Grand Traverse County
Board of Commissioners
Special Meeting

Wednesday, March 22, 2017 @ 5:30 p.m.
Commission Chambers
Governmental Center, 400 Boardman,
Traverse City, MI 49684

The Board of the Commissioners will be holding a Special Meeting which has been set for the date, time and location noted above. The purpose of the meeting is identified in the Agenda below.

If you are planning to attend and you have a disability requiring any special assistance at the meeting, please notify the County Clerk immediately at 922-4760.

AMENDED AGENDA

I. Call to Order (Pledge, Roll Call)

II. First Public Comment

Any person shall be permitted to address a meeting of the Board of Commissioners which is required to be open to the public under the provision of the Michigan Open Meetings Act, as amended. (MCLA 15.261, et.seq.) Public Comment shall be carried out in accordance with the following Board Rules and Procedures:

A) Any person wishing to address the Board shall state his or her name and address.

B) No person shall be allowed to speak more than once on the same matter, excluding time needed to answer Commissioners' questions. The Chairperson shall control the amount of time each person shall be allowed to speak, which shall not exceed three (3) minutes. Chairperson may, at his or her discretion, extend the amount of time any person is allowed to speak.

III. OPEN SESSION:

- *A) Biography for Peter Cohl and firm 2*
- B) Review of the law regarding the Co-Employer Relationship between County Commissioners and Elected County Officers (AO No. 1998-5 Included) 5
- C) Legal Update on Collective Bargaining 14
- *D) Review of dismissal of five Teamsters Unfair Labor Practice Charges by the Administrative Law Judge and Teamsters withdrawal of four out of the five grievances re: health insurance (PA 152)*

IV. CLOSED SESSION:

- A) Update on contract negotiation with various bargaining units
- B) Update on various union grievances pertaining to health insurance (PA152); and,
- C) Update of the Unfair Labor Practice charges filed by various bargaining units regarding health insurance (PA 152).

- D) Reconvene from Closed Session

V. Second Public Comment

VI. Adjournment

BIO

Peter A. Cohl

Peter A. Cohl has been specializing in municipal law and public sector labor law for over 35 years. He is the founding member of Cohl, Stoker & Toskey, P.C. He has published numerous articles on labor law and other topics. He is a frequent guest speaker for various organizations. Mr. Cohl is a former member of the Representative Assembly of State Bar of Michigan (appointed by Supreme Court); selected as a Fellow of the Michigan State Bar Foundation and as a Fellow of the American Bar Foundation (admission is limited to 1/3 of the 1% of the bar in each state). He has also received the highest possible rating (AV Preeminent) in legal ability, ethical standards, and labor and employment law by Martindale-Hubbell.

Cohl, Stoker & Toskey, P.C.

Cohl, Stoker & Toskey has specialized in county law and public sector labor law since 1979, providing labor legal services to over 70 municipal clients. Counties that our firm provides legal services to include Alger, Barry, Benzie, Branch, Calhoun, Clare, Crawford, Eaton, Gogebic, Gratiot, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kalkaska, Leelanau, Livingston, Luce, Mackinac, Manistee, Mecosta, Menominee, Osceola, Sanilac, Schoolcraft, Shiawassee, and Wexford Counties.

Cohl, Stoker & Toskey has unique experience in public sector labor law having negotiated hundreds of contracts with many different unions including, but not limited to, POAM, COAM, TPOAM, FOP, POLC, GELC, AFSCME, Teamsters, United Steelworkers, UAW, MNA, Operating Engineers, SEIU, ICEA/PERA, and the OPEIU.

Members of our firm have represented municipal employers in labor matters before the Michigan Employment Relations Commission (MERC), Circuit Courts, Court of Appeals and the Michigan Supreme Court. We have handled numerous Act 312 and Fact Finding proceedings, and hundreds of union grievances through arbitration. We have nine attorneys and pride ourselves in providing prompt expert advice.

Peter Cohl was the attorney who handled the landmark case of *Capitol City Lodge No. 141, FOP v Ingham County*, 155 Mich App 116 (1986), wherein the Court of Appeals ruled that Corrections Officers are not eligible for Act 312 Binding Arbitration. In *Eaton County and Capitol City Lodge #141, FOP*, MERC UC92 J-44 (April 14, 1993), Cohl, Stoker & Toskey was successful in convincing the MERC to rule that Central Dispatch 911 employees were not eligible for Act 312 arbitration. Cohl, Stoker & Toskey has also been involved in other significant cases which reinforced the right of public employers.

