

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

In the Matter of:

KALAMAZOO COUNTY,
Public Employer,

Case No. UC08 E-016

-and-

KALAMAZOO COUNTY SHERIFF'S DEPUTIES ASSOCIATION,
Labor Organization-Petitioner

-and-

KALAMAZOO COUNTY SHERIFF,
Public Employer-Interested Party.

APPEARANCES:

Nantz, Litowich, Smith, Girard & Hamilton, by John H. Gretzinger, Esq., for the Public Employer

Michael F. Ward, Esq., for the Petitioner

Sheriff Richard C. Fuller, for the Interested Party

**DECISION AND ORDER ON
MOTION TO DISMISS PETITION FOR ACT 312 ARBITRATION**

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 *et seq*, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). This matter was initiated by Kalamazoo County's (County) motion to dismiss, in part, an earlier petition for Act 312 arbitration¹ filed by the Kalamazoo County Sheriff's Deputies Association (Union), and by the County's petition for clarification of the bargaining unit. The Kalamazoo County Sheriff (Sheriff) Richard C. Fuller took part in the hearings as an interested party and for the purpose of opposing the relief sought by the County. Based upon the entire record, including the transcript

¹ 1969 PA 312, as amended by 1976 PA 203 and 1977 PA 303, MCL 423.231-247

of the multiple days of hearing², and the post-hearing briefs filed by the Kalamazoo County Sheriff on June 4, 2009, by Kalamazoo County Sheriff's Deputies Association on June 29, 2009, and by Kalamazoo County on July 1, 2009, the Commission finds as follows:

The Parties and the Nature of the Dispute:

This matter is one of several recent cases between the County and the deputies' Union.³ In *Kalamazoo Co & Kalamazoo Co Sheriff*, 22 MPER 94 (2009), the Commission found that the County had unilaterally and unlawfully repudiated an otherwise enforceable substantive provision of its contract with the Union by which the parties had agreed to interest arbitration of disputes over future contract terms covering certain classifications of employees where those classifications may not otherwise have been covered by Act 312 interest arbitration obligations. In *Kalamazoo Co*, C08 A-018, (August 20, 2009), the County was found by the ALJ to have unlawfully and unilaterally withheld compensation due to all of the members of the bargaining unit in the form of negotiated cost-of-living allowances (COLA). Also pending before an ALJ was *Kalamazoo Co Sheriff's Deputies Ass'n*, MERC Case No. CU08 B-005, which was awaiting decision on summary disposition, and in which the County asserted that the deputies' Union unlawfully failed to bargain in good faith when the Union refused to implement a contractual settlement that the County had negotiated with the command officers union, which would have altered the deputies' pension plan. Additionally, the County filed, but did not pursue, a charge in *Kalamazoo Co Sheriff's Deputies Ass'n*, MERC Case No. CU08 C-015 in which it asserted that the Union had failed to bargain in good faith by engaging in supposed surface bargaining.⁴ The parties also litigated issues related to injunctive relief in the Ingham Circuit Court arising from the same failure to reach a successor collective bargaining agreement.

The parties, having failed to negotiate a successor contract to one that expired by its terms December 31, 2007, also had an Act 312 arbitration case pending. The Commission has been advised by the chairperson of the Act 312 arbitration panel that the parties have voluntarily reached and ratified a successor collective bargaining agreement; however, the chairperson also advised the Commission that the parties nonetheless mutually seek a resolution of this dispute over Act 312 coverage.⁵ The resolution of the dispute over the terms of the collective bargaining agreement brought the Act 312 arbitration to an end, and therefore seemingly makes moot the question of which classifications of employment were properly subject to Act 312 interest arbitration.⁶ Nonetheless, the Commission will exercise its discretion to address the issues which were in dispute in this matter as the statutory issues are of sufficient importance, and as the

² Hearings were held on October 22, November 24, 2008; April 20, April 27, and May 15, 2009, with each party having a full opportunity to submit such proofs as it deemed appropriate; settlement conferences were additionally held on February 12 and April 13, 2009.

