STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN STATE UNIVERSITY
(POLICE DEPARTMENT),
Public Employer,

Case No. UC12 A-001
-and- Docket No. 12-000241-MERC

CAPITOL CITY LODGE NO. 141,
FRATERNAL ORDER OF POLICE,
Petitioner-Labor Organization.
_____/

APPEARANCES:

Radhika Pasricha, Assistant General Counsel, for the Public Employer

Wilson, Lett & Kerbowy, P.L.C., by Steven T. Lett, for the Labor Organization

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

On January 16, 2012, Capitol City Lodge No. 141, Fraternal Order of Police (Union or Petitioner) filed a petition for unit clarification and a petition for binding arbitration under 1969 PA 312 (Act 312), MCL 423.231-247, as amended. By these petitions, the Union seeks a determination from the Michigan Employment Relations Commission (MERC) of whether Act 312, which provides for compulsory arbitration in certain areas of public employment, applies to police officers employed by Michigan State University. Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System, acting on behalf of MERC. Based on the entire record, the Commission finds as follows:

Background:

Petitioner represents a bargaining unit consisting of full-time non-supervisory police officers employed by the Michigan State University (MSU) Police Department. MSU was established as a constitutional body corporate by Article VIII of the Michigan Constitution of 1963. The University is empowered to establish a public police department by MCL 390.1511, which authorizes the governing board of a four-year

public college and university created under Article VIII to "grant public safety officers of the institution the same powers and authority as are granted by law to peace and police officers to enable the public safety officers to enforce state law and the ordinances and regulations of the institution of higher education." It is well established that a four-year public college or university such as MSU is a public employer for purposes of PERA. *Bd of Control of Eastern Michigan University v Labor Mediation Bd*, 384 Mich 561 (1971); *Regents of the Univ of Michigan v Labor Mediation Bd*, 18 Mich App 485 (1969).

On or about October 19, 2011, the Union filed a petition for Act 312 arbitration, asserting that the members of its bargaining unit were eligible for compulsory arbitration proceedings pursuant to the recent amendment to Section 2 of Act 312, MCL 423.232. The University filed a motion to dismiss on November 3, 2011, arguing that Act 312, as amended by 2011 PA 116, does not entitle Petitioner's members to compulsory arbitration. We considered the issue at a public meeting on November 8, 2011, and concluded that "at first blush," the police officers employed by MSU were not eligible for Act 312 arbitration and that the petition should be administratively dismissed. However, we noted that either party could file a petition requesting that we formally decide the issue. Ruthanne Okun, Director of the Bureau of Employment Relations, administratively dismissed the petition for Act 312 arbitration by letter dated November 18, 2011.

On January 16, 2012, the Union simultaneously filed a petition for unit clarification and a new petition for Act 312 arbitration, once again seeking a determination of whether its bargaining unit members are eligible for Act 312 arbitration pursuant to the recent amendments to that statute. MSU filed a motion to dismiss both of the petitions on February 24, 2012, asserting that Act 312, as amended, cannot reasonably be construed as applying to the police officers in its employ. On February 27, 2012, the Union filed a position statement setting forth in detail the basis for its contention that the recent amendments to Act 312, 2011 PA 116, expanded the coverage of the Act to include police officers employed by colleges and universities. Thereafter, the petitions were assigned to ALJ Peltz for further proceedings.

On March 15, 2012, ALJ Peltz notified the parties in writing that there did not appear to be any material issues of fact in dispute and that the case seemed to turn solely on the interpretation of the applicability of 2011 PA 116. The ALJ indicated that either party could state its disagreement with that determination by filing "a detailed position statement setting forth with specificity what issues of fact are in dispute and explaining how those issues are material to the question of whether the police officers in question are eligible for compulsory arbitration." The ALJ explained that absent the filing of a supplemental position statement, the case would be submitted to the Commission for the issuance of a Decision and Order on summary disposition. No supplemental position statements were filed with the ALJ, nor did either party submit a request for oral argument.

Discussion and Conclusions of Law:

A representation proceeding is investigatory in nature and does not constitute a contested case for purposes of the Administrative Procedures Act, MCL 24.286. It is well established that we have discretion to determine whether good cause exists to hold a hearing on a representation question. *Sault Ste Marie Area Pub Sch v MEA*, 213 Mich App 176, 181 (1995); *Michigan Ass'n of Pub Employees v MERC*, 153 Mich App 536, 549 (1986). In the instant case, the parties were given the opportunity to show the existence of disputed factual issues that required an evidentiary hearing or to request oral argument, but failed to do so. Under these circumstances, we find that an evidentiary hearing would serve no purpose and, therefore, issue the following decision on summary disposition based solely upon the petition, the University's motion to dismiss, and the position statement filed by the Union. See *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007), aff'd sub nom *Oakland Co & Oakland Co Sheriff's Dep't v Oakland Co Deputy Sheriff's Ass'n*, 282 Mich App 266 (2009). See also *Swickard v Wayne Co Medical Examiner*, 184 Mich App 662 (1990).

