

94

COMMONWEALTH OF MASSACHUSETTS

DUKES, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2002-00071

WILLIAM J. WEIBRECHT & another,¹
Plaintiffs,

vs.

THE MARTHA'S VINEYARD AIRPORT COMMISSION & others,²
Defendants/Third Party Plaintiffs,

vs.

COUNTY OF DUKES COUNTY & others,³
Third Party Defendants/Defendants.

**FINDINGS OF FACT, RULINGS OF LAW
AND ORDER FOR JUDGMENT**

Introduction

Plaintiffs William J. Weibrecht and Sean C. Flynn, the Manager and Assistant Manager, respectively, of the Martha's Vineyard Airport, filed this breach of contract action against the Airport Commission, which in turn impleaded the Dukes County Commissioners, County Manager and County Treasurer. The critical issue in this case is whether the power to set the plaintiffs'

¹Sean C. Flynn

²Timothy Carroll, Marc Villa, John S. Alley, Francis Daly, George Balco and William Mill, in their official capacities as members of the Martha's Vineyard Airport Commission

³County Commission of Dukes County; Leslie H. Leland, Daniel Flynn, John S. Alley, Leonard Jason, Jr., E.B. Collins, Robert M. Sawyer and Roger Wey, in their official capacities as County Commissioners; Carol Borer, in her official capacity as County Manager; and Noreen Mavro Flanders, in her official capacity as County Treasurer

salaries lies with the Airport Commissioners, who claim such authority pursuant to G.L. c. 90, §§ 35-52, or with the County Commissioners, who claim such authority pursuant to G.L. c. 34A, §§ 16, 18 and c. 35, §§ 48-56.

In their four count complaint, filed on December 6, 2002, the plaintiffs allege that the defendants breached certain written employment agreements when they failed to pay compensation to the plaintiffs at the rate agreed to in the plaintiffs' employment contracts with the Airport Commission. In their answer to plaintiffs' complaint, the defendant members of the Airport Commission admit to many of the essential allegations in the Complaint, but respond affirmatively that implementation of the contractual obligations under the plaintiffs' employment contracts is dependent upon the release by the County Commissioners of airport funds necessary to pay the full compensation set forth in the employment contracts. According to the defendants, the County Commissioners, County Manager, and County Treasurer have, at all times relevant to this cause of action, refused to release the necessary funds. For that reason, through a third party complaint brought against the County of Dukes County, the County Commissioners, the County Manager and the County Treasurer, the members of the Airport Commission seek declaratory relief and relief in the nature of mandamus directing the county officials to release all monies owed to the plaintiffs under their employment contracts pursuant to warrants initiated by the Airport Commissioners, and judgment against the third-party defendants for all contract or statutory damages that may be awarded to the plaintiffs in this action.

In their answer to the third-party complaint, the third party defendants admit to the essential allegations in the third party complaint, but deny that they have unlawfully refused to pay the salaries specified in employment contracts entered into by the Airport Commission with the plaintiffs. In support of their position, the third party defendants argue that the County officials, not

the members of the Airport Commission, are the only persons empowered to enter into contracts with county employees; that the plaintiffs are county employees; and that, because the County Commissioners did not execute the employment contracts with the plaintiffs, the County is not obligated to pay the salaries called for in those contracts but, rather, is obligated to pay the plaintiffs only that amount of salary consistent with the grade and step levels of equivalent county employees.

Findings of Fact

The facts material to this costly litigation between members of the Martha's Vineyard Airport Commission and the Commissioners of Dukes County are largely uncontested. It is the confluence of those facts which has created the legal issue of apparent long-standing in the community. That issue can be reduced to a single question: Who has the power, the Airport Commissioners or the County Commissioners, to hire and set the salaries of the airport manager and the assistant airport manager? Resolution of this issue required the testimony of eight witnesses, taken over three days of testimony, and over 70 exhibits.⁴ What follows are findings of fact based on that evidence, and the reasonable inferences drawn from that evidence.

The Martha's Vineyard Airport is located in Edgartown, West Tisbury, Massachusetts. In 1945, the General Court authorized the County of Dukes County to acquire land for a public airport and to "construct, maintain and operate same as a public airport." St. 1945, c. 212, § 1. The following year, the General Court enacted a comprehensive statute for the regulation of aeronautical

⁴The following individuals testified: plaintiff William Weibrecht; Stephen Muench, Executive Director of Massachusetts Aeronautical Commission; Timothy Carroll, past member of Airport Commission and County Commission; plaintiff Sean Flynn; Marc Villa, formerly Chair of the M.V. Airport Commission; Noreen Flanders, County Treasurer; William Mead of the Massachusetts Department of Revenue; and James Powers, a Certified Public Accountant.

activity in Massachusetts and for the governance of local airports. St. 1946, c. 607 and 613, codified as G.L. c. 90, §§ 35-52. Under that statute, the "custody, control and management" of local airports, including the Martha's Vineyard Airport, was placed in an Airport Commission. G.L. c. 90, § 51E.

By statute, the authority to appoint the Martha's Vineyard Airport Commissioners was placed in the hands of the County Commissioners. See G.L. c. 90, § 39G, inserted by St. 1947 c. 593, § 5. Indeed, from that date forward, and at the time of the trial of this case, the authority to appoint members of the Airport Commission was exclusively within the power of the County Commissioners and, to that end, members of the County Commissioners have served and continue to serve concurrently as members of the Airport Commission.

In November of 1992, the citizens of Dukes County voted to adopt a charter. That charter was subsequently codified incorporating G.L. c. 34A, §§ 15, 16, 18 and 20. Dukes County adopted a County Manager form of government in accordance with Chapter 34A, section 18 under which the county is governed by an elected board of commissioners and an appointed county manager. Section 18 requires the county manager to prepare and submit to the county commissioners an annual operating budget, to control and disburse all county expenditures, to sign all contracts, to develop and maintain centralized budgeting, personnel and purchasing procedures, and to negotiate contracts for the county subject to county commission approval. See G.L. c. 34A, § 18(B)(iv)(b)-(j).

In 1996, Dukes County adopted Personnel Bylaws, which set forth job classifications, pay scales and step increases for county employees.⁵ Those bylaws, however, do not apply to

⁵These Bylaws were revised in 1998.

employees "covered by contractual agreement." Bylaws, section 1-3.⁶ Furthermore, the Bylaws permit employees to be paid at rates greater than those established by the County's compensation plan. Bylaws, section 7-8.

From the time of its inception through the mid-1990s, the physical facilities of the Martha's Vineyard Airport, including the passenger terminal, were in serious disrepair. Furthermore, because the airport was not professionally managed, its financial condition was precarious. Financial record keeping was inadequate, and effective management oversight was handicapped by the lack of monthly revenue and expenditure statements. An accounting system kept by the County Treasurer commingled airport revenues with other county funds. No accounts receivable system was maintained. Revenues available to the Airport were not being collected, including emplanement fees from commercial airlines, rentals from updated commercial land leases and parking franchise fees.

The dispute in this case first arose in the mid-1990s when, with the enactment of the County's charter, the County took the legal position that its powers under General Laws Chapter 34A superceded any powers conferred on the Airport Commission under General Laws Chapter 90. On January 13, 1997, Stephen Muench, Executive Director of the Massachusetts Aeronautical Commission ("MAC"), wrote to the County Commissioners and the County Manager to express concerns about the County's attempts to diminish the authority of the Airport Commission, and to set forth MAC's interpretation of Chapter 90. Muench expressed the view that the county charter act did not override the statutory scheme for oversight of public airports by airport commissions.

⁶ Section 1-3 provides as follows: "All County departments and positions shall be subject to the provisions of this bylaw except elected officials, employees covered by contractual agreements and collective bargaining agreements."

Muench stated that the purpose of Chapter 90 was to establish airport commissions as separate, semi-autonomous governmental entities with their primary focus of providing safe, and efficient airport services without conflicting priorities involving other local budgets, needs, activities and services.

In 1997, around the time Muench wrote to the County defendants, the Airport Commission applied for federal and state grants for the design, engineering and construction of a new passenger terminal. Because Muench was concerned about the continuing dispute between the County and the Airport Commission concerning management of the airport and because he was obligated to protect the state's investment in the construction of an airport terminal as well as facilities for other ground services at the airport, Muench conditioned the grant of state and federal funds needed for capital improvement at the airport on a commitment from County officials not to interfere with the Airport Commission's power to manage the airport. Accordingly, in a document entitled, "Grant Assurances, Martha's Vineyard Airport" and signed on March 18 and 19, 1997 by John Alley, Chairman of the Airport Commission, Timothy Carroll, Chairman of the Dukes County Commission, and Mr. Carroll as the acting county manager, the County Commission agreed as follows:

Notwithstanding any powers, authority or responsibility that may be granted to the County Commissioners by Chapter 34A of the General Laws (the "Charter"), the County Commissioners agree not to interfere in any way with the powers, authority and responsibilities granted to the Airport Commission by Chapter 90, Section 51E of the General Laws; provided, however, that this provision shall not preclude the establishment of a management agreement or agreements between the Airport Commission and the County Commission to utilize the resources and skill of the County Manager's office or any County department that will benefit the operation of the airport; and, provided further that each such agreement shall not take effect until approved by the Aeronautics Commission in writing. Grant Assurance, para. 3a.

Furthermore, in the 1997 Grant Assurances, the County Commission assured and certified

that:

the County Commission shall not take or permit any action which would dissolve the Airport Commission or deprive the Airport Commission of or otherwise diminish any of the rights, privileges, responsibilities or powers of the Airport Commission as are necessary for it to exercise the custody, care and management of the airport or to perform any or all of the terms, conditions and assurances in the Grant, previous grants and future grants from the Aeronautics Commission without the prior written approval of the Aeronautics Commission and the County Commission will act promptly to acquire, extinguish or modify any outstanding rights or claims of rights of others which would interfere with such performance by the Airport Commission. Grant Assurances, para. 4a.

A special meeting of the County Commissioners was held on March 12, 1997. At that meeting, the Chairman of the Commission, John S. Alley, moved to instruct the Chairman of the County Commissioners and the County Manager to sign the Grant Assurances. The motion was seconded and carried unanimously.⁷

In 1999, for a variety of reasons not relevant to this litigation, the Airport Commission was reorganized. As part of this reorganization, the Airport Commissioners, including the County Commissioners who were serving concurrently as members of the Airport Commission, decided formally to employ professional airport managers. Under G.L. c. 90, § 51E, the Airport Commission is authorized to appoint an airport manager "who shall be qualified by general management experience and aeronautical knowledge and shall be the executive officer of said commission." That provision of Chapter 90 also gives the Airport Commission the authority to appoint an assistant airport manager to act in place of the airport manager "at such times and under such conditions as the Airport Commission may direct." Accordingly, the Airport Commissioners wrote position descriptions for an airport manager and assistant manager, solicited applicants for

⁷ At the time this grant assurance was signed, two members of the County Commission were also sitting as members of the Airport Commission.

those positions and, after a lengthy process, hired plaintiff William J. Weibrecht as its airport manager.

In 2000, the County adopted the County of Dukes County Administrative Code. That code, amended in 2002, creates certain departments within the county, including the "Department of the County Airport." However, the code states: "[i]t is recognized that certain Department Heads, both elected and appointed, have statutory authority and responsibilities apart from or in addition to those which derive from the Dukes County Home Rule Charter. Nothing in this code shall reduce their responsibility and authority under those statutes."

