John F. Fuentes
County Administrator/Controller

Todd J. Campbell
Deputy Administrator

CLINTON COUNTY
OFFICE OF
ADMINISTRATIVE
SERVICES

Kate Rademacher
Finance Director

100 E. State Street, Suite 2100
St. Johns, Michigan 48879
(989) 224-5120 ▪ Fax: (989) 224-5102
www.clinton-county.org

HUMAN RESOURCES COMMITTEE
FEBRUARY 19, 2026 AT 10:00 A.M.
(OR IMMEDIATELY FOLLOWING THE WAYS AND MEANS COMMITTEE MEETING)
CLINTON COUNTY COURTHOUSE
BOARD OF COMMISSIONERS ROOM
100 EAST STATE STREET, ST. JOHNS, MI 48879

1	10:00	CALL TO ORDER, ADDITIONS TO THE AGENDA
2	10:02	LIMITED PUBLIC COMMENTS (LIMIT OF 3 MINUTES PER SPEAKER)
3	10:05	PARKS AND GREEN SPACE – SEASONAL PARK STAFF (KYLE THORNTON)
4	10:15	HOLIDAY/EMPLOYEE APPRECIATION LUNCHEON REQUEST (ADMINISTRATION)
5	10:20	COMMITTEE/COMMISSION APPOINTMENTS (ADMINISTRATION)
6	10:30	HIRING PROCESS (COMMISSIONER FICKES)
7	10:45	COMMISSIONERS' COMMENTS
8	10:50	ADMINISTRATOR'S REPORT
9	10:55	ANY OTHER BUSINESS
****MEETING STARTS PROMPTLY AT CALL TO ORDER TIME LISTED OR IMMEDIATELY FOLLOWING THE WAYS AND MEANS COMMITTEE MEETING. AGENDA ITEM TIMES MAY VARY****		

LINK to County YouTube Channel: https://www.youtube.com/@ClintonCounty-MI

PACKET INFORMATION IS CURRENT AS OF POSTING DATE. **NOTE:** ADDITIONAL INFORMATION MAY BE PRESENTED ON SCHEDULED AGENDA ITEMS. AGENDA ITEMS MAY ALSO BE ADDED DUE TO BUSINESS NEEDS.

TO REQUEST ACCOMMODATIONS OR MATERIALS IN AN ALTERNATIVE FORMAT, PLEASE CONTACT ADMINISTRATIVE SERVICES AT 989-224-5120 OR VIA EMAIL AT ADMIN@CLINTON-COUNTY.ORG NO LATER THAN 48 HOURS PRIOR TO THE MEETING.

Clinton County Parks and Greenspace Commission

1327 E. Townsend Rd • St. Johns, MI 48879
www.clinton-county.org
Phone: 989.224.5128 • Fax: 989.224-5102
Email: parks@clinton-county.org

TO: Human Resource Committee

FROM: Kyle Thornton
Parks and Greenspace Coordinator

SUBJECT: Seasonal Park Staff

DATE: February 10, 2026

Description:

Parks and Green Space Commission (PGSC) voted unanimously during their February 6, 2026, meeting to recommend the Human Resources Committee approve the revised job descriptions for seasonal parks staff, which include Lead Park Ranger (formerly called Park Manager/Intern) and Park Ranger (no name change).

Additionally, during the February meeting the PGSC voted unanimously to recommend to the Human Resources Committee to increase the wages for the seasonal park staff as follows: Lead Park Ranger to $15.00 per hour and Park Ranger to $14.00.

Note: In May 2025, as part of the 2026 budget preparation, the Parks & Greenspace Department submitted a model for seasonal staffing the parks for 2026 that reflected up to 15 rangers, 2 interns and 1 manager (total of 6,885 hours for the season if all positions were filled – equivalent to a total of 3.3 FTEs or 0.1834 FTE per seasonal).

-more-

The hourly wages proposed were a direct result of the continuing increasing state minimum wage issue. As of January 1, 2026, the current state minimum wage increased from $12.48/hr. to $13.73/hr. The proposed 2026 budget staffing model reflected all rangers at $13.29/hr. and the intern and manager positions at $14.50/hr. The estimated total for this model, if all positions were hired, is $93,661.50. The approved 2026 budget for seasonal Parks & Greenspace team members is $93,000. However, the Parks & Greenspace Department continually evaluates parks operations. The staffing evaluation resulted in a more efficient model to staff the parks in 2026. The proposed model includes four Lead Rangers @ $15/hr. and eight Rangers @ $14/hr. to provide a total of 280 hours of coverage for Motz Park, Clinton Lakes County Park and Clinton Trails County Park on a weekly basis over 17 weeks (total 4,760 hours for the season if all positions are filled – equivalent to a total of 2.3 FTEs or 0.1917 FTE per seasonal). The proposed staffing model has an approximate cost of $68,600 (approximately $24,400 in budget savings).

Suggested Action: Recommend Approval of the revised job descriptions, position titles and hourly wage rate for seasonal parks staff based on the revised staffing model of four lead rangers and eight rangers effective immediately to the Board of Commissioners.

###

CLINTON COUNTY
JOB DESCRIPTION

LEAD RANGER

Supervised By: Parks and Greenspace Coordinator
Supervises: Seasonal Park Rangers

Position Summary:

This position participates in the day-to-day work activities of the Clinton County Parks and Green Space parks regarding the operations of Parks and Green Space administered facilities. The employees shall assist the Parks and Green Space Coordinator in various administrative tasks as delegated with minimal supervision. The employee shall perform various types of operational and maintenance duties consistent with the operation of Parks and Green Space administered facilities. This position will train and provide guidance to staff, maintain grounds, infrastructure and equipment, and perform other duties as assigned. The employees provides direct supervision of the park rangers (on-duty).

Employment Period

January - December. Flexible scheduling (majority of hours between April and October) including days, nights, weekdays, weekends, and holidays. Adjustments may be made for students returning to school prior to the end of Employment Period

Essential Job Functions:

An employee in this position may be called upon to do any or all of the following essential functions. These examples do not include all of the duties, which the employee may be expected to perform. To perform this job successfully, an individual must be able to perform each essential function satisfactorily.

1. Assist in the planning, organizing, supervising and participating in routine and preventative maintenance tasks and repairs, cleaning public buildings, grounds and trash removal.
2. Participate in the clearing, brushing, marking, signing, mowing and grooming of non-motorized trails.
3. Perform periodic inspections and routine cleaning and maintenance of the facilities, infrastructure and trails.
4. Plan, prioritize and provide guidance to park rangers for daily operational and maintenance tasks in collaboration with the Parks and Green Space Coordinator.
5. Inspect vehicles and equipment on a regular basis to ensure that they are in safe operating condition.

6. Assist with and offer resolution to customer concerns, problems, and complaints in accordance with Clinton County policies, procedures and ordinances.
7. Answer phones, provide information, and courteously respond to public inquiries.
8. Conduct vehicle and foot patrols of grounds and facilities.
9. Assist with public programs and special events.
10. Keep the Parks and Green Space Coordinator and on-duty park staff (including Lead Rangers and Park Rangers) informed of concerns or complaints.
11. Respond to accidents, medical emergencies, and other incidents per training guidelines and ensure that all required paperwork is completed and filed appropriately.
12. Assist with training and enforcement on Clinton County policies, procedures and ordinances.
13. Complete various work activity reports and correspondence as directed by supervisor.
14. Immediately report to Parks & Green Space Coordinator all employee accidents, unsafe or unusual conditions in the park or other conditions in the park that involve property damage or theft, facility breakdown or closure, power outages, or concerns in the park related to public and employee safety.
15. Address safety issues that potentially affect public safety, directly or indirectly, including emergency situations and weather-related issues.
16. Train or assist in training park rangers about safety precautions, including use of personal protective equipment, and provide occasional safety presentations.
17. Safely operate and train staff on County-owned or leased vehicles, tools and equipment. Which could include but is not limited to trucks, farm tractors, equipment trailers, utility terrain vehicle (UTV), beach rakes, riding and push lawn mowers, string trimmers, leaf blowers, chainsaws, and an array of electric power tools.
18. Perform other duties as assigned

Required Knowledge, Skills, Abilities, and Minimum Qualifications:

The requirements listed below are representative of the knowledge, skills, abilities and minimum qualifications necessary to perform the essential functions of the position. Reasonable accommodations may be made to enable qualified individuals with disabilities to perform the job.

Requirements include the following:

- Minimum 18 years of age by start of Employment Period.
- Minimum High School Diploma or GED.
- Minium of one season as a park ranger or related experience.
- Ability to work independently and to complete daily tasks according to work schedule.
- Ability to read, interpret and carry out a variety of instructions furnished in written, oral, diagrammatic, or schedule form.
- Knowledge of basic computer word processing and spreadsheet software programs and ability to apply this knowledge in a productive and practical manner.

- Knowledge of basic arithmetic functions.
- Ability to write understandably and legibly and to prepare simple reports.
- Ability to effectively express ideas orally and to accurately and timely convey information and detailed instructions to others.
- Ability to establish and maintain effective working relationships with superiors, peers, subordinates, park visitors, and the general public.
- Ability to tactfully and diplomatically interact with people from diverse social, economic, and cultural backgrounds and to effectively manage park visitors who are upset or difficult.
- Ability to perform light to moderate manual labor.
- Possess a Valid Michigan driver's license.

Physical Demands and Work Environment:

The physical demands and work environment characteristics described here are representative of those an employee encounters while performing the essential functions of the job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- Visual acuity to carefully survey physical surroundings at all times.
- Hearing acuity to listen and communicate in person.
- Manual dexterity to fill out forms and use tools and equipment such as hand tools, power tools, pickup truck, and mid-size tractor with implements.
- Physical stamina to perform assigned tasks in an accurate and timely manner.
- Ability to walk, stand, bend, stoop, climb and lift up to 75 pounds occasionally and 5 pounds frequently.
- Mental capacity to exercise good judgment and make basic decisions.
- Exposure to people from all social, economic and cultural backgrounds.
- Exposure to occasionally upset/difficult people.
- Available to work weekends and holidays.
- Tolerance of variable outdoor weather conditions and sound levels.
- Safety awareness adequate to work around motor vehicles and near moving electric- and gas-powered mechanical equipment.

CLINTON COUNTY
JOB DESCRIPTION

PARK RANGER

Supervised By: Parks and Greenspace Coordinator and Lead Ranger (on duty)

Position Summary:

This position participates in the day-to-day work activities within the park system of the Clinton County Parks and Green Space regarding the operations, maintenance and cleaning of facilities. The employee shall perform various types of operational and maintenance duties consistent with the outdoor facilities and janitorial duties. This position is supervised by the Parks and Green Space Coordinator and Lead Ranger (on-duty).

Employment Period

January - December. Flexible scheduling (majority of hours between April and October) including days, nights, weekdays, weekends, and holidays. Adjustments may be made for students returning to school prior to the end of Employment Period

Essential Job Functions:

An employee in this position may be called upon to do any or all of the following essential functions. These examples do not include all of the duties, which the employee may be expected to perform. To perform this job successfully, an individual must be able to perform each essential function satisfactorily.

1. Participate in routine and preventative maintenance tasks and repairs, cleaning public buildings, swimming beach grooming, grounds and trash removal.
2. Participate in the clearing, brushing, marking, signing, mowing and grooming of non-motorized trails.
3. Perform periodic inspections and routine cleaning and maintenance of the facilities, infrastructure and trails.
4. Complete daily operational, janitorial and maintenance tasks.
5. Inspect vehicles and equipment on a regular basis to ensure that they are in safe operating condition.
6. Assist with and offer resolutions to customers concerns, problems and complaints in accordance with Clinton County policies, procedures and ordinances.
7. Answer phones, provide information, and courteously respond to public inquiries
8. Conduct vehicle and foot patrols of grounds and facilities.
9. Assist with public programs and special events.

10. Keep the Parks and Green Space Coordinator and on-duty park staff (including Lead Rangers and Park Rangers) informed of concerns or complaints.
11. Respond to accidents, medical emergencies, and other incidents per training guidelines and ensure that all required paperwork is completed and filed appropriately.
12. Enforcement on Clinton County policies, procedures and ordinances.
13. Immediately report to Parks & Green Space Coordinator and the Lead Ranger (on-duty) all employee accidents, unsafe or unusual conditions in the park or other conditions in the park that involve property damage or theft, facility breakdown or closure, power outages, or concerns in the park related to public and employee safety.
14. Address safety issues that potentially affect public safety, directly or indirectly, including emergency situations and weather-related issues.
15. Safely operate County-owned or leased vehicles, tools and equipment, which could include but is not limited to trucks, farm tractors, equipment trailers, utility terrain vehicle (UTV), beach rakes, riding and push lawn mowers, string trimmers, leaf blowers, chainsaws, and an array of electric power tools.
16. Perform other duties as assigned

Required Knowledge, Skills, Abilities, and Minimum Qualifications:

The requirements listed below are representative of the knowledge, skills, abilities and minimum qualifications necessary to perform the essential functions of the position. Reasonable accommodations may be made to enable qualified individuals with disabilities to perform the job.

Requirements include the following:

- Minimum 17 years of age by start of Employment Period.
- No educational required
- No experience required
- Ability to work independently and to complete daily tasks according to work schedule.
- Ability to read, interpret and carry out a variety of instructions furnished in written, oral, diagrammatic, or schedule form.
- Knowledge of basic computer word processing and spreadsheet software programs and ability to apply this knowledge in a productive and practical manner.
- Knowledge of basic arithmetic functions.
- Ability to write understandably and legibly and to prepare simple reports
- Ability to effectively express ideas orally and to timely and accurately convey information and detailed instructions to others.
- Ability to establish and maintain effective working relationships with superiors, peers, subordinates, park visitors, and the general public.
- Ability to tactfully and diplomatically interact with people from diverse social, economic, and cultural backgrounds and to effectively manage park visitors who are upset or difficult.

- Ability to perform light to moderate manual labor.
- Possess a Valid Michigan driver's license.

Physical Demands and Work Environment:

The physical demands and work environment characteristics described here are representative of those an employee encounters while performing the essential functions of the job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- Visual acuity to carefully survey physical surroundings at all times.
- Hearing acuity to listen and communicate in person.
- Manual dexterity to fill out forms and use tools and equipment such as hand tools, power tools, pickup truck, and mid-size tractor with implements.
- Physical stamina to perform assigned tasks in an accurate and timely manner.
- Ability to walk, stand, bend, stoop, climb and lift up to 75 pounds occasionally and 5 pounds frequently.
- Mental capacity to exercise good judgment and make basic decisions.
- Exposure to people from all social, economic and cultural backgrounds.
- Exposure to upset/difficult people.
- Available to work weekends and holidays.
- Tolerance of variable outdoor weather conditions and sound levels.
- Safety awareness adequate to work around motor vehicles and near moving electric- and gas-powered mechanical equipment.

COMMITTEE AGENDA ITEM

DATE OF MEETING: 2/19/26	ESTIMATE OF TIME NEEDED: 5 min.	NUMBER OF ATTACHMENTS: 0	REQUESTOR: Penny Goerge - Administration

BRIEFLY DESCRIBE THE ISSUE THE COMMITTEE IS BEING ASKED TO CONSIDER:

The 2026 Clinton County Holiday/Employee Appreciation Luncheon is tentatively scheduled to take place on Friday, December 18th at Agro-Liquid.

The Friend of the Court Office has graciously offered to host this year's luncheon. In order to begin preparations for the event, authorization is suggested for a budget not to exceed $5,700 to cover the cost of the hall rental, catering and decorations for approximately 180 staff (including retirees). This number represents a 3-4% increase from last year's request to account for inflation.

REQUESTED ACTION:

Authorize funding of up to $5,700 for the Clinton County Employee Appreciation Luncheon at Agro-Liquid on Friday, December 18, 2026, and close the Courthouse from 11:30 a.m. to 1:00 p.m. for employees to attend.

ADDITIONAL INFORMATION:

Please submit to Administration at least 1 week before the meeting.

COMMITTEE AGENDA ITEM

DATE OF MEETING: February 2026	ESTIMATE OF TIME NEEDED: 5 min	NUMBER OF ATTACHMENTS:	REQUESTOR: Administration

BRIEFLY DESCRIBE THE ISSUE THE COMMITTEE IS BEING ASKED TO CONSIDER:

COMMITTEE/COMMISSION APPOINTMENTS:

Tax Allocation Board:

- Pursuant to MCL 211.205j, the Tax Allocation Board is abolished when county electors approve separate tax limitations; in Clinton County, the electors approved Separate Tax Limitations on August 2, 2022, for a four-year period ending December 31, 2026 and as a result, the Tax Allocation Board was abolished and must now be re-established during the current year.
- Under MCL 211.205(e), the Board of Commissioners is responsible for appointing one individual to serve on the Tax Allocation Board; the appointed individual may not be officially connected with, or employed by, a local or county unit of government;
- The Board is required to take the necessary action to appoint an eligible individual and submit the appointee's name to the County Clerk no later than the end of March, so that she may prepare for the statutorily required meeting scheduled for April 20th.

Solid Waste Council: There is a vacancy on the Solid Waste Council for the Planning Commission Liaison.

Construction Appeal Board: There is a vacancy on the Construction Appeal Board for a two (2) year term expiring December 31, 2027.

Planning Commission: There are two vacancies on the Planning Commission for the remainder of three (3) year terms expiring May 1, 2026 and May 1, 2028.

Zoning Board of Appeals:

1. There is a vacancy on the ZBA for a three (3) year term expiring December 31, 2026.
2. There is a vacancy on the ZBA for a three (3) year term expiring December 31, 2028.
3. There is a vacancy on the Zoning Board of Appeals for the Planning Commission Liaison.

Building Authority: There is a vacancy on the Building Authority Board due to Cindy Moser's retirement. It is recommended that the new Finance Director, Kate Rademacher be appointed to fill the remainder of the three (3) year term expiring December 31, 2027,

CHAPTER 6
Human Resources Management

Updated by John Amrhein, M.B.A., Educator in Government and Community Vitality, MSU Extension.

County governments employ people in a wide range of occupations and skills, such as engineers, nurses, physicians, social workers, surveyors, administrative assistants, maintenance workers, computer technicians, communications specialists, election workers, and truck drivers.

Human resources management (HRM) is a staff function that all counties need to provide. We first consider the topic from the more traditional perspective, reviewing the legal provisions that guide HRM in county government, and then consider some of the basic principles and practices in organizing for HRM. Later in the chapter, we deal with collective bargaining and discuss how it affects HRM. Last, we consider equal employment opportunity and affirmative action policies and practices. In each section, we consider the impacts of the unique structure of Michigan county government, in which some departments are led by appointed department heads and others by elected county officials.

It is important to keep in mind that the board's primary role is to approve:
- The number of employees.
- The budget.
- All collective bargaining agreements.
- Pay systems for employees who aren't unionized.
- The human resources or personnel policy.

Boards must give clear policy direction to management staff members, including administrators and controllers, appointed department heads, elected officials, and court administrators. Day-to-day administration of those policies is the job of the administrative managers. The risk of legal problems due to inconsistent or incorrect HR management makes it especially important for county boards to speak with one voice and hire capable managers.

A Traditional Perspective

In this section, we will discuss HRM from a traditional perspective—that is, the legal basis for it. We discuss what people expect from their employment, and we consider how governments organize their workforces and compensate their employees.

Find Out More

To search for the most up-to-date version of any Michigan public act, use one of the Michigan Compiled Laws (MCL) search tools on the Michigan Legislature website at *http://legislature.mi.gov*.

To search for Michigan Attorney General opinions, go to *http://www.michigan.gov/ag* and click on "Opinions" in the menu.

To search for Michigan court rulings, go to *http://courts.mi.gov* and click on "Cases, Opinions and Orders" in the menu.

Legal Basis

State law relating to HRM in county government is rather limited. The basic general statute states merely that a county board may employ "such agents and employees for its county as may be deemed necessary by it, to carry out" any powers granted to county government.[1] This provision seems to allow a county board to do just about as it sees fit to adequately staff the county.

But there is a hitch: Some board policies may have limited legal effect on employees in departments headed by elected officials, including, of course, the courts. The state attorney general, for example, ruled in 1976 that a county board could not impose an HR policy on these departments because their employees are under the general control of elected officials and not of county boards.[2]

No specific statute authorizes the board to impose its HR policy in these departments. On the other hand, a court decision in 1986 held that these elected officials and county boards are co-employers,[3] a concept we'll discuss later. The result is that the matter is complicated and may be a source of frustration for both elected officials and county commissioners.

What authority does a county board have over elected officials and their employees? In general, the board may determine the number of employees in a department. For example, one statute allows the county board to determine in the budget the number of deputies in the sheriff's department.[4] And the budget can be important in determining the pay levels of employees, especially if the budget sets the pay for each position or incorporates the elements of a classification and compensation plan, an approach we review a little later. But where the difficulty comes, at least for some county commissioners, is that elected officials generally may determine whom to hire, how to schedule them, and any number of other day-to-day matters. Adding to the complexity is the presence of collective bargaining agreements in the counties.

With that kind of decentralized authority, developing and administering a unified HR policy or working with collective bargaining contracts can be difficult if the participants choose not to work together and the groups attempt to exercise the full extent of their power. What is needed is a cooperation pact between the elected officials, judges, and the board to work together.

In these days of diverse staff benefit programs and federal and state laws regarding nondiscriminatory practices—to say nothing of collective bargaining, binding arbitration, and the court-ordered rights of employees in the workplace—it seems almost futile to think that an organization as

complex as county government can get along without having someone specialize in these matters. If a county wants a unified HR program, some officer must be the focal point for policy development and coordination. Let us consider first some of the basic elements of effective HRM.

What Employees Want From Employment

Understanding HR practices from the employees' side is essential to developing sound policies and practices. It goes almost without saying that employees work to get money to meet, at a minimum, their food, shelter, transportation, child care, and healthcare needs. Usually, once having met that requirement, people consider money important, but money alone is no longer sufficient to keep employees motivated and productive. People also look to their jobs to fill social and psychological needs. Recognition, respect, acceptance, companionship, achievement, growth and development, opportunity to contribute, accomplishment, power, and pride are examples of such wants that all of us have in varying degrees. And we expect our jobs to fill these needs, at least in part. If the work environment helps fill such human and personal needs, employees are more likely to develop and maintain positive attitudes toward their work. If the needs go largely unfilled, negative attitudes and poor performance are likely results.

How do employers or managers go about meeting these biological, social, and psychological requirements? Workers want to be dealt with fairly, in an even-handed way without preferential treatment or favoritism. For that to occur, it is almost essential that an organization have a written set of rules—an HR policy that is communicated to the employees. Workers want and need to know what the rules are and that the rules are being applied uniformly to all employees.

Workers also want a voice in shaping the policies under which they work. They have demanded a kind of participatory management approach by forming unions to achieve a voice in shaping employment conditions and policies, an approach at times resisted by employers. During the 1980s and 1990s, fierce competitiveness between management and labor in the public as well as the private sector was replaced by a more participative approach to policy development. Much of that is still accomplished through the collective bargaining process. Additionally, the "self-directed work-team" approach is also making its way into the worklife picture, an approach we discuss later.[5] What is developing, then, is a unique American approach blending collective bargaining and participatory management.

The Human Resources Policy

Some county commissioners and administrators may assume that their county does not have an HR policy because the county board never adopted one. That may not be entirely accurate, however. Even though the board has not approved a formal policy, the county or its agencies in reality do have such a policy—it is just not a *written* policy. The best way to determine that policy is to look at the way the employees work. They have starting and quitting times, a holiday schedule, practices regarding the time and length of

coffee breaks, absences, and so on. The basics of such a policy, we suggest, are in place whether they are written or not.

But most of us would probably agree that this is not a very sound way to determine an effective HR policy in an organization. We would all see things a little differently and come to different conclusions about the rules. No doubt, so would the workers and administrators in such counties. Moreover, any county that operates in that way is leaving itself open to lawsuits and claims of discrimination, to say nothing about the costs of keeping demoralized employees on the job.

