

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CITY OF OAK PARK,

Plaintiff-Appellant,

v

OAK PARK PUBLIC SAFETY OFFICERS  
ASSOCIATION, and its bargaining representative,  
POLICE OFFICERS ASSOCIATION OF  
MICHIGAN,

Defendants-Appellees.

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UNPUBLISHED  
October 8, 1999

No. 208465  
Oakland Circuit Court  
LC No. 95-505720 AZ

Before: White, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying its motion for summary disposition and request for declaratory relief. We remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Oak Park Public Safety Officers Association is a labor organization representing public safety employees who perform both police and fire duties. Defendant Police Officers Association of Michigan is the bargaining agent for the labor organization. Following the expiration of the collective bargaining agreement ("CBA") on June 30, 1994, plaintiff and defendants engaged in bargaining toward a new contract, but could not reach agreement on all issues. Defendants filed a petition for compulsory arbitration pursuant to 1969 PA 312, MCL 423.231 *et seq.*; MSA 17.455(31) *et seq.* The Michigan Employment Relations Commission ("MERC") appointed a chairperson as an impartial arbitrator and head of an arbitration panel to hear the disputed issues.

In a pre-hearing order, the arbitrator wrote that the parties stipulated that apart from the issues submitted to the arbitrator, the contract would consist of the old CBA and any written agreements. Plaintiff objected, asserting that the old CBA contained matters that were not mandatory subjects of bargaining, and that these matters should not become part of the new CBA. Defendant took no issue with the concept that non-mandatory subjects negotiated to impasse would not be subject to the arbitrator's jurisdiction, but asserted that the issues identified by plaintiff were not non-mandatory.

Plaintiff filed a complaint for declaratory judgment, alleging that an actual controversy existed regarding whether in its answer to the petition for arbitration it had correctly identified non-mandatory bargaining issues that were not subject to the jurisdiction of the arbitration panel. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that issues such as whether to call in auxiliary firefighters, the need to assign the number of police officers per patrol car, the need, when layoffs were necessary, to lay off employees in a way that would best serve the public interest, the need to determine minimum staffing requirements, and the need to determine the number of bargaining unit members assigned to the operations division, were non-mandatory subjects of collective bargaining. Plaintiff sought a declaration that these non-mandatory bargaining subjects would not become part of the new CBA.

Defendant replied that the court lacked jurisdiction to make that decision because the decision should be made by the MERC or the arbitrator. Defendant further argued that if non-mandatory issues are intertwined with safety issues, they become mandatory subjects of bargaining. Defendant also argued that the court should not decide that issue, but if it did, it would have to hold a hearing and take testimony to determine if the issues are intertwined.

Plaintiff responded that the court had jurisdiction and in fact the parties stipulated that the court would determine whether the issues were subject to arbitration as mandatory or removed as non-mandatory.

At argument, plaintiff urged the court to decide in its favor because it had jurisdiction and because defendant submitted no evidence in support of its position that safety was involved. Defendant argued the court had no jurisdiction, the stipulation was only that the court would decide the declaratory judgment case, and that if the court assumed jurisdiction, it had to take evidence to decide the matter because the mandatory/non-mandatory issue presented a question of fact. The court decided that it had jurisdiction and that the issues were intertwined with safety, and therefore the issues were mandatory subjects of bargaining. Thus, the court denied summary disposition to plaintiff and effectively granted it to defendant.

On appeal, plaintiff argues that the court should have granted it summary disposition because there was no evidentiary support for the conclusion that the issues it maintains are non-mandatory are, in fact, intertwined with safety issues. Plaintiff asks for reversal and an order in its favor based on the lack of evidentiary support, or, alternatively, for an evidentiary hearing. Defendant responds asserting first that the court correctly concluded that there were questions of fact sufficient to support a denial of plaintiff's motion, and then asserting that the court had enough information to conclude that the issues were mandatory, especially since plaintiff had argued that the court should decide the matter on the papers submitted.

On the record before us, there is no factual development to support the court's conclusion that the issues are intertwined. However, defendant preserved the right to make a record by

asserting that a hearing was necessary. We therefore vacate the court's order, and remand for an evidentiary hearing and such further proceedings as are consistent with this opinion.

Vacated and remanded. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder