STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

HOWELL AREA FIRE AUTHORITY
Public Employer,

MERC Case No. 19-C-0498-CB

-and-

MICHIGAN ASSOCIATION OF FIRE FIGHTERS
Petitioner-Labor Organization.
_____/

APPEARANCES:

Shifman Fournier, by Howard Shifman, for the Public Employer

Bryan Davis, Jr., Legal Counsel, for the Petitioner

DECISION AND ORDER ON OBJECTION TO PETITION FOR ACT 312 ARBITRATION

On December 7, 2020, the Michigan Association of Fire Fighters (Union or Petitioner) filed a petition for compulsory arbitration under 1969 PA 312 (Act 312), MCL 423.231-247, as amended, for a bargaining unit of part-time firefighters employed by the Howell Area Fire Authority (Public Employer or Employer). The Employer objected to the Union's petition arguing that under the 2011 amendments to Act 312, MCL 423.232, Section 2(1)(d), fire department employees employed by an "authority" which existed on or prior to June 1, 2011 are excluded from Act 312 coverage, unless the employees either were represented by a bargaining representative or the parties acquiesced to Act 312 coverage in a contemporaneous collective bargaining agreement.

By contrast, the Union argued that the statutory language is ambiguous, the Employer's interpretation is illogical, and Section 2(1)(d) exclusions should be found inapplicable to public police and firefighters, or, in the alternative, that the bargaining unit employees are employed by a "department" subject to compulsory arbitration under Act 312.

Having reviewed the record, including the briefs[1] and supporting materials filed by the parties, the Order of Election in MERC Case R18 H-065, and other relevant documents, we find that the bargaining unit of part-time fire fighters represented by the Union are employees of an

[1] The Commission requested the Parties submit briefs on the issues of Act 312 eligibility and whether a panel chair had the authority or should rule on the 312 eligibility question before us. Both Parties agree that the eligibility question raised by the current petition requires a determination to be made by the Commission and not a panel chair.

authority and excluded from Act 312 coverage under MCL 423.232, Section 2(1)(d). Accordingly, we dismiss the Union's petition for compulsory arbitration.

Background Facts:

On June 22, 2019, we issued a Decision and Direction of Election in *Howell Area Fire Department and Michigan Association of Fire Fighters*, Case R18 H-065 in which we determined, *inter alia*, that the Employer is a public authority created in about 2004 to provide fire and emergency medical services to the townships of Howell, Osceola, Marion, and Cohoctah, and the City of Howell. Prior to that time, the City of Howell Fire Department provided services to the City and some surrounding townships. Following the Decision and Direction of Election, an election was held and the Union was certified as the collective bargaining representative for the following unit:

> All regular part-time firefighters employed by the Howell Area Fire Department, but excluding all full-time firefighters, part-time on-call firefighters, other part-time firefighters who are not assigned to regular shifts, and all other employees.

Article XXI of the Fifth Amended and Restated Articles of Incorporation of the Howell Area Fire Authority provides, in relevant part:

> The Authority shall enter into an agreement with the City of Howell pursuant to which the fire chief of the City of Howell on the effective date of the Authority shall render services to the Authority while remaining an employee of the City of Howell. Pursuant to such agreement, the Authority shall be obligated to reimburse the City of Howell for services provided by such individual, so long as such individual remains as fire chief of the City of Howell. . .The Authority shall not be obligated to obtain services from any other individual employed by the City of Howell except as agreed to in writing by the Authority.

There is no indication in the record that at any time following the Union's certification the identity of the employing entity for the bargaining unit employees changed from the Howell Area Fire Authority, or Howell Area Fire Department, to the City of Howell, or to any other employer.

Discussion and Conclusions of Law:

The Commission has Jurisdiction to Decide Act 312 Eligibility Issues.

Act 312 was enacted as a supplement to PERA. As we recently explained in *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), 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, however, 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). It is well established, however, that we have jurisdiction to resolve disputes over the scope of coverage of Act 312. As we stated in *Oakland County and Oakland County Sheriff*, 20 MPER 63 (2007):

> This Commission and the appellate courts have heard multiple cases involving the question of the scope of coverage of Act 312. Typically, the cases have been driven by an attempt to expand coverage to include groups of employees who perceive such coverage as conferring an advantage to them in the collective bargaining process. The Commission has jurisdiction to resolve such disputes over the extent of coverage of Act 312.

See also, City of Grand Rapids, 1981 MERC Lab Op 327; *AFSCME v Oakland Co (Prosecutor's Investigators)*, 89 Mich. App 564 (1979). In resolving such disputes, 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).

