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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

In the Matter of the Act 312
Arbitration Between:

WAYNE COUNTY and WAYNE COUNTY
SHERIFF'S DEPARTMENT,
Employer

MERC Case No. D04 A-0109
MERC Case No. D04 A-0110

-and-

WAYNE COUNTY AIRPORT AUTHORITY,
Employer,

-and-

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 502,
Union.

Hearings: April 28, 2008 and September 15, 2008

ARBITRATION PANELS' FINDINGS, OPINION AND ORDER

BEFORE TWO PANELS CONSISTING OF:

Benjamin A. Kerner, Chair (D04 A-0109)
Lynda Racey, Employer Delegate
Hugh Macdonald, Union Delegate

George T. Roumell, Jr., Chair (A-0110)
John Miles, Employer Delegate
Jamil Akhtar, Union Delegate

Appearances:

For Wayne County/Wayne County Sheriff: Thomas M.J. Hathaway
Jeffrey Steele

For the WCAA: Joseph P. Martinico

For the Union: Jamil Akhtar

Present for part or all of the proceedings: Mark DeBeau, Robert Dickerson, Mark Dukes,
Michelle Farmer, Gerard Grysko, Aram Kaloian, Mark Dukes, Robert MacDonagh, Mike Royal,
Carrie Skronek, Richard Walker.

Background

In March 2002, the State Legislature passed the Public Airport Authority Act, MCL 259.108 *et seq.* that separated the Airport Authority and Wayne County as Employers. Until the passage of the Public Airport Authority Act, Wayne County had operated airports at Willow Run and what was known as Detroit Metropolitan Airport, employing on those airport sites Sheriff Police Officers. As a result of the passage of the Act, the Wayne County Airport Authority filed a unit clarification petition in March 2004 with the Michigan Employment Relations Commission. At the time, Local 502 represented the police employees at both the airports and the Wayne County Sheriff's Department and had one Collective Bargaining Agreement covering all of these groups.

As a result of the unit clarification petition, the Michigan Employment Relations Commission, on December 20, 2004, issued its Decision and Opinion which in part read:

... we conclude that the WCAA is a separate and distinct public employer. Prior to the establishment of the WCAA, employees at the Detroit Metropolitan Wayne County and Willow Run Airports were employees of Wayne County. Employees represented by Locals 502 ... were also employees of the Wayne County Sheriff. The county and the Sheriff shared authority over their hours of work, rates of pay, and other conditions of employment. However, the legislation under which the WCAA was created terminated the authority of Wayne County and the Wayne County Sheriff over hours of work, rates of pay and other conditions of employment of members of Locals 502 ... who are employed at the Detroit Metropolitan Wayne County and Willow Run Airports. ... That authority has been transferred to, and exclusively resides in, the WCAA. The relationship between Wayne County and its airports has been severed by operation of law, and we find the WCAA to be an independent employer.

The Commission thereupon issued the following Order:

We grant the Wayne County Airport Authority's petition in Case No. UC04 C-009, and clarify the existing bargaining unit by severing the airport employees from the overall bargaining unit represented by Service Employees International Union, Local 502 with the proviso that ... the WCAA shall remain a member of the multi-employer association

comprised of the WCAA, Wayne County, and the Wayne County Sheriff for the purpose of bargaining the duration of transfer rights conferred by their Memorandum of Agreement with Local 502.

Following petitions filed by SEIU Local 502 and AFSCME Local 3317 (representing the Command Officers), George T. Roumell, Jr. was appointed Chairman of an interest arbitration panel pursuant to 1969 PA 312, MCL 423.231 *et seq.* Following a pre-trial conference and a remand of the proceedings to the parties for further negotiations, the Act 312 hearings began in late May 2006, and resulted in the entry of the Roumell Panel's Orders as to Local 502 on December 12, 2007. The term of contract effectuated by the Roumell Panel's Orders was October 1, 2004 to September 30, 2008.