In the important case of *City of Grandville v Grandville Municipal Executive Association*, 453 Mich 428; 533 NW2d 917 (1996), Cohl, Stoker & Toskey represented the Michigan Association of Counties, the Michigan Township Association and the Michigan Municipal League as amici before the Michigan Supreme Court advocating the reversal of the Michigan Court of Appeals. The Michigan Court of Appeals held that executive employees could organize into collective bargaining units. The Michigan Supreme Court reversed the Court of Appeals and ruled that the Michigan Employment

Relations Commission had the authority to exclude executive employees from organizing into collective bargaining units.

Cohl, Stoker & Toskey has accumulated significant expertise in State and Federal statutes which apply to employment law. Members of our firm frequently present workshops for various professional groups across the State of Michigan, including the Michigan Association of Counties, the Michigan Association of County Clerks, the Michigan Association of County Treasurers, the Michigan Association of Register of Deeds, the Michigan Sheriffs Association, the Michigan Association of Community Mental Health Boards, the Michigan Public Employer Labor Relations Association, etc.

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THE CO-EMPLOYER RELATIONSHIP BETWEEN COUNTY COMMISSIONERS AND ELECTED COUNTY OFFICERS

This summary will address the legal issues regarding that co-employer relationship. Michigan law recognizes a co-employer relationship between the Board of County Commissioners and each of the elected County officers (ie, Clerk, Drain Commissioner, Prosecutor, Register of Deeds, Sheriff, and Treasurer). Each has distinct spheres of authority with regard to employment issues. The purpose of this article is to summarize that co-employer relationship.[1]

Elected Officers' Sources of Authority

Elected County officers derive their authority from the Michigan Constitution and statutory law. Const 1963, Art. 7, §4 provides:

> There shall be elected for four-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds, and prosecuting attorney, whose duties and powers shall be provided by law....

Each elected County official has been given the power to select and appoint employees who serve at the pleasure of the elected official. See:

MCL 50.63 (deputy clerks);
MCL 48.37 (deputy treasurers and other employees of the county treasurer);
MCL 51.70 (deputy sheriffs);
MCL 49.31 and MCL 49.42 (assistant prosecuting attorneys and employees of the prosecuting attorney);
MCL 53.91 (deputy register of deeds and other personnel);
MCL 280.24 (deputy drain commissioner).

[1]This summary does not address the relationship between the Board of Commissioners and the Courts. See Administrative Order 1998-5 issued by the Supreme Court for information regarding court budgeting and funding.

However, the authority of the elected officials to discipline and fire employees is subject to the Public Employment Relations Act (PERA) collective bargaining requirements.

Authority of Board of Commissioners

The County Board of Commissioners also derives its authority from the Michigan Constitution and statutory law. Const 1963, Art. 7, §8 provides:

> Boards of [Commissioners] shall have legislative, administrative and such other powers and duties as provided by law....

Among the statutory duties of the County Board of Commissioners is the power to prescribe and fix the salaries and compensation of employees of the county if not fixed by law. MCL 46.11(g) The Board also has the power to represent the County, and have the care and management of the property and business of the County if other provisions are not made. MCL 46.11(*l*)

The Board of Commissioners is empowered to appropriate funds to elected officials for the hiring of employees by such officials, and to establish the number and salaries of their employees. See, e.g., MCL 45.41 and 45.51. This right to establish salaries is subject to the Public Employment Relations Act (PERA) for collective bargaining purposes.[2]

Funding

Historically, one of the potential problems in this working relationship is the funding level for the office of each elected County officer. Michigan courts have determined that the County Board of Commissioners is legally required to provide the funds necessary to permit elected County officers to carry out their statutorily mandated duties at a "serviceable level." *Wayne Circuit Judges v Wayne County*, 383 Mich 10 (1969). The Court of Appeals in 1979 defined "serviceable level":

