

STATE OF MICHIGAN
COURT OF APPEALS

POLICE OFFICERS ASSOCIATION OF
MICHIGAN,

UNPUBLISHED
August 20, 1999

Petitioner-Appellant,

and

MICHIGAN ASSOCIATION OF POLICE,

Amicus Curiae,

v

No. 208703
MERC
LC No. 97-000016

CITY OF SOUTHFIELD,

Respondent-Appellee.

Before: Doctoroff, P.J., and Markman and J.B. Sullivan*, JJ.

PER CURIAM.

Petitioner appeals as of right from the Michigan Employment Relations Commission's order dismissing its petition for compulsory arbitration. We affirm.

Petitioner represents thirteen of respondent's Public Safety Technicians (PSTs), who work in communications, providing emergency dispatch services for the Southfield Police and Fire Departments and the Lathrup Village Police Department. When petitioner and respondent were unable to reach a labor agreement for these employees, petitioner requested compulsory arbitration under 1969 PA 312, MCL 423.321 *et seq.*; MSA 17.455(31) *et seq.* (Act 312). The MERC dismissed the petition, holding that the thirteen PSTs were not entitled to compulsory arbitration because they work in a department separate from the police and fire departments.

Appellate review of the MERC's decisions is limited. *Org of School Administrators and Supervisors (OSAS) v Detroit Bd of Ed*, 229 Mich App 54, 64; 580 NW2d 905 (1998). The

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

MERC's factual findings are conclusive if they are supported by competent, material, and substantial evidence upon an examination of the entire record. *Id.*; MCL 423.216(e); MSA 17.455(16)(e); Const 1963, art 6, § 28. An administrative agency's legal conclusions will be set aside "if they are in violation of the constitution or a statute, or affected by a substantial and material error of law." *Amalgamated Transit Union, Local 1564, AFL-CIO v Southeastern Michigan Transp Auth*, 437 Mich 441, 450; 473 NW2d 249 (1991); MCL 24.306(1)(a), (f); MSA 3.560(206)(1)(a), (f).

As a matter of public policy in Michigan, employees of police and fire departments are entitled to compulsory arbitration pursuant to Act 312. MCL 423.231; MSA 17.455(31); *Police Officers Ass'n of Mich v Lake Co*, 183 Mich App 558, 561-562; 455 NW2d 375 (1990). The purpose of Act 312 is to avert strikes by public employees who provide "vital, unique, and essential services, the disruption of which would threaten public safety, welfare and order." *Id.* Petitioner argues that the PSTs who provide emergency dispatch services are eligible for Act 312 arbitration because they fit the statutory definition of employees of "public police and fire departments":

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 service personnel *employed by a police or fire department*, or an emergency telephone operator *employed by a police or fire department*. [MCL 423.232; MSA 17.455(32) (emphasis added).]

In *Lake County*, this Court considered whether ambulance attendants and emergency medical technicians were eligible for compulsory arbitration under Act 312. *Lake County, supra* at 560. This Court held that the statutory language was unambiguous, and that the Legislature must have intended to exclude emergency medical personnel from eligibility for compulsory arbitration when they were organized as a separate department. *Id.* at 564. Petitioner contends that *Lake County* was wrongly decided because this Court's decision ignored the statutory mandate that Act 312 be liberally construed. MCL 423.231; MSA 17.455(31). However, despite the mandate that Act 312 be liberally construed, the Act's clear and unambiguous requirements cannot be ignored. *Vugterveen Systems, Inc v Olde Millpond Corp*, 454 Mich 119, 121; 560 NW2d 43 (1997); *Brown Plumbing & Heating, Inc v Homeowner Construction Lien Recovery Fund*, 442 Mich 179, 185; 500 NW2d 733 (1993). The same statute and a very similar issue were before the MERC in the instant case. Thus, the MERC did not err in applying the *Lake County* holding to the instant case. Consequently, we will uphold the MERC's order dismissing the petition if its finding that the PSTs are employed by a department separate from the police and fire departments is supported by competent, material, and substantial evidence. *OSAS, supra* at 64.

The MERC considered whether emergency dispatchers were a department separate from the police or fire departments in *Huron Co Bd of Comm'rs*, 1996 MERC Lab Op 547. The Commission held that the emergency dispatchers at issue worked in a separate department from police and fire departments. *Id.* at 550. In both *Huron County* and the instant case, the direct supervision of the emergency dispatchers was changed from a police department to another entity. However, in *Huron County*, that entity was formally created, dispatched for many police departments within the county, and was governed by its own administrative body as a separate, functional unit within the county

government. *Id.* at 548-549. In the instant case, Civilian Support Services was never formally created, the police and fire personnel for whom it provided services was not expanded to multiple jurisdictions, and Civilian Support Services was not a separately functioning unit of city government. Rather, it was merely one of three subdivisions of the Public Safety Group.

However, there was sufficient evidence to support the MERC's finding that Civilian Support Services was a separate department. The ruling was based on evidence that Civilian Support Services operates from a budget that is prepared, defended, and administered separately from the budgets of the police or fire departments; that the Civilian Operations Director reports directly to the City Administrator, as do the police and fire chiefs; that only the Director of Civilian Support Services has the authority to hire, fire, discipline, promote, or suspend the PST's; and, that the police chief does not participate in the grievance procedure.

The MERC's findings of fact were accurate and there was competent, material, and substantial evidence to support the MERC's decision that the Civilian Support Services department was separate from the police and fire departments. *OSAS, supra* at 64. Therefore, we uphold the MERC's decision in this case.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Stephen J. Markman

/s/ Joseph B. Sullivan