Similarly, Locals 502 and 3317 filed petitions for Act 312 arbitration with the Wayne County Airport Authority (WCAA) resulting in Benjamin A. Kerner being appointed Chairman. The WCAA Act 312 arbitration proceedings began on December 1, 2006 and culminated in entry of the Kerner Panel's Orders on January 28, 2008. The term of contract effectuated by the Kerner Panel's Orders was December 1, 2004 to November 30, 2009.

Transfer rights between WCAA and the Wayne County Sheriff's Department (WCSD) were issues before both the Roumell and Kerner Panels. The transfer issue was reserved by both panels to be addressed in proceedings subsequent to the Orders issued on December 12, 2007 (Roumell Panel) and January 28, 2008 (Kerner Panel).

These proceedings, conducted jointly by both the Roumell and Kerner Panels, were convened on April 28, 2008, pursuant to notice and opportunity to participate by the WCAA, Wayne County and the Wayne County Sheriff, and SEIU Local 502, the representative of the police officers at both the Airport and the Wayne County Sheriff's Department (in separate bargaining units). Evidence was taken from all three parties at hearings on April 28 and

September 15, 2008. The Panels set a briefing date, and three briefs were received on or before October 21, 2008. The Panel Co-Chairs also made an interim decision that the question of the duration of the transfer rights conferred by the Memorandum of Agreement was an economic issue, and subject to the Last Best Offers provisions of Act 312, Section 8.¹

Jurisdiction

The County apparently does not dispute the fact that, since the transfer issue was reserved by the Roumell Panel, the Roumell Panel continues to have jurisdiction to decide the transfer issue. However, the County's Advocate at pages 16-23 of his post-hearing brief argues that the Kerner Panel has no jurisdiction as to the transfer issue because the Kerner Panel "lacks the full context of the issue, there are conflicts between Local 502 factions and that the interest of the Airport Authority conflicts with that of Wayne County." For these reasons, the County argues that there is no authority to have a joint panel as has been convened by Chairmen Kerner and Roumell.

There are two answers to these arguments as to jurisdiction. First, the Order of MERC specifically provides, to repeat, "...the WCAA shall remain a member of the multi-employer association comprised of the WCAA, Wayne County, and the Wayne County Sheriff for the purpose of bargaining the duration of transfer rights conferred by their Memorandum of Agreement with Local 502." This is the Order of the Michigan Employment Relations Commission.

And what is Act 312? Act 312 is a statutory procedure to resolve collective bargaining disputes involving, among others, police officers and their public employers. There is a dispute concerning transfer rights that affects police officers employed by both the Airport Authority and

¹ "...As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9..." MCL 423.238

the Wayne County Sheriff's Department that has not been resolved. In such a case, Act 312 is the vehicle to resolve the issue. In the context here, the Roumell and Kerner Panels have been jointly convened for the purposes of resolving transfer issues in dispute between the parties.

Transfer rights which affect both the Authority and the Sheriff's Department are such disputes.

Second, the Roumell Panel reserved the issue, as did the Kerner Panel, both recognizing the direction of MERC that transfers are a joint issue between WCSD and WCAA and Local 502 representing employees of both employers.

Based upon this analysis, it is the view of the Chairmen that, indeed, this is an appropriate situation for a Joint Panel. It may be that this is a unique situation unlikely to come up again in this State. But unique situations require an appraisal of the purpose of Act 312 in the circumstances involved. Here, the purpose of Act 312 is to resolve a dispute – a dispute that affects two employers who have been directed by the Michigan Employment Relations Commission to remain for the purposes of the transfer dispute as “a member of the multi-employer association.”

There is no other way to analyze the jurisdictional issue. It is based upon this analysis that, to repeat, the Co-Chairmen believe that in these unique circumstances the Joint Panel is appropriate and has jurisdiction to address transfer issues.

