STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY (AIRPORT POLICE DEPARTMENT),
Public Employer,

Case No. R00 H-102

-and-

WAYNE COUNTY POLICE ASSOCIATION,
Petitioner-Labor Organization,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 502,
Incumbent Labor Organization.
_____/

APPEARANCES:

Berry Moorman, P.C., by Sheryl A. Laughren, Esq., and David M. Foy, Esq., for Petitioner Labor Organization

Sachs Waldman, P.C., by George H. Kruszewski, Esq., for the Incumbent Labor Organization

DECISION AND ORDER DISMISSING PETITION

On August 31, 2000, the Wayne County Police Association (WCPA) filed a petition for representation election pursuant to Section 12 of the Public Employment Relations Act (PERA). 1947 PA 336, as amended. The WCPA seeks to represent a unit described in the petition as "[a]ll airport police officers on the airport budget, including dispatchers, but excluding all employees of the Wayne County Sheriff's Department." These employees are part of a bargaining unit of Wayne County employees currently represented by Service Employees International Union (SEIU), Local 502. The existing unit represented by the SEIU is described in the most recent contract recognition clause as "all employees performing non-supervisory law enforcement work, including, but not limited to, police officer, corporal, and detective." The WCPA was informed by the Commission election staff that the petition appeared to inappropriately seek a severance of employees from an established bargaining unit. In response, on September 27, 2000, the WCPA filed a memorandum of law and facts in support of the petition.

In its memorandum, the WCPA asserts that the unit of airport police officers which it seeks

to represent consists entirely of employees who are eligible for compulsory arbitration under Act 312. Citing *Alpena County,* 1997 MERC Lab Op 651, *Montcalm County*, 1997 MERC Lab Op 157, and *Ottawa County*, 1992 MERC Lab Op 370, Petitioner contends that severance is appropriate here because the existing unit consists, in part, of employees who are not Act 312 eligible, including those officers who serve at the Wayne County jails and within the courts. Alternatively, the WCPA asserts that there is an absence of common interests between the airport police and the remainder of the unit represented by the SEIU. Petitioner bases its argument on several assertions of fact, including: (1) that airport police are a part of the Wayne County Department of Public Services Division of Airports and are not responsible to the Wayne County Sheriff, as are other members of the existing bargaining unit; (2) that the Airport pays the County for wages and benefits provided to airport police, whereas the remainder of the unit is not reimbursed by the Division of Airports; (3) that the duties and training of airport police officers are different; and (4) that there is very little interchange of airport police with other positions within the existing unit.

On October 31, 2000, the SEIU filed a motion to dismiss the petition. The Incumbent argues that longstanding Commission policies, which include its efforts to maximize the size of bargaining units, and its reluctance to disturb established bargaining relationships, prohibit severance in this case. The SEIU contends that Act 312 status alone is not a sufficient basis to grant the WCPA's request for severance from a longstanding existing bargaining unit. The Incumbent also takes issue with Petitioner's assertion that many of the employees currently represented by the SEIU are not Act 312 eligible. In addition to the corrections officers which it represents, the Incumbent contends that there are approximately 190 employees working within the Court division of the Sheriff's Department who are eligible for compulsory arbitration under Act 312. According to the SEIU, these employees provide security services to all of the Wayne County courts, transport prisoners and execute warrants. The Incumbent further contends that there are a number of miscellaneous employees within the existing unit who are sworn, carry a gun and perform traditional police offer functions, including officers working on secondary roads, in the Wayne County parks, in the marine unit, within the internal affairs division, and in drug and warrant enforcement. Finally, the SEIU maintains that Petitioner has not met its burden of demonstrating an "extreme divergence" of community of interest" which the Commission requires before it will disturb an established bargaining relationship.

On November 27, 2000, Petitioner filed a memorandum of law opposing the SEIU's motion to dismiss. In the memorandum, Petitioner essentially repeats the legal arguments contained within its September 27, 2000, memorandum and, in addition, challenges the accuracy of certain facts set forth by the Incumbent in its motion to dismiss. For example, the WCPA asserts that the bargaining history between the Employer and the SEIU goes back only 15 years, rather than the 30 years claimed by the Incumbent. Petitioner also maintains that there are 85 "miscellaneous" members of the bargaining unit, as opposed to the 130 employees described by the Incumbent in its motion.

It was administratively determined that the motion to dismiss had merit; however, before reaching a final determination in this matter, the Commission wished to afford the parties the opportunity for oral argument to support their respective positions. Accordingly, a show cause hearing was scheduled. At the April 9, 2001, hearing, the parties summarized their legal arguments

as to the appropriateness of the petition. The WCPA made an offer of proof with respect to factors which it believed established a divergence of community of interest between the airport police and the remainder of the unit. These included a different locus of control, separate funding, different job classifications, a distinct geographical location, and the participation of the airport police in mutual aid pacts.

