

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

In the Matter of:

WAYNE COUNTY,
Public Employer-Respondent,

-and-

AFSCME LOCAL 3317,
Labor Organization-Petitioner.

Case No. D18 G-0877
Act 312 Arbitration

APPEARANCES:

Joseph P. Martinico, Wayne County Director of Labor Relations for Respondent

Jamil Akhtar, P.C., by Jamil Akhtar, for Petitioner

DECISION AND ORDER

This matter began with the filing of a notice of status of negotiations form by Petitioner AFSCME Local 3317 (Union) on July 19, 2018. Subsequently, the Union filed a petition for Act 312 arbitration dated October 1, 2018. On October 3, 2018, Wayne County (County or Employer) responded to the Union's petition and requested that it be dismissed as premature. The parties also indicated in their filings that they disagree about which document covering the terms and conditions of the bargaining unit members' employment provides the starting point for negotiations, mediation, and Act 312 arbitration. The Union contends that the starting point is the parties' expired collective bargaining agreement, which was originally designated to cover the parties' relationship for the period of October 1, 2011 through September 30, 2014. The Employer asserts that the starting point is the document containing the County Employment Terms dated September 23, 2016.

In its October 3, 2018 filing, the County asserted that the Union's petition for Act 312 arbitration did not comply with the preconditions for binding arbitration under § 3 of Act 312, MCL 423.233 and Rule 505(3) of the Commission's Act 312 rules, 2014 AACCS, R 423.505(3). The County explained that the parties had not yet engaged in mediation on this case, and therefore, the petition for Act 312 arbitration was premature. In response, the Union noted that the parties had met with mediators during the period between November 2017 and January 4, 2018. However, those meetings occurred prior to the date that the notice of status negotiations form was filed in this case and are, therefore, not relevant to this matter. Accordingly, on October 10, 2018, the director of the Bureau of Employment Relations, Ruthanne Okun administratively dismissed the Union's Act 312 petition. The Union was given until October 25, 2018, to appeal the administrative dismissal to the Commission. No appeal has been filed.

The parties began mediation on October 11, 2018. Accordingly, we must resolve the question of which document provides the starting point for the parties' negotiations. The parties were notified that they were to provide any documentary evidence and supplemental briefs related to this matter via email by the close of business on October 25, 2018. On our behalf, the Bureau Director requested that the parties' supplemental briefs "provide citations to any Michigan Administrative Rules and/or statutes that support their position. Also, each party should provide case citations to support their interpretations of the rules and statutes." On October 25, 2018, each party submitted an additional filing in support of their respective positions. In its supplemental filing dated October 25, 2018, the Union points to our decision issued October 16, 2015, involving an earlier petition for Act 312 arbitration filed by the Union in case number D14 A-0018.¹ We note that in its supplemental filing in this case the Union states, "A history of what happened to the 2014 - 2015 Act 312 arbitration is spelled in the Commissions October 16, 2015 decision and Order (29 MPER P26). Local 3317 adopts as its statement of facts the commission versions of the relevant facts as set out in its October 16, 2015 decision and order."²

Factual Summary

The parties' last collective bargaining agreement was originally effective October 1, 2011 through September 30, 2014, and provided:

This Agreement shall continue in effect for consecutive yearly periods after September 30, 2014, unless notice is given, in writing, by either the Union or the Employer to the other party at least sixty (60) days prior to September 30, 2014 or any anniversary date thereafter, of its desire to modify, amend, or terminate this Agreement.

The Union filed a petition for Act 312 arbitration on August 19, 2014. The parties entered into a memorandum of agreement dated October 1, 2014, which provided that the Act 312 petition would be dismissed without prejudice but could be refiled on a date after the November 4, 2014 general election but no later than December 15, 2014. The agreement further provided that the collective bargaining agreement would be extended in its totality until the Act 312 petition was refiled or December 15, 2014, whichever occurred earlier. The parties subsequently amended the memorandum of agreement several times. Each of the amendments extended the collective bargaining agreement and extended the deadline by which the Act 312 petition could be refiled. On June 22, 2015, the Union filed a request for reinstatement of the Act 312 petition.³

The County entered into its Consent Agreement with the State of Michigan under the Local Financial Stability and Choice Act 2012 PA 436, as amended (Act 436), MCL 141.1541-141.1575 on August 21, 2015. On September 1, 2015, Wayne County and the Wayne County Sheriff filed a motion to dismiss the Act 312 arbitration.⁴ On September 21, 2015, the County imposed new terms and conditions of employment on the bargaining unit in the document referred to as the County Employment Terms.

¹ Wayne County & Wayne County Sheriff, 29 MPER 26 (2015).

² The above-quoted language is verbatim from the first page of the Union's October 25, 2018 filing.

³ Wayne County & Wayne County Sheriff, 29 MPER 26 (2015).