> We adopt "serviceability" as the standard to be applied in determining whether the Board of Commissioners has unlawfully underfunded the county executive officers so that they are unable to fulfill their statutory obligations. Serviceability must be defined in the contest of Justice Black's opinion, i.e. "urgent," "extreme," "critical," and "vital" needs. A serviceable level of funding is the minimum budgetary appropriation at

[2] The Board of Commissioners has the authority to establish the salaries and fringe benefits of the elected officials which salary (not fringe benefits) cannot be diminished during their term of office. MCL 45.421(1)

> which statutorily mandated functions can be fulfilled. A serviceable level is not met when the failure to fund eliminates the function or creates an emergency immediately threatening the existence of the function. A serviceable level is not the optimal level. A function funded at a serviceable level will be carried out in a barely adequate manner, but it will be carried out. A function funded below a serviceable level, however, will not be fulfilled as required by statute.

Wayne County Prosecutor, et al v Wayne County Board of Commissioners, 93 Mich App 114, 124 (1979). (Emphasis added)

In summary, the Board of Commissioners determines the economic issues in the co-employer relationship, and the elected officer determines the non-economic issues in his or her office.

Economic Issues

Because the Board of Commissioners approves the County budget, it determines all *economic employment issues*, including, but not limited to:

- the number of employees in each office [subject to 93 Mich App 114 (1979) noted above]
- pay ranges
- paid leave policies
- insurance coverage
- all retirement plans and benefit levels
- workers' compensation economic policies
- unemployment policies
- travel reimbursement
- number of paid vacation days
- number of paid holidays
- number of paid sick days
- number of paid personal days
- grievance procedure regarding economic issues

With the exception of the number of employees, the above issues are subject to collective bargaining under PERA.

Non-Economic Issues

Each elected County officer determines *non-economic employment issues*, including, but not limited to:

- whom to hire
- "at-will" versus "just cause" standard for discipline and discharge
- management rights issues

- assignment of employees
- performance evaluations, if any
- work rules and regulations, if any
- control over employee conduct
- day-to-day operations of the office
- notice requirements for use of paid time off
- abuse of sick leave policy, if any
- transfer policy and procedures
- seniority and bumping rights into and within the office, if any
- discipline and discharge
- grievance procedure re: non-economic issues.

The above is subject to collective bargaining under PERA.

Cooperation

It cannot be overstated that cooperation and communication between the elected officer and the Board as co-employers is essential.

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AO No. 1998-5 — Chief Judge Responsibilities; Local Intergovernmental Relations

[Entered December 28, 1998; amended by order of September 18, 2007, effective October 1, 2007; amended again by order of January 29, 2014; text as amended again by order entered on June 4, 2014.]

I. APPLICABILITY

This administrative order applies to all trial courts as defined in MCR 8.110(A).

II. COURT BUDGETING

If the local funding unit requests that a proposed court budget be submitted in line-item detail, the chief judge must comply with the request. If a court budget has been appropriated in line-item detail, without prior approval of the funding unit, a court may not transfer between line-item accounts to: (a) create new personnel positions or to supplement existing wage scales or benefits, except to implement across the board increases that were granted to employees of the funding unit after the adoption of the court's budget at the same rate, or (b) reclassify an employee to a higher level of an existing category. A chief judge may not enter into a multiple-year commitment concerning any personnel economic issue unless: (1) the funding unit agrees, or (2) the agreement does not exceed the percentage increase or the duration of a multiple-year contract that the funding unit has negotiated for its employees. Courts must notify the funding unit or a local court management council of transfers between lines within 10 business days of the transfer. The requirements shall not be construed to restrict implementation of collective bargaining agreements.

III. FUNDING DISPUTES; MEDIATION AND LEGAL ACTION

If, after the local funding unit has made its appropriations (including, for purposes of this section, amendments of existing appropriations or enforcement of existing appropriations), a court concludes that the funds provided for its operations by its local funding unit are insufficient to enable the court to properly perform its duties and that legal action is necessary, the procedures set forth in this order must be followed.

1. The chief judge of the court shall notify the State Court Administrator that a dispute exists regarding court funding that the court and the local funding unit have been unable to resolve. The notice must be accompanied by a written communication indicating that the chief judge of the court has approved the commencement of legal proceedings. With the notice, the court must supply the State Court Administrator with all facts relevant to the funding dispute. The State Court Administrator must attempt to aid the court and the local funding unit to resolve the dispute. If requested by the court and the local funding unit, the State Court Administrator must appoint a person or entity to serve as mediator within five business days. Any mediation that occurs as a result of the appointment of a mediator under this paragraph is intended to be the mediation referred to in MCL 141.438(6) and (8) and MCL 141.436(9).