In its position statement, Petitioner contends that MSU is a police department within the meaning of Act 312, as amended by 2011 PA 116. Act 312 was enacted as a supplement to PERA. As we recently explained in *Oakland Co*, compulsory arbitration pursuant to Act 312 functions primarily as a limitation on a certain narrow class of public employers, police and fire departments, preventing them from exercising the rights normally held by public employers. Generally, public employers have the right to unilaterally impose changes in terms and conditions of employment when a good faith bargaining impasse is reached. See e.g. *Wayne Co*, 1988 MERC Lab Op 7. Act 312 prohibits police and fire departments from exercising that same authority, thereby minimizing the likelihood of strikes and work stoppages by critical service employees that might impact the public welfare. *Oakland Co*; *Dearborn Fire Fighters Union v City of Dearborn*, 394 Mich 229, 247 (1975). In this manner, Act 312 redresses, in the specific context of police and fire departments, the imbalance in bargaining power created by the prohibition of strikes. *Detroit Fire Fighters Ass'n, IAFF Local 344 v City of Detroit*, 482 Mich 18, 30 (2008).

Neither Act 312 nor PERA authorizes the Commission to remedy violations of Section 13 of Act 312. See e.g. *City of Jackson*, 1977 MERC Lab Op 402 (no exceptions). However, it is well established that we have jurisdiction to resolve disputes over the scope of coverage of Act 312. *City of Grand Rapids*, 1981 MERC Lab Op 327; *AFSCME v Oakland Co (Prosecutor's Investigators)*, 89 Mich App 564 (1979). In so doing, our primary goal must be, as it is in all matters of statutory construction, to ascertain and effectuate the intent of the Legislature. *Lakeview Cmty Sch*, 25 MPER 37 (2011); *Casco Twp v Secretary of State*, 472 Mich 566, 571 (2005); *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135 (1996). We must begin with the language of the statute itself, ascertaining the intent that may reasonably be inferred from its language. *Lash v Traverse City*, 479 Mich 180, 187 (2007); *Sotelo v Grant Twp*, 470 Mich 95, 100 (2004). When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction of the statute is neither necessary nor permitted. *Lash* at 187;

Koontz v Ameritech Services, Inc, 466 Mich 304, 312 (2002). The drafters must have intended the plainly expressed meaning, and the statute must be enforced as written. *POLC v Lake Co*, 183 Mich App 558, 563 (1990); *Hiltz v Phil's Quality Mkt*, 417 Mich 335, 343 (1983).

The provisions of Act 312 are geared to the employing unit, not employee status. *Detroit Transp Corp*, 1989 MERC Lab Op 596. Section 1 of Act 312 specifies that employees of "public police and fire departments" are eligible for compulsory arbitration. Prior to 2011, Act 312 defined "public police and fire departments" to mean "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 service personnel employed by a police or fire department, or an emergency telephone operator employed by a police or fire department." MCL 423.232. In Y*psilanti Police Officers Ass'n v Eastern Michigan Univ*, 62 Mich App 87 (1975), the Court of Appeals held that police officers employed by Eastern Michigan University were not eligible for compulsory arbitration under Act 312. In so holding, the Court rejected the petitioner union's reliance on Section 1 of the Act, which mandates that the provisions concerning compulsory arbitration are to be "liberally construed." The Court concluded that such a requirement applies only when the statutory language in question lacks clarity. According to the Court, the language of Act 312 "is plain and unambiguous" and, therefore, had to be enforced as written. *Id.* at 93.

In 2011, the Legislature amended several sections of Act 312, including Section 2 of the Act, MCL 423.232. That section now provides, in pertinent part:

> (1) As used in this act, "public police or fire department employee" means any employee of a city, county, village, or township, or of any authority, district, board, or any other entity created in whole or in part by the authorization of 1 or more cities, counties, villages, or townships, whether created by statute, ordinance, contract, resolution, delegation, or any other mechanism, who is engaged as a police officer, or in fire fighting or subject to the hazards thereof; emergency medical service personnel employed by a public police or fire department; or an emergency telephone operator, but only if directly employed by a public police or fire department. Public police and fire department employee does not include any of the following:
>
> (a) An employee of a community college.