It is much better for a county to have a formal and written HR policy. The policy should state the conditions of employment. It should deal with the many legal considerations in employment. And it should assign the responsibility for overseeing the policy in operation.

Is this a plea for each county to have a big, thick HR manual? Not quite. Each policy must fit the conditions of the county. But we are not suggesting that it is OK if the policy consists of a few randomly adopted resolutions that relate to HR matters. Whatever HR resolutions are adopted should relate to one another and be consistent. Out-of-date provisions should be amended or repealed to avoid confusion.

A Classification Plan

Each HR policy should include a structured classification plan that groups county jobs that have similar requirements for knowledge, skills, abilities, and minimum experience and educational requirements. When job classes are coupled with rates of pay, the main contribution is an assurance that people exercising similar responsibilities and doing similar work are getting similar compensation. Large counties will probably have many classes. In small counties, the number will likely be lower. (Elected positions are not included in the plan.) The plan should cover seasonal, temporary, part-time, and full-time positions.

One word of caution: Setting up such a plan in county government is not easy. Judges often assert that their employees perform at higher levels than, for example, other employees in the clerk's office. Or the prosecutor might argue that the standards for employees there should be as high as for those working in the courts. The sheriff, the directors of the health department, planning department, and others will express similar reasons why their positions should be highly rated.

So at the outset, many of these department head interests should be involved in developing criteria to be used in determining how positions will be evaluated. If the county has current job descriptions, the task will be a little easier. But do not rely on them entirely—they may have become outdated.

Classification Studies

Whenever a county undertakes a major revamping of the classification plan or creates one for the first time, study and analysis of the jobs will be necessary. Such a study reviews what is involved in each position. What education, training, or certification is necessary for an employee to perform the tasks successfully? How much experience is essential? Does the person in the position work under much or little supervision? Does the position

involve supervising people in other positions? Must the employee make independent judgments frequently? What responsibility for funds and equipment does the position involve? What are the consequences of errors?

Job analysts look primarily at the responsibilities that go with a job because actual responsibilities, not titles, determine requirements for job knowledge, skills, and abilities.

How do those conducting the classification study get the necessary information? Individual, group, and supervisory interviews, direct observation, employee logs, and questionnaires are the principal methods. Usually, employees complete a form describing what they do and the responsibilities they exercise on the job, how much time they spend at each task, what special knowledge, skills, and abilities are essential to perform the job tasks, and more. Supervisors and department heads then typically review the forms for accuracy and completeness. Accurate and complete forms provide the basic information that one needs to analyze and classify the jobs.

Classifiers generally use a point system to give weight to the considerations we mentioned above. And on the basis of total scores, a general pattern emerges. The positions can then be grouped into classes and arranged in rank order. Some disagreement will probably arise over a few positions, and some fine-tuning will be needed, but the important foundation will be in place.

Job duties and responsibilities, however, change in response to existing conditions, as do people's skills and interests. Such changes may call for occasional reclassification of some jobs. Selective changes can and should be made from time to time, and, depending on the number of single changes, the entire classification plan will have to be reevaluated every few years.

Benefits of a Classification Plan

What benefits derive from a classification plan? First, managers have a current, clear, and comprehensive basis for understanding what knowledge, skills, and abilities are needed to perform the work of the department. This can be useful in assigning the unit's work and important in recruiting new workers to fill vacancies. Employees, on the other hand, also can gain understanding of what they should do to qualify for higher level positions, if that is their wish.

Second, the classification plan can form the basis for evaluating recruitment procedures to ensure that they are job-related. Establishing the job-relatedness of tests and other screening devices is important not only because it may help avoid or resolve charges of discrimination but because it makes personnel selection decisions more reliable. Establishing entry-level requirements such as education, experience, and licensure also helps to set up the base expectations for the position and improves the recruitment process.

Third, the classification plan provides the basis for developing the compensation plan and making compensation decisions. This allows for establishment and maintenance of internal equity between classifications.

A Compensation Plan

A classification plan indicates the relative value of positions to one another and to the county. But that does not yet say how much each employee should be paid. Hence, a pay or compensation plan is needed.

If pay rates before the classification study were handled well, present pay rates will tend to define the proper pay range for each class of positions rather well. But rates for at least a few employees will clearly fall outside a reasonable range. The temptation is to broaden the range. A better approach, we think, is to bring those employees below the range up to the first level for their class and to "red circle" those that are too high—that is, hold them at their current rates until they are promoted or the pay rates in the range rise to include those red-circled rates. If a red-circled employee leaves while still above the range, the replacement should be hired at a rate within the range.

Setting Compensation Ranges

How should compensation ranges be set? Three considerations are involved in answering this question. One is *comparability.* That is, how do the compensation rates of the county compare to rates that other employers in the labor area pay? This consideration will apply to a large majority of the jobs in the county. The second consideration is *competitiveness.* With which employers does the county compete for talent? Urban counties probably compete with many employers for a high proportion of the county positions; rural counties may compete for employees in only a few positions—for example, certified assessors, accountants, computer technicians, and police officers. The third is *internal equity.* How do the positions compare with one another within the organization?

Some counties will have to set their compensation at levels that enable them to compete in the marketplace; other counties will be able to set pay at levels comparable to those of the area for reasons of fairness and equity. But this latter group of counties may have to set the pay for the competitive positions at levels considerably higher than the county pays its other employees. Both types of counties, however, require reliable information about the levels of compensation in the area. Local chambers of commerce sometimes compile data on compensation by type of job. If salary survey data are not readily available, the county human resources director may have to gather less comprehensive information by contacting area employers or personnel agencies. Copies of collective bargaining agreements from nearby counties or data gathered by county personnel officers will also prove helpful.

Compensation Steps

Another consideration is how many steps should be in each range and how long an employee should have to work in the position before becoming eligible for the next step. The best criterion, we believe, is the length of time it takes a worker to reach the point where he or she can perform the work very well. If that time is rather short, the number of steps might be as few as two or three. If employees normally require a long time to learn the duties of a particular job very well, the position class may have as many as six or seven steps to reach the top pay level in the class. Each step should constitute recognition of the progress a person is making in mastering the

work. This principle, of course, also implies that a new, highly skilled employee may be hired in at some step other than the first level.

Career Ladders

A pay plan with just a few steps may mean some employees will top out (reach the top of the pay scale for their classification) fairly soon. But if the classification plan is structured properly and the county is viewed as one government rather than a collection of agencies, the system will produce a kind of career ladder—steps to higher level positions. That will permit able and qualified employees to improve their situations by working for and being rewarded with more responsible positions in other departments of the county. Some department heads may object to this approach because they may see themselves as seemingly in the mode of always training employees who leave just when they seem to understand their duties. That could be a problem that will need to be addressed in a different way. However, a personnel system having no career ladder "dead ends" employees too soon and may lead to an unacceptable rate of turnover or to demoralized employees.

High turnover rates or unenthusiastic employees in key positions should concern commissioners and managers. But they should not become so concerned that they create new positions or raise classifications merely to retain the services of an employee. The county should have limits to its willingness to compete.

Employees with career ambitions that the county cannot reasonably provide may have to pursue those ambitions elsewhere. Administrators tend to resist losing well-trained and valued employees and so want to upgrade their positions. Upgrading can be appropriate if the county needs warrant. But when the board follows the practice only to retain an individual, the classification system will get out of balance and produce negative reactions throughout the employee ranks.

Evaluating Employee Performance

A major weakness of many HR systems is employee performance evaluation or appraisal. Many of us who have had supervisors assess our performance have seldom been entirely happy with how they did it. We may even have promised ourselves that we would do it right when our turn came. But once we have the responsibility, we find it difficult to proceed as we would like. The heart of the problem, generally, is a lack of understanding, both by the supervisor and the employee, about what is expected. Supervisors, for example, may criticize a person's attitude in vague ways that only serve to anger an employee and sour working relationships.

A better approach is to concentrate on which behaviors managers want or do not want from an employee. These behaviors can be developed in "effective" and "ineffective" or positive and negative terms. As part of the evaluation process, these desirable and undesirable behaviors can be scaled, say from 1 to 5. When it is time to discuss the evaluation with the employee, the manager and employee have a basis for talking about what the supervisor thinks the employee has been doing very well, what can be done better, or what ought to be stopped altogether.

It is not likely that individual county commissioners will be involved in this kind of performance evaluation, except perhaps in connection with the county administrator. Nonetheless, the board should be concerned with the type of evaluation system that administrators use and should include some guidelines in the HR policy. The rating system should focus on the ability to perform the job, not on obscure and unstated impressions about how well a person is doing.

On another note, the evaluation system should provide for a regular review of performance. An annual review may be adequate for experienced employees; for very new employees, reviews twice a year for the first two or three years may prove beneficial.

Some counties are transitioning to a performance model that looks more forward than backward. The supervisor and employee set professional and personal goals each year, with coaching sessions held at least quarterly.

Human Resources Policies & Manuals

Once the human resources policy is in place, the county needs a plan to ensure that the policy is communicated to the county employees. This plan might be contained in the policy or created by the administrator. If it's in the policy, it should allow the administrator flexibility in implementation. A good plan will include a way for each employee to easily access the manual, whether electronically or on paper, and provide for training on the policy. The manual will include a description of the classification and compensation plans and many other important topics.

Elements of the Manual

The heart of the manual should deal with the work rules and information about the conditions of employment. Approved policies should be presented pretty much the way the board passed them if they are not too legalistic and complex. If necessary, some additional explanation can be included. That will help reduce misunderstandings and disputes over what official policy is. Each county will want to tailor its HR manual to its own needs and circumstances, but all county manuals will have some common topics.

Some counties have a set of procedures that accompany each policy that can be changed by the administrator, but only the county board can change the policy.

Definitions

Definitions may not make for an exciting section, but the manual ought to be clear about certain terms. For example, it should state which positions are covered by the policy and which, if any, are not. It ought to distinguish between full-time and part-time employees, between temporary and permanent workers. The manual should state how an employee's anniversary date is determined and what significance it has in the policy. The definitions section should also deal with the probationary or trial periods, and state the conditions that pertain to new and temporary employees and permanent ones.

Employee Records

The manual should describe how the county maintains the personnel records of each department. Are they kept in the personnel office or in individual departments? The board should also ensure that employees know which records are kept, who may make entries in the files, and the circumstances under which employees may exercise their rights to inspect their personnel files.

Access to Personnel Files

The Michigan Employee Right to Know Act of 1978 (ERKA)[6] defines and protects the rights of employees to see their personnel records. The general rule is that employers must give employees reasonable access to their individual records. Employees may ask to have certain documents removed. If the employer disagrees, the employee may enter a statement in the file telling his or her side of the story.

In addition, an employer must notify the employee if documents concerning a disciplinary action are to be sent to a third party. In *Kent County Deputy Sheriffs' Association v. Kent County Sheriff*, the Michigan Court of Appeals ruled that such records are not subject to the Freedom of Information Act.[7] Records of disciplinary actions that are more than 4 years old may be deleted before sending the records to a third party. Violations are subject to civil action and penalties.[8]

Counties handle the retention policy for disciplinary records in various ways, such as:

- Keeping a permanent file with no deletions.
- Negotiating the matter with their labor unions. Such agreements often specify that, after a certain period of time (such as 3 years) after the infraction, if the employee has committed no further offenses, the record of the infraction and resulting disciplinary action will be removed.
- Writing into the human resources policy that removal of disciplinary records may be mutually agreed upon by the employer and employee.