When it employed Weibrecht beginning on February 15, 2000, the Airport Commission set the salary for his position at \$65,000.00 per year, an amount which the Airport was and continues to be capable of paying from its own operating budget. In response to Weibrecht's request for a higher salary, a request the Commissioners felt to be reasonable given comparable salaries, the Airport Commissioners told Weibrecht they would review his salary after one year and would make adjustments, subject to his satisfactory performance and the financial performance of the airport. At the time these commitments were made, the members of the Airport Commission were under the impression that they had the authority to hire the airport's management team and to set the pay for those individuals as they determined.

In June of 2000, the Airport Commissioners employed plaintiff Sean C. Flynn as the assistant airport manager at an annual salary of \$51,000.00. As they had done with Weibrecht, the Commissioners assured Flynn that, after one year, his performance would be evaluated and his pay increased to comparable levels subject to his job performance and the financial performance of the

airport.⁸

Since its inception, the Airport Commission has participated in the County's administrative budgetary process. Like all departments of the county, the Airport Commission submits an annual budget to be approved by the County Commissioners. If approved by the County Commissioners, the budget, as part of the overall county budget, is submitted to the County Finance Advisory Board, which consists of one selectman from each town in the county. If the budget is approved by the County Finance Advisory Board, it is submitted to the Massachusetts Department of Revenue, Division of Local Services, County Finance Review Board. As with all departments of the county, the Airport Commission's annual budget appears as line items within the county budget approved by the County Finance Review Board. At all times relevant to this cause of action, airport revenues have exceeded airport costs, and the Airport Commission has not found it necessary to request any supplemental appropriations of funds from the County.

In July of 2000, Grant Assurances similar to those executed in 1997 were drafted and signed by the airport and County officials. The County officials entered into these Assurances with free knowledge of what they were forfeiting with respect to management of airport activities. In turn, the County received significant benefits from the Grant Assurances in the form of state and federal financing assistance. The Assurances were endorsed by the County Commissioners following discussion and approval at a special meeting convened for that purpose.

In March of 2002, and because the plaintiffs were not being paid that amount to which they had agreed, the Airport Commissioners approved two documents, each of which is entitled

⁸Weibrecht and Flynn receive standard County benefits, including health and life insurance. Their paychecks are issued from the County Payroll Account, after a warrant for the release of airport funds is submitted to and approved by the County Treasurer.

“Employment Contract for Term 2001-2003.” On March 3, 2002, those agreements were signed on behalf of the Airport Commission by its then chairman, Marc Villa. The Commission’s March 2002 agreement with Weibrecht called for Weibrecht to receive an annualized salary of \$86,000.00 for the period July 1, 2001 through June 30, 2003, plus a single lump-sum payment of \$10,718.03 for past performance. The March 2002 agreement with Flynn called for Flynn to receive an annualized salary of \$67,000.00 for the period July 1, 2001 through June 30, 2003, plus a single lump-sum payment of \$2,791,67 for past performance.

In July of 2002, Grant Assurances similar to those executed in March of 1997 and July of 2000 were drafted and signed by the airport and County officials. The County officials entered into the Assurances with free knowledge of what they were forfeiting with respect to management of airport activities. Again, the County received significant benefits from the Grant Assurances in the form of state and federal financing assistance. The Assurances were endorsed by the County Commissioners following discussion and approval at a special meeting convened for that purpose.

Throughout the years relevant to this case, and in breach of the plaintiffs’ employment contracts, the County has refused to release airport funds necessary to pay warrants requesting compensation for the plaintiffs at the agreed-to levels. Instead, the County has released only enough money from the airport’s account to pay the plaintiffs’ salaries at compensation rates established in the County’s pay and classification system. The Commissioners have taken this position even though other county employees have been exempted from the county classification system, including the Sheriff, the Registrar of Deeds, the County Manager and the County Treasurer.

In December of 2002, a second set of employment contracts was signed. In this second set of agreements, Weibrecht was offered an annualized salary of \$95,030.00 for the year July 1, 2003 to June 30, 2004, plus a formula for compensation increases over the following two years. Flynn

was offered an annualized salary of \$74,035.00 for the first year of the contract, plus a formula for increases over the following two years. This second set of contracts was also signed on behalf of the Airport Commission by Mr. Villa on December 26, 2002.

On November 12, 2002, Weibrecht and Flynn each filed a Non-Payment of Wage Complaint Form with the Office of the Attorney General. Weibrecht claimed unpaid wages of \$34,855.65 through October 16, 2002. Flynn claimed unpaid wages of \$ 21,299.33 through October 16, 2002. The following week, the Fair Labor and Business Practices Division notified Weibrecht and Flynn that the Attorney General did not intend to pursue enforcement action and granted them authority to file suit under General Laws Chapter 149 and 151.

Weibrecht and Flynn filed this action on December 6, 2002. Count I of their complaint seeks a declaratory judgment as to the parties' rights and obligations under the 2001-2003 Employment Agreements and the December 2002 Employment Agreements. Count II seeks economic damages for the Airport Commission's breach of contract, while Count III seeks economic damages on a theory of quantum meruit. Finally, Count IV asserts a claim based on G.L. c. 149, §§ 148-150, the Massachusetts Wage Act.

The Airport Commission filed a third-party complaint against the County Commissioners, County Manager and County Treasurer seeking a declaratory judgment in Count I as to whether the Airport Commission has the authority to set the salary levels of the airport manager and assistant airport manager and whether the County is obligated to pay the plaintiffs compensation at the levels established by the Airport Commission. Count II of the third-party complaint seeks an order of mandamus requiring the County to release sufficient Airport funds to pay the plaintiffs' salaries at the level set by the Airport Commission. Count III of the third-party complaint alleges that the County has breached the Grant Assurances, resulting in the plaintiffs' seeking damages from the

Airport Commission. Finally, Count IV of the third-party complaint alleges that the County has tortiously interfered with the Airport Commission's statutory authority and contractual duties to the plaintiffs. The third-party complaint seeks to hold the County liable for any sums the Airport Commission is liable to pay the plaintiffs in this litigation.

