STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY AIRPORT AUTHORITY,
Public Employer - Petitioner,

-and-

WAYNE COUNTY LAW ENFORCEMENT SUPERVISORY LOCAL 3317, AFSCME
Labor Organization,

Case No. UC04 C-009

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 502, AFL-CIO,
Labor Organization,

Case No. UC04 C-010

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 101,
Labor Organization,

Case No. UC04 D-016

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
LOCALS 1862, 2057, and 2926,
Labor Organization.

Case No. UC04 D-017

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APPEARANCES:

Foster, Swift, Collins & Smith, P.C., by Robert E. McFarland, Esq., for the Public Employer

Akhtar, Webb & Ebel, P.C., by Jamil Akhtar, Esq., for Wayne County Law Enforcement Supervisory Local 3317, AFSCME

Sachs Waldman, P.C., by George H. Kruszewski, Esq., and John R. Runyan, Esq., for Service Employees International Union, Local 502, AFL-CIO

Miller Cohen, P.L.C., by Eric Frankie, Esq., for American Federation of State, County and Municipal Employees, Locals 1862, 2057 and 2926

DECISION AND ORDER

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard in Detroit, Michigan, on July 8, 2004, by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including briefs filed by the parties on or before September 7, 2004, the Commission finds as follows:

The Petitions:

On March 4, and April 16, 2004, the Wayne County Airport Authority (Petitioner or WCAA) filed four unit clarification petitions requesting that various of its employees who are represented by the Service Employees International Union (SEIU), Local 502, the Wayne County Law Enforcement Supervisory, Local 3317, AFSCME, and the American Federation of State, County and Municipal Employees (AFSCME), Locals 101, 1862, 2057, and 2926 be severed from bargaining units which include individuals who are employed by Wayne County and the Wayne County Sheriff. In letters dated March 23, 2004, Mark R. Ulicny, Legal Advisor to the Wayne County Sheriff, and Ronald D. Bush, II, Wayne County's Director of Labor Relations, concurred in the position taken by Petitioner that the WCAA is a separate employer and is entitled to bargain separately with regard to its employees. On November 3, 2004, AFSCME Locals 101, 1862, 2057, and 2926 entered into agreements with the WCAA acknowledging the WCAA as the "sole employer" and agreeing that for purposes of collective bargaining the AFSCME bargaining units would include only WCAA employees and exclude other Wayne County employees.

AFSCME Locals 101, 1862, 2057, and 2926 and the WCAA have asked this Commission to order the relief requested in the unit clarification petitions filed by the WCAA in relation to these parties. We decline to do so for the reason that full relief has been provided by the agreements between these parties; there is no claim, nor does the record suggest, that the bargaining units created by these agreements are not appropriate, we are not asked to direct an election, and there is no issue to be decided as to these parties. Consequently, the WCAA's petitions as to AFSCME Locals 101, 1862, 2057, and 2926 will be dismissed.

Remaining to be addressed and decided are the WCAA's petitions as to SEIU Local 502 and Wayne County Law Enforcement Supervisory Local 3317, AFSCME.

Bargaining History

Local 502 has been the representative in bargaining for all Wayne County employees performing non-supervisory law enforcement work for the Sheriff and the Airport Director. Local 3317 has been the representative in bargaining for all of Wayne County's police sergeants and lieutenants under the direction of the Sheriff and the Airport Director. These unions had separate collective bargaining agreements with Wayne County. Their collective bargaining agreements included various provisions governing the transfer of bargaining unit members to and from positions under the direction of the Sheriff and positions under the direction of the Airport. These agreements expired on November 30, 2004.

On September 25, 2003, prior to the expiration of its collective bargaining agreement with Wayne County, Local 502 entered into an agreement with Wayne County, the Wayne County Sheriff, and the WCAA providing, among other things, that transfer rights between the Wayne County Sheriff and the WCAA under the collective bargaining agreement be "guaranteed for all employees who successfully bid and transfer to the WCAA on or before 11/30/04 through the life of the next collective bargaining agreement." We have no evidence of a similar agreement with Local 3317.