Petitioner contends that Michigan State University is a police department within the meaning of Section 2 of Act 312, as amended by 2011 PA 116. Petitioner argues that because MSU is authorized to create a public police department by Article VIII of the Michigan Constitution and MCL 390.1511, the University therefore constitutes an "authority, district, board, or . . . other entity" covered by the Act. We find Petitioner's reading of the statute erroneous. Petitioner focuses entirely on the phrase "created by statute, ordinance, contract, resolution, delegation or any other mechanism" and

completely ignores the language that immediately precedes that clause. Regardless of the precise mechanism by which a police or fire department was created, the amended statute explicitly provides that the employees of such a department are eligible for compulsory arbitration only if the employing entity has been authorized by "1 or more cities, counties, villages or townships." There is no factually supported allegation in the record that would establish or even suggest that the MSU Police Department has been authorized by any of the units of local government specifically delineated within Section 2(1). Accordingly, based on the plain and unambiguous language of the amended statute, we find that dismissal of the petition on summary disposition is appropriate.

In so holding, we find no merit to Petitioner's assertion that the exemption of community college employees in Section 2(1)(a) of the Act demonstrates that the Legislature intended to extend the right to compulsory arbitration to employees of four-year universities and colleges. It is a recognized principle of statutory construction that the expression of one thing in a statute means the exclusion of other similar things. See e.g. *Alan v Wayne Co*, 388 Mich 210, 253 (1970). However, this principle applies only when the statutory language is ambiguous and interpretation is required. As noted, when the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction that varies the plain meaning of the statute is neither necessary nor permitted. *Lash*, 479 Mich at 187; *Sun Valley Foods Co v Ward*, 460 Mich 230, 236 (1999). Here, the statute clearly and unequivocally mandates that in order for an individual to qualify as a "public police or fire department employee" under the Act, he or she must be an employee of an entity that was created "in whole or in part by the authorization of 1 or more cities, counties, villages, or townships." For the same reason, the legislative mandate requiring us to construe the provisions of Act 312 "liberally" has no relevance where, as here, statutory interpretation is unnecessary. *Ypsilanti Police Officers Ass'n*, 62 Mich App at 93; see also *Oakland Co*, 20 MPER 63 (2007) at 191, in which we held that the petitioner union had confused the obligation to give "liberal construction" to the scope of remedies under Act 312 with an obligation to give a "liberal construction" to the scope of coverage of the Act.

Based on the plain and unambiguous language of MCL 423.232, we find that the purpose of the amendment was not to expand the scope of coverage of Act 312 beyond municipal police and fire departments. Rather, the Legislature amended Section 2(1) of the Act merely to ensure that employees of an authority created by one or more such municipalities are eligible for compulsory arbitration. Under the prior statutory language, a police officer or fire fighter working for a department created by an intergovernmental agency would have been excluded since the statute defined "police and fire departments" to mean "any department of *a* city, county, village or township." (Emphasis supplied.) This finding is supported by the Michigan Senate Fiscal Agency Bill Analysis, House Bill 4522 of June 29, 2011, which states that the amendment would "[i]nclude authorities created by local units among the entities covered by the Act . . . ."

Our conclusion is further reinforced by the preamble to Act 312, which was left unchanged by the recent amendments. According to the preamble, Act 312 was intended to provide for the "compulsory arbitration of labor disputes in *municipal* police and fire

departments." Preamble, 1969 PA 312 (Eff. Oct. 1, 1969) (Emphasis supplied). Although the Act does not provide a definition for the term "municipal," the dictionary defines municipality as "of or relating to a town, city, or borough or its local government." (Collins English Dictionary, Internet Edition, 2012.) This is consistent with the statute's reference to "cities, counties, villages, or townships" and makes clear that the purpose of Act 312 is to make compulsory arbitration available only to those police officers and fire fighters employed by police and fire departments which are created or authorized by a unit of local government. Although a preamble is not to be considered authority for construing an act, it is useful for interpreting its purpose and scope. *Malcolm v City of East Detroit*, 437 Mich 132, 143 (1991); 2A Sands, Sutherland Statutory Construction (4th ed), § 47.04, pp. 126-128. Reading Act 312 as a whole, including the language of both the preamble and the statute, we conclude that compulsory arbitration is not available to police officers employed by a public university, including the individual members of Petitioner's bargaining unit.

We have carefully considered the remaining arguments of the parties and conclude that they do not warrant a change in the result. For the reasons set forth above, we hereby dismiss the petitions for unit clarification and compulsory arbitration.

ORDER

Based on the findings of fact and conclusions of law set forth above, the petitions for unit clarification and compulsory arbitration filed by Capitol City Lodge No. 141, Fraternal Order of Police are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Robert S. LaBrant, Commission Member

Dated: _____