

## COA Opinion: Circuit-court judges have exclusive constitutional authority over the selection of deputy circuit-court clerks

25. March 2011 By Nicole Mazzocco

On March 24, 2011, the Michigan Court of Appeals published its opinion in *AFSCME Council 25 v. County of Wayne*, No. 298655. The court held that the Third Judicial Circuit Court of Michigan (the “Third Circuit”) has “exclusive authority” over the assignment of deputy circuit-court clerks to its judges’ courtrooms as part of the “judicial branch’s inherent constitutional authority,” and Wayne County’s collective-bargaining agreement with its employees could not supersede the Third Circuit’s control over its clerks.

The Third Circuit serves Wayne County. Wayne County entered into a collective-bargaining agreement (the “CBA”) with its employees that required Wayne County to promote and to hire its employees in accordance with certain rules. In the case of deputy circuit-court clerks, the CBA failed to provide the Third Circuit’s judges with input or authority regarding the clerks assigned to their chambers.

On March 30, 2007, the county-employee union, AFSCME Council 25 (the “Union”), filed a “complaint to compel” against Wayne County. The Union sought to force Wayne County to comply with a 2004 arbitration ruling, which ordered Wayne County to assign the Third Circuit’s clerks in accordance with the CBA. The Union and Wayne County filed cross-motions for summary disposition.

Shortly thereafter, the Third Circuit intervened. The Third Circuit filed a four-count counterclaim/cross-claim. Count I sought a declaratory judgment that, under common-law contract principles, the Third Circuit was not bound by the CBA. Count II asked for a declaratory judgment that the 2004 arbitration ruling did not bind the Third Circuit. Count III sought a declaratory judgment that the Third Circuit’s Local Administrative Order (“LAO”) 2005-06 governing the selection of clerks was “presumptively valid, that the trial court lacked subject-matter jurisdiction to otherwise consider the validity of LAO 2005-06 and the chief judge’s . . . order [demanding the enforcement of LAO 2005-06], and that the county clerk was required to follow LAO 2005-06 and the enforcement order.” Count IV “requested, in the alternative, a court declaration that LAO 2005-06 and the chief judge’s enforcement order controlled the assignment of court clerks to serve in courtrooms notwithstanding any contrary provisions in the CBA and the arbitration award.” The Third Circuit and the Union then filed cross-motions for summary disposition.

The trial court rejected the Third Circuit’s arguments and granted the Union’s motions for summary disposition. The Court of Appeals reversed and remanded for entry of judgment in favor of the Third Circuit.

First, the Court of Appeals quickly disposed of whether under common-law contract principles the CBA and the arbitration ruling bound the Third Circuit. The court noted that the Third Circuit was not a party to the CBA or the arbitration, and so was not bound absent unusual circumstances, such as “incorporation by reference, assumption, agency, veil-piercing/alter-ego, and estoppel.”

The court found that no unusual circumstances were present; therefore, common-law contract principles did not bind the Third Circuit to the CBA or the arbitration ruling.

Next, the court considered whether the Public Employment Relations Act (“PERA”) rendered the Third Circuit subject to the CBA or the arbitration ruling. PERA requires that public employers, like Wayne County, engage in collective bargaining with their employees when the employees request collective bargaining. The court noted that Michigan courts have frequently held that PERA trumps conflicting laws, charters, and ordinances. But, the court held that the constitutional separation-of-powers doctrine prevented “PERA-based” contracts and arbitration awards from encroaching on “the judicial branch’s inherent constitutional powers.”

The court also examined several other statutes cited by the Union, holding that, even if these statutes applied, each was superseded by the constitutional separation-of-powers doctrine.

The court then assessed whether the judicial branch required control over the selection of its clerks to exercise its constitutional powers. The court observed that court personnel carry out all the judiciary’s responsibilities. Accordingly, control over the selection of court personnel, like the clerks, is essential to the judicial branch’s ability to ensure proper performance of its constitutional duties. Because the CBA and the arbitration ruling denied the Third Circuit this necessary control, neither bound the Third Circuit.

Lastly, the court upheld LAO 2005-06 as a valid exercise of the Third Circuit’s powers.