The Public Airport Authority Act

Prior to the creation of the WCAA in August 2002, Wayne County operated the Detroit Metropolitan Wayne County and Willow Run Airports as a county department, and those who worked at the airports were employees of Wayne County. On March 26, 2002, the Michigan legislature enacted the Public Airport Authority Act, MCL 259.108 *et seq.*, which authorized the creation of airport authorities. The Act gave the chief executive officer of an airport authority extensive authority over its employees, including the responsibility for negotiating and establishing compensation and other terms and conditions of employment; appointing, dismissing, disciplining, demoting, promoting, and classifying the authority's employees; negotiating, supervising and enforcing contracts entered into by the authority; and supervising the authority's contractors and subcontractors in the performance of their duties. The WCAA held its first organizational meeting on April 24, 2002, and was certified by the Federal Aviation Administration to operate the Detroit Metropolitan Wayne County and Willow Run Airports on August 9, 2002.

The Public Airport Authority Act states that "except as otherwise provided," an authority created under the Act is "a political subdivision and instrumentality of the local government that owns the airport and shall be considered a public agency of the local government for purposes of state and federal law." MCL 259.110(1). The airport authority is governed by a board of seven members, four appointed by the chief executive officer of the local government that owns the airport, one appointed by the legislative body of the local government and two appointed by the governor. This board appoints and fixes the compensation of a chief executive officer who is responsible, as indicated above, for the "negotiation and establishment of compensation and other terms and

conditions of employment for employees of the authority" and the "appointment, dismissal, discipline, demotion, promotion, and classification of employees of the authority." MCL 259.114(4)(c) & (d).

Section 119 of the Act allows local government employees to transfer to an airport authority, and requires the authority to "accept the transfers without a break in employment, subject to all rights and benefits held by the transferring employees under a collective bargaining agreement." It also provides: "A representative of the employees or a group of employees in the local government who represents or is entitled to represent the employees or a group of employees of the local government, pursuant to 1947 PA 336, MCL 423.201 to 423.217 [Public Employment Relations Act] shall continue to represent the employees or group of employees after the employees transfer to the authority and the authority shall honor all obligations of a public sector employer after the expiration of any collective bargaining agreement with respect to transferring employees." MCL 259.119(2).

Discussion and Conclusions of Law:

The threshold issue is whether the WCAA is an independent public employer entitled to bargain separately with the representatives of its employees. In determining whether an entity constitutes a co-employer or a separate employer, the facts of each case must be examined, with particular attention to the enabling legislation. The most important factor is whether the entity in question has sufficient independent control over the employment relationship. See *Wayne Co Federated Library System*, 1979 MERC Lab Op 494, on remand from 402 Mich 871 (1978); *Judges of the 74th Judicial Dist v Bay Co*, 385 Mich 710, 723-724 (1971); *City of Flint and Bishop Int'l Airport Authority*, 1993 MERC Lab Op 78.

In *Wayne Co Federated Library System*, pursuant to 1977 PA 89, MCL 397.551 *et seq*, the legislature established a separate governing board to administer a cooperative library, distinct from the individual libraries that the cooperative library serviced. The governing board was designated as a body corporate and a juristic entity for social security and legal identity purposes; was authorized to manage and control its own funds and property; purchase library materials, equipment and real property; enter into contracts with other political subdivisions of the state; and appoint its own director and hire necessary employees. *Id.* at 505. We found that the cooperative library (WOLF) had been given sufficient autonomy in the operation and management of its affairs to constitute a separate public employer. Similarly, in *City of Flint*, a Commission administrative law judge concluded that the Bishop International Airport Authority was a separate and independent public employer because under the terms of the Community Airport Statute, MCL 259.621- 259.631, and the resolutions adopted by Genesee County and the City of Flint, the airport operated independently, including establishing its own budget, entering into contracts, employing personnel, and exercising other attributes of a separate public employer.

We have also found that school consortiums created by school districts pursuant to the State School Act of 1978, 1978 PA 404, were separate employers. See *Grand Haven Pub Schs*, 183 Mich App 186 (1989), enforcing 1988 MERC Lab Op 444; *Fruitport Cmty Schs*, 1981 MERC Lab Op 682; *Lakeview Pub Schs*, 1977 MERC Lab Op 899; and *Center Line Pub Schs*, 1976 MERC Lab Op 729.