³ These matters were pursued by the County over the express objections of the co-employer Sheriff Fuller, who likewise objected to the filing of an appearance by the County's attorney, purportedly on behalf of the Sheriff.

⁴ The charges in Case Nos. CU08 B-005 and CU08 C-015 were withdrawn by the County on December 23, 2009.

⁵ The County's position on the mootness question has shifted. In its post-hearing brief, at page 11, the County asserted that if then-pending Act 312 arbitration process resulted in the voluntary creation of a new collective bargaining agreement, the jurisdictional dispute would be moot, such that the Union's Act 312 petition must be administratively dismissed.

⁶ As noted above, the Commission previously determined that certain classifications which may otherwise not have been covered by Act 312 were nonetheless subject to an equivalent interest arbitration proceeding, based on the earlier voluntary agreement of the parties. See *Kalamazoo Co & Kalamazoo Co Sheriff*, 22 MPER 94, (2009).

County's previously exhibited failure to comply with the mandatory terms of negotiated agreements suggests that the dispute could recur. See *Wayne State Univ*, 1991 MERC Lab Op 496; 4 MPER 22082 (1991); *Ingham Co*, 1988 MERC Lab Op 170.⁷ The primary remaining question, on which the parties seek a Commission ruling, is whether the conditions of employment affecting several disputed classifications of Sheriff's Department employees are subject to the compulsory arbitration provisions of Act 312.

Findings of Fact:

The Kalamazoo Sheriff's Deputies Association has since the 1970s represented a unit that presently consists of approximately two hundred sworn officers, as well as other non-supervisory non-police officer personnel employed in the Kalamazoo Sheriff's Department. The Union has had a long and, until recent events, seemingly unremarkable relationship with both the County and the successive elected County Sheriffs, with the most recent prior dispute litigated by these parties before MERC appearing to be *Kalamazoo Co & Kalamazoo Co Sheriff*, 1992 MERC Lab Op 664. The parties' most recent collective bargaining agreement was effective January 1, 2005, with its main provisions expiring December 31, 2007. When the parties were unable to reach agreement on a successor contract, the Union petitioned for Act 312 interest arbitration. The County, purporting to act on behalf of both itself and the Sheriff, brought a motion to dismiss the Act 312 petitions as to nearly three-quarters of the existing bargaining unit, asserting that the job positions, in question, were not subject to interest arbitration under Act 312.⁸ The core dispute was over whether conditions of employment of personnel assigned to the jail and courts divisions of the Kalamazoo County Sheriff's Department were subject to Act 312, with the County ultimately conceding that all of the positions in the road patrol division were subject to the constraints of Act 312. The Act 312 coverage dispute was submitted for hearing before an administrative law judge.

The classifications of deputy F-19 and sergeant F-22 encompass virtually all of the positions or assignments held by sworn officers in the various divisions in the Sheriff's Department. The F-19 and F-22 assignments in the road patrol are not in dispute, while essentially all of the F-19 and F-22 assignments in the corrections and courts divisions were in dispute. Well into the hearing process, the County abandoned its challenge to most of the

⁷ The parties had been directed to address in their post-hearing briefs in this matter the question of whether the Employer should be deemed estopped from seeking to avoid submitting disputes over changes in conditions of employment for classifications subject to the 2003 interest arbitration agreement. The intervening Commission decision in *Kalamazoo Co & Kalamazoo Co Sheriff*, 22 MPER 94, (2009), finding that the County had unlawfully repudiated its agreement with the Union and enforcing that agreement regarding interest arbitration, renders the question of estoppel moot. The parties had been additionally instructed to brief the question of whether the County, acting alone and in contravention of the position of the Sheriff, had standing to challenge the Act 312 coverage of positions peculiarly under the control of the Sheriff. That issue is also rendered moot by the multi-party request for a ruling in this matter.