The Memorandum of Agreement

In 2003, Wayne County, WCSD and WCAA entered into a Memorandum of Agreement which contained the following recital:

Because the Wayne County Airport Authority was created by state law (MCL 259.110) during the term of the current collective bargaining agreement (CBA) between the County of Wayne and Local 502 (12/11/00-11/30/04); and because the CBA has been assumed by the WCAA (MCL 259.119) and contains provisions regarding employee transfers between the Wayne County Sheriff's Department (WCSD) and

the Airport Police; and because the law also provides certain employee transfer rights in addition to employee rights under the CBA (MCL 259.119); and because of the confusion that has resulted as to the transfer rights from the WCAA to the WCSD and from the WCSD to the WCAA, and the dates, deadlines or CBA term that seem to limit such transfers, many employees have been reluctant to accept or to retain their positions at the WCAA, the parties agree as follows:

The first of a number of provisions in the Memorandum of Agreement and the one that is crucial here is, "Transfer rights between the WCAA and the WCSD under the current CBA will be guaranteed for all employees who successfully bid and transfer to the WCAA on or before 11/20/04 through the life of the next collective bargaining agreement."

Both the County and the Wayne County Sheriff and the WCAA have taken the approach in their Last Best Offers that the language of the Memorandum of Agreement controls. Local 502 has taken a more expansive approach.

Positions of the Parties

The positions of the parties, namely, their respective Last Best Offers, are as follows.

The County (meaning both Wayne County and the Wayne County Sheriff) takes the position "that the transfer right set forth in the Memorandum of Agreement continued through the full life of the next collective bargaining agreement, that being the 2004-2008 agreement. The transfer right ended, once and for all, when the 2004-2008 agreement expired on September 30, 2008. This means that any WCAA employee who was not formally re-hired by Wayne County on or before September 30, 2008, has no further right or opportunity to transfer to Wayne County."

The WCAA takes the position, separately, that "The September 23, 2003 Transfer Memorandum of Agreement should be regarded as terminated effective September 30, 2008; the termination date of the 'next' collective bargaining agreement between Wayne County and

SEIU, Local 502.”

Local 502 takes the position spelled out by the following eight points:

1. In February of 2009, pursuant to the standard practice of the parties, the Union will accept bids from eligible employees of the Wayne County Airport represented by Local 502 for transfer back from the Airport Police Department to the Wayne County Sheriff's Department.
2. The Union will notify the Wayne County Airport Authority and the Personnel Department of Wayne County as to the names of those members employed at the Airport Police Department who have requested a transfer back to the Wayne County Sheriff's Department in accordance with the Transfer Request Form the employee filled out in February of 2009, consistent with the Decision and Order of the Panel chaired by Arbitrator Roumell, Section 14.402 /Permanent Transfers.
3. As positions become vacant at the Wayne County Sheriff's Department, and using the standard operating procedure as spelled out in the Local 502/ Wayne County contract, the Sheriff will notify the Union as to a vacancy in a particular job assignment. The Union will furnish the department with the name of the employee holding the highest seniority. If an employee is an airport employee, then the airport employee with greater seniority than a Wayne County Sheriff's employee will have transfer rights over an existing Wayne County Sheriff employee.
4. Whenever a vacancy opens up in the Wayne County Jail which no employee in the Wayne County Sheriff's Department has bid for, then an employee of the Airport Police Department may request a transfer to that vacant position in lieu of the County hiring a person off the police officer's eligibility list or recalling a non-certified police officer from layoff.
5. The Sheriff may elect to transfer an Airport police officer to a discretionary position within the Wayne County Sheriff's Department in the same manner now prescribed in the collective bargaining agreement between Local 502 and Wayne County.
6. An employee of the Airport Police Department who transfers back to a vacant position in the County Jail shall not be precluded from requesting a transfer to a seniority bid position. This right to transfer to a seniority bid position shall be in effect until the February 2010 Transfer Request Forms are circulated among the members of Local 502.
7. If an employee is offered a position in the Wayne County Sheriff's Department pursuant to their request for transfer as set forth on their Transfer Request Form, [and] that employee refuses said transfer, then the employee's name will be

stricken from the Transfer Eligibility List and the employee will remain an employee of the Airport Police Department.

