1 – Eaton County-CCLP contract ending 9-30-17

¹⁹ Ex. 16 – PA 202 of 2017 Health Care (OPEB) Report for 2017 disclosing County being 1/10 of 1% of being 'underfunded' in that category of reporting.

...one of the practical implications of adopting its proposal would allow for it to unilaterally make subsequent changes to the terms of its plans for those retiring members, i.e., whose retirement healthcare insurance would not (sic) longer be the same as active employees. Under the present system, retirees remain aligned with active employees, and taking that away would remove this existing security from future retirees.

Many Michigan governments have failed to plan the expense of this benefit in their annual budgeted expenses. Some offer none²⁰. But for that have or do -

Hundreds of local governments in Michigan — counties, cities, townships and villages — offer health care benefits to retired employees, called other post-employment benefits, or OPEB. But many of these governments have not set aside enough money to actually pay for these benefits when the bills come due.

The Michigan Treasury Department gathered data on 363 of the state’s general purpose governments — cities, villages, charter townships and counties. There are 46 governments — 13 percent of the total — that either did not offer retiree health insurance benefits to their employees or have set aside enough money to pay for them. The other 87 percent offer health benefits to retirees but have not saved enough money.

It would take \$9 billion for those local governments to pay for the current benefits in place for employees and retirees, though the problem is more severe in some places than in others.

If governments were required to set aside enough money today to address this problem, the median cost would be only \$306 for each of their residents. But there are a handful of basket cases. In River Rouge it would cost each resident \$6,500 to pay off these benefits, and there are 48 governments where it would take \$2,000 for each resident to set aside enough money to do the same.

Here is what the Mackinac Center of Public Policy Reports as to Eaton and the comparable Counties in this regard²¹:

Allegan	\$0.00
Bay	\$676.06
Calhoun	\$147.14
Clinton	\$0.00
Eaton	\$468.05
Lapeer	\$110.46
Lenawee	\$4.90

²⁰ See Union Ex. 20 as to comparable Counties in this regard.

²¹ Source: <https://www.mackinac.org/OPEB>

The uncertainty in the County's proposal regarding what the promised benefit is and how and when it may change gives pause to the Chair in awarding its Last Best Offer. Given the record and Awards made here as a whole, the Union's proposal is the better choice.

The Union's Position on Retiree Health Insurance is the better choice.

d. Retiree Health Savings Plan [Economic].

Employer's Position on Retiree Health Savings Plan

'It is the position of the Employer that, effective January 1, 2019, Article 16, Section 3 be revised (a) to change the Employer's contribution from 2% of the employee's salary to a flat dollar amount of \$50.00 per pay, (b) to increase the employee's mandatory contribution from 1% to 2%, and (c) to eliminate any matching Employer contributions.'

Union's Position on Retiree Health Savings Plan

'It is the position of the Union that the retiree health savings plan provisions in Article 16, Section 3 remain *status quo* for the duration of the Agreement decided upon by the Act 312 Panel.'

Discussion

In the overall scheme of things, Retiree Health Savings Plans are amore recent feature of Public Employee benefits. One provider explains its plan as follows:

*'The Municipal employees' Retirement System (MERS) Health Care Savings Program is an employer-sponsored program providing a tax-free medical savings account for post-employment medical expenses. The account is available for use by your employees, their spouses and any legal dependents, as well as a named beneficiary. The MERS Health Care Savings Program is not a Health Savings Account, Flexible Spending Account, or Health Reimbursement Account. It is a tax-exempt Section 115 Governmental Integral Part Trust, which ensures the assets are used for reimbursement of future medical expenses only.'*²²

As to this issue. the County's Post Hearing Brief says:

This change would affect only a small portion of the bargaining unit as the Retiree Health Savings Plan covers only those hired after April 1, 2007. However, as time goes by, the number of such bargaining unit employees

²² Source - <http://www.mersofmich.com/Employer/Programs/Health-Care-Savings-Program/Health-Care-Savings-Program-Features>

will increase, which will also increase the County's costs with respect to this benefit.

As C. Exs. 16²³ and 18²⁴ reveal, the County is not in a good position to absorb these increasing costs. The significance of these two (2) County Exhibits is clear: If steps are not taken (and taken soon) to reduce the cost of retiree health care, the possibility that this benefit will be lost will become more prevalent.