⁴ Wayne County & Wayne County Sheriff, 29 MPER 26 (2015).

Discussion and Conclusions of Law

In its October 25, 2018 filing, the Union argues that our October 16, 2016 decision did not find that the expired collective bargaining agreement was not valid. Indeed, we did not find the collective bargaining agreement to be invalid because it had expired.⁵

The October 1, 2014 memorandum of agreement and the parties' amendments to that agreement provided that the collective bargaining agreement would be extended until the Act 312 petition was refiled or until the date set by the parties' agreement. The last extension of the parties' last collective bargaining agreement expired on June 22, 2015, with the refiled of the Act 312 petition. At that point, although the parties would still have been bound by provisions of the 2011 - 2014 collective bargaining agreement covering mandatory subjects of bargaining, the contract itself had expired. Provisions of the expired collective bargaining agreement covering mandatory subjects of bargaining continued to govern the parties' relationship until that agreement was lawfully replaced.

Under § 8(10) of Act 436, a consent agreement may grant to the chief administrative officer one or more of the powers prescribed for emergency managers, except the power to set aside a collective bargaining agreement under § 12(1)(k). As we explained in another decision involving these parties, *Wayne County*, 30 MPER 76 (2017):

Under § 8 of Act 436, the State Treasurer has broad authority to set the terms in the consent agreement with which the local government must comply. . . . Further, § 8 expressly provides that the Treasurer has the authority to give certain officials of the local government one or more of the powers of emergency managers "for such periods and upon such terms and conditions as the state treasurer considers necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement." MCL 141.1548(10).

On September 21, 2015, the County imposed the County Employment Terms, containing new terms and conditions of employment, on the bargaining unit represented by Petitioner. In imposing the County Employment Terms, the County relied on authority granted to it under § 2(c) of the Consent Agreement with the State of Michigan, which provides in relevant part:

Beginning 30 days after the effective date of this agreement, if a collective bargaining agreement has expired, the County Executive may exercise the powers prescribed for emergency managers under section 12(1)(ee) of Act 436 to impose by order matters relating to wages, hours, and other terms and conditions of employment, whether economic or noneconomic, for County employees previously covered by the expired collective bargaining agreement. Matters imposed under this section 2(c) will remain in effect for those employees until a new collective bargaining agreement for the employees takes effect under 1947 PA 336, as amended, MCL 423.201 to MCL 423.217, or other applicable law.

⁵ *Wayne County & Wayne County Sheriff*, 29 MPER 26 (2015).

The authority described in this section 2(c) is in addition to the powers retained and granted under sections 1 and 2(a).

Accordingly, since the parties' collective bargaining agreement had expired as of June 22, 2015, the County was authorized to impose the County Employment Terms.⁶ The new County Employment Terms replaced the provisions of the expired collective bargaining agreement that had continued to govern mandatory subjects of bargaining. Under § (2)(c) of the Consent Agreement, the County Employment Terms will remain in effect for the members of the bargaining unit represented by Petitioner until a new collective bargaining agreement or a new Act 312 award takes effect.

Section 13 of Act 312

In support of its contention that the parties' 2011 - 2014 collective bargaining agreement is the starting point for the parties' current negotiations, the Union points to the following sentence from § 2(c) of the Consent Agreement:

Matters imposed under this section 2(c) will remain in effect for those employees until a new collective bargaining agreement for the employees takes effect under 1947 PA 336, as amended, MCL 423.201 to MCL 423.217, or *other applicable law* (emphasis added).

The Union contends that the phrase "or *other applicable law*" includes § 13 of Act 312 which states:

During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this act.

Thus, the Union contends that during the pendency of an Act 312 arbitration the parties' expired contract continues to apply. Indeed, as noted above, provisions of the expired collective bargaining agreement that applied to mandatory subjects of bargaining would have continued to apply while the parties were in Act 312 arbitration. However, the June 22, 2015 Act 312 arbitration petition, which terminated the collective bargaining agreement extension, was dismissed long before the filing of the petition in this case.

The Union raised this argument in an earlier case between these parties.⁷ In that case, we rejected the Union's contention and stated:

Petitioner also contends that § 13 of Act 312 requires the continuation of terms and conditions of employment contained in the parties' collective bargaining agreement after a petition for Act 312 has been filed. Although that is true when an employer is neither in receivership nor subject to a consent agreement, it is not true in this case. As of 30 days after the effective date of the consent agreement,

⁶ Wayne County & Wayne County Sheriff, 29 MPER 26 (2015).

⁷ Wayne County & Wayne County Sheriff, 29 MPER 26 (2015).

if the parties' collective bargaining agreement has expired, the County may impose new terms and conditions of employment for employees previously covered by the expired collective bargaining agreement by virtue of the powers given to the County in the consent agreement pursuant to § 12(1)(ee).

