

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

WAYNE COUNTY AIRPORT AUTHORITY,
Respondent-Public Employer,

Case No. C05 A-014

-and-

WAYNE COUNTY LAW ENFORCEMENT SUPERVISORY
LOCAL 3317, AFSCME,
Charging Party-Labor Organization.

APPEARANCES:

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

Akhtar, Webb & Ebel, by Jamil Akhtar, Esq., for the Labor Organization

DECISION AND ORDER

On September 28, 2005, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. On January 27, 2006, the Commission received a letter from Charging Party indicating that the dispute underlying the charge had been settled and requesting that the charge be withdrawn. Charging Party's request is hereby approved. This Decision and Order and the Decision and Recommended Order of the Administrative Law Judge will be published in accordance with Commission policy.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

WAYNE COUNTY AIRPORT AUTHORITY,
Respondent-Public Employer,

Case No. C05 A-014

-and-

WAYNE COUNTY LAW ENFORCEMENT SUPERVISORY
LOCAL 3317, AFSCME,
Charging Party-Labor Organization.

APPEARANCES:

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

Akhtar, Webb & Ebel, by Jamil Akhtar, Esq., for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on May 6, 2005, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and post-hearing briefs filed by June 10, 2005, I make the following findings of fact and conclusions of law.

The Unfair Labor Practice Charge:

On January 14, 2005, Charging Party Wayne County Sheriff & Airport Police, Sergeants & Lieutenants, Local 3317 (Local 3317) filed an unfair labor practice charge against Respondent Wayne County Airport Authority (WCAA) alleging certain violations of PERA.¹ Local 3317 claims that the WCAA unilaterally changed and repudiated the terms and conditions of employment of its bargaining unit members by refusing to honor various provisions of the parties' collective bargaining agreement, including Articles 21 and 22 involving transfers and promotions, respectively. Specifically, Local 3317 claims that the WCAA violated PERA; Act 312 of the Public Acts of 1969, as amended, MCL 423.231 *et. seq.*; and Act

¹The charge was filed by Wayne County Sheriff & Airport Police, Sergeants & Lieutenants, Local 3317. However, the Wayne County Law Enforcement Supervisory Local 3317, AFSCME, which is named as the Charging Party in the caption, and Wayne County are the parties to the collective bargaining agreement at issue in this case.

90 of the Public Acts of 2002, MCL 259.108 *et seq.*, when it refused to allow Lieutenant Lynne Langa, a Wayne County employee, to transfer to the WCAA.

Procedural and Bargaining History and Stipulated Facts:

Wayne County Law Enforcement Supervisory Local 3317, AFSCME, and Wayne County are parties to a collective bargaining agreement that covered the period December 1, 2000 to November 30, 2004. Local 3317 is the bargaining representative for police sergeants and lieutenants employed by Wayne County. Prior to March 2002 when Act 90 was enacted, bargaining unit members were assigned to the Wayne County Sheriff's Department under the direction of the Sheriff and to the Airport Police Division, a unit of the Wayne County Sheriff's Department, under the direction of the Airport Director. Employees assigned to the Airport Police Division worked at the Detroit Metropolitan Wayne County and Willow Run Airports, which were under the operational jurisdiction of Wayne County. Bargaining unit members had the right to transfer and be promoted to vacant positions within the Department. Sub-Section 21.01 of Article 21, Transfers, provided:

All Bargaining Unit positions in the department shall be filled from a list compiled pursuant to a specific posting. When the Sheriff or Airport Director becomes aware that a position is about to become vacant, he shall immediately post said vacancy for ten (10) days. All employees in the classification who request transfer to the vacant position shall have their name placed on the list. Further, all vacancies shall be filled from the list as spelled out in the following subsections. When no employee "bids" for an open position, it shall be filled by the employee in that classification with the least seniority.

In March 2002, during the term of the collective bargaining agreement Act 90 was enacted. It created, among other things, WCAA as a separate and distinct public employer to operate the airports, granted certain rights and benefits to employees who elected to transfer to the WCAA, and imposed obligations on the WCAA to protect the rights and benefits that the transferring employees had during their employment with Wayne County. Section 119(2) allowed bargaining unit members employed at the airports to transfer to the WCAA on, or before, the Federal Aviation Administration transferred operational jurisdiction of the airports to the WCAA and gave them the option to return to Wayne County's employment within one year from the approval date "without a loss of seniority unless contrary to a collective bargaining agreement."