Moreover, making the County's contributions to this plan on a flat-dollar contribution, rather than making such contributions as a percentage of salary, puts the County in a position to more accurately budget for the cost of this plan.

The County's proposal on this issue represents a small step that can be taken to alleviate a budgetary situation that is getting worse as time goes by.

County's Post Hearing Brief at p. 22

The Union's Post Hearing Brief in pertinent part says:

...the parties previously negotiated away retiree healthcare insurance coverage for employees hired after April 1, 2007.

Those newer employees are no longer eligible for insurance in retirement and, instead, are provided only access to a Retiree Health Care Savings Program under Article 16, Section 3. (Employer Exhibit 1, at 45-46; Tr, at 87-88.)

Within the Retiree Health Care Savings Program under Article 16, Section 3, post-April 2007 employees are currently required to make their own contributions (1 % of their salary, pre-tax) into their accounts, and are eligible for contributions from the Employer as well (i.e., "The County will contribute an amount equal to 2% of the employee's salary into their HCSP"). There is also a "matching" component to this plan, whereby the Employer will match an employee's contributions over 2% and up to 4%. The Employer is now seeking to reduce the retirement benefits bargained for those more recent hires to an even lower level. (Tr, at 89-90.)

First, the Employer wants to reduce its contribution into the employees' accounts from 2% of their salary to a flat rate of \$50 per pay. Thus, as an employee's salary increases, the Employer's contribution would remain static at the flat rate.

²³ Indicating that in its last fiscal report the County was one-tenth of one percent from reporting itself as in 'underfunded status' triggering state intervention in this fund under P.A.202 of 2017.

²⁴ Ex. 18 is the multi-year county budget projection spreadsheet projecting insolvency in FY 2021-22.

Second, the Employer wants to raise employees' required contribution by 1% of their salary, to 2%. Third, the Employer then wants to eliminate its current matching obligations for any contributions by an employee over 2% and up to 4%.

.....There is no support from the other negotiated agreements or non-union employee groups within the internal comparables which the Employer can rely upon to support its proposal. The Employer has settled agreements without including such concessions. (See, e.g., Employer Exhibits 8, 10, and 12.²⁵) There is no record evidence to show this concession has been imposed on the non-union employees and administrators. As for the external comparables, half do not even have a Health Care Savings Plan in effect. (Union Exhibit 20.)²⁶

Rather, these proposed changes further reduce what can already be considered to have been a concession in or about April 2007 when the parties went to this two-tiered system. Employees will get less money from the Employer over time and will no longer be able to reap the benefits of the matching program.

Further, when coupling this proposed change with the Employer's initial 1 % wage offer in its Last Best Offer (see Open Issue #6), the employees would now be required to contribute that 1 % raise from the Employer to their own retirement (i.e., increasing the required employee contribution from 1% to 2%).

Union Post Hearing Brief at pp. 11, 12 & 13

Answering the question of how to address benefits for those who have completed their service is always a vexing proposition. The County points out the number of persons (families) affected is small. The Union points out that number will grow.

And yet, with such stakes, neither side could come to agreement. That is not an indictment of fault, but an observation that it now falls to this Panel to decide how retiree health savings will be provided to this class of beneficiaries.

On this issue, the County has not made a case that persuades the Chair to grant its request. With a shorter award of Duration, a continuation of this benefit as proposed by the Union (which may prove to be as brief as that time period) to this smaller universe of beneficiaries is justified for the moment.

²⁵ Ex. 8 - June 20, 2018 'RESOLUTION TO APPROVE COLLECTIVE BARGAINING SETTLEMENT AGREEMENT WITH THE CAPITAL CITY LABOR PROGRAM-ANIMAL CONTROL DIVISION'; Ex. 10 - May 11, 2018 'EATON COUNTY BOARD OF COMMISSIONERS -and- THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 324 SETTLEMENT AGREEMENT'; & Ex. 12 - December 7, 2017 'EATON COUNTY BOARD OF COMMISSIONERS, EATON COUNTY CIRCUIT COURT -and- GOVERNMENTAL EMPLOYEES LABOR COUNCIL EATON COUNTY CIRCUIT COURT YOUTH FACILITY UNIT SETTLEMENT AGREEMENT'.