⁸ The County additionally sought the administrative dismissal of the petition on its assertion that certain classifications were "as a matter of law" not covered by Act 312 based merely on their job titles. That very contention, that job titles could determine coverage by Act 312, was rejected in *Oakland Co (Prosecutors Investigators)*, 1978 MERC Lab Op 328. Such determinations are necessarily fact specific and we expressly reject the County's assertion that coverage under Act 312 can ever be determined by mere reference to job titles rather than by reviewing actual job duties.

previously disputed positions,⁹ leaving in dispute the following positions: sergeant (corrections) (F-22); deputy (corrections) (F-19); deputy (court security) (F-19); deputy (transport) (F-19); registered nurse (F-20). Additionally, on the fourth day of hearing, the County, for the first time, sought to place in dispute the position sergeant (transport) (F-22). The primary job classification of deputy (F-19) in the law enforcement division is populated entirely by sworn police officers routinely performing traditional law enforcement duties and the coverage of that classification by Act 312 was not disputed.

It is undisputed that the following challenged positions are all filled by sworn police officers: sergeant (corrections) (F-22); deputy (corrections) (F-19); deputy (court security) (F-19); deputy (transport) (F-19); sergeant (transport) (F-22). The only factual question to be resolved as to the preceding positions is whether they are routinely assigned to traditional police duties, that is, to the enforcement of the general criminal laws of the state of Michigan. The classification of registered nurse (F-20), is not filled by sworn police officers, and the question to be resolved with regard to this position is whether individuals in the classification function as “emergency medical service personnel” as that term is utilized in Act 312.

Much of the dispute centered on the County’s assertion that marked differences existed between duties assigned to the ‘corrections’ and ‘law enforcement’ divisions of the Sheriff’s Department. The terms of the prior collective bargaining agreement between all three parties makes clear that the parties had agreed earlier on the respective status of the various positions to which the police officer and non-police officer classifications could be assigned. Article XXIV provided for the newly created corrections deputy 17 classification, which did not require status as an MCOLES certified police officer. Recognizing the distinction, the parties expressly agreed that these officers without MCOLES certification “will not be assigned to work outside the jail facility in non-corrections assignments (e.g. road patrol, transport, and courts).” All three parties, prior to this litigation, understood that the assignments in road patrol, transport, and in the courts were not jail assignments and, because of the nature of the work actually assigned to the positions, could not be given to an officer who was not a fully MCOLES certified police officer.

As more fully described below, competent testimony was provided by current or former incumbents, including the Sheriff, regarding the actual duties regularly assigned to the several disputed classifications. The pre-existing ‘position descriptions’ for the several disputed positions were introduced and reflect the long standing and agreed upon duties of the employees assigned to those positions. Additionally, the County offered into evidence ‘job descriptions’ which were initially purported to have been created or revised in the ordinary course of business. It became clear through the County’s own witnesses that those documents were, in fact, merely prepared for purposes of the present litigation; they did not go through the County’s ordinary

⁹ The County expressly dropped its challenges regarding the positions of sergeant (airport); sergeant (investigations); sergeant (evidence); polygraph examiner; sergeant (laboratory); and sergeant (traffic), acknowledging that all of the individuals in each of those assignments and in the polygraph examiner classification were required to be sworn police officers and were routinely assigned to traditional law enforcement duties. The Union acknowledged that individuals in the classification corrections officer (F-17) were not required to be sworn police officers and were not routinely assigned to traditional law enforcement duties. Under *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007), corrections officer classifications that are not MCOLES certified are not subject to Act 312 arbitration requirements.

review process nor did they constitute ordinary business records. Therefore, except to the extent that they contained admissions against interest, they were given no evidentiary weight. The Kalamazoo County Sheriff, who has the sole constitutional authority to delegate law enforcement powers to his deputies, asserted that each of the police officer positions in dispute were, in fact, assigned law enforcement duties and that he granted them commensurate authority to enforce the criminal laws of the state.