The WCAA was approved to operate the airports on August 9, 2002. The Act required the WCAA to:

- Assume and be bound by the transferring employees' existing collective bargaining agreements for the remainder of their terms, continue to recognize the transferring employees' bargaining representatives and honor all obligations of a public sector employer after the collective bargaining agreements expire (Sec. 119(1));
- Accept the transferring employees without a break in employment subject to all rights and benefits

that they held under collective bargaining agreement with Wayne County (Sec. 119(2));

- For one year after the approval date, or for a longer period if required by their agreements, not place the transferring employees in a worse position regarding wages, workers' compensation, pension, seniority, sick leave, vacation, or health and welfare insurance or any other term and condition of employment that the transferring employees had under agreements with Wayne County (Sec. 119(2)); and
- Not diminish the transferring employees' accrued local government pension benefits or credits, and, if a transferring employee was not vested, credit his or her post-transfer service toward vesting in Wayne County's retirement system (Sec. 119(2)).

Section 119(2) also provides that the employees' protected rights and benefits could be altered by a future collective bargaining agreement except that if transferring employees had a right, by contract or statute, to submit unresolved disputes to binding Act 312 arbitration, they would continue to have that right. 2 3

2Section 119 of Act 90 reads:

(1) For employees who elect to transfer to the authority under subsection (2) and who are covered by the terms of a collective bargaining agreement with the local government that owns and airport over which operational jurisdiction will be transferred, the authority shall assume and be bound by those existing collective bargaining agreements for the remainder of the term of the agreement. 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 [PERA], 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.

(2) Local government employees employed at an airport from which operational jurisdiction will be transferred to an authority may agree to transfer to the employment of the authority on or before a date established by the authority. The date established by the authority shall not be later than the approval date. Local government employees who do not agree to transfer to the employment of the authority, shall be reassigned within the local government. The local government shall not, as a result of the creation or incorporation of an authority for a period of not more than 1 year, layoff or reduce the pay or benefits of any employee of the local government into whose position a local government employee who was previously employed at the airport is reassigned. The authority shall consider any person hired by the authority to fill a position that had been previously filled with a local government employee who did not agree to transfer to the employment of the authority to be under the collective bargaining agreement covering, and to be represented by the collective bargaining representative of, the local government employee who did not agree to transfer to the authority. The authority shall accept the transfers without a break in employment, subject to all rights and benefits held by the transferring employees under a collective bargaining agreement. Transferring employees shall not be placed in a worse position by reason of the transfer for a period of 1 year after the approval date, or any longer period as may be required in connection with the assumption of any applicable collective bargaining agreement, with respect to wages, workers' compensation, pension, seniority, sick leave, vacation, or health and welfare insurance or any other term and condition of employment that a transferring employee may have under a collective bargaining agreement that the employee received as an employee of the local government. The rights and benefits protected by this subsection may be altered by a future collective bargaining agreement except that any employee who as of the effective date of this chapter has the right, by contract or statute, to submit any unresolved disputes to the procedures set forth in 1969 PA 312, MCL 423.231 to 423.247, shall continue to have that right, or, for employees not covered by collective bargaining agreements, by benefit plans as established and adopted by the authority. Employees who elect to transfer shall not by reason of the transfer have their accrued local government pension benefits or credits diminished. If a transferring employee is not vested in his or her local government pension rights at the time of transfer, his or her post-transfer service with the authority shall be credited toward vesting in any local government retirement system in which the transferring employee participated prior

In April 2004, WCAA filed four unit clarification petitions to sever its employees from existing bargaining units represented by Local 3317 and various other labor organizations, including the Service Employees International Union, Local 502, AFL-CIO. On October 25, 2004, while the unit clarification petitions were pending, Local 3317 filed a petition for Act 312 arbitration naming Wayne County, the Wayne County Sheriff and WCAA as co-employers. Local 3317 attached to the petition its proposed modifications to the collective bargaining agreement between Wayne County and Local 3317.