²⁶

The Union's Last Best Offer on Retiree Health Savings Plan is the better choice.

e. Pension [Economic].

Employer's Last Best Offer on Pension

'It is the position of the Employer that Article 16, Section 10 be revised such that, effective February 1, 2019, the pension multiplier shall be bridged to 2.00%, with Final Average Compensation being calculated on the basis of the Frozen FAC method, maximum benefit of 80% of FAC at termination of employment, base wages plus a maximum of 80 hours of overtime included in FAC, and COLA frozen for service prior to February 1, 2019. Effective with the institution of this bridged pension multiplier, employee contributions toward pension to be reduced from 16.50% to 14.50%. Effective October 1, 2020, employee contributions toward pension to be further reduced from 14.50% to 13.50%.'

Union's Last Best Offer on Pension

'Effective the date of the Award, or as soon as practicable thereafter, the Union proposes modifying the pension benefits set forth in Article 16, Section 10 to "bridge-down" all current employees from the existing benefits to account for the following pension terms:

- 3.20% multiplier for all service prior to the effective date of the bridge-down
- 2.50% multiplier for all service after the effective date of the bridge-down
- Maximum Benefit: 80% FAC at Termination of Employment
- Member Contribution of 12.38%
- FAC computed on Base Wages plus Maximum 160 hours of Overtime
- Freeze COLA (i.e., E-2) as of the effective date of the bridge-down'

Discussion

The Union's Post Hearing Brief recites their interpretation of the dilemma:

Both parties' Last Best Offers contemplate a "bridge-down" of benefits. The Panel must resolve how much of a bridge-down the Command Officers should absorb.

Presently, Article 16, Section 10 of the contract provides for a pension system managed by MERS. This includes a 3.2% multiplier with a maximum of 80% of final average compensation; an E-2 cost-of-living adjustment benefit; an F50/25 eligibility program; and an FAC-3 final average compensation component, with no restrictions listed. (Employer

Exhibit 1, at 50-51.) For these benefits, bargaining unit members contribute 16.5% of their earnings.

Union's Post Hearing Brief at pp. 13-14

The County's Post Hearing Brief summarizes the situation along the following track:

If left unchecked, the County's pension costs are expected to rise from \$3,328,053 to a whopping \$5,065,605 in the five (5) year period from fiscal year 2017-18 to fiscal year 2022-2023. This represents an increase of over 52% in this five (5) year period.

This unsustainable situation has been caused by many factors, none more relevant than the results of two (2) Settlement Agreements with the Municipal Employees Retirement System (MERS), to which both the County and the Union are parties.

As it currently continues to do, MERS administered the County's pension funds in the late 1990's. During that time, the County negotiated a pension improvement with (a) the Union in the present case, (b) the Union then-representing the Sheriff Deputies, Corrections Officers, Cooks, and Clerks, and (c) the Union representing the Supervisory Personnel in Dispatch. This newly-negotiated pension plan increased the pension multiplier to 3.2% based upon actuarial analyses done by MERS during the course of those negotiations.

However, it was only after these contracts (which now included the 3.2% multiplier) were ratified that MERS realized that its actuarial studies were in error. A number of lawsuits resulted, at least two (2) of which were resolved by the Settlement Agreement that was admitted into evidence...

[Reference to exhibits omitted]

Employer's Post Hearing Brief at pp. 6-7

Most if not all, county governments in Michigan face the challenge of funding legacy costs, including pension and retirement benefits for public safety employees. They face limited revenue-generating options other than the property tax. In 1964, the Michigan Legislature enacted Act 243 of 1964²⁷, prohibiting local governments from levying any taxes not authorized by law. This limits ability to pay. And between Pensions and Healthcare, competing for future funding vs. present funding respectively, ability to pay is always a concern. As previously noted, revenue sharing between the state government and local governments has decreased, making property taxes all the more important as a revenue source for local governments.

Here, the county/employer has shown a bleak forecast for certain financial ruin.

²⁷ MCLA 141.91

In every fiscal year subsequent to the 2018-2019 year, the County's expenditures will exceed its revenue. By the 2021-2022 budget year, the County will no longer have sufficient funds in its fund balance to balance its budget. Rather, by that fiscal year, the County's fund balance reflects a NEGATIVE \$1,234,423.

This scenario represents the very definition of a "structural deficit."