2. If the court concludes that a civil action to compel funding is necessary, a civil action may be commenced by the chief judge, consistent with MCL 141.436 and MCL 141.438, if applicable. [The statutory provisions referred to in this paragraph relate to funding disputes between courts and their county funding unit(s). Third class district courts and municipal courts are not subject to the referenced statutory provisions.] If not applicable, a civil action may be commenced by the court, and the State Court Administrator is authorized to assign a disinterested judge to preside over the action.

3. Chief judges or representatives of funding units may request the assistance of the State Court Administrative Office to mediate situations involving potential disputes at any time, before differences escalate to the level of a formal funding dispute.

IV. LOCAL COURT MANAGEMENT COUNCIL OPTION

Where a local court management council has been created by a funding unit, the chief judge of a trial court for which the council operates as a local court management council, or the chief judge's designee, may serve as a member of the council. Unless the local court management council adopts the bylaws described below, without the agreement of the chief judge, the council serves solely in an advisory role with respect to decisions concerning trial court management otherwise reserved exclusively to the chief judge of the trial court pursuant to court order and administrative order of the Supreme Court.

A chief judge, or the chief judge's designee, must serve as a member of a council whose nonjudicial members agree to the adoption of the following bylaws:

1) Council membership includes the chief judge of each court for which the council operates as a local court management council.

2) Funding unit membership does not exceed judicial membership by more than one vote. Funding unit membership is determined by the local funding unit; judicial membership is determined by the chief judge or chief judges. Judicial membership may not be an even number.

3) Any action of the council requires an affirmative vote by a majority of the funding unit representatives on the council and a majority vote of the judicial representatives on the council.

4) Once a council has been formed, dissolution of the council requires the majority vote of the funding unit representatives and the judicial representatives of the council.

5) Meetings of the council must comply with the Open Meetings Act. [MCL 15.261 *et seq.*; MSA 4.1800(11) *et seq.*] Records of the council are subject to the Freedom of Information Act. [MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.*]

If such bylaws have been adopted, a chief judge shall implement any personnel policies agreed upon by the council concerning compensation, fringe benefits, and pensions of court employees, and shall not take any action inconsistent with policies of the local court management council concerning those matters. Management policies concerning the following are to be established by the chief judge, but must be consistent with the written employment policies of the local funding unit except to the extent that conformity with those policies would impair the

operation of the court: holidays, leave, work schedules, discipline, grievance process, probation, classification, personnel records, and employee compensation for closure of court business due to weather conditions.

As a member of a local court management council that has adopted the bylaws described above, a chief judge or the chief judge's designee must not act in a manner that frustrates or impedes the collective bargaining process. If an impasse occurs in a local court management council concerning issues affecting the collective bargaining process, the chief judge or judges of the council must immediately notify the State Court Administrator, who will initiate action to aid the local court management council in resolving the impasse.

It is expected that before and during the collective bargaining process, the local court management council will agree on bargaining strategy and a proposed dollar value for personnel costs. Should a local court management council fail to agree on strategy or be unable to develop an offer for presentation to employees for response, the chief judge must notify the State Court Administrator. The State Court Administrator must work to break the impasse and cause to be developed for presentation to employees a series of proposals on which negotiations must be held.

V. PARTICIPATION BY FUNDING UNIT IN NEGOTIATING PROCESS

If a court does not have a local court management council, the chief judge, in establishing personnel policies concerning compensation, fringe benefits, pensions, holidays, or leave, must consult regularly with the local funding unit and must permit a representative of the local funding unit to attend and participate in negotiating sessions with court employees, if desired by the local funding unit. The chief judge shall inform the funding unit at least 72 hours in advance of any negotiating session. The chief judge may permit the funding unit to act on the chief judge's behalf as negotiating agent.

VI. CONSISTENCY WITH FUNDING UNIT PERSONNEL POLICIES

To the extent possible, consistent with the effective operation of the court, the chief judge must adopt personnel policies consistent with the written employment policies of the local funding unit. Effective operation of the court to best serve the public in multicounty circuits and districts, and in third class district courts with multiple funding units may require a single, uniform personnel policy that does not wholly conform with specific personnel policies of any of the court's funding units.