In *Wayne Co Airport Authority*, 17 MPER 85, (December 20, 2004), the Commission rendered its decision and order on the WCAA's unit clarification petitions. It held that Act 90 created WCAA as a separate and distinct public employer, and clarified Local 3317's bargaining unit by severing the airport employees from the overall existing unit of Sheriff's Department and Airport Police Division employees. The Commission also preserved, pursuant to Section 119(1), Local 3317's status as bargaining representative for employees in the resulting bargaining units at the Sheriff's Department and the WCAA. The Commission wrote:

... [W]e 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 Local 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 Wayne County Sheriff over hours of work, rates of pay and other condition [sic] 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.

* * *

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

to the transfer, but the post-transfer service with the authority shall not be credited for any other purpose under the local government's retirement system, except as provided in subsections (3) and (4). An employee who elects to transfer to the authority may, upon return to employment with the local government within 1 year from the approval date, do so without loss of seniority unless contrary to a collective bargaining agreement...

3Act 312 eligibility is limited to employees who are subject to the hazards of police work and fire fighting, and who are employed in a critical-service department whose function is to promote public safety, order and welfare so that a work stoppage in that department would threaten community safety. *Metropolitan Council No. 23, AFSCME v Oakland Co Prosecutor*, 409 Mich 299 (1980).

these former co-employers have no authority to make demands or grant or withhold concessions with regard to rates of pay, hours of work or other conditions of employment of the employees at issue here [employees at the Detroit Metropolitan Wayne County and Willow Run Airports].

* * *

Based on our finding that the Wayne County Airport Authority is a separate employer, we grant the WCAA's petition ... and clarify the existing bargaining unit by severing 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. 4

On January 21, 2004, after the Commission's decision and order was issued, Local 3317 filed an amended Petition for Act 312 Arbitration naming WCAA as a separate employer. In the meantime, on December 16, 2004, WCAA posted a vacancy for a police lieutenant position in its central communications unit. On December 22, Wayne County Sheriff's Department employee Lieutenant Langa applied for the position. WCAA rejected her application on the basis that she was not a WCAA employee.

The instant unfair labor practice charge was filed on January 14, 2005.⁵ Thereafter, the Wayne County Circuit Court granted Local 3317's request for injunctive relief. WCAA was required to honor the terms and conditions of the expired collective bargaining agreement pending the issuance of an Act 312 award and a decision in this case, and until a new agreement is reached.

Conclusions of Law:

Local 3317 interprets Section 119 of Act 90 as requiring the WCCA to honor the transfer provisions in the agreement between Wayne County and Local 3317 and to maintain them until they are changed by future negotiations. It argues that WCAA repudiated the agreement and committed an unfair labor practice when it refused to allow Lieutenant Langa to transfer into a vacant position in its communications unit. Local 3317 also contends that since Section 119(1) specifically provides for transferring employees covered by Act 312 to remain subject to its provisions, the WCAA was obligated to maintain their transfer rights until an Act 312 arbitration award was issued.

WCAA contends that Local 3317's arguments have no merit and should be categorically rejected. It claims that Act 90 does not require it to comply with provisions in the agreement negotiated by Wayne

⁴The Commission noted that on September 25, 2003, Local 502 entered into an agreement with Wayne County, the Wayne County Sheriff and the WCCA, providing that transfer rights between the Wayne County Sheriff and the WCAA under their collective bargaining agreement be "guaranteed for all employees who successfully bid and transfer to the WCAA on or before 11/30/04 [the agreement's expiration date] through the life of the next collective bargaining agreement."

⁵This charge is the first of several filed by Local 3317 and/or SEIU Local 502 against the WCAA and/or Wayne County involving similar issues.

County and Local 3317 that allowed bargaining unit members to transfer between the Airport Police Division and the Wayne County Sheriff's Department. It argues that Local 3317's charge is an effort to collaterally attack the Commission's December 20, 2004 decision, which it did not appeal, and to undo the Legislature's creation of the WCAA as a separate employer. I agree. The unfair labor practice charge is totally without merit and warrants dismissal.

It is a well-established rule of statutory construction that provisions pertaining to a specific subject matter must be construed together, and harmonized if possible. *Brady v Detroit*, 353 Mich 243 (1958). When statutory language is clear and unambiguous, judicial interpretation that varies the plain meaning of the statute is prohibited. The drafters must have intended the plainly expressed meaning, and the statute must be enforced as written. See *POLC v Lake Co*, 183 Mich 558 (1990); *Hiltz v Phil's Quality Mkt*, 417 Mich 335 (1983).

I find that Local 3317 grossly misinterprets Section 119. The language of Section 119 is clear and unambiguous. It, therefore, is unnecessary to interpret it in order to vary its plain meaning and restore, as Local 3317 urges, rights of its members to transfer between the Sheriff's Department and the Airport Police Division. By its terms, Section 119 only confers rights and benefits to employees who transferred to the WCAA, a separate and distinct employer, and obligates the WCAA to assume and be bound by their existing collective bargaining agreements. Local 3317's reliance on language in Section 119 to mean that the WCAA is required to honor transfer requests by Wayne County employees ignores its plain text. The numerous references to "transferring employees" in Section 119 only apply to those who were employed at the airports and transferred to the WCAA by August 9, 2002. Moreover, language in Section 119(2), which states that Section 119-protected rights and benefits may be altered by future negotiations only refers to those that were conferred on employees who transferred to the WCAA and not to employees who remained employed by Wayne County.

Section 119, in addition to obligating the WCAA to assume and be bound by the transferring employees' collective bargaining agreements for the remainder of their terms, also requires it to honor all obligations of a public sector employer after the agreements expire. This means that the WCAA must maintain the status quo relating to mandatory subjects of bargaining and bargain in good faith until impasse is reached. *Local 1467, IAFF v City of Portage*, 134 Mich App 466 (1984), lv denied, 422 Mich 924 (1985); *City of Saginaw* 1982 MERC Lab Op 727, 730. There is no claim by Local 3317 that the WCAA has not maintained the status quo for its employees.

As the Commission found in *Wayne Co Airport Auth, supra*, WCAA became a separate and distinct public employer when Act 90 was enacted. As such, by operation of law, the authority previously exercised by Wayne County and Wayne County Sheriff over the hours of work, rates of pay and other condition of employment of Local 3317's members who transferred to the WCAA was severed. Similarly, I find that, by operation of law, the status of the Airport Police Division as a unit of Wayne County government and the right of the Sheriff's Department's employees to transfer to it were extinguished. I conclude, therefore, that the WCAA is not required to honor expired contract provisions which allowed the Sheriff's Department's employees to transfer to the Airport Police Division. Even if the WCAA honored the transfer provisions until November 30, 2004, when the contract expired, I find nothing in Act 90 that legally

obligated it to do so. I note that unlike SEIU Local 502, Local 3317 did not enter into an agreement with Wayne County, the Wayne County Sheriff and the WCAA to guarantee transfer rights for its members.

Finally, Local 3317's assertion that the WCAA committed an unfair labor practice by not maintaining the right of Wayne County employees to transfer to the WCAA after October 2004, when an Act 312 petition was filed, requires little comment. First, the petition was improper since it named the WCAA as a co-employer, with Wayne County and the Wayne County Sheriff, rather than as a separate employer. Second, there is nothing in the record to show that before binding arbitration proceedings were initiated, the issues in dispute had been submitted to mediation as required by MCL 423.233. Third, even after the petition was amended, the terms and conditions of employment that Local 3317 alleges should be maintained are for Wayne County employees, not employees of the WCAA. The provision in Section 119(2) making employees who transferred to the WCAA Act 312-eligible is evidence of the Legislature's intent to preserve a benefit that they would have lost by transferring to the WCAA, which is not a critical-service department whose function is to promote public safety, order and welfare. See *Metropolitan Council No. 23*, fn 3, *supra*.

I have carefully considered all other arguments advanced by Local 3317 and conclude that they do not warrant a change in the result. Included is its claim that the WCAA is required to honor the collective bargaining agreements that it inherited from Wayne County because the WCAA is successor employer or alter ego. Based on the above facts and conclusions of law, I conclude that the WCAA did not violate PERA by refusing to allow Lieutenant Langa to transfer into a vacant position at the airports. I, therefore, recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____