Policy on Providing References

This provision concerns the forwarding of work-record information to prospective employers of present or past county employees. It is a matter that the board may want to address in its policy, though not necessarily in the HR manual. State law provides that:

> An employer may disclose to an employee or that individual's prospective employer information relating to the individual's job performance that is documented in the individual's personnel file upon the request of the individual or his or her prospective employer. An employer who discloses information under this section in good faith is immune from civil liability for the disclosure. An employer is presumed to be acting in good faith at the time of a disclosure under this section unless a preponderance of the evidence establishes 1 or more of the following:

> (a) That the employer knew the information disclosed was false or misleading.
>
> (b) That the employer disclosed the information with a reckless disregard for the truth.
>
> (c) That the disclosure was specifically prohibited by a state or federal statute.[9]

Despite the statutory provision, providing employee performance information can prove troublesome because an actual or prospective ex-employee may have a different perspective on that person's performance. The problem is that giving work record information, however accurate, may demean a person's reputation and diminish his or her opportunity for gaining employment elsewhere. Some employers have found that not only did their former employees sue them for this reason but that courts also awarded substantial judgments to the individuals. It may be prudent to set a county policy authorizing county personnel to report or verify only the following information about a current or former employee:

- Dates of employment.
- Positions held.
- Beginning and ending rates of pay.
- Whether the person is eligible for rehire.

These are factual responses, not subjective evaluations by which a county administrator, department head, or other management employee may accidentally incur a lawsuit for the county.

Hiring Policy

The HR policy manual should describe how the county hires people and especially how employees can be considered for promotion within the same department or a different one. How are employees informed of vacancies in other departments? Do current employees get preferential consideration over others? Are tests involved? Who does the interviewing? Will a person who applies be considered for a position other than the one applied for or by departments other than the one where an application was made? Who makes the hiring decisions? Other hiring rules, imposed by the federal Americans with Disabilities Act, also apply. We discuss those later.

Orientation

The county's human resources policy should also identify who is responsible for orienting new employees. Sometimes employers fail to introduce workers to county policies and to new surroundings—they assume that employees, in time, will get to know their way around. Then an error is made and the manager wonders why an employee, after six months or so on the job, did not know about this or that.

The orientation should include a personal review of the manual and perhaps an organizational chart of the county departments. A solid introduction will help get a new employee off to an informed and productive beginning.

Many counties already do an excellent job of employee orientation. Kalamazoo County, for example, developed a short slide presentation to orient new employees. It told of the various functions that county government exercises and a little about the county facilities, and it gave an overview of the county organizational structure. Kent County provides a

mandatory 4-hour orientation for all new employees, with an overview of the organization, structure, policies, and procedures of the county, and a review of compensation and benefits. A second part of the orientation is mandatory and provides an orientation to cultural awareness and diversity. Ottawa County provides an orientation for all new employees and also pairs each new employee with an ambassador, a county employee trained to help smooth a new employee's adjustment to a new organization.

Work Rules

The HR manual should cover the general work rules of the county. Does the county have a general rule regarding punctuality or unexcused absences? What about personal use of county equipment? Or advance notice for termination and resignation? Are there rules about employing relatives or about employee safety? What should a person do in case of an accident at work? And what should be done if an employee threatens a coworker or county client?

Departmental Rules

As we have noted, the county board may not be able to make all its policies apply in departments headed by elected officials or in county departments that have their own governing boards. The manual should identify those exceptions. The manual should also note where copies of departmental rules may be obtained. Departmental rules should be clearly spelled out and consistently applied because, as a co-employer, the department head has the same general responsibilities as the county board.

Leave Policies

Many employers offer their employees one or more types of paid or unpaid leave, such as vacation leave, personal leave, sick leave, jury duty, parental leave, family sick leave, disability leave, bereavement leave, and educational leave. Information in the employment manual about each type of board-approved leave may include:

- Which employees (such as full-time, part-time, seasonal, temporary, on-call) are eligible for it.
- Whether it is paid or unpaid leave.
- What the leave may be used for (for example, personal illness, exposure to a dangerous contagious illness, illness of a family member, medical or dental treatment, the birth or adoption of a child).
- When the employee starts earning credits for it (such as date of hire, 30 days after hire, 1 year after hire).
- Whether paid holidays that fall within the leave will be charged to that type of leave.
- Whether any unused leave rolls over at the end of the calendar or fiscal year.
- Maximum accruals (such as 80 hours of vacation leave, 24 hours of personal leave a year).
- The rate at which employees accrue credits for it (such as full-time employees at X number of hours per month, three-quarter-time employees at 75% of the full-time rate, half-time employees at 50% of the full-time rate).

- Whether the leave type may be coordinated with other types of pay or benefits.
- Whether the employee must present a physician's statement before returning from sick leave or to authorize payment of sick leave.
- Whether the leave is to be reported and paid in days, hours, or fractions of hours.
- The procedure for requesting and reporting leave.
- When an employee becomes eligible to use the leave (such as after 30 days, 60 days, or 1 year of employment).
- Whether the employee will receive payment for the unused leave at termination or retirement.

Employees who are members of the Reserve and National Guard "must, upon request, be granted a leave of absence to satisfy a requirement for military training."[10] They also have reemployment rights after completing military duty. Federal law generally requires that a service member returning from military duty be reemployed in a position that is the same or similar to the one he or she left after being called up. The returning employee has 90 days from the date of discharge to apply.

Public employers, including county governments, have historically allowed employees to accrue more vacation and sick leave than their counterparts in the private sector. As a result, public employers have sometimes owed resigning or retiring employees rather large payments for their accrued vacation and sick leave. Some county boards have chosen to establish reserve funds to cover such payments when they come due; others have reduced employees' maximum accruals.

Abuse of Leave Benefits

Eliminating all abuse of sick leave benefits is not likely. Allowing a partial payoff for unused sick leave on retirement is a commonly used incentive to reduce abuse. Some counties also allow employees to use two or three days of sick leave each year as personal leave days. Of course, employees are still away from their jobs under this arrangement, but it may permit the managers to schedule the absences a little better than if people just call in sick.

Most important, county policy should state who is responsible for reporting and recording sick leave and annual leave use. Without carefully kept records, the board may find it difficult to deny claims for payment in the future. Although it adds to record keeping, good practice requires informing individual employees when their leave accounts have been charged. Employees should also receive periodic reports on the status of their leave accounts.

The best method for maintaining leave records is by associating them with the payroll process. Computerized payroll processes facilitate accurate maintenance of annual sick leave records. Used annual and sick leave can be reported along with other payroll information by department managers and charged to the individual accounts.

Holiday Observances

Time off with pay for holiday observances is another important policy and cost area. The manual should list the holidays that the county observes. More important, though, are policies that relate to holiday observances—how skeleton staffs are scheduled, how working employees will be compensated, whether attendance the day before a holiday is required to draw holiday pay, and so on.

Compensation & Employee Benefits

We noted earlier that the manual should cover briefly the classification and compensation plans. The policy, however, should also deal with rules about compensation for overtime, when paychecks are delivered or direct deposits made, and what period each check covers. Note that Michigan law generally requires employers to compensate employees at 150% of the regular rate for all time worked in excess of 40 hours per week.[11] Allowing compensatory time off in lieu of monetary compensation is permissible if the collective bargaining agreement does not prohibit this option or if the individual employee and employer voluntarily agree on it.

Retirement Benefits

Most county employees are included in the federal social security programs, though public safety employees may not be participating in social security. But counties, like many other employers, commonly provide additional retirement benefits.

Retirement plans come in two basic forms. The traditional form is a *defined benefit* plan through which the employer commits to pay to retired employees a specified amount per month based usually on the employee's length of employment with the employer and the person's average earnings during a specified period, often the highest three or five years. With this approach, the employer creates its own fund or contracts with either a private or state retirement fund to reserve funds during the employee's working period so that the money will be available when the person retires. Under this type, the employer is constitutionally obligated to pay the promised benefit.

The second form, a *defined contribution* plan, is simpler because the employer promises only to contribute a percentage of earnings to a retirement account. Depending on the plan, employees may or may not be required to contribute a percentage of their earnings to their accounts. The funds are invested and earn interest, and the employer makes no guarantee regarding the retirement benefits because the benefits are based on whatever an individual account has accumulated and will support. This retirement benefit form puts the risk on the employee to fund his or her retirement years rather than on the employer. The accumulated amount is held in the employee's name, and after vesting conditions have been met, the assets become the property of the employee. Michigan restructured its state employee retirement plan on a defined contribution basis in 1997.

Retirement plan alternatives have become more numerous in recent years. One of the alternatives is to participate in the Municipal Employees Retirement System of Michigan, a defined benefit plan established in 1945 by the state for public employers. In 1996, the legislature authorized MERS to operate as an independent and professional retirement services company

operated on a not-for-profit basis.[12] This plan is administered by a nine-person board consisting of three nonofficer employees who are members of the retirement system, three people who are officers of participating municipalities or courts, one person who is a retiree of the system, and two people who are knowledgeable about retirement systems.

MERS serves about 800 municipalities, including 66 counties. Over 100,000 employees are covered by the MERS plans, which are primarily defined contribution plans. Few defined benefit plans remain.[13]

A second alternative is for county boards to establish county retirement plans, either on their own or in collaboration with investment firms. This statutory alternative permits a board to pay for or contribute to an endowment or annuity retirement policy or to establish a fund to provide retirement benefits. In the latter case, the board may establish a board of trustees to administer the county plan under policy guidelines provided by the board of commissioners and the general statute. The act permits the board to pay part or all of the retirement program costs.[14] This alternative is based on the defined benefit form.

Which approach is better depends on several factors. Most counties find working with MERS to be beneficial because they can then be part of a large pool over which to spread the risk of the actuarial tables. Larger counties may constitute sufficiently large pools so they can absorb the vicissitudes of the various risk factors. Also important is the expertise available in investments and portfolio management.

A third alternative may be to supplement either of the above approaches with supplemental retirement accounts, or SRAs. This is a defined contribution approach and permits an employee to ask to have his or her salary reduced by a specified percentage and have the amount paid to an annuity account, mutual fund, or other such plan. The money thus invested is pretax money that is earning interest all the while it is invested. The retiree pays the federal tax as he or she withdraws the funds. Michigan now collects income tax on some retirement benefits for taxpayers born after 1945, though some types and levels of income are still exempt. The rules are different for taxpayers born from 1946 through 1951 and for those born in 1952 or later. The rules also change once a taxpayer in either group reaches age 67. Details are available at *http://www.michigan.gov*.

Insurance Benefits

Another section of the human resources policy undoubtedly will deal with insurance of various kinds. The manual should outline this coverage. Health, disability, life, and accident insurance, for example, are commonplace and of great significance to employees. They are also an important form of untaxed compensation and expense for employers. The manual should inform employees about what is covered and what is not, how they might apply for benefits, whether benefits are applicable to family members, the amount of the employee copay, and more. It is also of benefit to let employees know what the total benefits package costs, even if the employer pays the entire amount. One would not include the specific amount in the personnel manual because the figures change. The county board has authority to pay all or part of these bundles of benefits. The plans may cover present and retired county employees including those of the road commission and other county boards and commissions.[15]

For most Americans now living, the federal government has always provided Medicare for persons 65 years and older. This program has played a significant role in paying the costs of healthcare coverage for seniors. The program, however, seems to be under intense challenge as the costs rise because of two factors. One is the increasing life expectancy of the senior population. The second factor is the accelerating costs of the healthcare industry. Both factors will challenge the viability of the Medicare program. Congress made major changes in 2006, but it appears that further changes will be necessary. The Medicare changes have the potential for affecting both public and private employers.

The county must also provide worker compensation insurance to cover costs associated with work-related injury, illness, or death. Many counties now obtain this coverage through a self-insurance program administered by the Michigan Association of Counties. This coverage may not be of paramount interest to many employees. But they should know that it exists and what they should do in case of such an accident or illness.

Unemployment insurance is similar in that it is now a required program for public employers. Employees will be interested in that, too, especially because employees may have had experience with layoffs. Counties have two basic approaches for handling these obligations. One is to self-insure by reimbursing the state for benefits paid to their laid-off employees. Or, they may pay a percentage of their monthly payroll as private employers do. (For more information see the *Employers Handbook,* available online or from local Michigan Unemployment Insurance Agency offices.[16])

Employers & the Affordable Care Act

The basic premise of the Patient Protection and Affordable Care Act (ACA) is that all individuals should have some form of health insurance coverage that meets minimum criteria, whether this comes through an employer-sponsored plan, Medicare, Medicaid, or the Health Insurance Marketplace of the state. This section will focus on the employer responsibilities and reporting under the ACA.

