STATE OF MICHIGAN

COURT OF APPEALS

ALLEN PARK FIRE FIGHTERS ASSOCIATION, a/k/a LOCAL 1410 I.A.F.F., and MELVINDALE PROFESSIONAL FIRE FIGHTERS UNION, a/k/a LOCAL 1728 I.A.F.F., Plaintiffs-Appellants,	UNPUBLISHED November 20, 2007
v	No. 270713 Wayne Circuit Court
CITY OF ALLEN PARK and CITY OF MELVINDALE, Defendants-Appellees.	LC No. 06-608515-CL

Before: Saad, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Plaintiffs, Allen Park Fire Fighters Association ("APFFA") and Melvindale Professional Fire Fighters Union ("MPFFU"), appeal as of right from an order denying their request for a preliminary injunction and dismissing their complaint in this labor dispute. We affirm.

I. FACTS

This case arises out of defendant City of Allen Park's ("Allen Park") and defendant City of Melvindale's ("Melvindale") adoption of an Intergovernmental Fire and Emergency Service Aid-Pact and Agreement ("the Pact"). Plaintiffs contend that because they had initiated arbitration proceedings under MCL 423.231 *et seq*., commonly known as "Act 312," before defendants adopted the Pact, defendants were prevented from adopting the Pact or otherwise changing the status quo between the parties during the pendency of the arbitration proceedings.

On March 22, 2006, plaintiffs filed suit against defendants, seeking to enjoin them from implementing the Pact. Plaintiffs alleged that defendants violated MCL 423.243 of Act 312 by adopting and implementing the Pact while plaintiffs' petitions for Act 312 arbitration were pending. Specifically, plaintiffs argued that the Pact changed the status quo between the parties because the Pact only requires Allen Park to maintain a minimum of 24 firefighters and Melvindale to maintain a minimum of 12 firefighters, while plaintiffs' collective bargaining agreements with defendants require Allen Park to maintain a minimum of 28 firefighters and Melvindale to maintain a minimum of four employees for each shift (16 firefighters). Plaintiffs also contended that the Pact adversely affects firefighter safety.

Defendants opposed plaintiffs' request for injunctive relief, and Melvindale moved to dismiss plaintiffs' claims under MCR 2.116(C)(4), (C)(8), and (C)(10). After oral arguments, the trial court denied plaintiffs' request for a preliminary injunction and dismissed their complaint. The trial court reasoned that there was no violation of Act 312 because the Pact did not alter the status quo between the parties. Plaintiffs now appeal.

II. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Willis v Deerfield Twp*, 257 Mich App 541, 548; 669 NW2d 279 (2003). A motion for summary disposition under MCR 2.116(C)(10)[1] is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), we consider all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id*. at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id*. at 31.

We also review de novo issues of contract and statutory interpretation. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Ford Motor Credit Co v Detroit*, 254 Mich App 626, 628; 658 NW2d 180 (2003). "In interpreting a contract, our obligation is to determine the intent of the contracting parties." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). We must examine the language of the contract and accord words their ordinary and plain meanings if such meanings are apparent. *Wilkie*, *supra* at 47. If the language is unambiguous, we must interpret and enforce the contract as written. *Quality Products*, *supra* at 375. Likewise, when interpreting a statute, our obligation is to ascertain the legislative intent that may be inferred from the words of the statute. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). "When the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself, and judicial construction is not permitted." *Id.*

III. ANALYSIS

Section 2 of the public employment relations act (PERA), MCL 423.201 *et seq.*, prohibits public employees from striking. MCL 423.202; *Jackson Fire Fighters Ass'n, Local 1306, IAFF, AFL-CIO v City of Jackson* (*On Remand*), 227 Mich App 520, 522; 575 NW2d 823 (1998). Section 15 of the PERA requires public employers to bargain collectively with representatives of

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[1] It appears that the trial court granted summary disposition to defendants under MCR 2.116(C)(10). Although the trial court indicated on the record that plaintiffs' complaint failed to state a valid claim, it based its decision on its determination that the Pact does not affect the contractual relationships between the parties. Additionally, the trial court relied on documentary evidence outside the pleadings in rendering its decision. *Driver v Hanley*, 226 Mich App 558, 562; 575 NW2d 31 (1997).

employees regarding "wages, hours, and other terms and conditions of employment . . . ." MCL 423.215(1); *Jackson Fire Fighters Ass'n, supra* at 522. "Because '[c]ompulsory arbitration in police and fire disputes was seen as a necessary tradeoff for the prohibition against striking,' the Legislature enacted the compulsory arbitration statute, [Act 312], MCL 423.231 *et seq.*" *Jackson Fire Fighters Ass'n, supra* at 523, quoting *Local 1277, Metropolitan Council No 23, AFSCME, AFL-CIO v Center Line*, 414 Mich 642, 650-651; 327 NW2d 822 (1982). Act 312 provides for compulsory arbitration of police and fire disputes regarding mandatory bargaining subjects. *City of Manistee v Employment Relations Comm*, 168 Mich App 422, 426; 425 NW2d 168 (1988).