Sergeant (Corrections) (F-22)

The position of sergeant (corrections) (F-22) is exclusively filled by MCOLES certified police officers. It is in the same classification and, in essence, is indistinguishable from the sergeant (F-22) positions in the road patrol or airport assignments which the County concedes are covered by Act 312. The individuals in this classification are routinely and readily transferred amongst the positions on both short term assignments and long term rotations. The Sheriff was unequivocal in testifying that he has granted full law enforcement powers and duties to all of the sergeants (F-22) regardless of their particular assignment and that he expects each to enforce the criminal laws of the state. The Sheriff characterized the role of the sworn police officers in the jail as akin to patrolling a small city. He noted that the sergeants assigned to the jail are additionally responsible for perimeter security which requires daily inspection tours outside the jail while in full uniform and armed. The Sheriff retains the contractual right, as needed, to transfer sergeants between divisions.

Sgt. Ward Lawrence and Sgt. James DelaBarre each testified based on their own experience in both the sergeant F-22 and deputy F-19 assignments in the corrections area of the Sheriff's Department. Both testified that in either assignment they were required to be MCOLES certified, were issued the full standard complement of uniforms and weaponry, and possessed and used law enforcement powers, including the investigation of crimes occurring within the jail. They and subordinate deputies, while assigned to a jail position: 1) routinely investigate criminal complaints within the jail; 2) interrogate suspects; 3) interview witnesses and crime victims; 4) prepare criminal complaints; and 5) make arrests within the confines of the jail related to both property crimes and crimes against persons. When assigned to work in the jail, they are responsible as well for working in concert with other police agencies, including local police agencies, FBI, state police, DEA, and foreign countries through Interpol to investigate crimes committed outside the jail.

Both Lawrence and DelaBarre have transferred in and out of road patrol and jail division assignments without restriction, whether based on job bids held every six months or on daily assignments based on the changing operational needs of the Sheriff. While working in the jail division they were entitled to bid on and perform work on daily overtime in any other division. Sergeants and deputies assigned to the jail are all sent for special interrogation training. DelaBarre received letters of commendation from the county prosecutor's office for his work in the jail in obtaining evidence in five separate felony cases, including a murder case where the conviction would not have been secured without his efforts.

Registered Nurse (F-20)

The sole testimony regarding the job duties of the nurses was provided by Ron Tharge who is one of the five incumbents in the classification and who has served in that capacity for four years.¹⁰ Tharge is a registered nurse and is also licensed as a paramedic and has emergency medical treatment (EMT) certification. Tharge also works, when not on duty with the Sheriff's Department, for a local hospital as an ambulance based EMT and was, therefore, well positioned to compare the types of duties performed in the two positions. His ambulance has the same equipment and he responds in the same fashion as when on duty at the jail. Nurses' equipment at the Sheriff's Department includes cardiac monitors, defibrillators, IV supplies, stethoscopes, EKG and ultrasound equipment, blood pressure and pulse measuring devices, and necessary equipment to maintain airways. Medicines available to them include ordinary over the counter medications, as well as benadryl for treating allergic reactions, epinephrine for injections, glucose for diabetics, and the like. Major medical emergencies requiring treatment or transport occur several times a week.

The nurses are issued radios and respond to dispatched medical emergencies both within and outside the jail building. The nurses generally, and Tharge personally, have responded to heart attacks by citizens in the lobby and by inmates, and the nurses provide emergency stabilization care until transport arrives. They also respond to stroke victims and provide emergency trauma care, including for such things as bone fractures, crushed heads, lacerations, and attempted suicides by cutting or hanging. Nurses respond to childbirth situations and must evaluate if labor is ongoing and whether immediate transport is needed. In all of the above situations, the nurses must evaluate the injury or medical condition, initiate stabilizing treatment, and determine if transport is necessary. As the Sheriff himself noted, the most recent dramatic instance was a citizen who drove up to the front door of the jail knowing emergency medical treatment for a heart attack would be available.