On April 3, 2003, the plaintiffs filed a direct complaint against the third-party defendants pursuant to Mass. R. Civ. P. 14(a). Count I alleges that the County defendants have tortiously interfered with the plaintiffs' contractual rights with the Airport Commission. Count II seeks a declaratory judgment that the County defendants lack the authority to interfere with the Airport Commission's payment of the plaintiffs' salary in accordance with the employment agreements.⁹

Rulings of Law

The County Commission contends that the plaintiffs' employment contracts are void and unenforceable because the Airport Commission lacks authority to offer the plaintiffs a salary in excess of the pay scales established in the County classification system without the approval of and appropriation of funds by the County. The Airport Commission claims unconditional authority to fix the plaintiffs' salaries pursuant to various provisions of General Laws Chapter 90.

A. Relationship Between the Special Act and Chapter 90

The County first contends that it retains authority over the salaries of airport employees

⁹On January 5, 2004, this Court (Moses, J.) dismissed Count One of this direct complaint, citing Lafayette Place Assoc. v. Boston Redevelopment Authority, 427 Mass. 509, 528 (1998). Count IV of the Airport Commission's third-party complaint must fail on the same basis.

under the special act creating the Martha's Vineyard Airport.

The Airport was originally authorized in 1945 through a special act which provided:

SECTION 1. The county of Dukes County, acting by its county commissioners, is hereby authorized to acquire by purchase or otherwise land or other property for public airport purposes, and, upon the acquisition of such property, said county, acting as aforesaid, is hereby authorized to construct thereon an airport and to maintain and operate the same as a public airport.

SECTION 2. Said county commissioners may make rules and regulations for the use of such airport, and they may let or lease such airport, or any part thereof, for a period not exceeding twenty years.

SECTION 3. Subject to appropriation, said county commissioners shall employ such persons as they may deem necessary in the maintenance and operation of such airport, and fix their salaries or compensation.

St. 1945, c. 212. The statutory scheme for the ownership and operation of airports by the Commonwealth and its political subdivisions, General Laws Chapter 90, sections 35 through 52 ("the Airport Act"), was enacted the following year in 1946, and by its express terms, applies to all municipal airports established prior to its effective date. See St. 1946, c. 613, § 2. The current version of the Airport Act, including the provision creating the positions of airport manager and assistant manager, was enacted in 1947. See St. 1947, c. 593, § 1. The 1947 enactment expressly made the Airport Act applicable to airports owned and operated by any county. See G.L. c. 90, § 39G, inserted by St. 1947, c. 593, § 5. Section 51E of the Airport Act provides in relevant part:

In any city or town in which an airport is established under section fifty-one D, or under any other provision of law, there shall be established a board consisting of an odd number of members . . . to be called the airport commission, which shall have the custody, care and management of the municipal airport of said city or town. . .

...

The airport commission may appoint an airport manager who shall be qualified by general management experience and aeronautical knowledge and shall be the executive officer of said commission, and may also appoint an assistant airport manager who shall be qualified as aforesaid. Neither the airport manager nor the assistant airport manager shall be subject to chapter thirty-one. . . The airport manager, and the assistant airport manager when acting in place of the airport

manager under the direction of the airport commission, shall be responsible to said commission for the proper maintenance and operation of such airport and of all facilities under his supervision. **Subject to appropriation, said commission shall appoint such other officers and employees as its work may require and shall fix the salaries of all officers and employees appointed or employed by it.**

G.L. c. 90, § 51E (emphasis added). The other provisions of the Airport Act give the Airport Commission broad powers. See, e.g., § 51F (authorizing airport commissions to lease land for airport); § 51G (authorizing airport commissions to exercise powers of eminent domain); § 51H (authorizing airport commissions to execute contracts and determine charges or rentals for airport properties, facilities and services); § 51I (authorizing airport commissions to expend funds and make contracts for maintenance, operation, construction and improvement of airport); § 51J (authorizing airport commissions to set rules and regulations for airports, subject to approval of Massachusetts aeronautics commission).

The County argues that despite the enactment of the Airport Act and its applicability to county airports, the County Commission retains its original authority to set the salaries of airport employees under St. 1945, c. 212, § 3, while the plaintiffs and Airport Commission argue that to the extent there is a conflict, § 51E of the Airport Act supercedes the special act. The construction of General Laws which are in conflict with preexisting special laws requires a careful analysis of legislative intent. Edwards v. Boston, 408 Mass. 643, 648 (1990). To the extent possible, local statutes and statutes of general application should be construed together so as to constitute a harmonious whole consistent with the legislative purposes of both. G.J.T., Inc. v. Boston Licensing Bd., 397 Mass. 285, 293 (1986); School Committee of Boston v. Boston, 383 Mass. 693, 701 (1981). Repeals by implication are generally disfavored and strong terms are required to show a legislative intent to supercede by a general act a special act which “may be made in regard to a place, growing out of its peculiar wants, condition, and circumstances.” Edwards v. Boston, 408 Mass. at 648;

Emerson College v. Boston, 393 Mass. 303, 306 (1984). A statute will not be deemed to repeal or supercede a prior statute in the absence of express words to that effect or clear implication. Colt v. Fradkin, 361 Mass. 447, 449 (1972). A repeal will be found only where the prior statute is so repugnant to and inconsistent with the later enactment that both cannot stand. Chernick v. Chief Administrative Justice of the Trial Court, 395 Mass. 484, 487 (1985).