As our Supreme Court stated in *Ottawa Co v Jaklinski*, 423 Mich 1, 14; 377 NW2d 668 (1985),

> [i]t is helpful to distinguish at the outset between "grievance" and "interest" arbitration. The former involves arbitration of disputes arising under an existing collective bargaining agreement; the latter involves arbitration of the terms to be included in a new collective bargaining agreement after the parties have negotiated to impasse. Binding *interest* arbitration is the statutory right of fire fighters and police officers . . . and their public employers. [Act 312], MCL 423.231[.] [Emphasis in original.]

In other words, "the compulsory arbitration provided for in Act 312 is not available to individuals with grievances regarding the interpretation of an existing or expired collective bargaining agreement." *Id.* at 15.

Plaintiffs alleged in their complaint that both the M-CBA and the AP-CBA had expired, but continued to remain in effect until successor agreements are reached. Plaintiffs maintained that the Pact permits defendants to violate the collective bargaining agreements by specifying minimum personnel requirements at odds with those in the M-CBA and AP-CBA. Plaintiffs further alleged that the Pact implicates firefighter safety, a mandatory subject of bargaining.

Violations of MCL 423.210, including the requirement that public employers bargain collectively with the representatives of public employees, are deemed unfair labor practices. MCL 423.210(1)(e); *St Clair Intermediate School Dist v Intermediate Ed Ass'n*, 458 Mich 540, 550; 581 NW2d 707 (1998). Under the PERA, proceedings related to an unfair labor practice charge must be conducted before the Michigan Employment Relations Commission (MERC). MCL 423.216(a); *Bay City School Dist v Bay City Ed Ass'n*, 425 Mich 426, 438-439; 390 NW2d 159 (1986). In fact, MCL 423.216 "vest[s] the MERC with exclusive jurisdiction over unfair labor practices." *St Clair Intermediate School Dist, supra* at 550.

Accordingly, to the extent that plaintiffs' grievances pertain to the interpretation of their existing, expired collective bargaining agreements, the MERC has exclusive jurisdiction over such disputes. *St Clair Intermediate School Dist, supra* at 550; *Ottawa Co, supra* at 14-15. Indeed, the trial court here expressly recognized the propriety of the grievance procedure to plaintiffs' claims. Thus, to the extent that plaintiffs' complaint asserts a violation of Act 312 based on the interpretation of their existing collective bargaining agreements, dismissal under MCR 2.116(C)(8) was proper.

Plaintiffs also argue that because they initiated Act 312 proceedings, defendants were prohibited from adopting and implementing the Pact, or altering the status quo, during the pendency of those proceedings. As previously stated, arbitration under Act 312 is available only with respect to successor agreements and is not available for grievances regarding existing or expired collective bargaining agreements. *Ottawa Co*, *supra* at 15.

MCL 423.233 provides:

> Whenever in the course of mediation of a public police or fire department employee's dispute, except a dispute concerning the interpretation or application of an existing agreement (a "grievance" dispute), the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings by prompt request therefor, in writing, to the other, with copy to the employment relations commission.

In *City of Manistee*, *supra* at 426, 428, this Court interpreted this provision not to require good-faith bargaining to impasse as a prerequisite to Act 312 arbitration. Rather, this Court stated that "[t]he only prerequisites are those expressly stated in [MCL 423.233] of Act 312," *id*. at 428, which this Court identified as "unsuccessful mediation on an unresolved dispute and a written request for arbitration by either party," *id*. at 426.

Although plaintiffs filed Act 312 proceedings, there is no indication that they first submitted their dispute to mediation as required under MCL 423.233. Rather, it appears that plaintiffs filed their Act 312 petitions merely in an attempt to prevent defendants from adopting the Pact. Under MCL 423.233, plaintiffs were authorized to initiate Act 312 proceedings only after their dispute failed to be resolved within 30 days after submission to mediation. The record is devoid of any reference to mediation, and it instead appears that plaintiffs filed Act 312 petitions in an attempt merely to prevent defendants' adoption of the Pact, which was being negotiated and discussed at the time that plaintiffs filed their petitions. It does not appear that plaintiffs had a genuine dispute regarding the terms to be included in successor bargaining agreements, which Act 312 arbitration was intended to resolve. MCL 423.233; *Ottawa Co*, *supra* at 14-15. Therefore, because plaintiffs apparently failed to satisfy the prerequisites for Act 312 arbitration as provided by MCL 423.233, we question whether they properly initiated Act 312 proceedings.

But even if plaintiffs did properly initiate Act 312 proceedings, the trial court did not err in granting summary disposition for defendants because the Pact did not alter the status quo between the parties. Section 13 of Act 312, MCL 423.243, provides:

> 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.

Allen Park argues that preservation of the status quo was not required at the time that defendants adopted the pact because there were no proceedings before *the arbitration panel*. Allen Park

contends that there was no arbitration panel and no list of arbitrators when the Pact was adopted. While the language of the statute may suggest that MCL 423.243 requires that an arbitration panel be in place before the requirement of preservation of the status quo takes effect, our Supreme Court has interpreted this section as requiring the maintenance of the status quo upon the mere "invocation" of Act 312 proceedings. See *Ottawa Co*, *supra* at 14.