> <u>The Bargaining Unit Employees of the Howell Area Fire Authority are Excluded from Act 312 Coverage Under the 2011 Amendments.</u>

The provisions of Act 312 are geared to the employing unit rather than 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. Employees of an authority were not covered by the Act.

In 2011, the Legislature enacted 2011 PA 116, which amended several sections of Act 312. Section 2 was amended to provide, 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:
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> (d) An employee of an authority that is in existence on June 1, 2011, unless the employee is represented by a bargaining representative on that date or a contract in effect on that date specifically provides the employee with coverage under this act. An exclusion under this subdivision terminates if the authority composition changes to include an additional governmental unit or portion of a governmental unit. This subdivision does not apply to terminate an exclusion created under subdivisions (a) to (c).

We find no ambiguity in the statutory language as amended. Although the amendments to Act 312 coverage added employees of an "authority," the legislation plainly excluded authorities in existence prior to June 1, 2011, with limited exception. Here, there is no dispute that the Howell Area Fire Authority existed prior to June 1, 2011. Likewise, it is uncontroverted that as of June 1, 2011, no bargaining representative existed for the bargaining unit employees, and no contract was in effect which provided for coverage under Act 312. Finally, there is no evidence that the composition of the Howell Area Fire Authority changed after June 1, 2011 to include an additional governmental unit or portion of a governmental unit.

Petitioner argues that the provisions of Act 312 should be construed "liberally" and that the exclusion found in Section 2(1)(d) is illogical because the policy underlying Act 312 was to avoid disruptions in public safety services through compulsory arbitration of contract disputes involving police and firefighters, and bargaining units comprised of those employees were not previously required to memorialize their acceptance of Act 312 coverage in a collective bargaining agreement in order to avoid exclusion. We reject these arguments. The legislative mandate requiring us to construe the provisions of Act 312 "liberally" has no relevance where, as here, statutory interpretation is unnecessary.

In *Ypsilanti 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. See also *Oakland Co*, 20 MPER 63 (2007) at 191, in which we held that the petitioner 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.

Similarly, 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).

Under the prior statutory language, a fire fighter working for an authority would have been excluded from Act 312 coverage since the statute defined "police and fire departments" to mean "any department of a city, county, village or township." In 2011, Act 312 was expanded for the first time to apply to authorities. For authorities already in existence on that date however, the mandates of Act 312 were limited to bargaining units where the employees were already represented by a bargaining representative, or had a contract providing that the employer was subject to compulsory arbitration under the Act. It is clear that the legislature intended that the amendments allowing Act 312 coverage for employees of an authority would not be retroactively imposed on an employer whose employees were either unrepresented or whose collective bargaining agreement did not explicitly provide for such coverage. Although Petitioner may consider that exclusion to be illogical, we must enforce the statute as written.

Accordingly, based on the clear and unambiguous language of the amended statute, we find that the Howell Area Fire Authority is not a fire department under Section 2 of Act 312 and that the part-time firefighters involved in this dispute are not eligible for Act 312 Arbitration.

The Employer is an Authority Excluded From Act 312 Compulsory Arbitration.

The Union contends, in the alternative, that even if the 2011 amendments plainly render employees of an authority ineligible for compulsory arbitration under Act 312, the bargaining unit members involved in this case should nevertheless be found eligible for Act 312 arbitration because they are arguably employees of the Howell Area Fire Department and not the Howell Area Fire Authority. In that regard, the Union argues that the substitution of the word "department" for "authority" in the name of the Employer on various occasions, including on employee paychecks, supports its assertion. We disagree.

Although it is clear that the parties have, on occasion, substituted the word "department" for "authority" in identifying the Employer, that fact, standing alone, does not change the nature of the employing entity. There is no evidence that the Howell Area Fire Department is a different or separate entity from the Howell Area Fire Authority. The determination that the Employer was an "authority" was made prior to the Union's certification in our Decision and Direction of Election, and there is no evidence that the employing entity has changed since that time.

As reflected in Article XXI of the Articles of Incorporation of the Howell Area Fire Authority, only the fire chief of the City of Howell remained an employee of the City of Howell after the establishment of the Howell Area Fire Authority. The record before us establishes that the bargaining unit members are employees of an "authority," rather than another entity eligible for compulsory Act 312 arbitration. However, should the Union believe there is evidence supporting a determination that the employing entity has changed, it is free to file a unit clarification petition to obtain an evidentiary hearing on whether the bargaining unit employees

are employed by an entity covered by the compulsory arbitration provisions of Act 312.

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 dismiss the petition for compulsory arbitration.

ORDER

Based on the findings set forth above, the petition for compulsory arbitration filed by the Michigan Association of Fire Fighters is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Robert S. LaBrant, Commission Member

Tinamarie Pappas, Commission Member

Issued: February 19, 2021