The ACA applies to employers of all types—for profit, nonprofit, and government. An employer with an average of 50 or more full-time employees (or full-time and full-time equivalents, or FTEs) in the previous calendar year is classified as an applicable large employer (ALE). ALEs are required to offer health insurance coverage to their full-time employees or be subject to an additional payment administered by the IRS. This is commonly referred to as the "Play or Pay" provision. Employers with full-time or part-time seasonal employees are permitted to adjust for these seasonal employees when calculating their number of employees.

Guidance continues to be written and released by all agencies that provide oversight of the ACA. It is also important to recognize that all of the information being discussed in this section may change with any further guidance being issued or changes made to the act. Always work with the county's trusted HR management team and advisers on legal, financial, and tax matters about the specifics of your situation and how the act may affect your county.

Tax Forms

Regardless of whether an ALE offers health insurance coverage to its full- or part-time employees, it is required to provide specific tax documentation to the employee and the IRS. There are some circumstances that may require small employers (non-ALEs) also to report to the IRS and provide forms to their employees. Current filing information can be obtained from the U.S. Internal Revenue Service and U.S. Department of Labor.

Conditions of Employment Policies

Another group of policies relates to general conditions of employment—the breadth of opportunity for job changes, the quality and fairness of disciplinary actions, and others.

Promotions & Transfers

The HR manual should explain promotion and transfer policies. Department heads and managers may not like to see their able and dependable employees go off to another department. Yet if the county is to have a system that provides an employee career ladder and the opportunity for personal advancement and challenge, it should provide for interdepartmental transfer and promotion. The manual should discuss how and when jobs are posted and whether current employees will receive preferential treatment.

Discipline & Discharge

Employers and managers sometimes fail to enforce work rules evenhandedly. In such cases, a supervisor who finally does decide to discipline or discharge an employee creates a liability risk.

Department heads should have discretion in how they discipline employees as long as the discipline:

- Is within generally accepted processes.
- Complies with all federal and state laws and collective bargaining agreements.
- Is carried out in conjunction with the county human resources department.

The policy should also provide a series of progressive actions for repeated violations of the less important work rules, violations that may be more annoying than anything else. Some violations, of course, may be so egregious that there can be no second chance. The county discipline policy should include an internal review and appeal procedure that gives employees an opportunity to explain their view of the situation.

To make the ultimate form of discipline—"You're fired!"—stick, county administrators should be very careful to document each incident that leads to dismissal. Who did what and when? What action did the manager take? What other factors contributed to the employer's decision? Administrators who terminate an employee without having taken (and documented) other disciplinary steps may find themselves defending their actions in a grievance procedure with the state Civil Rights Commission or even in court. And if the procedure is judged to be unfair, the employee may be put back on the job with retroactive pay and benefits.

On another note, many managers have risen through the ranks of a single department. What they have learned about discipline over the years may have come primarily from what they observed in that department. Managers, like all employees, should be given the opportunity and encouraged to participate in training and educational seminars and workshops on management best practices and employee–employer legal procedures.

Grievance Procedure

The grievance procedure provides an internal process for employees to get problems resolved and to ensure, in discipline cases, that the enforcement of a rule and the penalty are fair. If the union-management contract specifies the steps of the grievance procedure for employees covered by the contract, the HR manual should refer readers to that process. The problem-solving procedure for nonunion members should be included in the HR manual.

Grievance procedures are complex in most counties. The basic guide is that the steps follow a chain of command: first, an employee–supervisor conference; second, a review by the appropriate department head; and third, consideration by the HR director or other person charged with overall administration of HR policies. Some boards may think the county board or a board committee should have the final internal review of the matter. We generally advise against that approach because it usually turns an administrative problem into a political one. However, it may be the only recourse in some situations.

When the employee is part of a union, the final step in the process may be an outside arbitrator's review and ruling. That can relieve the board itself of having to decide questions of this kind. At the same time, an arbitrator's decision may run counter to what the board sees as appropriate. The courts are generally reluctant to overturn the decisions of arbitrators.

Other Matters

The county HR manual can deal with several other matters. Among them are policies regarding personal conduct, employee safety practices, leave for jury duty, and conflicts of interest. It may also provide information on credit union services, rules regarding travel on county business, and any other HR matters the board wishes to address.

Making the Transition to Written Rules

If your county board is considering revamping the HR rules or even just bringing them together in a consolidated form, bear in mind that this can be a sensitive matter for employees. Going from scattered rules or from an unwritten policy to a comprehensive written policy may appear to be threatening. Even if the board only intends to clarify some previously fuzzy policies, employees may be suspicious of what the board has up its sleeve.

A few ideas that may help smooth the process follow. The first is don't move too fast. When a draft is available, hold a hearing on it so employees can raise questions or objections and suggest improvements. The hearing gives the commissioners occasion to explain the changes and the reasons for them. Employees will have an opportunity to have their say. And this will

warn commissioners about future points of contention if the board proceeds with the proposal.

Commissioners also need to note that many of these items may be subjects of collective bargaining for those employees covered by a collective bargaining agreement. In that case, unilateral action by the board may lead to claims of unfair labor practice. Thus, the board may have to work some of these matters through with the unions in the contract negotiation process.

When the board introduces a new or revised policy, it should also take care to make arrangements for a transition from the old to the new. More than likely, the board will have to make some concessions to some employees who would suffer in some way under the new policy. Including a hold harmless clause and providing time, perhaps as much as a year, to permit all aspects to be implemented will also help. If the new policy is worthwhile, such concessions are a good tradeoff.

Finally, clarity of policies is very important. Policies need sufficient detail to be sure their meaning is clear enough to minimize the chance of misunderstandings by both sides.

The Civil Service Alternative

The establishment of a county civil service commission is an alternative for county boards, although only one Michigan county has availed itself of this alternative to a board-established HR policy.

Creation of civil service systems was a key proposal of reformers in the early 1900s. They saw it as an important antidote to the patronage systems that developed during the 1800s. The general idea is that government workers should be appointed on a merit basis—that is, on the basis of their ability to perform the work—rather than because of the person they helped get elected or the amount of money or time they contributed to a political campaign. Civil service systems are now widespread.

A county civil service system is headed by an appointed commission. The commission has a high degree of independence from the political interests of the county. The commission sets the employment policies, establishes the work rules, administers the classification system, oversees the testing for appointment and promotion of employees, and conducts hearings and investigations regarding disciplinary actions.

Civil service systems, however, are not common to Michigan county government. Wayne County has the only county civil service system. That is due, in part, to the enabling legislation that provides for civil service arrangements only in counties with a million or more population.[17] As this act requires, voters approved the system in a referendum. The county board appoints the three-member civil service commission to 6-year terms. The civil service board members are paid on a per diem basis.

Although this statute permits only the largest counties to have civil service systems, the constitution contains a self-executing provision that allows any county board, with approval of the voters, to establish a civil service system.[18] To implement this provision, a county board would have to pass an ordinance containing all the basic provisions of the system and then have the electorate approve it. The attorney general ruled that this constitutional provision is not subject to voter initiative.[19]

Why haven't more counties adopted such a system? The main reason, we think, is that the partisan alignments of county boards of supervisors were relatively stable in the past. Hence, county employees were not generally turned out of office after each election. In addition, most counties have developed personnel selection systems that at least assured the county of having a qualified staff. The traditional political abuses were not commonplace, and the pressure from employees and voters for civil protection didn't develop.

Court decisions also now protect employees against arbitrary dismissal in ways not previously available. For example, the U.S. Supreme Court ruled in a case involving assistant federal prosecutors that being of the wrong political party was not a justifiable reason for dismissal. Employee unions, as well, shelter employees from the onslaughts of incoming administrations. Collective bargaining units have built into the union contracts some protections against politically motivated firings, such as have happened, for example, when a new sheriff is elected. With these and other developments, we are not likely to see much pressure for the creation of new civil service systems.

Other Human Resources Regulations

In addition to the ACA, several other federal and state laws address various aspects of human resources management, such as:

- The federal Americans With Disabilities Act.
- The federal Family and Medical Leave Act
- The federal Equal Employment Opportunity Act
- The Michigan Civil Rights Act

Americans With Disabilities Act

The federal Americans With Disabilities Act of 1990 (ADA) took effect in 1992. It "prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications."[20] This discussion will focus on the employment regulations that apply to state and local governments (Titles I and II). According to the employment section of the ADA:

> No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.[21]

The employment-related provisions of the ADA that we will discuss in this section are:

- Pre-employment medical examinations.
- Medical records and information.
- Substance use and abuse.
- Reasonable accommodation.
- Notices, enforcement, and penalties.

The ADA prohibits employers from using "qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities."[22]

Medical Examinations

The act forbids employers from requiring pre-employment physicals or asking questions intended to determine whether a job candidate has any disabilities. Under the ADA, employers may make such inquiries now only for purposes related to the performance of job-related functions. That is, "Can the candidate perform the tasks required to hold the position?"

Medical examinations, however, may be required after an employee is hired, but even then only under certain conditions:

- If one employee is required to submit to a physical exam, all employees must be required to do so.
- Health information must be treated confidentially and maintained on a form separate from other personnel records.
- Employee health information may be released to supervisors only for the purpose of developing reasonable accommodations and to safety personnel who may need to know about an employee's disability in a medical emergency.

Substance Use & Abuse

Testing for current illegal use of drugs is not considered a medical exam under the ADA, so it may be required of prospective or current employees.[23] County policy may specifically prohibit the use of illegal drugs and alcohol at the workplace for *all* employees. The county policy may also demand that all employees not be under the influence of such substances while at work, and importantly, may hold all employees to the same qualification and performance standards even if an employee's unsatisfactory performance is related to drug or alcohol use. It is extremely important that counties have a clearly written drug-free workplace policy and provide training on it. Always consult a qualified attorney when creating such a policy.

Reasonable Accommodations

The first major question posed by the ADA relates to disability. The second and equally important question is whether the employer can make a reasonable accommodation that "would not impose an undue hardship on the operation of the owner's business."[24] Thus, it may not be enough to say, "We're sorry, we would really like to hire you, but it is clear that you simply are not able to perform *all* the duties of this position."

The follow-up question, then, is whether any accommodation in the job duties or physical arrangement could be made in a way that would enable the person with a disability to perform the job. This is where some creativity and ingenuity come into play.

For example, suppose an employee who uses a wheelchair must regularly look up information in a multivolume set of books that is kept on an overhead shelf in the register's office. Reasonable accommodations for the employer to consider in this case might include:

- Keeping the books on a lower shelf that is easily accessible to the employee.

- Installing a mechanical retrieval system that the employee could use to move the books.
- Shifting the task that requires checking the books to another employee.
- Digitizing the books' contents so that the employee could look up the data electronically.

This is not to indicate that a county or other employer needs to make every conceivable accommodation or to restructure every job in the courthouse to open up positions to people with disabilities. The act does contain a hardship clause that requires the U.S. Equal Employment Opportunity Commission—the agency administering the ADA—to take into account the nature and cost of an accommodation, the employer's resources, and other factors. At the same time, it is important to note that the ADA does impose a standard that differs from the traditional standard.

Notice & Penalties

The ADA also requires employers to post a notice of these provisions at the workplace so that employees, department heads, and residents may be aware of them. Remedies and penalties under the act are subject to administrative and judicial review. Civil suits are a key means of enforcing the ADA. One of the early judgments was against an employer who fired a person with cancer even though the person could perform the duties of the job.[25]

Family & Medical Leave Act

> It is the purpose of this Act—
>
> (1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.
>
> (2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition.
>
> (Excerpt from the opening of the Family and Medical Leave Act[26])

A "child" under the act is a person under the age of 18 or, if over 18, a person who is incapable of self-care because of physical or mental disability.

Eligible Employers & Employees

The Family and Medical Leave Act (FMLA) applies to all employers who have 50 or more employees within a 75-mile radius of the work site, which includes most county governments.[27]

There are some exceptions, but in general, FMLA-eligible employees are those who have worked for the eligible employer they're requesting leave from for at least 12 months and for at least 1,250 hours of service during the previous 12-month period (an average of about 25 hours a week).[28]
The act allows an employer to deny leave to "a salaried eligible employee who is among the highest paid 10 percent of the employees" of that

employer and whose leave would cause "substantial and grievous economic injury to the operations of the employer."[29]

As long as the employer and employee agree that the employer's problem would be very serious, the issue might end there. If the parties don't agree, however, the county should be prepared to justify the assertion about the importance of the employee to its operations.