8. The right to transfer shall remain open until the last employee on the Transfer List has either been transferred or has been offered a transfer and has rejected the transfer.

Relevant Statutory Sections

The Legislature has directed that the following factors be applied in determining “wage rates or other conditions of employment,” MCL 423.239:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employee including direct wage compensation, vacation, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration into the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The arbitration panel may give more weight or less weight, as it deems appropriate, to any one factor. *City of Detroit v Detroit Police Officers Ass'n.*, 408 Mich 410, 483-484 (1980).

The key Section 9 criteria applicable to this situation are 9(c), financial ability of the County and 9(h), the so-called other factors. In this case, 9(h) becomes an important factor because what is involved here is contract construction ascertaining the intent of the parties as evidenced in collective bargaining; and, another Section 9(h) factor, the equities of the situation that influence the formation of collective bargaining agreements.

Discussion

An overview of the situation reveals that the Union has proposed a set of vested rights which would have the effect of allowing employees at the Airport to exercise transfer rights defined by the Union's Offer beginning in February 2009 and concluding when the "last employee on the Transfer List has either been transferred [or has declined a transfer]." In other words, under current conditions, according to the testimony of Chief Robert Dickerson, the Sheriff Department's Chief of Administrative Operations, it could be several years before the

transfer requests would be exhausted. (C1 Tr. 151-152)²

On the other hand, the County and the WCSD take the position that the transfer rights are governed by the 2003 Memorandum of Agreement which provides the transfer rights “will be guaranteed for all employees who successfully bid and transfer to the WCAA on or before 11/20/04 through the life of the next Collective Bargaining Agreement” and that this means that the Agreement ordered by the Roumell Panel covering the period 2004-2008, expiring on September 30, 2008, represents the terminal date of the transfer rights effective September 30, 2008.

The WCAA in effect takes the same position as the County as it relates to duration.

When the Co-Chairmen applied the Section 9 criteria as discussed above, the Co-Chairmen concluded with the majority of the Panels that the Last Best Offer of the County and the WCSD, supported by the Last Best Offer of the WCAA, should be adopted. In doing so, the Co-Chairmen construed the language of the Memorandum of Agreement and reviewed the operative purpose of the Memorandum of Agreement, the previous opportunity of officers to transfer, the County’s ability to pay for the cost impact of the transfers, the practical and administrative reasons militating against the continuation of the opportunity to transfer, and the equities of the situation, along with the lack of a record showing comparable support for Local 502’s position.

According to Carrie Skronek, Chief of Administration for the Department of Human Resources Wayne County, the purpose of the Memorandum of Agreement was to stabilize the

² There were two hearings on the transfer issue on April 28 and September 15, 2008. Because the numbering of the transcripts did not continue the sequence from the previous transcripts, the reference to the transcripts of April 28 and September 15, 2008 will be preceded with the letter “C”, designated as “continued hearing.” The reference to “C Ex” are to exhibits introduced in the April 28 and September 15, 2008 hearings.

work force of the WCAA, which in 2003 was bedeviled by a short-handed police department.

Ms. Skronek testified:

It's my understanding and recollection that it was during a period of time where the Airport was actually having some difficulty getting their positions filled and needing people to go to the Airport. And because of this uncertainty, people were reluctant to go to the Airport Authority.

* * *

And there were some previous and subsequent agreements [to the MOA] making sure people would stay so they wouldn't get the academy and be gone. They had to stay, I think for 18 months.

That was the purpose behind the MOA. It was to get people to go, to get those positions filled. It was not to open—to leave the door open for people—we never anticipated where we are today. We're under different contracts. It just—there's some things you don't foresee in 2003 that exist in 2008.