While there are a number of factors that have caused this trend, none may be more relevant than the cost of pensions. As C. Ex. 18 reveals, if left unchecked, the County's pension costs are expected to rise from \$3,328,053 to a whopping \$5,065,605 in the five (5) year period from fiscal year 2017-18 to fiscal year 2022-2023. This represents an increase of over 52% in this five (5) year period.

This unsustainable situation has been caused by many factors, none more relevant than the results of two (2) Settlement Agreements with the Municipal Employees Retirement System (MERS), to which both the County and the Union are parties. (C. Exs. 21 and 22).

County Post-Hearing Brief at pp. 6-7

If this prediction comes true, the County has but a few years of solvency before it will be in the hands of other than its elected leaders to 'right the ship'.

And their Exhibit 65,²⁸ containing proposed solutions to pension underfunding, says in pertinent part, that after reading all of its content, it contains:

An exhibit showing the short-term impact of the proposed benefit change – that is, the impact on next year's contribution.

August 22, 2018 Report Cover Letter of Cathy Nagy, FSA,
MAA – Actuary & Curt Powell, EA, MAAA – Senior Analyst

The Union looks to past 'settlements' affecting pension shortfalls which the County claims the Union had a part in, as having some bearing on decisions facing the future.

And, goes on to say:

When compared with the Employer's proposal, the Union's offer best returns the parties to the pension terms in effect prior to the 1997 Settlement Agreement with MERS. Prior to the agreement, Command Officers had a B-4 / 2.5% multiplier, with a contribution rate of only 11.6%. (Employer Exhibit 21, at 13.) With the Union's offer, employees still pay a rate higher than that for the same B-4 multiplier (i.e., 12.38%), with even less benefits when considering the further concessions made by

²⁸ CBIZ Retirement Plan Services, Municipal Employees' Retirement System of Michigan, 'Retirement Plan Options' dated August 22, 2018, using year-end 2017 funding numbers.

limiting FAC to include only 160 hours of overtime and by freezing the E-2 benefit.

This offer is more reasonable when compared to the Employer’s proposal to reduce the Command Officers to a 2.0% multiplier, with still a 14.5% employee contribution rate, and 80 less hours of overtime included in FAC. Only in a few years does the Employer’s offer allow employee contributions to be reduced to 13.5%.

The savings attributable to the Union’s change are reflected in the November 6, 2017 Supplemental Valuation. (Employer Exhibit 26 and Union Exhibit 17.) As forecasted by the actuaries, the savings to the Employer due to the Union’s concessions would amount to 10.38% as a percentage of payroll, or \$248,448 when compared to the current benefits. (Id., at 8.)

Union Post-Hearing Brief at pp. 15-16

Although referenced earlier, for a better understanding of another risk of financial instability see P.A. 202 of 2017, MCL 38.2801, et seq, *Protecting Local Government Retirement and Benefits Act* effective December 20, 2017 and in force beginning 2018.

In view of undeniable shortfalls that may be fatal to the County’s ability to provide whatever a promised pension is at a member’s retirement the County has made its case for a modified as to length of time recommendation in its favor.

The Employer’s Position on Pension, but ending September 30, 2020, being the recommended term of Duration of this contract, is the better choice.

f. Wages [Economic].

Employer’s Position on Wages

‘It is the position of the Employer that the wages set forth in Appendix A of the parties’ contract be increased as follows:

Upon ratification of a new collective bargaining agreement
by the Union membership and the Eaton County Board of
Commissioners ----- 1.00%
Effective October 1, 2019 1.00%
Effective October 1, 2020 1.00%’

Union’s Position on Wages

‘The Union makes the following three individual and separate across-the-board wage offers for the Salary Schedule set forth in Appendix A for

each of the three years of the contemplated duration of the Agreement, with full retroactivity:

- a. Effective October 1, 2017 – 2% increase (retroactive)*
- b. Effective October 1, 2018 – 2% increase (retroactive)*²⁹
- c. Effective October 1, 2019 – 2% increase'

Discussion

Taking the record as a whole, it appears that the comparable counties have varying approaches to providing wage and benefits to their Sheriff command personnel. Internal comparables of Eaton County indicate a conservative approach being pursued. The Union has set forth a proposal that looks to retain a workforce of law enforcement supervisors.