Leave Purpose & Scheduling

The act permits an employee to take a leave of up to 12 work weeks during any 12-month period:

- Because of the birth or placement of a child with the employee for adoption or foster care. The leave doesn't have to start immediately after the child arrives, but it does have to occur within the first 12 months after the child's birth or placement.
- To care for the spouse, or a son, daughter, or parent of the employee who has a serious health condition.
- Because the employee has a serious health condition that makes him or her unable to perform the functions of his or her job.
- Because of "any qualifying exigency . . . arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty . . . in the Armed Forces."[30]

Can the employee just call in and say, "I'll be on leave for the next three months because . . . ."? The act gives some general instruction to employees to consider the interests of the organization. The law instructs employees to give at least a 30-day notice unless a medical necessity pertains, and to schedule the medical treatment in the employer's interest. The act also permits employers to request a certification of the condition and to request a second professional opinion if the employer is willing to pay the cost of obtaining the second opinion. Under some circumstances, these provisions may be influential, but for the most part, the decision on whether a leave will be taken is the employee's call.

Conditions of Leave

An issue working against the use of leave time, of course, is that the absences are unpaid leaves. If county policies permit, an employee could use accumulated annual leave time for at least part of the absence. The accumulation of normal employee benefits such as sick leave and annual leave may be interrupted in accordance with general county policies. Benefits accrued by the employee at the time the leave begins must be maintained. And county medical coverage must be continued. If the employee does not return at the end of the permitted leave, however, the employer may seek financial recovery for all medical coverage payment made in the employee's behalf. At the end of the leave, in most cases, the employee must be restored to the same position or a similar position.

Enforcement & Notices

What happens if a county, intentionally or inadvertently, denies an employee the exercise of this leave alternative? The federal law permits the employee to seek a remedy in federal or Circuit Court. The court may order payment of wages and benefits, monetary losses such as cost of providing child care, interest, as well as additional damages that may be defined in an employment contract. As noted, an employee may sue the county for

violating the act, and the statute also gives employees "similarly situated" standing to sue their employer for perceived violations even though they, themselves, were not necessarily injured directly by a specific county or employee action.

Finally, the statute requires employers to post notices in conspicuous places to notify their workers of their rights under this law. As is the case with this and other federal and state laws, employees are given certain rights and protections, and employers are assigned specific obligations. And employees are given standing to sue in many of these circumstances. For these and other reasons, counties should take care in establishing policies and overseeing the administration of such policies to assure their appropriate enforcement. Another such important policy has to do with employment discrimination policies, a matter that we discuss next.

Nondiscrimination in Employment

Both public and private employers need to maintain a strong awareness of discrimination in employment decisions. The Michigan Constitution, now more than 50 years old, created the Michigan Civil Rights Commission. It began largely with concern over racial discrimination in employment, housing, and other areas. But now we find that concern over discrimination extends much more broadly. Michigan's Elliott-Larsen Civil Rights Act (Public Act 453 of 1976)[31] prohibits discrimination on the basis of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status. In addition, the state has a Persons With Disabilities Civil Rights Act (Public Act 220 of 1976)[32] that prohibits employers from discriminating against a person with disabilities if the disability does not prevent the person from performing the required duties of the job in question. Both acts apply to employers who employ one or more persons, a category that includes all counties.

It is not the statutes alone that should give county commissioners a heightened awareness over discriminatory practices. Public awareness, especially by those possibly discriminated against, and successful charges of discrimination against employers over the years have resulted in very substantial judgments. County government, because of its decentralized organizational structure, is especially vulnerable to such charges.

When the law and courts dealt mainly with racial discrimination in hiring, Michigan counties generally complied with the law. With questions of discrimination arising in terms of gender and especially with respect to pay differentials between male and female employees, county government practices called for change. The elimination of discriminatory practices and resultant problems requires some form of centralized application and record keeping to assure that hiring and promotion decisions throughout county departments do not produce a pattern of discrimination. Central record keeping, at least, will enable one to assess conditions.

Equal Opportunity Employment

How should a county board deal with existing disparities in the workforce? First, the board should assure itself that the county has a policy stating that the county is an equal opportunity employer. The board should give the policy continuing exposure by including a statement in job notices as well as

on county stationery. The purpose is not so much to inform the public as it is to remind those making hiring and promotion decisions.

Second, the county commission should direct someone to make an overall assessment or evaluation of how well the county government is doing with respect to equal opportunity employment. Are all groups in the county or nearby areas being given opportunity for employment? The evaluation should also consider how the county is employing women. Are they being considered for all positions or only for some? Do women head any departments? Are women being compensated on a par with men holding similar positions?

At the same time, counties must take note of the amendment to the state constitution adopted in November 2006. Subsection 2 of the amendment states, "The state shall not discriminate against, or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."[33] Subsection 3 goes on to indicate that "any city, county...or other governmental instrumentality" is included in "state." Subsection 4 states that the amendment "does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state."

This provision in the constitution does not argue for discriminatory conduct or preferential treatment in employee hiring or HR management in attempts to develop a more diverse workforce. Achieving a balanced workforce requires administrators to bring about new efforts to recruit qualified candidates of all backgrounds.

The county board, as noted earlier, is not in a position to dictate to county administrators and managers about whom they must hire. So, in part, the county board role is to encourage and to build awareness and expectation of equal opportunity among those who make employment decisions in county government.

Collective Bargaining

Collective bargaining and employee unions are now commonplace at all levels of Michigan local governments. Although not all employee classes in all counties are organized into labor unions, collective bargaining represents a most influential force in employer–employee relationships, even in counties that have relatively few employees. In this section, we explore the legal framework for collective bargaining with public employees, the basic difficulties or considerations involved, and some that are common to this process.

The Legal Framework

The state legislature passed the basic statute governing collective bargaining, the Public Employment Relations Act (PERA) in 1965.[34] PERA amended the Hutchinson Act (Act 336 of 1947), which was then the cornerstone law pertaining to public employer–employee relations. Though the Hutchinson Act did not forbid public employers or public employee groups from bargaining over wages and working conditions, it did little to

encourage bargaining, either. In fact, it did not require public employers even to recognize employee groups.

With the 1965 changes, employers were forbidden to interfere with the right of employee groups to form organizations for the purpose of bargaining. Moreover, the revised law specifically granted employee groups the authority to organize if they so choose. And it instructed employers to bargain with such groups once the employees become organized.

The act says, in part:

> To bargain collectively is to perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party.[35]

We note, as does the act, that this law does not compel either party to agree to a proposal or require either to make a concession. As we will see later, the statute may not require the bargainers to compromise, but the political and social pressures work differently.

Michigan Employment Relations Commission

In addition to the 1965 changes, the legislature also created an agency in state government to oversee the collective bargaining processes in community governments. It is called the Michigan Employment Relations Commission (MERC). The commission and its staff administer the act, conduct hearings on disputes over the formation of bargaining groups, and assist in the bargaining process itself when talks break down. MERC also establishes the supplemental ground rules—administrative rules that flesh out PERA.

Anti-Strike Provision

The legislature retained the anti-strike provision for which the Hutchinson Act was principally noted. That is, the statute continues to forbid public employee groups from striking. In the act, a strike is defined as:

> The concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of duties of employment for the purpose of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

In summary, PERA permits groups of employees to form an organization for the purpose of collective bargaining, prohibits an employer from interfering with the process or discriminating against employees who lead others in the organizing process, and requires both parties to bargain in good faith over the conditions of employment. PERA forbids employees to strike to get their way in the bargaining process.

The Significant Issues

In theory, if not in practice, an employer has complete control over wages, hours, and conditions of employment when there is no union. The theory holds that market conditions influence an employer to pay enough to hire and retain competent employees but not so much that the company's products are priced out of the market. Thus, if employees are unhappy with the terms dictated, they can leave and work elsewhere.

Collective bargaining, of course, changes that relationship. It gives employees an option beside just packing up and moving on. And for the employer, collective bargaining means sharing management's power. Just how much is shared is determined by what the two sides agree to put in the contract. That may seem a little simplistic, but when all the rhetoric is stripped away, that is what is left.

Union Security

All union bargainers seek agreements on the issues that we read about in the newspapers and see on television—wages, health insurance, holidays, retirement benefits, overtime compensation, rest periods, clean-up time, job assignments, promotion rules, layoff procedures, safety conditions, and numerous other issues. What often is not reported, though, is the union's concern with the union security issue. Unions, especially those affiliated with national labor organizations, also seek contract provisions that enable them to maintain themselves.

Dues Check-off

One of the most important union security provisions is the dues check-off. In this provision, employers can agree to collect union dues through payroll deductions. Without dues check-off, the union has to collect the dues from individual members. Not only is it a bothersome task, but it leads to a weakening of the union because members might not always pay. The law does not require employers to collect dues for the bargaining unit and forward those to the union, but a labor contract might.

Union Membership Provisions

Another union security issue is the union membership requirement. This, too, is a matter that the contract spells out. Typically, contracts now require the *union shop* arrangement—that is, employees in the bargaining unit must become and remain members of the union to continue their employment. New employees must join the union but generally may defer joining until they have completed a probationary period. This is the union's preferred clause because it enables them to require co-workers to be members.

The next step from a union shop is a *modified union shop.* It allows some current employees to refrain from joining the union but requires that all persons who were members of the union at the time the agreement is signed to continue their membership. This provision in a contract also requires new employees to become members at some point during their employment.

An *agency shop* clause in labor contract means that employees in a bargaining unit may continue working without joining the union if they agree to pay a service fee to the union and, usually, an additional amount—an amount equal to the union dues—to a charitable organization. The idea is

that a person may object to being a member of a union and this provision eliminates the financial incentive for those who might like to freeload—that is, enjoy the benefits negotiated by the union without paying dues to the union. Union officials argue that the law requires them to represent all employees in a bargaining unit whether or not they are members, and therefore the union should be compensated for those services. Agency shops are now less common than they were when public employees began forming bargaining organizations. Pressure for agency shops, however, tends to increase when unions become highly politically active, especially on issues dealing with moral questions.

A fourth type of membership clause is *maintenance of membership.* This form requires those who were union members at the time the union was organized to maintain their membership. If they do not, the employer agrees to discharge them. The difference between this provision and the modified union shop is that new employees would not be required to join the union or to pay dues under maintenance of membership clause.

We also hear, occasionally, the terms *open shop* and *closed shop.* Open shop provisions leave union membership entirely to the individual. A person may join or not join as he or she pleases without placing the job at risk. A closed shop, on the other hand, requires the employer to hire only union members. Federal law forbids closed shop agreements.

Some critics have argued that any form of mandatory union membership gives a union excessive power. They fear that a union leader could cause a person to be fired by revoking the union membership. This potential problem has been resolved by a rule that allows a union to cancel a person's membership only for failure to pay the required dues and fees.

In 2012, Michigan joined 23 other states as a *right-to-work* state when Public Acts 348 (private sector) and 349 (public sector) were signed into law. The measures became effective on March 28, 2013. Under these right-to-work laws, employees of an organization cannot be compelled to join a union or pay union dues, even if they are covered under the provisions of the collective bargaining agreement. The right-to-work laws apply only to collective bargaining agreements executed after the new laws became effective (that is, for any agreements that became effective after March 28, 2013). These laws do not apply to police or fire employees covered under Act 312 or to certain state law enforcement personnel.

As a result, employers no longer have the obligation to collect dues from employees who are not interested in paying those dues, and neither unions nor employers can require individuals to join a union. Employers should, however, work with collective bargaining units to determine the manner in which dues are collected (or not collected) and communicate with employees about the right-to-work law in an objective, nonpartisan manner.