Here, St. 1945, c. 212, § 3 and §51E of the Airport Act directly conflict with respect to who has the authority to fix the wages of airport employees, with the special act placing such power in the Dukes County Commissioners, and § 51E placing such power in the Airport Commission which “shall” be established in any political subdivision which owns and operates an airport. A statute designed to deal uniformly with a statewide problem displays on its face an intent to supercede local and special laws and to repeal inconsistent special statutes. Board of Education v. Boston, 386 Mass. 103, 109 (1982); Boston Teachers Union, Local 66 v. Boston, 382 Mass. 553, 564 (1981). Cf. School Committee of Boston v. Boston, 383 Mass. at 702. The Airport Act sets forth a comprehensive scheme applicable statewide to all airports owned and operated by any political subdivision of the Commonwealth, under the loose supervision of the Massachusetts aeronautical commission, and therefore, this Court may infer an intent to supercede all inconsistent special and local laws concerning such airports. Cf. Homer v. Fall River, 326 Mass. 673, 676-677 (1951) (general law requiring all cities and towns to create veterans’ services department superceded earlier-enacted city ordinance creating similar department); McDonald v. Justices of Superior Court, 299 Mass. 321, 324 (1938) (act of general applicability to liquor licensing boards across the state superceded earlier-enacted provisions of city charter relating to such board); Havden v. Town of West Springfield, 22 Mass. App. Ct. 902, 904, rev. den., 397 Mass. 1104 (1986) (state act of general applicability relating to water commissioners superceded earlier-enacted special act providing for

election of town water commissioners). There is no evidence that the Legislature intended to make any exception to the Airport Act for Dukes County; to the contrary, at the same time it added the provision concerning airport managers, it also expressly stated that the Act was to apply to county-owned airports. See G.L. c. 90, § 39G, inserted by St. 1947, c. 593, § 5.¹⁰ Thus, this Court concludes that the provision in St. 1945, c. 212, § 3 authorizing the Dukes County Commissioners to fix the salaries of airport employees has been superceded by the enactment of G.L. c. 90, § 51E, which authorizes the Airport Commission to do so.¹¹

B. Relationship Between County Charter and Chapter 90

The County next contends that any authority granted to the Airport Commission under § 51E has been superceded by the subsequently enacted Dukes County Charter, which consists of G.L. c. 34A, §§ 15, 16, 18 and 20.

Section 16(A) of Chapter 34A provides in relevant part:

Any county that has adopted a charter pursuant to this chapter may, in accordance with the provisions of such charter, and subject to the provisions of general law and the Constitution of the Commonwealth of Massachusetts:

(i) Organize and regulate its internal affairs; create, alter, abolish offices, positions and employments and define functions, powers and duties thereof; establish qualifications for persons holding offices, positions and employments; and provide for the manner of their appointment and removal and for their term, tenure and

¹⁰It is undisputed that Dukes County is the only county which owns and operates its own airport.

¹¹This conclusion is not undermined by the fact that St. 1945, c. 212 was amended in 1974 to lengthen the period for which the County Commission may lease the airport from twenty to ninety-nine years. That amendment is consistent with the Airport Act insofar as G.L. c. 90, § 51F authorizes airport commissions in cities to enter into leases longer than twenty years only with the approval of the mayor and city council, and authorizes airport commissions in towns to enter into such leases only with the approval of a town meeting.

compensation.

Further, under section 18(B)(v)(a), the county manager “[s]hall supervise, direct and control all county administrative departments.” Under section 18(B)(iv)(e), the county manager shall “through the county treasurer . . . control all disbursements and expenditures and shall prepare a complete account of all expenditures” and under section 18(B)(iv)(f), shall “[s]ign all contracts, bonds or other instruments requiring the consent of the county.”

Section 15 of Chapter 34A provides that upon adoption of a charter, “the county shall thereafter be governed by . . . all general laws, subject to provisions of this chapter.” G.L. c. 34A, § 15(A). For purposes of Chapter 34A, “general law” is defined in relevant part as a law that “(i) is not inconsistent with this chapter; and (ii) is by its terms applicable or available to all counties.” G.L. c. 34A, § 15(B). The County Commissioners argue that the Dukes County Charter places control over the plaintiffs’ salary in the County because the Airport Act is a “general law” which is inconsistent with the charter insofar as it authorizes the Airport Commission to hire, control and fix the salary of the airport manager and assistant airport manager.

To the extent possible, two statutes addressing similar subject matter should be construed together so as to constitute a harmonious whole consistent with the legislative purposes of both. Packard Clothes v. Director of Div. of Employment Sec., 318 Mass. 329, 334 (1945); Nercessian v. Board of Appeal on Motor Vehicle Liability Policies & Bonds, 46 Mass. App. Ct. 766, 771 (1999). As noted above, one statute will not be deemed to repeal or supercede a prior statute in the absence of express words to that effect or clear implication, and a repeal will be found only where the prior statute is so repugnant to and inconsistent with the later enactment that both cannot stand. Chernick v. Chief Administrative Justice of the Trial Court, 395 Mass. at 487; Colt v. Fradkin, 361 Mass. at 449. Chapter 34A is a broad enabling statute allowing the establishment of county

government, while the Airport Act is a narrowly tailored statute of statewide application that accommodates state and federal interests while ensuring the effective management of local airports. Nothing in Chapter 34A suggests an intent to repeal the Airport Act as it applies to counties; indeed, Chapter 34A is silent on the specific matter of local airports. Moreover, the Airport Act is not repugnant to the broad authority granted to the County by Chapter 34A because its scope is extremely narrow, relating only to the Airport and to no other aspect of county management and control. See G.J.T., Inc. v. Boston Licensing Bd., 397 Mass. at 293; School Committee of Boston v. Boston, 383 Mass. at 701 (local statutes and statutes of general application should be construed together so as to constitute a harmonious whole). See also Plymouth County Retirement Assoc. v. Commissioner of Public Employee Retirement, 410 Mass. 307, 312 (1991) (where one statute is more restrictive in a particular area than a more general statute, the restrictive statute controls in that area, while all other areas remain governed by the more general enactment). Chapter 90, § 51E simply restricts the manner in which the County may exercise its control over the airport: its control resides in its power to appoint the Airport Commission.