On Wages, the County's Post Hearing brief says:

It is the position of the County that the wages set forth in Appendix A of the parties' contract be increased as follows:

Effective October 1, 2018 1.00% (retroactive to October 1, 2018 for those positions eligible for Act 312 Arbitration, and effective upon ratification of the new agreement for those positions not so eligible)

Effective October 1, 2019 1.00%

Effective October 1, 2020 1.00%

The Union's position is to increase the wage rates by 2% effective on each September 1st in the years 2017, 2018, and 2019, with such increases being fully retroactive for the positions eligible for Act 312 Arbitration. For those positions not so eligible, the Union would add a \$500.00 lump sum payment.

The County's ability to pay (or, more appropriately stated, its inability to pay) has already been discussed in detail and will not be repeated here. Suffice it to say that, given the content of C. Ex. 18, the County's wage offer is more than reasonable.

This is particularly true in light of the fact that, if the County's pension proposal is adopted, the employees' annual contribution to the cost of pension will decrease by 3% over the life of the new agreement, in effect providing a 3% increase in gross wages.

²⁹ *The Union acknowledges that the non-Act 312 eligible employees are not eligible for retroactive benefits in accordance with 2011 Public Act 54, MCL 423.215b. Thus, while a wage increase for 2017 may not allow for a current retroactive payment for those employees, the Union's proposal still contemplates an increase to the Salary Schedule of 2% in 2017, to be then built upon to compute subsequent wage increases in 2018 and/or 2019. Additionally, the wage offer for the non-Act 312 eligible employees for the second year of contract is: 2% increase effective October 1, 2018, plus a \$500 lump sum (off-schedule) at the time of the Award.'

As to the internal comparables, C. Ex. 64 speaks volumes, and reveals that of the eight (8) employee groups in the County, six (6) have seen total increases in wages of 13.00% since 2007. Of the two (2) remaining groups, the non-union employees have received increase totaling only 11.69%, while the bargaining unit at issue in this case has seen its wages increase by 15.50% over that same time period! Moreover, if one examines the settlements of the three (3) bargaining units covering the 2017-2018 fiscal year, one quickly discovers that none of those groups received on-schedule wage increases. (C. Exs. 8, 10, and 12).

As to the external comparables, a review of the 2017 wages rates contained in C. Ex. 45 reveals that Eaton County compares more than favorably, with only Allegan and Clinton Counties having generally higher base wages. The same conclusion holds true when one examines Total Direct Cash Compensation (C. Ex. 51).³⁰ Moreover, the County submits that this is precisely the position it should occupy as it ranks third among the comparables in Taxable Value (C. Ex. 38), Population (C. Ex. 39), and Population Density (C. Ex. 42), and fifth among the comparable counties in Taxable Value Per Capita (C. Ex. 41).

On wages, the Union's Post Hearing brief in summary says:

Overall, the Union's wage offers for each of the three years of the proposed contract will allow the County to attract and retain qualified candidates to the profession of law enforcement. The Union's proposals for an additional 1 % in the second and third years of the proposed contract are a modest step in the right direction towards achieving that desired effect.

Here, the dilemma is that the County offers something with a limitation on retroactivity.

The Union asks for twice as much for the full term. External comparables would lean in favor of the Union. Internal comparables tend to favor the County.

In awarding the County's Employee Pension proposal, there is a predictable increase in an affected employee's spending power beyond this award. Against that thought are the concerns that without competitive wages, promotions will not be sought by existing employees, and that they may migrate to other agencies that offer a more competitive wage. None-the-less, if the finances of the County are not firmly and effectively addressed by its Commissioners, it's budget will likely be controlled by others. Depending upon how that develops, any gain to the Union made here may be short lived.

³⁰ Ref. f.n. 27 above, for Ex's 8, 10 & 12; Ex. 64 - County Unionized PAY INCREASES chart 2007 forward; Ex. 45 - EATON COUNTY-SHERIFF COMMAND OFFICERS-ACT 312 MAXIMUM BASE PAY RATE FOR SHERIFF COMMAND OFFICERS IN THE COMPARABLE COUNTIES Chart 1-2016 to 1-2019; Ex. 51 - DIRECT CASH COMPENSATION FOR A 15-YEAR COMMAND OFFICER (2017).