Deputy (Corrections) (F-19)

The testimony of Capt. Thomas Shull, the jail administrator, Sgts. Lawrence and DelaBarre, and the Sheriff was concurred in by Deputy (F-19) Peter Hanold who had recently been regularly assigned to work in the jail. As with the position of sergeant (corrections) (F-22), the assignment of deputy (corrections) (F-19) is exclusively filled by MCOLES certified police officers. It is in the same classification and, in essence, is indistinguishable from the deputy (F-19) positions in the road patrol or airport assignments which the County concedes are covered by Act 312. The deputies who are assigned to the jail receive the same training in criminal law as all other deputies. The individuals in the classification are routinely and readily transferred among the positions, on both short term assignments and long term rotations, including the routine use of deputies ordinarily assigned to the jail to cover road patrol on overtime. The movement of deputies from assignments within the jail to assignments on the road patrol, transport, dispatch, or the courts is a daily occurrence. The Sheriff characterized the role of the sworn police officers in the jail as akin to patrolling a small city. Deputies assigned to the jail routinely, on their own initiative, make arrests in the jail lobby of disorderly persons and of

¹⁰ Despite placing the matter in contention, the County offered no testimony and no other competent evidence regarding the actual job duties of the nurse classification.

individuals with outstanding arrest warrants who appear at the jail to visit friends or family. Jail officers reporting to the front desk go with their sidearm, which is not carried within the cellblocks, and effectuate lobby arrests 12-20 times a month. The Sheriff was unequivocal in testifying that he has granted full law enforcement powers and duties to all of the deputies (F-19) regardless of their particular daily assignment and expects each to enforce the criminal laws of the state. The Sheriff retains the contractual right, as needed, to transfer deputies (F-19) between divisions.

On nearly a daily basis, deputies assigned to the jail are regularly and routinely dispatched as transport officers, working on the street in full uniform with weapons with at least six to eight officers per week day being so reassigned out of the jail. Deputies are reassigned from the jail to the road patrol, according to Sgt DelaBarre, as frequently as two to three times a week. Deputies have been transferred from the jail to fill vacancies in law enforcement division positions, and officers assigned to road patrol are detailed to fill vacancies in the jail. As Deputy Hanold testified, without contradiction, any deputy F-19 showing up for work on any given day does not know if he will be detailed to work in the jail, in the courts, in transport, or on road patrol. Deputies F-19 assigned to the jail on any given day have the right to bid on posted overtime in any division or location, including the road patrol. Hanold testified that, like the sergeants, he was personally responsible for making arrests and processing crime scenes within the jail. Deputies have investigated and made arrests for crimes occurring within the jail for a range of offenses, including armed robberies and assaults, as well as for offenses committed outside the jail or planned within the jail, such as murder for hire schemes. Deputies assigned to the jail also serve as the firearms instructors for the Sheriff's Department and maintain the departmental armory. The Sheriff testified that deputies F-19 assigned to the jail are given the same, full, law enforcement powers as they would have while on any other assignment and are expected to enforce the criminal laws of the state.

Deputy (Court Security) (F-19)

The court security deputies provide law enforcement within the three separate court facilities that are not housed within the jail. The decision to base deputies within the court facilities was based on a desire, as expressed by the undersheriff, to have a law enforcement officer immediately available to address, and to deter, a perceived increase in violent crimes within those facilities. Among the precipitating incidents was a violent assault on a probation officer.

Deputy Rusty Shelburne, who previously served as a road patrol officer, testified regarding the regular duties assigned to F-19 deputies working in the courts. As with all F-19 assignments MCOLES certification and possession of full law enforcement authority are prerequisites for assignment to the position. While working in the court's assignment, deputies are in full uniform with the ordinary complement of equipment, including a dispatch radio, handcuffs, tazer, pepper spray, flashlight, and a 40 caliber sidearm. Court-assigned deputies receive the same training as the undisputed road patrol deputies and can bid on any vacancy or temporary overtime assignment in any division, including road patrol. In the event of a layoff, court-assigned deputies can use their seniority to bump into any other assignment.

Deputy Shelburne testified without contradiction that, as a court-assigned officer, he regularly enforces the general criminal laws of the state in the same fashion as when on road patrol. Shelburne, as a court-assigned officer, runs LEIN checks on persons appearing in court and effectuates arrests if outstanding warrants are disclosed. He makes arrests at the direction of the judge in the courtroom. Shelburne has made arrests of persons discovered carrying concealed weapons at the court security checkpoint and has arrested disorderly persons. After he arrests a person, Shelburne processes them in the same fashion as do road patrol officers. He has the discretion, as would any officer on the street, to choose not to arrest an individual on whom there is an active warrant. He responded to a domestic violence call to a residence across the street from the courthouse and to assault calls regarding the nearby juvenile detention facility. The court-assigned officers investigate auto accidents in the adjacent parking lots and write traffic and parking tickets in the same fashion as road patrol officers. Shelburne made nearly one-hundred arrests and processed over fifty complaints in his 2007-2008 stint at the Gull Road court facility.

Shelburne's testimony was supported by the Employer-created pre-existing position description for that assignment, Ex. 29, which described the "essential functions" of the job as including:

1. Conduct security inspections of all buildings, parking lots, and perimeter fencing; respond to . . . all alarms and other incidents. . .
2. Respond and take immediate action on all in-progress crimes on the Courthouse grounds; effect arrests and detain subjects for suspected criminal violations; detain subjects attempting to breach Courthouse security. . . maintain control of the scene to gather initial information;
3. Effect arrests in the Courtroom;
4. Conduct preliminary investigations of not-in-progress criminal. . . incidents;
5. Prepare . . . written reports . . . including use of force forms . . .
6. *
7. Testify in court on Courthouse related investigations . . . etc.

Deputy (Transport) (F-19)

The testimony of the Sheriff, the transport sergeant, and Deputy Hanold, who at the time of the hearing was assigned to transport duties, establishes that the transport-assigned deputies are all MCOLES certified police officers and that they regularly engage in the enforcement of the general criminal laws of the state. These deputies wear the same uniform and equipment as road patrol assigned officers, including pepper spray and a department issued sidearm. Transport assigned officers have the right to move to other assignments, including road patrol, and do so on a regular and consistent basis, for both long and short term assignments, including for daily overtime. Among their essential job functions, according to the Employer-prepared position description, Ex. 37, are: 1) to respond to emergencies in the courthouse; 2) to investigate complaints of criminal activity during the course of normal duties; prepare reports of criminal activity; 3) to arrest and transport persons from other jails or at probation or parole offices; 4) to

arrest persons sentenced in court; 5) to arrest persons found in the courthouse with active warrants or carrying contraband; and 6) to “use independent judgment in making decisions requiring interpretation and application of Michigan Criminal Law”.

There are fifteen officers regularly assigned to transport duties; however, that workforce is supplemented, on a daily basis, by six or more officers on transfers or working overtime from other assignments or divisions. Road patrol officers may be called upon to pick up or transport prisoners. The primary function of transport officers is transporting prisoners between the courthouses and the jail and traveling to secure or deliver prisoners to other jurisdictions. Deputies on transport assignment are issued regular marked patrol cars or marked vans. Both types of vehicles are equipped with dispatch radios and shotguns. Deputies on transport duty are expected to, and do, make traffic stops for serious infractions, unless they have prisoners in the vehicle. In that circumstance, they are expected to radio in the offense and tail the offender. The same would be true for officers assigned to road patrol; they would not make a traffic stop if they already had a prisoner in the car. Transport officers also patrol and enforce the law in the courthouse buildings, grounds, and adjacent parking lots. They are responsible for arresting, searching, and processing persons in the courthouse who have outstanding warrants, who are apprehended with contraband, or who commit crimes in the facilities. Deputies assigned to transport duty also respond to ancillary facilities to effectuate arrests, including at the Office of Community Corrections, the Kalamazoo Probation Enforcement Program and the probate and small claims court. Deputies on transport assignment made more than 1,400 arrests in 2008, with six to ten arrests per day being routine. Transport officers monitor radio transmissions from surrounding police jurisdictions and have left the court building to assist City of Kalamazoo police officers. The deputies assigned to transport are expected to, and have, responded to other officers needing assistance in making arrests outside the court buildings. Deputies assigned to transport effectuated the arrest of a murder suspect in 2009 being pursued by City of Kalamazoo police officers.