To the extent there is an irreconcilable conflict between Chapter 34A and the Airport Act, the Airport Act must prevail. If a general statute and a specific statute cannot be reconciled, the general statute must yield to the specific, regardless of the order of enactment. Pereira v. New England LNG Co., Inc., 364 Mass. 109, 118 (1973); Vimar Seguros Y Reaseguros, S.A. v. M/V Sky Reefer, 29 F.3d 727, 732 (1st Cir. 1994), *aff'd*, 515 U.S. 528 (1995). Accord 2B Singer, *Statutes and Statutory Construction* § 51.05 (6th ed. 2000). This Court rejects the County's argument that under §15, the county charter supercedes all general laws which are arguably inconsistent, as that could not have been the intent of the Legislature. Where the Legislature has intended such a result, it has used specific, express language to accomplish it. See, e.g., Lexington v. Commissioner of Education,

393 Mass. 693, 698 (1985) (where earlier general statute contained phrase “notwithstanding any provision of any special or general law to the contrary,” it was inappropriate to apply rule of statutory construction that general law must yield to more specific, later-enacted law); Mathewson v. Contributory Retirement Appeal Bd., 335 Mass. 610, 614 (1957) (noting that Legislature’s use of the phrase “notwithstanding the provisions of any general or special law to the contrary” evinces an intent to repeal an indefinite number of inconsistent statutory provisions to the extent necessary to effectuate new legislation). Thus, this Court concludes that enactment of the Dukes County Charter pursuant to Chapter 34A did not supercede the Airport Act, which remains applicable to the Martha’s Vineyard Airport.

C. Interpretation of Chapter 90, section 51E

The County next argues that the plaintiffs’ employment agreements are invalid because the County did not appropriate funds to cover their salaries.

Chapter 90, section 51E provides in relevant part:

The airport commission may appoint an airport manager who shall be qualified by general management experience and aeronautical knowledge and shall be the executive officer of said commission, and may also appoint an assistant airport manager who shall be qualified as aforesaid. Neither the airport manager nor the assistant airport manager shall be subject to chapter thirty-one. . . The airport manager, and the assistant airport manager when acting in place of the airport manager under the direction of the airport commission, shall be responsible to said commission for the proper maintenance and operation of such airport and of all facilities under his supervision. **Subject to appropriation, said commission shall appoint such other officers and employees as its work may require and shall fix the salaries of all officers and employees appointed or employed by it.**

The plaintiffs and Airport Commission contend that the phrase “subject to appropriation” applies only to the appointing of “other officers and employees,” and not to the fixing of salaries for

the airport manager and assistant manager. The placement of the phrase “subject to appropriation” at the beginning of the sentence suggests that it is a qualifying phrase applicable to the entire remainder of the sentence. Cf. Commissioner of Revenue v. Dupee, 423 Mass. 617, 620 (1996) (qualifying phrases are applied to words or phrase immediately preceding them and not to others more remote). However, when the phraseology of a statute is ambiguous, the court may look to legislative history for insight as to intent. Commonwealth v. Collett, 387 Mass. 424, 433 (1982). Cf. Acting Superintendent of Bourne Wood Hospital v. Baker, 431 Mass. 101, 104 (2000). The original version of G.L. c. 90, § 51E provided as follows: “Subject to appropriation, the commission shall appoint and fix the salaries of all employees appointed or employed by it.” St. 1946, § 613.

The current version of G.L. c. 90, § 51E contains several sentences providing for the appointment of an airport manager and assistant manager to operate the airport and then states that “subject to appropriation,” the Airport Commission may appoint such other officers and employees as its work may require. It thus distinguishes between the key positions of airport manager and assistant airport manager and all other airport employees. A reasonable conclusion can be reached as the result of the change in the statutory language that the Legislature meant to exclude the positions of airport manager and assistant manager from the “subject to appropriation” language of the current section 51E. Thus, the Airport Commission may fix the salaries of all airport employees, with positions other than the manager and assistant manager subject to appropriation.

This interpretation is supported by the language and history of § 51I, which addresses the power of the Airport Commission to expend funds. When the meaning of statutory language is brought into question, it is proper for a court to read other sections of the same statute and construe them together as a harmonious whole. LeClair v. Town of Norwell, 430 Mass. 328, 333 (1999).

The former version of § 51I provided:

All revenue obtained by an airport commission of a city or town from the ownership, control and operation of any airport or air navigation facilities shall be deposited with the city or town treasurer, and may be appropriated by the city or town airport commissioners for the operating expenses of such airport, including debt maturing annually and the interest thereon.

St. 1946, c. 613, § 1. This language reveals an intent to empower the Airport Commission to appropriate airport funds even when it did not directly control such funds. Section 51I currently provides in relevant part: “[t]he airport commission of any city or town shall be authorized to expend any funds granted to, or received from any source or appropriated by, such city or town for airport purposes . . .” G.L. c. 90, § 51I. Under this section, the Airport Commission may expend three sources of funds: those granted to it; those received from “any source,” including revenues generated by airport services and operations; and those appropriated by the local government. Thus, the salaries set by the Airport Commission for the airport manager and assistant airport manager are “subject to appropriation” by the County, as opposed to the Airport Commission itself, only where airport expenditures exceed airport revenue such that the Airport Commission requires assistance from the County to meet its financial obligations. Under such circumstances, the “subject to appropriation” language acts as a restraint on the Airport Commissioners’ power, and the salaries of the airport manager and assistant manager must undergo review by other County officials as part of the budgetary process. Where, however, the Airport Commission does not require additional County funds to pay the salaries it has set, it is empowered to expend airport funds for that purpose without County oversight.¹²