The Employer’s Position on Wages but ending September 30, 2020, being the recommended term of Duration of this contract, is the better choice.

6. SUMMARY OF RECOMMENDATIONS

Given everything before me, and struggling with the issue of an argument on one side, of what I see as an insurmountable lack of funds to operate on a balanced budget over the foreseeable future without drastic change; and on the other side, to hear the argument of excessive loss of income, health care benefits, and reduction of residual lifetime retirement payments; I am convinced that both parties have made their best case.

Considering that the first objective of a county is to provide for the health, safety, and welfare, of all who reside, do business and come upon its premises, an objective clearly sought by both parties, I choose to err on the side of continued local control.

ISSUE	RECOMMENDATION
Duration	That the Agreement cover a three-year period, beginning October 1, 2017 and in effect through September 30, 2020.
Health Insurance	<p>That Article 16, Section 1(a) be changed, <i>but not beyond September 30, 2020 being the recommended Duration of the Contract</i>, such that the base health insurance coverage is BC/BS CB12, in which the employee will be automatically enrolled unless he or she elects the BC/BS CB 6 Plan, with a-re-opener for health insurance for the 2020 medical benefit plan year, <u>without change unless otherwise negotiated</u>:</p> <p>The Employer shall continue to provide health insurance for each employee and his family. Coverage for promoted employees shall be continuous following their promotion. Coverage ends upon an employee’s separation from employment.</p> <p>All eligible regular full-time employees shall be covered by a health insurance plan, which is currently the Blue Cross and Blue Shield of Michigan Community Blue 12 Plan, as attached hereto as Appendix C, <i>in which the employee shall be automatically enrolled unless he or she elects the Blue Cross/Blue Shield Community Blue 6 Plan as set forth below.</i></p> <p>The County shall offer as an option, the Blue Cross/Blue Shield Community Blue 6 Plan.</p> <p><i>This section of the contract shall be re-opened for negotiations for the 2020 medical benefit plan year, without change unless otherwise negotiated.</i></p> <p><i>In addition, effective with the 2019 medical benefit plan year, the County will cover the cost of maintaining the current optical insurance.</i></p> <p>An employee, whose spouse has comparable group health insurance from</p>

	<p>another source, must secure coverage for the spouse from that group. The comparable coverage must also cost the spouse less than \$1,200.00 annually), effective January 1, 2011. The spouse may be covered by the Employer's group health coverage upon becoming ineligible to be covered by the other source or if the alternate coverage does not continue to be comparable to the coverage provided by the Employer. When a spouse has coverage, as described above, any other eligible family members will be covered according to the Order of Benefit Determination Rules, i.e., coverage is the coverage plan of the parent whose birthday is earlier in the calendar year.</p> <p>If an employee does not agree with the County's determination of comparable coverage, they may submit the issue for an independent third- party review. The independent third party will be mutually agreed to by the Union and the County. The decision made by the independent third party shall be final and binding on all parties and not subject to the Grievance Procedure.</p>
Retiree Health Insurance	That the retiree health insurance provisions in Article 16, Section 2 remain <i>status quo</i> for the duration of the Agreement, ending September 30, 2020.
Retiree Health Savings Plan	That the retiree health savings plan provisions in Article 16, Section 3 remain <i>status quo</i> for the duration of the Agreement, ending September 30, 2020.
Pension	With a contract ending September 30, 2020, that Article 16, Section 10 be revised such that, effective February 1, 2019, the pension multiplier shall be bridged to 2.00%, with Final Average Compensation being calculated on the basis of the Frozen FAC method, maximum benefit of 80% of FAC at termination of employment, base wages plus a maximum of 80 hours of overtime included in FAC, and COLA frozen for service prior to February 1, 2019. Effective with the institution of this bridged pension multiplier, employee contributions toward pension to be reduced from 16.50% to 14.50%.
Wages	<p>With a contract ending that the wages set forth in Appendix A of the parties' contract be increased as follows:</p> <p style="padding-left: 40px;">Upon ratification of a new collective bargaining agreement by the Union membership and the Eaton County Board of Commissioners ----- 1.00%</p> <p style="padding-left: 80px;">Effective October 1, 2019 1.00%</p>

Respectfully submitted,

/s/ 

Ralph L. Maccarone
Fact Finder

Dated: December 10, 2018