[CTr. I, p. 30-31]

The Skronek testimony establishes that the operative purpose of the Memorandum of Agreement (MOA) was to assist the Airport to fill and stabilize the rank of Police Officers at the Airports. The record reveals that this has been accomplished and that it was not the purpose of the MOA to facilitate the movement of WCAA Police Officers to the WCSD when the Sheriff's Department had full employment. The fact is the purpose of the MOA, namely, to permit officers who initially transferred to the Airport with the opportunity to return in the event the officers were not satisfied with employment at the Airport, has been accomplished.

Furthermore, the prefatory part of the agreement states that one of the purposes of the agreement is to alleviate "confusion that has resulted as to the transfer rights from the WCAA to the WCSD and from the WCSD to the WCAA..." The Agreement goes on to state in paragraph 1 that, "transfer rights between the WCAA and the WCSD under the current CBA will be guaranteed for all employees who successfully bid *and transfer to the WCAA...*" [Emphasis

added.] This sentence indicates a purpose to protect the Wayne County Sheriff Department employee who transfers to WCAA, and may find that the fit with the new employer is not good; and wants to transfer back to the WCSD. The testimony elicited at hearing in this case, including that of Carrie Skronek and Robert Dickerson support this reading of the Agreement.

There is no suggestion that the language of the Memorandum was designed to allow employees to shop benefits; and to switch back to former employment for the sake of benefits offered under future collective bargaining agreements. In fact, it is apparent from the language of the Memorandum that the parties did not, at that time, contemplate the development of two different collective bargaining relationships. The Memorandum must be interpreted for the limited purpose for which it was intended, and not be allowed to broaden out into a general grant of authority for wholesale movement of employees between different employers.

Pursuant to MCL 259.119(1)-(2), for the first year of this operation, an employee wishing to transfer back to WCSD only needed to express his or her desire to stay with the County. Then, by virtue of the MOA, every eligible employee had another five years to transfer back to the WCSD pursuant to Article 14.02 of the Local 502 contract. (C1 Tr. 28; C Ex1).

The Wayne County Sheriff's Department, in addition to the MOA-based transfer right, provided Airport employees at least three additional broad opportunities to come to Wayne County, namely, in May 2005 in 2006 and in 2007. (C1 Tr. 48-49, 54-55, 59-61).

Chief Dickerson testified without contradiction that any Airport Authority employee requesting an opportunity to transfer back to WCSD before the December 12, 2007 Roumell Panel Award, would have been given the opportunity to do so. (C1 Tr. 63-64).

Thus, for a six year period, officers have been given the opportunity to transfer back to the Wayne County Sheriff's Department which suggests that this has been ample time to

accomplish the purpose of the Memorandum of Agreement, namely, to assure that officers who did go to the Airport had the opportunity to return to the Wayne County Sheriff's Department. For six years, the officers had this opportunity and it would seem that, recognizing that there are two separate Employers and two separate Collective Bargaining Agreements, there is no reason to extend the opportunity. Six years is a sufficient time in which to exercise the transfer opportunity.

In addition to the six year opportunity to transfer back, the Co-Chairmen, applying principles of contract construction, agree that the right to transfer back, by agreement between the parties, ended on September 30, 2008. The Memorandum of Agreement specifies that transfer rights are guaranteed "through the life of the next Collective Bargaining Agreement." The Roumell Panel issued an Opinion and Order providing for the next Collective Bargaining Agreement, succeeding the Agreement that ended September 30, 2004, would cover the period from October 1, 2004 through September 30, 2008. This is the next Collective Bargaining Agreement within the meaning of the Memorandum of Agreement. This represents the parties' Agreement entered into in 2003 before the expiration of the 2001-2004 Local 502 Agreement.

This analysis answers when the transfer rights end, namely, on September 30, 2008.