1. *Unscheduled Court Closing Due to Weather Emergency.* If a chief judge opts to close a court and dismiss court employees because of a weather emergency, the dismissed court employees must use accumulated leave time or take unpaid leave if the funding unit has employees in the same facility who are not dismissed by the funding unit. If a collective bargaining agreement with court staff does not allow the use of accumulated leave time or unpaid leave in the event of court closure due to weather conditions, the chief judge shall not close the court unless the funding unit also dismisses its employees working at the same facility as the court.

Within 90 days of the issuance of this order, a chief judge shall develop and submit to the State Court Administrative Office a local administrative order detailing the process for unscheduled court closing in the event of bad weather. In preparing the order, the chief judge shall consult with the court's funding unit. The policy must be consistent with any collective bargaining agreements in effect for employees working in the court.

2. *Court Staff Hours.* The standard working hours of court staff, including when they begin and end work, shall be consistent with the standard working hours of the funding unit. Any deviation from the standard working hours of the funding unit must be reflected in a local administrative order, as required by the chief judge rule, and be submitted for review and comment to the funding unit before it is submitted to the SCAO for approval.

VII. TRAINING PROGRAMS

The Supreme Court will direct the development and implementation of ongoing training seminars of judges and funding unit representatives on judicial/legislative relations, court budgeting, expenditures, collective bargaining, and employee management issues.

VIII. COLLECTIVE BARGAINING

For purposes of collective bargaining pursuant to 1947 PA 336, a chief judge or a designee of the chief judge shall bargain and sign contracts with employees of the court. Notwithstanding the primary role of the chief judge concerning court personnel pursuant to MCR 8.110, to the extent that such action is consistent with the effective and efficient operation of the court, a chief judge of a trial court may designate a representative of a local funding unit or a local court management council to act on the court's behalf for purposes of collective bargaining pursuant to 1947 PA 336 only, and, as a member of a local court management council, may vote in the affirmative to designate a local court management council to act on the court's behalf for purposes of collective bargaining only.

IX. EFFECT ON EXISTING AGREEMENTS

This order shall not be construed to impair existing collective bargaining agreements. Nothing in this order shall be construed to amend or abrogate agreements between chief judges and local funding units in effect on the date of this order. Any existing collective bargaining agreements that expire within 90 days may be extended for up to 12 months.

If the implementation of 1996 PA 374 pursuant to this order requires a transfer of court employees or a change of employers, all employees of the former court employer shall be transferred to, and appointed as employees of, the appropriate employer, subject to all rights and benefits they held with the former court employer. The employer shall assume and be bound by any existing collective bargaining agreement held by the former court employer and, except where the existing collective bargaining agreement may otherwise permit, shall retain the employees covered by that collective bargaining agreement.

A transfer of court employees shall not adversely affect any existing rights and obligations contained in the existing collective bargaining agreement. An employee who is transferred shall not, by reason of the transfer, be placed in any worse position with respect to worker's

compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other terms and conditions of employment that the employee enjoyed as an employee of the former court employer. The rights and benefits thus protected may be altered by a future collective bargaining agreement.

X. REQUESTS FOR ASSISTANCE

The chief judge or a representative of the funding unit may request the assistance of the State Court Administrative Office to facilitate effective communication between the court and the funding unit.

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LEGAL UPDATE ON COLLECTIVE BARGAINING

A. **State Law Covering Public Employees**

1. Public Employment Relations Act (PERA) MCL 423.201, *et seq*.

2. Labor Mediation Act (LMA), MCL 423.1, *et seq*.

3. Michigan Employment Relations Commission (MERC) administers the above statutes

4. **Recent legislation affecting collective bargaining**.

   a. **PA 54 of 2011** (Effective June 8, 2011)

   Prior to the enactment of Public Act 54, after a collective bargaining contract expired, if there were any premium increases in health insurance, the public employer had to absorb 100% of the cost until the next agreement was finalized. Further, if there were any scheduled wage step increases (or other benefit accruals such as paid time off or longevity payments) for employees after a contract expired, the public employer was required to implement those increases. However, since June 8, 2011, when Public Act 54 took effect, the exact opposite is now the law and the Employer is prohibited from implementing those increases. The following is quoted from that Act:

   > [A]fter the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement. The prohibition in this subsection includes increases that would result from wage step increases. Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining

agreement shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits.

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

* * *

(a) "Expiration date" means the expiration date set forth in a collective bargaining agreement without regard to any agreement of the parties to extend or honor the collective bargaining agreement during pending negotiations for a successor collective bargaining agreement. (Emphasis added.)

(b) "Increased cost" in regard to insurance benefits means the difference in premiums or illustrated rates between the prior year and the current coverage year. The difference shall be calculated based on changes in cost by category of coverage and not on changes in individual employee marital or dependent status. [Emphasis added.]

Since the law passed in 2011, several significant changes have occurred through both legislative action and court interpretation impacting the application of the law. In 2014, the law was amended via Public Act 322 [see MCL 423.215b(4)(a)-(c)] to exclude police and fire employees from Act 54. Additionally, the Michigan Employment Relations Commission (MERC) and the Michigan Court of Appeals have rendered several decisions interpreting PA 54.

MERC in *Schoolcraft County and the Schoolcraft County Sheriff and Schoolcraft County Deputy Sheriff's Ass'n*, Case No. C12-L-12 (November 24, 2014), ruled that Act 54 only allowed employers to pass on increased costs of insurance benefits, not increased costs to pension benefits.

MERC also ruled an employer, based on Act 54, did not have to pay step increases after a collective bargaining agreement expired, even where a Memorandum of Understanding (MOU) providing for across-the-board wage increases between the parties remain unexpired. MERC found step increases were still governed by the expired agreement since the MOU did not specifically govern step increases. *Michigan State University and Capitol City Lodge #141, Fraternal Order of Police*, Case No. C11-H-126 (September 17, 2014).

Consequently, the following principles now apply to collective bargaining in the public sector, excluding police and fire bargaining units[1]:

(1) After the expiration date of a collective bargaining contract and until a successor agreement is in place, public employees are required to pay any increase in health insurance costs. Thus, any increased costs in any health, dental, vision, prescription or other insurance benefits shall be paid for by the employees. Pension cost increases, however, cannot be passed to the employee.

(2) After the expiration of a collective bargaining agreement, step increases cannot be provided.

(3) The Employer is authorized to make payroll deductions to pay for any such increased costs in maintaining those benefits.

(4) The statute specifies that the parties to a collective bargaining contract are not allowed to agree and an arbitration panel is not permitted to order any retroactive wage or benefit level or amounts that are greater than those in effect after the contract expired.

(5) Expiration date is specifically defined as a date set forth in the agreement and must exclude any agreement of the parties to extend or honor the collective bargaining contract pending negotiations.

b. **PA 116 of 2011** (Regarding Act 312; Effective July 20, 2011)

Sec. 6. The arbitrator shall act as chair of the panel of arbitration, call and begin a hearing within 15 days after appointment, and give reasonable notice of the time and place of the hearing. The chair shall preside over the hearing and shall take testimony. Upon application and for good cause shown, and upon terms and conditions that are just, the arbitration panel may grant leave to intervene to a person, labor organization, or governmental unit having a substantial interest in the matter. The arbitration panel may receive into evidence any oral or documentary evidence and other data it considers relevant. The proceedings shall be informal. Technical rules of evidence do not apply and do not impair the competency of the evidence. A verbatim record of the proceedings shall be made, and the arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them but the transcripts

[1] See MCL 423.215b(4)(a)-(c)

are not necessary for a decision by the arbitration panel. The expense of the proceedings, including a fee to the chair, established in advance by the Michigan employment relations commission shall be borne equally by each of the parties to the dispute. The delegates, if public officers or employees, shall continue on the payroll of the public employer at their usual rate of pay. The hearing conducted by the arbitration panel may be adjourned from time to time, but shall be concluded and any posthearing briefs filed within 180 days after it commences. Its majority actions and rulings shall constitute the actions and rulings of the arbitration panel.

Sec. 8. The arbitration panel shall identify the economic issues in dispute and direct each of the parties to submit to the arbitration panel and to each other its last offer of settlement on each economic issue before the beginning of the hearing. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic is conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or within up to 60 additional days at the discretion of the chair, shall make written findings of fact and promulgate a written opinion and order. As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.