Management Rights Clause

The counterpart to the union security issue is a management rights clause. In a nutshell, this clause states that what is not included in the contract or agreement remains the prerogative of management. That is implicit in the whole bargaining setting, of course, and therefore may appear unnecessary. But by including such a clause, management seeks to obtain union acknowledgment that certain subject areas are the sole and exclusive

responsibility of management. The idea is that, unless those rights and responsibilities are specifically limited by other parts of the agreement, management may exercise those rights without interference from the union.

How those rights and responsibilities are exercised during the term of a contract, of course, may make them the subject of future negotiations. But including the management rights clause means there is at least tacit agreement that management may proceed with its plans until it agrees to share further its authority and responsibility with the bargaining unit.

The Strike Issue

As mentioned earlier, it is illegal for public employees in Michigan to strike. Though employees of municipal governments have gone on strike occasionally, the most common occurrence has been among school employees—teachers, maintenance personnel, school bus drivers, and others. It has been argued that teachers are able to strike without sacrifice because the school days and paydays missed are made up at some other point in the year and, therefore, unlike other public workers, have very little at risk. Partly in response to this line of argument, the legislature in 1994 changed PERA. While most of the changes pertain to public schools, some changes spill over to other public employers and employee groups as well.

Some of those advocating the 1994 changes have suggested that PERA, as it had been working in practice, did not mean what it seemed to say. Although public employers were empowered in PERA to discipline or discharge employees who participated in a strike, the reality was that employers have been reluctant to take the action. If the county employees go on strike, the county board may vote to fire the employees as President Reagan did with the striking air controllers in 1981 or as the Crestwood (Michigan) Board of Education did to its striking teachers some years ago. But some believe that such a remedy may be worse than the cure. With that being true, a few effective ways to prevent a strike do exist.

The more usual approach was for governing bodies to ask for a court order directing employees to return to work. The request for an injunction would seem to be an open and shut case. But most of the time judges have not been inclined to issue an injunction merely because the workers have taken a "concerted action." The courts have established a policy stating that one or more other conditions must also be present. Trial court judges were instructed to seek answers to the following questions: Have the striking workers caused violence? Has there been a breach of the peace? Is the strike doing irreparable damage? And, has the employer been bargaining in good faith? The case between the Lake Michigan College Federation of Teachers and Lake Michigan Community College established these guidelines.[36]

The 1994 changes pertain largely to public school districts and now require MERC to fine school employees one day's pay for each day they are on strike and the union $5,000 per day for each day the union strikes. It also requires MERC to fine each school board member $250 per day and school district $5,000 per day in the event of a board lockout.[37] These provisions, as noted, apply only to several types of school boards, not to counties or other civil governments.

As we discuss later, PERA provides for compulsory arbitration for police and fire unions. None of these bargaining unions has conducted a strike during the four decades this provision has been in effect. To deal with other employee groups, county boards are left with the traditional tools—discipline, discharge, or coping with a strike should that occur. Strikes among these employees have been unusual, but the way Grand Rapids coped with a strike among general service workers several years ago is one of the alternatives. The city handled the strike much as a private employer might, anticipating the work stoppage and taking steps to provide essential services on a modified basis without the striking employees. Residents, of course, experienced inconveniences but found that some municipal services could be deferred. Later, the two sides resolved their difficulties and both undoubtedly learned something from the experience.

It should be noted that a public employer may discipline an employee for violating this statute. The employee is entitled to a determination hearing within 10 days after the employer imposes a penalty. If the disciplinary action is to continue, the employee may appeal that decision to the Circuit Court within the 30 days following the decision.[38]

Mediation, fact finding, and arbitration are progressive steps in the negotiation process to keep talks from deadlocking. All three involve third-party intervention.

Mediation

Sometimes during negotiations, participants tire and emotions run high. With the desire to win at the negotiating table, they may overlook opportunities to break logjams. Mediation brings in a third party, usually a person selected through MERC procedures, in an attempt to close the gap between the two sides. Through mediation, the issues can be restated and the parties pressured to reach settlement. The recommendations of the mediator are not binding on either side, however. The information provided to a mediator is generally not made public. But if the mediator believes that releasing information to the public will help resolve the dispute, the mediator may prepare a written report and release it to the public.

Fact Finding

Fact finding constitutes a second level of pressure by an outside intervener. The pressure on the bargaining parties is increased, in part, because the facts discovered usually become public. A fact finder investigates the claims of each side: "We're underpaid" or "We just can't afford that much." The fact finder then seeks to clarify for the participants and the public just what the situation is. Fact finding also includes a recommendation of how the sides might settle their differences. Again, the findings and recommendations are not binding on the parties, but this kind of outside intervention often helps the sides to reach agreement.

Arbitration

Arbitration takes place at two levels. For other than police and fire employees, arbitration usually applies only to disagreements over how the provisions of an existing contract are applied. That is, a contract may

provide for arbitration when management and the union disagree over what a clause in the contract means. In this sense, arbitration is voluntary—the sides have agreed to have an outside party determine the meaning for them. But they also agree in advance that they will accept the decisions of the arbitrator. This level of arbitration, then, is not commonly used to settle disputes over contract renewals.

The second level of arbitration is both mandatory and binding for disputes involving police and fire employee unions and does not apply to grievances under an existing contract. The legislature provided this alternative in 1969 after a committee, appointed by Governor George Romney, made its recommendations. The committee believed that society should not be threatened by interruptions to their public safety services. Thus, while we still read of police or firefighters threatening "blue flu" or "red rage," strikes by these employees have not occurred in Michigan since the enactment of compulsory arbitration.

Compulsory arbitration of labor disputes in police and fire departments was enacted in Public Act 312 of 1969. Act 312 is intended to ensure against strikes by public employees who provide unique and essential services whose disruption would jeopardize public welfare, order, and safety.[39] Two conditions are required to invoke Public Act 312:

> First, the particular complainant employee must be subject to the hazards of police work [. . .] Second, the interested department/employer must be a critical-service county department [. . .] having as its principal function the promotion of the public safety, order, and welfare so that a work stoppage in that department would threaten community safety.[40]

A dispute between the county and the sheriff's deputies over new contract provisions may go to arbitration upon the petition of either party notifying MERC and the other side that it wants to proceed with arbitration. Each party nominates a member of the panel, and MERC nominates three. Each side then may strike one of MERC's nominees. The panel would then consist of each party's nominee and one of the names not stricken by the parties. Each side then makes a final offer on each of the issues still in dispute. The arbitration panel, after hearing the presentations and studying the arguments, selects one of the two final offers on each of the economic issues and so fashions the final agreement.

County governments are no strangers to this process. According to one study, from 1980 to 1992, 41 counties were involved in binding arbitration a total of 72 times, an average of six arbitration cases a year. These county cases involved county sheriff departments—sometimes deputies, other times police supervisor unions, and in a few instances, 911 personnel. (PERA provides for binding arbitration for police and fire units only. EMS, 911 operations, corrections officers,[41] and airport police units[42] would be covered only if they are part of a police or fire agency.) Analysis of the 12-year period of compulsory arbitration indicated that arbitrators selected management's offers as often as they chose labor's demands, and that arbitrated awards of a sample of cases didn't exceed the rate of inflation.

A quick review revealed that in 2005 and 2006, counties were involved in 21 binding arbitration cases, and from May 2015 through April 2016, 10 arbitrations involved six counties.

This form of binding arbitration appears to have been helpful in avoiding the complete breakdown of public safety services that we have read about in some other states. County and other local officials, however, have not been entirely happy with the process because in their view:

- The arbitrated awards have been too costly.
- The process takes too long.
- The process is too costly.
- Some union negotiators prefer to take their chances with an arbitrator, so they stall until they can claim that negotiations have broken down and ask MERC to appoint an arbitrator.

Opinions about the process are no doubt shaped somewhat by the experiences that various counties and officials have. The general indications are that arbitrators balance rather closely their choices between labor and management alternatives. It is important to note, though, that the act instructs arbitrators to take into account factors such as inflation, compensation, and benefits paid to personnel in other similar positions in comparable units, and wages and benefits paid by private employers and others. Being prepared to make an effective and persuasive case to the arbitrator is essential for both parties.

Public Act 54 of 2011

Sometimes public employees who aren't eligible for binding arbitration under Act 312 find themselves working under expired collective bargaining agreements before successor agreements are in place. In such cases, they become subject to Public Act 54 of 2011, which prohibits local units of government—including counties—from doing the following:

1. Increasing their contributions to employee healthcare benefits. Employees who receive health, dental, vision, prescription, or other insurance benefits under an expired collective bargaining agreement will pay any increased cost of maintaining those benefits that occurs after the contract expiration date.

2. Providing step or general wage increases after the expiration date of the collective bargaining agreement until a successor collective bargaining agreement is in place.

3. Providing retroactive wage or benefit funding increases once a successor collective bargaining agreement is in place.

Issues in Collective Bargaining

Other issues arise in collective bargaining beyond what goes into a contract, such as the definition of the bargaining units.

Defining Bargaining Units

When a county board finds that some of the employees have signed cards to form a union, the reaction is frequently one of shock and a desire to do something at once. Most labor relations advisers suggest that this is the time to do nothing. Don't examine the cards. Don't count them. Don't voluntarily agree to recognize the request. Don't make public statements against the union or the organizers.

The best approach is to let union organizers take the cards to MERC. Here they can petition for an election to form a union if they have signatures of 30% or more of the employees in the proposed bargaining unit. Giving employees a chance to state their union or nonunion preferences in a secret ballot election is the fairest way to proceed for the employees.

Having the employees petition for an election also gives the county board time to determine whether it agrees with the way the organizers have defined the proposed unit. Usually the petitioners will seek to define the group as broadly as possible. But at times they will try to exclude some types of employees who management believes ought to be a part of the unit but who are not so likely to favor unionization.

The county board, on the other hand, may wish to limit the number of unions and thus seek to include groups the organizers have left out. The county may not be able to influence the proposed bargaining unit makeup a great deal. But it is at this stage in the process that the county's view should be expressed in front of a MERC hearing officer.

The other element in the formation of bargaining units, of course, is that the county should make sure that the same bargaining unit does not include both supervisors and those they supervise. Sergeants in the sheriff's department, for example, are responsible to administer the contract provisions as they pertain to deputies. If the sergeants are to have a union, they should have their own unit or at least one that involves supervisory staff only.

After a hearing on the definition of the bargaining unit, MERC makes a ruling on what is a proper bargaining unit with respect to the petition in hand.

Who Is the Employer?

County government faces a special problem in collective bargaining with respect to this question. County government was structured long before collective bargaining was contemplated. Determining who the employer in county government is has been a thorny issue. Is it the county board or elected department heads? And how do court employees figure in the picture?

The county board is the public employer of county employees:
1. The prosecuting attorney is a co-employer with the county board of most but not all employees in the office.
2. The county clerk is a co-employer with the county board of only the appointed deputy clerks.
3. The county treasurer is a co-employer with the county board of only the chief deputy treasurer.
4. The register of deeds is a co-employer with the county board of only the chief deputy register of deeds.
5. The county sheriff is a co-employer with the county board of the undersheriff and deputies.
6. The drain commissioner is a co-employer with the county board of only the deputy drain commissioner. This position must be approved by the county board; other offices have statutory authority to have a chief deputy position without needing board approval.

The State Court Administrative Office (SCAO) issued Administrative Order No. 1998-5, which prescribes the chief judge responsibilities in several areas relative to local funding units (county government). One provision states that "The chief judge must adopt personnel policies consistent with the written employment policies of the local funding unit."[43]

The problem is that county boards are responsible for the county budget, and elected officials are responsible for the general oversight of the employees of their respective departments. And PERA does not address the problem that county government raises. So we face the uncertainty of how a contract signed by the county board may affect the employees in the clerk's office, the sheriff's department, and the other departments headed by elected officials.

After numerous rulings and decisions by the attorney general, MERC, and the Michigan Court of Appeals, the Michigan Supreme Court made a definitive decision on the issue. Its answer was that at least the constitutional officers—sheriff, prosecuting attorney, clerk, treasurer, and register of deeds—are co-employers along with the county or board of commissioners. These officers then have a right to participate in the bargaining process and are parties to the contract.