In this case, § 13 of Act 312 does not apply since there is no Act 312 petition currently pending. However, if the Union files a new petition for Act 312 arbitration, the terms and conditions of employment contained in the expired collective bargaining agreement will not apply because that agreement was replaced by the County Employment Terms on September 21, 2015.

Asserted Temporary Suspension of the Collective Bargaining Agreement

The Union argues in its July 19, 2018 letter, which accompanied its notice of status of negotiations form:

AFSCME Council 25 and Local 3317 takes the position that under the applicable provisions of Act 436 P.A. 2012, that the suspension of the Collective Bargaining Agreement, which was in effect on September 20, 2015 and which was replaced on September 21, 2015, by the Employer's "*County Employment Terms*" was a temporary suspension of the 2011 - 2014 Collective Bargaining Agreement, which was extended when the union filed for Act 312 arbitration, will automatically be reinstated effective October 1, 2018, the date that the Michigan Employment Relations Commission determine to be the date that Wayne County, would once again have a duty to bargain with its employees of the sheriff's department represented by AFSCME Council 25 and its affiliated Local 3317.

The parties' October 1, 2014 memorandum of agreement and its amendments provided that the extension of the 2011 - 2014 collective bargaining agreement would end with the filing of an Act 312 petition. The Act 312 petition that ended the extensions of that contract was filed June 22, 2015, well before the imposition of the County Employment Terms. The imposition of the County Employment Terms cannot be "a temporary suspension" of the collective bargaining agreement since that agreement had already expired. The Union has failed to point to any language in Act 312, Act 436, the Consent Agreement, the parties' October 1, 2014 memorandum of agreement, or the subsequent amendments to the October 1, 2014 memorandum of agreement that would support the Union's argument that the 2011 - 2014 collective bargaining agreement would "automatically be reinstated" when the suspension of the Employer's duty to bargain was terminated. The Union has not pointed to any rule, statute, or case law that would require the automatic reinstatement of an expired collective bargaining agreement in the absence of express agreement by both parties.

Whether the County Employment Terms Are Temporary

In the Union's October 8, 2018 letter, in support for its argument that the County Employment Terms are temporary, the Union quotes § 12(1)(k)(iv) of Act 436, which states:

(iv) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

The language of § 12(1)(k)(iv) does not apply to the situation before us because it is merely one of four conditions that must apply before *an emergency manager* may reject, modify, or terminate one or more terms of an existing collective bargaining agreement. No emergency manager was appointed in this case. Moreover, the powers granted to emergency managers under § 12(1)(k) of Act 436 were not granted to the County under the terms of the Consent Agreement. Section 12(1)(k) provides:

(1) Subject to section 19, after meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state's sovereign powers if the emergency manager and state treasurer determine that all of the following conditions are satisfied:

(i) The financial emergency in the local government has created a circumstance in which it is reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose.

(ii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.

(iii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

(iv) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

The Consent Agreement between the County and the State of Michigan lists the powers that may be exercised by the County Commission and the County Executive in part (3)(c) of the Consent Agreement. That provision of the Consent Agreement expressly excludes the County Commission and the County Executive from jointly exercising the powers prescribed for emergency managers under §§ 12(1)(k), 12(1)(l), 12(1)(q), 12(1)(z), 12(1)(bb), and 12(1)(dd) of Act 436.

The Union goes on to argue:

It is clear that the intent of the Legislature was to make changes made by an Emergency Manager and/or the Chief Administrative Officer under a Consent Agreement to be only temporary.

However, the Union points to nothing in Act 436 that supports this proposition or the Union's assertion that the 2011 - 2014 collective bargaining agreement was temporarily suspended.

Conclusion

Section 2(c) of the Consent Agreement sets the duration of the applicability of the County Employment Terms. As noted above, the Consent Agreement provides at § 2(c):

Matters imposed under this section 2(c) will remain in effect for those employees until a new collective bargaining agreement for the employees takes effect under 1947 PA 336, as amended, MCL 423.201 to MCL 423.217, or other applicable law.

The County Employment Terms replaced the provisions of the expired collective bargaining agreement as of September 21, 2015. The County Employment Terms, as amended September 23, 2016, continue in effect for the members of the bargaining unit represented by Petitioner until a new collective bargaining agreement or a new Act 312 award takes effect.

We have considered all other arguments submitted by the parties and conclude that they would not change the result in this case.

ORDER

The Union's October 1, 2018 petition for Act 312 arbitration is dismissed. The document currently covering the parties' relationship is the document containing the County Employment Terms dated September 23, 2016. The terms and conditions of employment set forth in that document shall be the starting point for the parties' negotiations, mediation, and Act 312 arbitration in this matter.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____/s/_____
Edward D. Callaghan, Commission Chair

_____/s/_____
Robert S. LaBrant, Commission Member

_____/s/_____
Natalie P. Yaw, Commission Member

Dated: November 14, 2018