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.

c. **PA 152 of 2011** (Health Insurance)

PA 152 would prohibit the state, local governments, public schools, colleges and universities from paying more for employee health insurance benefits than the total cost (individually or in aggregate) of $5,692.50 for a single person, $11,385.00 for a couple and $15,525.00 for a family plan (indexed annually to the "medical price index"), or alternatively, require municipal employees (individually or in aggregate) and elected officials to contribute at least 20 percent of the total cost of healthcare. Only local governmental bodies as defined by the Act could waive the requirements annually with a two-thirds vote of their governing body.

Unless a different decision is made by the governing body or bodies of a public employer, all public employees default to the hard cap limit. However, with a simple majority vote, a governing body or bodies of a public employer may opt to satisfy the Act with the "at least" 20% employee contribution option. Certain public entities, including counties, may opt out under the Act by a formal vote of 2/3's of the governing body. The decision to elect the 80%/20% option or the opt out option must be made annually, prior to the beginning of the next health plan coverage year. The question of whether a county can go to the 80/20 without bargaining with a union is before MERC.

B. **Bargaining Units**

1. Supervisors must be in unit of all Supervisors

2. Professionals and Non-Professionals

3. Confidential Employees are excluded

4. Temporary and Substitute Employees should be excluded

C. **Preparing for Negotiations and Negotiation Techniques**

1. The Employer Bargaining Team

2. Authority of Negotiators

3. Strategies (timing)
   a. Arbitration termination
   b. Dues deduction termination

4. Costing
   a. Paid time off
   b. Health and dental insurance

c. Step increases
d. Longevity
e. FICA
f. Retirement costs

5. Union Security Clause – Right to Work, PA 349 of 2012 (see attached)

6. Communication by Management to Employees

D. **Mediation**

E. **Fact Finding**

F. **Impasse**

G. **Act 312**

Corrections Officers may not be eligible

Dispatchers, if not connected with Sheriff's Department - not eligible

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WAGES AND FRINGE BENEFIT SUMMARY

Name of Employee JOHN JONES Date Hired 2/10/08

Total Wages (2016 wages)	$40,000.00	
Overtime	800.00	
Longevity	1,000.00	
Total Wages		$41,800.00
2016 Dental-Health Insurance Cost	$15,000.00	
2016 Life-Disability Insurance Cost	400.00	
2016 Contribution to FICA (7.65%)	3,197.70	
Sickness and Accident Insurance	300.00	
Workers' Compensation	180.00	
2016 Contribution to Retirement (15%)	6,270.00	
Total Benefit Cost		$25,347.70

TOTAL WAGES AND BENEFIT COST $67,147.70

PAID TIME OFF

2016

EMPLOYEE JOHN JONES

	Paid Days Off
Holidays	12
Vacation	15
Personal Days	3
Sick Days	12
TOTAL DAYS OFF WITH PAY	42
	(8 & 2/5 weeks)

In addition, employees may have three (3) Funeral Days off with pay.

The Employer provides a sick and accident policy that pays employees two-thirds of their wages for six (6) months starting the first (1st) day of injury or the eighth (8th) day of illness.

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IMPORTANT LEGAL UPDATE
MICHIGAN'S NEW PUBLIC SECTOR RIGHT TO WORK LAW

On December 11, 2012, the Governor signed 2012 PA 349, which has been commonly referred to as the public sector right to work law. (There is a separate right to work law which applies to the private sector, 2012 PA 348, which will not be addressed here.) The law will take effect on March 28, 2013. However, police and firefighters are excluded from 2012 PA 349.

Before Enactment of 2012 PA 349

Historically, most unions and public employers have agreed to union security clauses in collective bargaining agreements, which means that as a condition of employment employees would financially support the union by either (1) becoming a member of the union and paying union dues within a specified amount of time of becoming employed; or, (2) not joining the union and paying an agency or representation fee to the union (in some rare cases, such clauses also may have required, in lieu of paying the union, the employee making a corresponding charitable contribution). Generally, pursuant to these union security clauses in collective bargaining agreements, employees who failed or refused to so financially support the union would be subject to discharge. All unit employees would be represented by the union as the exclusive bargaining agent and would be bound by the collective bargaining agreement negotiated between the employer and union.

Requirements Under 2012 PA 349

Under 2012 PA 349, unless there is a collective bargaining agreement in place prior to March 28, 2013, which requires employees as a condition of employment to financially support a union, public employees (with the exception of police and firefighters) can no longer be compelled to join a union, or pay dues or an agency fee to a union, or be required to make a corresponding charitable contribution, nor can the employee be fired if he or she does not join the union or does not agree to financially support the union. Similarly, for collective bargaining agreements entered on or after March 28, 2013, it would

be illegal for a public employer to agree to a provision in a collective bargaining agreement which requires, as a condition of employment, a public employee to be a member of the union or to otherwise financially support the union (or to make a charitable contribution in lieu of such dues or fees).

Union security provisions in a collective bargaining agreement entered into prior to March 28, 2013, remain in full force and affect until such agreements expire, even if those union security provisions require the employees to financially support the union as a condition of employment.

Even under the new law, bargaining unit employees (even if they choose not to financially support the union) remain represented by the union and remain bound by any terms and conditions of collective bargaining agreements. The fact that an employee does not financially support the union does not mean that the employer and employee are now free to directly negotiate with each other over wages or other terms and conditions of employment – that remains the role of the union as the exclusive bargaining representative of unit employees. Thus, the differences can be summarized by the following chart:

	UNDER 2012 PA 349	**BEFORE 2012 PA 349**
Union is generally required to represent all unit employees	**Yes**	**Yes**
Unit employees are bound by union contract negotiated between the union and employer	**Yes**	**Yes**
Union is the unit's exclusive bargaining agent with which the employer must negotiate in good faith	**Yes**	**Yes**
Unit employees are required to join union or pay union dues or agency/representation fees or to make a corresponding charitable contribution	**No** (after Mar. 28, 2013) **Yes** (If labor contract requires and is in place before Mar. 28, 2013; or if required in a labor contract for police or firefighters only).	**Yes** if labor contract so requires.

Counties' counsel/human relations specialists should review their current collective bargaining agreements entered into prior to March 28, 2013. If there are union security provisions which require employees, as a condition of employment, to financially support the union, such provisions remain enforceable until such contract expires (even if that is after March 28, 2013).

Police and firefighter unions are exempt from the law. Thus, there is no change for such employees. However, counties should note that often units which contain police employees also include non-police employees (such as 9-1-1 dispatchers and support staff). In negotiating new collective bargaining agreements with such "mixed" units,

counties should carefully assure that the non-police or non-firefighter employees of such "mixed" units are distinguished in any union security provisions so that 2012 PA 349 is fully adhered to.

Parties to collective bargaining agreements with unions which have expired or will expire *before* March 28, 2013, remain free to enter into new collective bargaining agreements which may contain union security provisions which may require unit employees to financially support the union as a condition of continued employment so long as the agreement is ratified by the union(s) and employer prior to the new law taking effect.

For collective bargaining agreements which are entered into *on or after* March 28, 2013 (except for those with police or firefighters), counties are now legally forbidden from including union security provisions or other provisions which require, as a condition of continued employment, a public employee to financially support the union or make a corresponding charitable contribution. Individuals, employers and unions are subject to civil fines of $500 and potential lawsuits for violation of this Act. The decision whether or not to financially support the union now becomes a decision solely of the individual employee. However, for counties and other municipalities (unlike school districts), there does not appear to be any prohibition in the law forbidding a county from undertaking to collect dues or service fees from wages of unit employees pursuant to a voluntary authorization by the employee to permit such deductions. As such, if an employee provides a written authorization to a county to deduct union dues and fees, the law does not appear to prohibit the county from complying with such voluntary deduction. Conversely, however, if an employee provides a county notice that the employee is withdrawing his or her authorization to deduct union dues or agency fees from the employee's paycheck, that decision must be respected and adhered to. However, once again, this does not mean that the employer and employee are now free to negotiate with such employee(s) directly over wages and conditions of employ. The union continues to be the exclusive bargaining representative for the unit employees, and the unit employees continue to be bound by, and protected by, the terms and conditions of the collective bargaining agreement between the county and the union.

If you have any questions or concerns, please feel free to contact us.

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