The case in which the issue arose was *St. Clair Prosecutor v. AFSCME.*[44] At issue was whether the provisions of PERA override statutory language elsewhere stating that assistant prosecuting attorneys "hold office during the pleasure of the prosecuting attorney appointing" them. The court's answer was that "when separately elected constitutional officers, with unique law enforcement powers are given statutory authority to hire, manage, and terminate the employment of their assistants, such obvious employer criteria are not to be lightly swept away under the guise of collective bargaining inconvenience."

What are the implications for bargaining in county government? We suspect that in future bargaining efforts, union representatives will insist on more direct participation in bargaining by the constitutional officers. The county officers, of course, may choose to have the board's agent carry out the negotiations for all of management. At the same time, elected officers should be aware of their stake in these discussions and should take care first to make their concerns known to the management negotiator, and second, to read the tentative agreement before signing it. These officers should understand that, as co-employers, they may not refuse to bargain under PERA.

The county board should readily acknowledge the co-employer responsibility of the constitutional officers and do what it can to have the officers exercise that responsibility. To do something other than make the contract the responsibility of all the parties is to run the risk of disavowal of one or more of the provisions later on.

Does the ruling mean that the officers must sit in on all the negotiations over contracts involving their employees? Probably not. The officers could delegate the board or the board's bargaining agent to represent them. Alternatively, the officers with departments involved in the union could select one of the officers to represent the others. Unions, however, will probably insist that they receive copies of the delegation of their authority. And county boards would wisely insist that the officers sign the agreements once they are made.

The ruling makes collective bargaining more complicated for both the county and the unions. County boards will still have key control over wages and other economic issues. The officers' voices will be critical in discussions of other working conditions, including grievances, hiring, promotion, and dismissal. And particular difficulties will arise when officers do not agree among themselves on one or more of these issues.

How does the St. Clair case affect other departments of county government? It is important to note that this case addresses only the constitutional offices. The one elected office not mentioned specifically is that of drain commissioner, which, of course, is an office created by statute. But to the extent that the language of the drain commissioner act is similar to statutory provisions regarding the constitutional offices, the same provisions probably do apply to that department.

Other Departments

Bargaining for other county departments is likely to depend on the tests for determining employer status:

- Who selects and engages the employees?
- Who sets the rate and pays the wages?
- Who has power of dismissal?
- Who has power and control over employee conduct?

Where county board policy constitutes the authority for answers to all four tests, it appears that the board is the sole employer. In other instances, the board should consider whether a co-employer should be involved. In a pre-St. Clair decision, the court in a Wayne County case said the Wayne County Library Board did not have "sufficient indicia of control over library employees" to be considered the sole employer of library employees.[45] We note, however, that this situation also involved the county civil service commission. In another case involving the Michigan Department of Health and a county mental health services board, the court decided that the mental health board was the employer for collective bargaining purposes. The court ruled that the mental health services board had "every appearance of an 'employer.' "[46]

As a final note, we observe that none of the cases just discussed addressed the question of court employees. Previously, however, the courts have made a distinction between court employees and other employees in county government. In a Livingston County case, the Supreme Court said a county board representative could sit in on bargaining sessions involving court employees, and that such a representative could present "relevant data regarding other county employees, e.g., wage levels for comparable jobs, provisions in other contracts, general county benefits, and county budget information."[47] But the court also said that the Circuit Court judge acted properly when he issued an administrative order to implement the contract he had negotiated with his court's employees.

All of this, though, outlines the practice before legislative changes in 1996. The 1996 statute states that the county is the employer of the county-paid employees, but that the county board and the chief judge of the single-county Circuit Court must reach agreement on matters typically found in a bargaining contract. And, if the board and the chief judge are unable to reach agreement, the county board decides issues of compensation, fringe benefits, pension, holiday, and leave policies. The judge deals with other questions. In a multicounty Circuit Court, the participating counties may designate the

employer in an intergovernmental agreement; if they don't, then each county is the employer for employees the county pays for.[48]

Who Bargains for the County?

Collective bargaining can be a time-consuming and legally complex process. It is also a process in which large sums of money are committed against future revenues. How should a county board oversee this process?

Some commissioners believe collective bargaining is too important a matter to be left to others and so involve themselves directly at the bargaining table. Others argue that, because it is so important, they should hire an outside expert, usually an attorney who specializes in labor relations. Still other boards leave the bargaining to their top administrators.

Whichever approach a county takes, one thing is certain: Someone with a great deal of expertise and experience must be actively involved in the process. Anything less can result in mistakes that can cost many thousands of dollars down the road. Counties may find the necessary expertise in a professional such as a labor attorney, a labor relations specialist, the HR director, the county administrator, or some combination of the above.

County commissioners as bargainers bring another risk to negotiations—the political element. County employees represent a potential source of campaign support or opposition in the next election. It is not likely that a commissioner would be deliberately "easy" in bargaining just to gain some political support. On the other hand, being tough at the bargaining table could earn a commissioner some opposition in the next election.

Another problem with having county commissioners directly involved in the bargaining is that it reduces the possibility of the board's being objective when it's time for the board to approve the agreement. A vote against an agreement negotiated by a county commissioner or a board committee may be seen as a vote of no confidence in that commissioner or committee. That puts the rest of the commissioners on the spot when they really should be deciding the question of the proposed agreement.

We have been in meetings where participants have said that counties "have been taken to the cleaners" in bargaining sessions. The contention was that commissioners have not been fully aware of the implications of some contract provisions. The problem is not that commissioners are not astute bargainers. Often it is simply a matter of having enough time to read and understand what the other side is proposing. Because the process ends in a legal contract, what is written and agreed to becomes fact. What a person may have intended or assumed may not count for much in later proceedings.

From the other side are those who maintain that experienced commissioners often bring a degree of wisdom and savvy to the process that enables them to break the logjam and settle a problem quickly that others have labored over for weeks or longer. When fundamental agreement is reached, they say, that is the time to bring in the attorneys to make sure the contract language meets everyone's intent and purpose. As a lay person in collective bargaining, Professor Kenneth VerBurg once made a critical contribution to a labor negotiation that resulted in the breaking of the logjam, and it was a contribution that the attorneys could not have provided.

We believe, however, that county commissioners should keep their distance from direct bargaining. Some would argue that those making the final

approval should never be at the bargaining table. Because of the financial implications, of course, a board must necessarily stay closely attuned to what is taking place at the bargaining table. The county's negotiating team should work closely with the board or a board committee on the basic commitments that can be offered and lived up to.

Having the administrator and other administrative staff member serve on the negotiating team or in communication between the board and the negotiating team often proves helpful because that person or persons will also probably be administering the contract after it's approved. A thorough knowledge of what the contract contains will be beneficial. However, because labor relations are largely legal in nature, we believe it is important for both negotiators and the administrative staff to have the assistance of legal counsel both during the negotiations, whether at the table or in an advisory capacity, and while the agreement is worked out in day-to-day decisions.

A Final Note on Collective Bargaining

Collective bargaining is now a fact of life in county administration and policymaking. Collective bargaining can be an adversarial process, and for that reason, some would prefer to have employer–employee relations handled in some other way. But collective bargaining does not have to mean that every few years county boards will get bogged down in long, drawn-out negotiations or that good personnel relations are no longer possible. In fact, the collective bargaining process can produce sound and productive relationships, especially if one understands that settling the contract is only the first step.

Equally important is a firm, fair, and equitable administration of the agreement throughout the life of the agreement. In that respect, not much has changed from the point we began with: employees want fair and equitable treatment in their work situation. The bargaining process is an indication that they also want a voice in shaping the policies that govern their working lives.

Endnotes

[1] MCL 46.13a.

[2] OAG 5046, 1976.

[3] St. Clair Prosecutor v. American Federation of State, etc., Local #1518, 425 Mich. 204 (1986).

[4] MCL 45.405.

[5] See Leholm, A., & Vlasin, R. D. (2006). *Increasing the odds for high-performance teams: Lessons learned.* East Lansing: Michigan State University Press.

[6] Bullard-Plawecki Employee Right to Know Act of 1978 (MCL 423.501–423.512).

[7] Kent County Deputy Sheriffs' Association v. Kent County Sheriff, 238 Mich. App. 310 (1999).

[8] MCL 423.501–423.511.

[9] MCL 423.452.

[10] Military.com. (2017). *Guard and Reserve frequently asked questions: What if I have a problem getting time off . . .* Retrieved from http://www.military.com/join-armed-forces/guard-and-reserve-faqs.html

[11] MCL 408.414a.

[12] MCL 38.1536.

[13] Municipal Employees' Retirement System. (n.d.). *MERS: Michigan Employees' Retirement System.* Retrieved from http://www.mersofmich.com/

[14] MCL 46.12a.

[15] MCL 46.12a.

[16] Michigan Unemployment Insurance Agency. (2014). *The employer handbook.* Retrieved from http://www.michigan.gov/documents/uia/Employer_Handbook1-14_455893_7.pdf

[17] MCL 38.401–38.40.

[18] *Michigan Constitution,* Article XI, § 6.

[19] OAG 4434, 1966.

[20] U.S. Department of Justice. (2009 & 2017). *A guide to disability rights laws.* Retrieved from https://www.ada.gov/cguide.htm#anchor62335

[21] Americans With Disabilities Act of 1990, 42 U.S.C. § 12112(a).

[22] U.S. Equal Employment Opportunity Commission. (n.d.) *Facts about the Americans With Disabilities Act.* Retrieved from https://www.eeoc.gov/eeoc/publications/fs-ada.cfm

[23] U.S. Equal Employment Opportunity Commission. (n.d.) *Facts about the Americans With Disabilities Act.* Retrieved from https://www.eeoc.gov/eeoc/publications/fs-ada.cfm

[24] U.S. Equal Employment Opportunity Commission. (n.d.) *Facts about the Americans With Disabilities Act.* Retrieved from https://www.eeoc.gov/eeoc/publications/fs-ada.cfm

[25] U.S. Equal Employment Opportunity Commission v. AIC Security Investigations, Ltd., 823 F. Supp. 571 (N.D. Ill. 1993).

[26] USC Title 29, 2601(b).

[27] USC Title 29, 2611.

[28] USC Title 29, 2611.

[29] USC Title 29, 2614.

[30] USC Title 29, 2612.

[31] MCL 37.2101–37.2804.

[32] MCL 37.1101–37.1607.

[33] *Michigan Constitution,* Article 1, § 26 (November 7, 2006, amendment).

[34] MCL 423.201–423.217.

[35] MCL 423.215(1).

[36] Lake Michigan Federation of Teachers v. Lake Michigan College, 60 Mich. App. 747 (1975). See also School District for the City of Holland v. Holland Education Association, 380 Mich. 314 (1968).

[37] MCL 423.202a.

[38] MCL 423.206(2).

[39] MCL 423.231.

[40] Metropolitan Council No. 23, AFSCME v. Oakland County Prosecutor, 409 Mich. 299, 294 N.W. 2d 578 (1980).

[41] Lincoln Park Detention Officers v. City of Lincoln Park, 76 Mich. App. 358; 256 N.W.2d 593 (1977).

[42] Michigan Fraternal Order of Police v. Kent County, 436 N.W. 2d 690, 174 Mich. App. 440 (1989).

[43] Michigan Supreme Court. (1998). *Administrative Order 1998-5—Chief Judge Responsibilities; Local Intergovernmental Relations.* Retrieved from http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/Documents/HTML/AOs/AOs-Responsive%20HTML5/index.html#t=AOs/Administrative_Orders/AO_No_1998-5_%25E2%2580%2594_Chief_Judge_Responsibilities_Local.htm

[44] St. Clair Prosecutor v. American Federation of State, etc., Local #1518, 425 Mich. 204 (1986).

[45] Wayne County Library Board v. Wayne County Board of Commissioners, 78 Mich. App. 240; 259 N.W.2d 440 (1977).

[46] American Federation of State, etc. v. Department of Health, 78 Mich. App. 416 (1977).

[47] Livingston County v. Livingston Circuit Judge, 393 Mich. 265; 225 N.W.2d 352 (1975).

[48] MCL 600.591.