There are financial considerations involved in the transfer dispute. It was represented that there were 76 officers at the Airport eligible for transfer under Local 502's Last Best Offer. (C1 Tr. 172-173). There are now two different Collective Bargaining Agreements involving Local 502 – one, the Roumell Panel Order addresses Local 502 members employed at the WCSD; the second, pursuant to the Kerner Panel, covers officers employed at the Airports. There are different benefits between the two contracts, with the wages at the Airport being higher. There are differences in some benefits as between the Airport and the Sheriff's

Department.

Recently, Local 502 members employed at the Airport have received retroactive pay checks at the higher rate of pay. During the time that Airport officers are waiting to be transferred, they would be paid at the rate higher than Sheriff Department employees.

The financial issue involving transfers from the Airport to the Sheriff's Department includes problems of apportioning sick leave/vacation banks, addressing retirement contributions to match the Wayne County plans, and recognizing that, with the difference in wage rates at the present time, there would be a higher final average compensation for Airport employees transferring to the Sheriff's Department. This all means that there are legacy costs, namely, costs associated with the transfer.

Hugh Macdonald prepared C Ex 17, an analysis of this cost. According to Mr. Macdonald, he testified that the current legacy cost would average \$73,327 per employee, or a total amount of approximately \$5,574,000, of which \$4.6 million will be due to increased pension costs. (C2 Tr. 13, 14, 18). The County has argued that this analysis is low and does not contain 2008 salary figures. The County has presented testimony from Richard Walker, Wayne County Deputy Chief, Financial Officer in Charge of Budgeted Funding and Planning, who testified as to a hypothetical employee with 24 years of service as costing the County a \$1,274,137 liability over the lifetime of the "transferring employee." (C2 Tr. 78-79; C Ex 20). For a hypothetical 47 year employee, the County's obligation would be increased by at least \$1,858 per year with a lifetime liability to Wayne County of \$951,671. (C1 Tr. 79; C Ex 20). There was also testimony about increased costs for retiree health care insurance for those transferring from the Airport to Wayne County's pension plans awarded by the Roumell Panel.

Though the figures proffered by both parties had some elements of advocacy, the figures nevertheless represented increased costs to the County in terms of legacies by virtue of the differences in the contracts involving the Airport and the Sheriff's Department.

What is obvious is there will be an increased cost to the County if the transfers were continued beyond September 30, 2008 at a time when the County is experiencing reduced tax revenues, reduced State-shared revenues and is situated in Southeast Michigan which is experiencing a serious economic downturn. It is an understatement to suggest that the financial health of the County is less than robust.

On May 2, 2007, George T. Roumell, Jr., as Chairman of an Act 312 Panel, which constituted the same Panel members as in the 502 Panel here, issued the Opinion and Awards as to Local 3317 AFSCME Council 25, representing the Sergeants and Lieutenants of the Wayne County Sheriff's Department wherein, at pages 15-21, Chairman Roumell recognized that the County was experiencing financial difficulties. Again, in the Roumell Panel's December 12, 2007 Opinion, at pages 17-26, reviewed the County's financial situation and concluded at page 25 as follows:

Bluntly put, the conclusion is that the economic condition of the County has not improved since the Local 3317 Award. It is no secret that the State is in financial difficulty; that State aid cannot be expected in the amount once received; that with foreclosures in Wayne County, there are tax delinquencies, all of which impact on the economic conditions of the County. The sub-prime mortgage crisis, which has emerged as a national issue after the record was closed, has certainly been part of the Wayne County situation. Thus, Wayne County finds itself in a deteriorating, financially bleak picture.

If anything, Mr. Walker's testimony in the transfer hearings, confirms that the County's financial situation is deteriorating.

The findings of the Roumell Panels (3317 and 502) as to the County's finances are incorporated by reference. Furthermore, Mr. Walker in the transfer hearings noted that the projected deficits for the County for the year ending September 30, 2008 is approximately \$30 million, \$12 million of which is attributable to the Sheriff's Department. (C2 Tr. pp. 92-93). The projection for the 2008-2009 fiscal year is that there is a \$34 million shortfall between expenses and expected revenue. (C1 Tr. p. 93).