Discussion and Conclusions of Law:

In accordance with the policy expressed by the Supreme Court in *Hotel Olds v State Mediation Board,* 333 Mich 382 (1952), this Commission has attempted in unit determinations proceedings to constitute the largest unit which, under the circumstances of the particular case, includes all common interests and is most compatible with the effectuation of the purposes of PERA. Once there is an established bargaining history in a particular unit, there is a heavy burden on a party seeking to disturb that bargaining relationship. Only where the unit as currently constituted is *per se* inappropriate or an *extreme divergence in community of interest* is established will we break up an established bargaining unit. *Huron County Bd of Comm*, 1995 MERC Lab op 505

We have previously indicated that Act 312 eligibility is an important, and often controlling, factor in determining community of interest. *City of Dearborn Hts,* 1984 MERC Lab Op 1079, 1084. More specifically, we have stated that we will not include *previously unrepresented* positions ineligible for Act 312 arbitration in units with Act 312 eligible employees where any party objects to such placement. *City of Grosse Pte Public Safety Dept*, 1994 MERC Lab Op 588, 591. However, this policy does not require the division of a previously established and agreed upon unit composed of both Act 312 eligible and noneligible employees, nor is such a unit *per se* inappropriate. *Twp of Genesee*, 1994 MERC Lab Op 210, 216; *Ottawa County*, 1992 MERC Lab Op 370. 372-374. In certain situations, we have allowed Act 312 eligible employees to choose between remaining in the existing unit or accreting to a law enforcement unit, but in keeping with our policy of avoiding undue fragmentation of units, we have generally not allowed such employees to sever and form a separate unit. *City of Fenton*, 1984 MERC Lab Op 1086, 1088; *City of Centerline*, 1987 MERC Lab Op 500, 502; *City of Ypsilanti*, 1987 MERC Lab Op 855, 858. Severance is permissible only where there is an extreme divergence in community of interest. *Jackson County Bd of Comm & Sheriff*, 1985 MERC Lab Op 468.

In the instant case, Petitioner has not shown that it could present evidence to demonstrate either of the conditions set forth in *Huron, supra.* As indicated, a mixed unit of Act 312 eligible and noneligible employees is not *per se* inappropriate. Nor has Petitioner asserted facts which would establish an extreme divergence in community of interest. Even assuming arguendo that airport police are Act 312 eligible, the WCPA makes no claim that these officers are the only employees within the existing unit subject to compulsory arbitration.[1] Clearly, those officers working within

[1] Petitioner appears to argue that airport police officers work for the Wayne County Department of Public Services, rather than the Sheriff, and that this establishes a separate community of interest. We note that under this theory, the Act 312 eligibility of the airport police officers could be challenged on the basis that they do not work for a critical service department. See

the Sheriff's Department who are sworn, carry a gun, and perform police officer functions would, as asserted by the SEUI, fall within the purview of Act 312. In particular, we have previously found court officers to be Act 312 eligible. See *Branch County*, 1989 MERC Lab Op 768. In addition, even if the WCPA were permitted to introduce evidence on matters such as different work locations, duties and supervision, separate funding or infrequent transfers between divisions, we find these factors insufficient to establish the required extreme divergence in community of interest. For example, this Commission has never considered a separate work location to constitute a barrier to finding a community of interest. See e.g. *Charlevoix County Bd of Comm*, 1993 MERC Lab Op 803; *Univ of Mich Flint Campus*, 1993 MERC Lab Op 615. The fact that the duties of airport police officers may differ in some degree from other employees within the bargaining unit does not detract from the fact that all employees in the existing unit perform, or support, law enforcement functions. We find that this is a controlling community of interest factor which overrides any minor differences in job responsibilities. *Shelby Twp Fire Dept*, 1995 MERC Lab Op 395, 398.

In summary, we find that the existing unit represented by the SEIU is one appropriate for collective bargaining. No compelling reasons have been presented by Petitioner which would persuade us to disturb the long-standing bargaining history and allow a segment of this unit to be separately represented in violation of our well-established policy against fragmentation of bargaining units. *Dearborn Pub Sch,* 1990 MERC Lab Op 513. We conclude that the WCPA has failed to demonstrate good cause as to why its petition should not be dismissed as inappropriate. *Shelby Twp,* 1995 MERC Lab Op 395.

Mich FOP v Kent County, 174 Mich App 440 (1989), *rev'g* 1987 MERC Lab Op 768.

ORDER

For the reasons set forth above, the petition filed by the WCPA seeking to represent a unit of airport police officers is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Chair

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Harry W. Bishop, Member

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C. Barry Ott, Member

DATED: _____