The importance of considering the enabling legislation when determining employer status was emphasized by the Michigan Court of Appeals when it reversed our finding in *Village of New Haven and New Haven Housing Comm*, 1992 MERC Lab Op 608, that the housing commission was a separate employer from the village. In *Village of New Haven & New Haven Housing Comm v Michigan AFSCME Council 25*, unpublished opinion per curiam of the Court of Appeals, decided December 28, 1995 (Docket No. 158153), the Court of Appeals found that MERC erred when it failed to properly consider the enabling legislation and applicable local ordinances by which the housing authority was created. Subsequent appellate decisions provide guidance in the case before us.

In *Grand Rapids Employees Independent Union v City of Grand Rapids*, 235 Mich App 398, 403-04 (1999), the Court of Appeals stated:

> In general, the characteristics of employers are as follows: (1) that they select and engage the employee; (2) that they pay the wages; (3) that they have the power of dismissal; (4) that they have the power and control over the employee's conduct. [*Michigan Council 25, AFSCME v St Clair Co*, 136 Mich App 721, 736; 357 NW2d 750 (1984), rev'd in part on other grounds 425 Mich 204, 233; 388 NW2d 231 (1986), quoting *Wayne Co Civil Service Comm v Wayne Co Bd of Supervisors*, 22 Mich App 287, 294; 177 NW2d 449 (1970) (citation omitted).]
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> "A most significant requisite of one who is an employer is his right to exercise control over the method by which they employee carries out his work." *Wayne Co Civil Service Comm v Wayne Co Bd of Supervisors*, 22 Mich App 287, 294; 177 NW2d 449 (1970), rev'd in part on other grounds, 384 Mich 363; 184 NW2d 201 (1971).

Applying these principles, the appellate court in *Grand Rapids* held that because the enabling statute and ordinance granted to the Grand Rapids Housing Commission the power to set the terms and conditions of employment for its employees, "there is no longer a question that the housing commission is an employer, separate and distinct from Grand Rapids." *Id.* at 407.

Similarly, in *AFSCME v City of Detroit*, 468 Mich 388 (2003), our Supreme Court held that the statute which granted to housing commissions the authority to "employ and fix the compensation of a director, who may also serve as secretary, and other employees as necessary," gave them clear and unambiguous authority to employ and fix the compensation of their employees and to determine the duties of those employees. Consequently, the Court held that the prior co-employment relationship

between the municipality and its housing commission had been severed by operation of law.

Applying the above precedent to the instant case, and construing the Public Airport Authority Act as a whole, we conclude that the WCAA is a separate and distinct public employer. Prior to the establishment of the WCAA, employees at the Detroit Metropolitan Wayne County and Willow Run Airports were employees of Wayne County. Employees represented by Locals 502 and 3317, were also employees of the Wayne County Sheriff. The County and the Sheriff shared authority over their hours of work, rates of pay, and other conditions of employment. However, the legislation under which the WCAA was created terminated the authority of Wayne County and the Wayne County Sheriff over hours of work, rates of pay and other condition of employment of members of Locals 502 and 3317 who are employed at the Detroit Metropolitan Wayne County and Willow Run Airports, and thereby terminated their co-employer status. That authority has been transferred to, and exclusively resides in, the WCAA. The relationship between Wayne County and its airports has been severed by operation of law, and we find the WCAA to be an independent employer. However, we must also decide whether a multi-employer bargaining obligation exists.

It is argued that the matter before us is controlled by our decision in *Wayne Co Airport Police Dep't*, 2001 MERC Lab Op 163, aff'd sub nom *Wayne Co Police Ass'n v Wayne Co Airport Police Dep't*, unpublished opinion per curiam of the Court of Appeals, decided February 14, 2003 (Docket No. 235669). There, we dismissed a petition seeking to fragment the existing unit represented by Local 502 by severing the airport police officers who were asserted to have a separate community of interest. We reiterated our policy that we will not fragment a bargaining unit where there is a long-standing bargaining history and no compelling reason to allow a segment of the unit to be separately represented. Based on the discussion below, we find that the Public Airport Authority Act and subsequent developments provide such a reason.