According to Chief Dickerson, the current financial situation at the County, which continued to deteriorate even after the December 12, 2007 Roumell Award, has resulted in the Sheriff's Department considering layoffs. (C2 Tr. pp. 134-137). Thus, as the Co-Chairmen view the financial ability criteria, joined in by a majority of the Panel, the County cannot assume legacy costs associated with the proposed Last Best Offer from Local 502.

Local 502's figures recognize there will be additional costs associated with the transfers. The County suggests that the costs are greater. The point is, in a deteriorating economic climate, resulting in revenue shortfalls, leading to possible layoffs, it is clear that it would be irresponsible for this Panel, considering the financial criteria, to award the Last Best Offer of Local 502 as to transfers. To say, as Local 502 did in its Advocate's post-hearing brief at page 5, that the financial arguments of the County represent "a red herring used by Wayne County to muddy the waters" is to ignore reality. The County just does not have the financial ability to accommodate the Last Best Offer as structured by Local 502 as to transfers.

The County argues that there are practical and administrative reasons suggesting that the continuation of the opportunity for WCAA employees to return to the WCSD would be problematic such as dealing with overtime and discipline records, FMLA benefits, leave records

and similar matters. Primarily, these concerns center around the fact that the benefits are different between the two contracts and, as already pointed out, there are differences in wages.

The latter point emphasizes that continuing the transfer rights beyond what the parties agreed to would interfere with the balance of the Local 502/Wayne County Award which emphasized pensions. As pointed out in the hearings, when Local 502 members employed at the Sheriff's Department retire, they would be replaced with new lower paid employees and not higher paid employees from the Airport. (C2 Tr. pp. 82-83). The County does make a valid point in this regard because, in formulating any 312 Award, there is a delicate balance. The thrust of Local 502 in the County was to obtain improved pensions, which did occur. And it was the result of a carefully balanced equation which the continuation of transfers would upset.

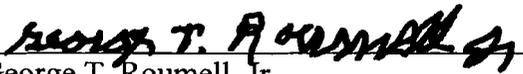
This balance emphasizes the fact that the parties, by their own Agreement, as represented by the 2003 Memorandum of Agreement, came to an agreement that the right to transfer ended on September 30, 2008.

Although the Airport in its post-hearing brief did not necessarily agree with all the points made by the County, the Airport did emphasize the vitality and language of the Memorandum of Agreement. And, in the end, coupled with financial considerations, the previous opportunity to transfer, the lack of comparables and other practicalities, as well as the parties' own agreement, the Co-Chairmen must adopt the position of the public employers, as expressed in the Last Best Offer of the County.

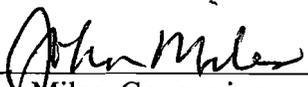
AWARD

A majority of the Panels hereby adopt the following Last Best Offer of Wayne County:

The transfer right set forth in the MOA continued through the full life of "the next collective bargaining agreement," that being the 2004-2008 collective bargaining agreement. The transfer right ended, once and for all, when the 2004-2008 agreement expired on September 30, 2008. This means that any Airport Authority employee who was not formally re-hired by Wayne County on or before September 30, 2008 has no further right or opportunity to transfer to Wayne County.


George T. Roumell, Jr.
Panel Chair in Case No. D04 A-0110


Benjamin A. Kerner
Panel Chair in Case No. D04 A-0109


John Miles, Concurring
Employer Delegate in Case No. D04 A-0110


Lynda Racey, Concurring
Employer Delegate in Case No. D04 A-0109


Jamil Akhtar, Dissenting
Union Delegate in Case No. D04 A-0110


Hugh Macdonald, Dissenting
Union Delegate in Case No. D04 A-0109

Dated: November 14, 2008