¹²This interpretation of Chapter 90 is not inconsistent with various special acts cited by the County which authorize the County Commissioners to raise and expend money for specific airport purposes. See St. 1952, c. 429 (authorizing Dukes County Commissioners to expend up to \$24,000 to lengthen Airport runway and to issue public notes to raise the money); St. 1963, c. 475 (authorizing Dukes County Commissioners to expend up to \$13,000 to improve the Airport and to issue public notes to raise the money); St. 1997, c. 11, § 80 (authorizing Dukes County

Significantly, this interpretation of Chapter 90 has been endorsed by the Massachusetts aeronautical commission, the agency which regulates all non-federal airports in the Commonwealth. See G.L. c. 90, § 39. The court gives substantial deference to the construction placed on a statute by an agency charged with its administration. Manning v. Boston Redevelopment Auth., 400 Mass. 444, 453 (1987); Casa Loma, Inc. v. Alcoholic Beverage Control Comm'n, 377 Mass. 231, 235 (1979). At all times relevant to this action, the Airport Commission has been able to pay the plaintiffs' salaries, as contained in the employment agreements, out of its own funds, without any assistance from the County.¹³ Accordingly, the Airport Commission was authorized to fix the plaintiffs' salaries under § 51E without County approval and without a budget appropriation from the County.¹⁴

D. Effect of Grant Assurances

Finally, even if the County Commissioners could be deemed to possess the authority under G.L. c. 34A to constrain the Airport Commission's fixing of the plaintiffs' salaries, the County

Commissioners to expend up to \$1,200,000 to construct new terminal and to issue public notes to raise the money). Further, there is no merit to the County's argument that St. 1992, § 57, which authorizes the County to establish limited-purpose funds from which the Airport Commission may make expenditures without further appropriation, demonstrates that the Airport Commission lacks authority under § 51E to appropriate funds from its own revenues for salaries.

¹³The airport has not required additional county funds since the airport reorganization in 1999, and it cannot be anticipated that such an event will occur in the near future.

¹⁴The fact that the salaries fixed by the Airport Commission are in excess of the compensation rates established under the Personnel Bylaws is of no import. See G.L. c. 35, § 49 (requiring classification of county offices and positions but providing, "nothing in sections forty-eight to fifty-six inclusive, and nothing done under authority thereof, shall prevent any person from continuing to receive from a county such compensation as is fixed under authority of other provisions of law or as is expressly established by law").

Commissioners forfeited their right to do so by executing the Grant Assurances. Those Assurances state:

Notwithstanding any powers, authority or responsibility that may be granted to the County Commissioners by Chapter 34A of the General Laws (the "Charter"), the County Commissioners agree not to interfere in any way with the powers, authority and responsibilities granted to the Airport Commission by Chapter 90, Section 51E of the General Laws . . .

Chapter 90, section 51K provides that in order to receive federal funds for airport improvement, the Airport Commission and the underlying municipality must designate the Massachusetts aeronautics commission as its agent to receive the funds and shall enter into an agreement with the aeronautics commission "prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of the commonwealth." G.L. c. 90, § 51K. Having received the benefit of federal funds to improve the Airport, the County cannot be permitted to repudiate its statutorily-based commitment to the Massachusetts aeronautical commission to refrain from interference with the Airport Commission's powers under § 51E to control operation of the Airport through an Airport Manager and Assistant Airport Manager.¹¹

The plaintiffs and the Airport Commission concede that they have relied on the County budgetary process for administrative purposes, and it is undisputed that the plaintiffs participate in the county's retirement system and its health and life insurance plans. In denying the plaintiffs' motion for summary judgment on August 10, 2004, this Court (Chin, J.) suggested the importance of factual issues relating to the historical relationship between the Airport Commission and the County. However, the Airport Commission's voluntary participation in the County budgetary

¹¹To the extent, however, that the Airport Commission seeks to assert an independent breach of contract claim based on the Grant Assurances, such a claim cannot succeed given that the Massachusetts aeronautical commission is not a named party to this action.

process is of little materiality given the explicit language of Chapter 90; the forfeiture of management responsibility by way of the Grant Assurances; and the recent history of a financially self-sufficient airport. Reliance on the County budgetary process for administrative convenience is not inconsistent with either Chapter 90 or the Grant Assurances, and does not amount to a concession that the County has the authority to hire the airport's manager and assistant manager and to set their salaries.¹²

Thus, for all the foregoing reasons, this Court concludes that the Airport Commission and the County defendants have breached the plaintiffs' employment agreements by refusing to pay the full amount of the salary fixed by the Airport Commission. The evidence at trial established that between July 16, 2001 and February 28, 2005, Weibrecht was damaged in the amount of \$85,226.07, consisting of the \$10,718.03 lump sum due under the Employment Contract for Term 2001-2003, and \$59,399.42 in shortfall wages and \$11,357.32 in interest due under the Employment Contracts for Terms 2001-2003 and 2003-2006. Weibrecht is entitled to recover these amounts as contract damages. In addition, Weibrecht claims a loss of \$971.35 in wages for each two-week pay period since March 1, 2005. This Court invites counsel to submit a supplemental affidavit detailing this additional salary loss.

The evidence at trial established that between July 16, 2001 and February 28, 2005, Flynn was damaged in the amount of \$60,458.35, consisting of the \$2,791.67 lump sum due under the Employment Contract for Term 2001-2003, and \$47,651.95 in shortfall wages and \$10,014.73 in interest due under the Employment Contracts for Terms 2001-2003 and 2003-2006. Flynn is

¹²Although not directly at issue in this case, this Court strongly recommends the establishment of an Enterprise account to keep airport funds distinct from other county funds and to comply with the Grant Assurances.

entitled to recover these amounts as contract damages.¹³ In addition, Flynn claims a loss of \$759.73 in wages for each two-week pay period since March 1, 2005. This Court invites counsel to submit a supplemental affidavit detailing this additional salary loss.