MCL 423.243 requires that the status quo with respect to "existing wages, hours and other conditions of employment" be maintained during the pendency of proceedings. Plaintiffs contend that the Pact alters the firefighters' conditions of employment. "In determining whether an employer's unilateral action affects a condition of employment within MCL 423.243, this Court considers cases [that] define mandatory subjects of collective bargaining." *Detroit Police Officers Ass'n v Detroit*, 142 Mich App 248, 251-252; 369 NW2d 480 (1985). Plaintiffs argue that firefighter safety is a mandatory subject of bargaining and that the Pact implicates firefighter safety. Plaintiffs also argue that the Pact provides for manpower reductions that would alter the terms of their collective bargaining agreements.

The Pact provides that Allen Park "shall maintain not less than twenty-four (24) full-time Firefighters" and that Melvindale "shall maintain not less than twelve (12) full-time Firefighters . . . ." Contrary to plaintiffs' argument, these provisions do not alter the terms of the collective bargaining agreements. The Allen Park collective bargaining agreement provides for a minimum of 28 personnel in the fire suppression division while in the "Advance transporting service" and a minimum of 26 personnel while transporting. Although the minimum number of personnel required by the Allen Park collective bargaining agreement is higher than that stated in the Pact, it is not inconsistent with the Pact's requirement of not less than 24 firefighters. Similarly, the Melvindale collective bargaining agreement provides that each shift will be manned by a minimum of four employees. This provision is not inconsistent with the Pact's requirement that Melvindale maintain not less than 12 full-time firefighters. Therefore, plaintiffs' arguments regarding manpower reductions are unavailing.

Plaintiffs also contend that the Pact implicates firefighter safety. This Court has held that safety practices constitute a condition of employment. *City of Alpena v Alpena Fire Fighters Ass'n, AFL-CIO*, 56 Mich App 568, 575; 224 NW2d 672 (1974), overruled in part on other grounds *Detroit v Detroit Police Officers Ass'n*, 408 Mich 410, 483 n 65; 294 NW2d 68 (1980). Defendants' entering into the Pact did not alter firefighters' conditions of employment, however, because the terms of both collective bargaining agreements permitted defendants to enter into mutual aid agreements. Specifically, Article 28 of the Melvindale collective bargaining agreement, entitled "Mutual Aid Agreement," provides:

> It is agreed that the City has the right to enter into aid pacts or agreements with other communities, but that the City shall not use such a mutual agreement to furnish manpower to another community in what would amount to a strike breaking situation in the other community, provided, however, an actual emergency must be handled by the Department.
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> A strike breaking situation shall be defined to mean that collective bargaining efforts and negotiations have been discontinued or terminated.

Therefore, the Melvindale collective bargaining agreement explicitly allows Melvindale to enter into mutual aid agreements such as the Pact and contemplates that Melvindale will furnish manpower to other communities. There is no allegation of a strike situation existing in Allen Park. Accordingly, Melvindale did not violate the status quo between the parties by entering into the Pact.

Unlike the Melvindale collective bargaining agreement, the Allen Park collective bargaining agreement does not explicitly refer to mutual aid agreements. However, Art III, § 3 of the Allen Park collective bargaining agreement implicitly authorizes Allen Park to enter into such agreements and provides as follows:

> A. The Union recognized other rights and responsibilities belonging solely to the City, prominent among which, but by no means wholly inclusive, are the rights to determine the location and number of stations, the manner in which the stations are to be operated, *the equipment to be used, the manner in which work is to be performed, and the number and type of personnel to be employed, and the assignment of their duties.*
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> B. The Union recognizes the right of the City to make such reasonable rules and regulations, not in conflict with this Agreement, as it may from time to time deem best for the purpose of maintaining order, safety, and/or effective operation of the City's Fire Department and to require compliance therewith by the employees is recognized. The Union reserves the right to question the reasonableness of the City's rules or regulations through the grievance procedure. [Emphasis added.]

Thus, Allen Park specifically reserved to itself the rights to determine the equipment that the firefighters use, the manner in which firefighters perform their work, and the assignment of their duties. Further, Allen Park reserved to itself the right to make rules and regulations not in conflict with the Allen Park collective bargaining agreement. Other than the manpower provision discussed previously, plaintiffs fail to identify any provision of the Allen Park collective bargaining agreement that the Pact offends. The primary procedure implemented by the Pact requires that both defendants be notified of a situation in the other city and provide initial response to the other city. Thus, the Pact involves the manner in which work is to be performed and the assignment of firefighters' duties, which Allen Park specifically reserved to itself the rights to determine. Accordingly, defendants' adoption of the Pact did not alter the status quo between the parties, and the trial court did not err in failing to hold an evidentiary hearing or in granting summary disposition for defendants.

Affirmed.

/s/ Henry William Saad
/s/ Mark J. Cavanagh
/s/ Bill Schuette