In *Common Pleas Court of the City of Detroit*, 1974 MERC Lab Op 83, we held that absent an agreement by the Common Pleas Court to join a multi-employer bargaining unit, we would not order it to do so. We relied upon decisions of the National Labor Relations Board recognizing the consensual nature of multi-employer bargaining. See *Greenhoot, Inc*, 205 NLRB No 37, 83 LRRM 1656 (1973); *Shell Oil Co*, 194 NLRB 988, 79 LRRM 1130 (1972). Where labor organizations have attempted to sever employees from valid multi-employer units created by *voluntary* action of the participating employers, we have refused to do so. *Jackson Co Juvenile Court*, 1976 MERC Lab Op 750; *53rd Judicial Dist Court*, 1978 MERC Lab Op 82; *Wayne Co Bd of Comm'rs*, 1980 MERC Lab Op 215.

The WCAA has never consented to be a participant in a multi-employer bargaining unit with respect to employees represented by Local 3317, and we will not order the WCAA to the bargaining table with Wayne County and the Wayne County Sheriff because these former co-employers have no authority to make demands or to

grant or withhold concessions with regard to rates of pay, hours of work or other conditions of employment of the employees at issue here.

With regard to Local 502, we have a different circumstance to consider, that being its agreement with Wayne County, the Wayne County Sheriff, and the WCAA to extend collectively bargained transfer rights "through the life of the next collective bargaining agreement." This multi-employer agreement contemplates a common expiration date of the guaranteed rights. WCAA may withdraw from this multi-employer relationship only if its withdrawal is both timely and unequivocal. *Retail Assoc, Inc*, 120 NLRB 388 (1958).

The WCAA's petition, seeking a separate bargaining unit for airport employees represented by Local 502 is unequivocal and gave adequate notice of the WCAA's intention to bargain independently. However, that notice was given after the WCAA became signatory to a multi-employer agreement regarding transfer rights. Consequently, giving due consideration to the brief history of the multi-employer bargaining that has occurred and the limited scope of the multi-employer agreement to which the WCAA is party, we find that the WCAA's withdrawal is timely in all respects, except one.

To allow the parties to separately bargain conflicting expiration dates for the extended transfer rights to which they have agreed would cause confusion and invite disputes. We see no reason why a multi-employer bargaining relationship should not be preserved as to this issue. Thus, we grant the relief sought by the WCAA as to Local 502 with regard to all subjects that may properly be bargained, with the exception of the duration of the transfer rights that all parties have agreed to extend "through the life of the next collective bargaining agreement." The expiration of those rights should be bargained jointly by the parties to the multi-employer agreement by which they were extended.

ORDER

Based upon the above findings and conclusions, the petitions filed by the Wayne County Airport Authority regarding the American Federation of State, County, and Municipal Employees, Locals 101, 1862, 2057, and 2926 in Case Nos. UC04 D-016 and UC04 D-017 are dismissed.

Based on our finding that the Wayne County Airport Authority is a separate employer, we grant the WCAA's petition in Case No. UC04 C-009, and clarify the existing bargaining unit by severing the airport employees from the overall bargaining unit represented by Wayne County Law Enforcement Supervisory Local 3317, AFSCME, with the proviso that pursuant to Section 119(1) of the Public Airport Authority Act, the status of Local 3317 as bargaining representative of members of both resulting bargaining units is preserved.

We grant the Wayne County Airport Authority's petition in Case No. UC04 C-009, and clarify the existing bargaining unit by severing the airport employees from the overall bargaining unit represented by Service Employees International Union, Local 502 with the proviso that pursuant to Section 119(1) of the Public Airport Authority Act, the status of Local 502 as bargaining representative of members of both resulting bargaining units is preserved and, with the further proviso that the WCAA shall remain a member of the multi-employer association comprised of the WCAA, Wayne County, and the Wayne County Sheriff for the purpose of bargaining the duration of transfer rights conferred by their Memorandum of Agreement with Local 502.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Date: _____