Sergeant (Transport) (F-22)

As noted above, it was not until the on the fourth day of hearing that the County, for the first time, sought to place in dispute the position of sergeant (transport) (F-22). That belated effort to amend its claims was untimely and improper; however, as proofs were, nonetheless, taken, the claim will be addressed, herein, in order to deter future litigation over the issue.

As with all other sergeant assignments within the department, the transport sergeant assignment is exclusively filled by MCOLES certified police officers. It is in the same classification and, in essence, is indistinguishable from the sergeant positions in the road patrol or airport assignments that the County concedes are covered by Act 312. The sole incumbent in the assignment, Rich Haring, testified as to his duties without contradiction. The individuals in the sergeant classification are routinely and readily transferred among the positions, on both short term assignments and long term rotations. The Sheriff was unequivocal in testifying that he has granted full law enforcement powers and duties to all of the sergeants, regardless of their particular assignment, and expects each to enforce the criminal laws of the state, including by making arrests where crimes are in progress. The Sheriff retains the contractual right to transfer sergeants between divisions. The Employer-created position description, Ex. 36, includes among

the essential job functions of the transport sergeant assignment the following: 1) to direct investigations of criminal activities; 2) to make arrests and conduct investigations; 3) to perform internal investigations; and 4) to respond to emergencies within the courthouse. Haring wears the same uniform and is issued the same equipment as other law enforcement officers. Haring has actually made arrests while in the transport assignment and routinely conducts criminal investigations.

Discussion and Conclusions of Law:

This Commission and the appellate courts have heard multiple cases involving the question of the scope of coverage of Act 312. The Commission has jurisdiction to resolve disputes over the extent of coverage of Act 312. *Oakland Co and Oakland Co Sheriff*, 20 MPER 63 (2007); *City of Grand Rapids*, 1981 MERC Lab Op 327; *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)*, 89 Mich App 564 (1979).

Act 312, MCL 423.231, *et seq.*, as a supplement to the provisions of PERA, provides:

Sec. 1. It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

Sec. 2. Public police and fire departments means any department of a city, county, village, or township having employees engaged as policemen, or in fire fighting or subject to the hazards thereof, emergency medical personnel employed by a police department or fire department, or an emergency telephone operator employed by a police or fire department.

As we held in *Oakland Co*, Act 312 interest arbitration functions primarily as a limitation on a narrow class of public employers, namely, police and fire departments, which prevents them from exercising the rights normally held by public employers. When a good faith bargaining impasse is reached, public employers generally may unilaterally impose changes in conditions of employment. Act 312 prohibits covered police and fire departments from exercising that same power. As held by the Supreme Court, in reviewing the first significant challenge to Act 312, compulsory interest arbitration serves to stay the hand of police and fire department employers, prohibiting them from unilaterally implementing changes in conditions of employment, and, thereby, minimizing the likelihood of an unlawful response by employees:

Unless there is some constraint on public employers, they may ignore legitimate negotiation demands of the employees and illegal strikes may result. The challenged act represents a legislative attempt to prevent the dire consequences of strikes or work stoppages by certain public employees—policemen and firemen.

Dearborn Firefighters Union v City of Dearborn, 394 Mich 229, 247 (1975).

We reiterate our holding in *Oakland Co* that the statutory phrase “employees engaged as policemen” is straightforward, and we again conclude that in 1969, as today, it is best understood as meaning only MCOLES certified police officers who enforce the general criminal laws of the state. Conversely, non-MCOLES certified employees of a county sheriff department, such as ordinary jail guards, are not within the scope of coverage of Act 312.

Here, the record establishes that the disputed positions or assignments of sergeant (corrections) (F-22); deputy (corrections) (F-19); deputy (court security) (F-19); deputy (transport) (F-19); sergeant (transport) (F-22) are all filled entirely by MCOLES certified sworn police officers employed by the Kalamazoo County Sheriff’s Department. The evidence, as detailed above, further establishes that the persons in those positions are routinely assigned to perform the traditional duties of police officers and are routinely involved in the enforcement of the general criminal laws of this state. Additionally, the individuals assigned to corrections and court-related deputy F-19 and sergeant F-22 positions are routinely rotated in and out of road patrol and other traditional law enforcement positions in the same classifications on a daily basis. There was no dispute that the duties to which they rotated were solely those of a law enforcement officer. It is apparent that the various positions to which deputy F-19 officers and sergeant F-22 officers are assigned are just that, assigned positions, rather than separate and discrete classifications. The Sheriff’s testimony was unequivocal, and unchallenged, that this rotation of assignments was essential to the functioning of the department. The classifications of deputy F-19 and sergeant F-22, and the various interchangeable positions, to which they may be assigned, are comprised entirely of individuals “engaged as policemen” regularly and routinely responsible for the enforcement of the criminal laws of the state and, therefore, the conditions of employment of those classifications are subject to Act 312 arbitration.¹¹

The classification of nurse F-20 requires a different analysis. Those positions in Kalamazoo County are not held by MCOLES certified police officers. Rather, it is asserted that the classification is within the scope of the amendment to Act 312 that brought into the Act’s purview the conditions of employment of “emergency medical personnel employed by a police department” who:

[F]or purposes of this act includes a person who provides assistance at dispatched or observed medical emergencies occurring outside a recognized medical facility including instances of heart attack, stroke, injury accidents, electrical accidents, drug overdoses, imminent childbirth and other instances where there is the possibility of death or further injury; initiates stabilizing treatment or transportation of injured from the emergency site; and notifies police or interested departments of certain situations encountered including criminal matters, poisonings, and the report of contagious diseases.

MCL 423.232(2)

¹¹ The County asserts that the transport assignments in particular are not subject to Act 312 arbitration, relying on *Ottawa Co*, 1993 MERC Lab Op 661 and *Jackson Co*, 1994 MERC Lab Op 278. Unlike the matter before us, both cases involved corrections officers who were not required to be MCOLES certified as a condition of employment.

The emergency medical personnel category is not further defined in Act 312 itself and has rarely been the subject of decisions by the Commission. Those classifications of employees found to be “emergency medical personnel” are treated for all purposes of Act 312 in the same manner as traditional sworn police officers. In what appears to be the only reported decision addressing the question, the Commission found that sheriff’s department nurses assigned to a jail division were covered by Act 312 as they qualified as “emergency medical service personnel” as defined by the then recent amendment to Act 312. See *Washtenaw Co Sheriff’s Dep’t*, 1979 MERC Lab Op 671.¹² Nonetheless, the question of Act 312 coverage must be resolved on the facts of each case. Based on our review of the record regarding the duties assigned and performed by the nurses F-20, including the fact that nurses respond to dispatched medical emergencies both within and outside of the jail building, we find that they function as “emergency medical personnel” as described in Act 312. We find the conditions of employment of that category of employees in Kalamazoo County is subject to Act 312 arbitration.

Conclusion

As indicated above, and as based on the evidence adduced at trial, we deny, in its entirety, the County’s motion to dismiss the Union’s petition for Act 312 arbitration. The terms and conditions of employment of the positions or assignments of sergeant (corrections) (F-22); deputy (corrections) (F-19); deputy (court security) (F-19); deputy (transport) (F-19); sergeant (transport) (F-22) and registered nurse F-20 are subject to compulsory arbitration under Act 312. It is intended that this latest clarification of the relationship among the parties provide guidance to the voluntary and binding resolution of future disputes over conditions of employment in the Kalamazoo County Sheriff’s Department.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

¹² We note, but do not rely on, the differing definition of “emergency medical services personnel” provided at MCL 333.20904, which relates to the creation of an education and licensing system for the various categories of professionals typically involved in the ambulance and aircraft based transport and treatment of emergency patients. Neither party sought our reliance on the terms of that licensing statute, which is irrelevant where Act 312 provides its own specific definition of the term, and where the licensing statute post-dates the relevant amendment of Act 312.