E. Massachusetts Wage Act Claim

The plaintiffs seek to recover treble damages and attorney's fees under the Wage Act, G.L.

c. 149, §§ 148, 150. Chapter 149, section 148 provides in relevant part:

Every person having employees in his service shall pay weekly or biweekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week . . .

Section 150 further provides in relevant part:

Any employee claiming to be aggrieved by a violation of section 148, 148A, 148B, 150C, 152, 152A or 159C may . . . within three years of such violation, institute and prosecute . . . a civil action for injunctive relief and any damages incurred, including treble damages for any loss of wages and other benefits. An employee so aggrieved and who prevails in such an action shall be entitled to an award of the costs of the litigation and reasonable attorney fees.

G.L. c. 149, § 150. The purpose of this Act is to prevent the unreasonable detention of wages.

Boston Police Patrolmen's Ass'n, Inc. v. City of Boston, 435 Mass. 718, 720 (2002). If a violation of the Act is found, an award of treble damages is mandatory, and such award does not depend on a finding of bad faith on the part of the employer. Gibbs v. Archie, 2002 Mass. App. Div. 205, 206.

Accordingly, the plaintiffs are entitled to treble their lost wages and recover costs and reasonable

¹³Accordingly, the plaintiffs' count to recover in quantum meruit must fail. "Recovery in quantum meruit presupposes that no valid contract covers the subject matter of a dispute. Where such a contract exists, the law need not create a quantum meruit right to receive compensation for services rendered." Boswell v. Zephyr Lines, Inc., 414 Mass. 241, 250 (1993).

attorney's fees.¹⁴ An award of treble damages under § 150 is essentially punitive in nature. Cf. Goodrow v. Lane Bryant, Inc., 432 Mass. 165, 178 (2000). Under the circumstances of this case, where it is the other County defendants and not the Airport Commission which caused the detention of the plaintiffs' wages by refusing to release the funds, it is appropriate to allocate the damages to hold the third-party defendants and not the Airport Commission responsible for the multiple damages, costs and attorney's fees under the Wage Act.

F. The Commission's Request for Injunctive Relief

Finally, the Airport Commission seeks an order of mandamus against the third-party defendants to compel them to release airport funds to pay the plaintiffs' salaries. Relief in the nature of mandamus lies to compel a public official charged by statute with a clear duty to act, to perform that duty if he has failed or refused to do so. Lutheran Service Ass'n of New England, Inc. v. Metropolitan District Comm'n, 397 Mass. 341, 344 (1986); Lynch v. Police Commissioner of Boston, 43 Mass. App. Ct. 107, 108 (1997). However, even if the act sought to be compelled is ministerial in nature, relief in the nature of mandamus is extraordinary and may be granted only to prevent a failure of justice in instances where there is no alternative remedy. Forte v. Commonwealth, 429 Mass. 1019, 1020 (1999); Callahan v. Superior Court, 410 Mass. 1001, 1001 (1991). A party must turn to any available legal or equitable remedies before resorting to an action in the nature of mandamus. Doe v. District Attorney for the Plymouth District, 29 Mass. App. Ct. 671, 674 (1991). The issuance of mandamus lies in the sound discretion of the judge. Forte v.

¹⁴With respect to the lost wages, however, the plaintiffs' statutory recovery under G.L. c. 149, § 150 cannot be duplicative of their recovery of single wages under their breach of contract claim.

Commonwealth, 429 Mass. at 1020; Coach & Six Restaurant, Inc. v. Public Works Comm'n, 363 Mass. 643, 645 (1973).

Here, although the County defendants have steadfastly refused to pay the plaintiffs' salaries at the levels fixed by the Airport Commission, the relevant statutes were sufficiently ambiguous in their application to give them a colorable argument that their actions were proper. Now that this Court has determined that the plaintiffs' employment agreements are enforceable, it is presumed that the third-party defendants will comply with the law as declared in this opinion. See Benefit v. City of Cambridge, 424 Mass. 918, 927 (1997) (court will not enter injunction against public officials in the absence of intransigence on the part of such officials). Cf. Barry v. Treasurer of County of Essex, 369 Mass. 960, 960 (1975) (ordering treasurer to pay salary authorized by county commission where leaving plaintiff to lesser remedies would be unfair because particular county treasurer had in the past arrogated powers to himself which he did not possess, necessitating judicial intervention). The extraordinary relief of mandamus is therefore not warranted at this juncture, and the plaintiffs have other equitable remedies available to them if the County defendants refuse in the future to release airport funds to pay the plaintiffs' salaries as upheld by this Court.

ORDER FOR JUDGMENT

For the foregoing reasons, it is hereby **ORDERED** that judgment enter in favor of the plaintiffs on Count I of the complaint. It is hereby **DECLARED** and **ADJUDGED** that the "Employment Contract for Term 2001-2003" executed by plaintiff Weibrecht on March 4, 2002, the "Employment Contract for Term 2001-2003" executed by plaintiff Flynn on March 4, 2002, the "Employment Contract for Term 2003-2006" executed by plaintiff Weibrecht on December 26, 2002, and the "Employment Contract for Term 2003-2006" executed by plaintiff Flynn on

December 26, 2002 are valid and enforceable agreements.

It is **ORDERED** that judgment on Count II of the complaint enter in favor of plaintiff William Weibrecht against the Martha's Vineyard Airport Commission and its members in their official capacities in the amount of eighty-five thousand, two hundred and twenty-six dollars and seven cents (\$85,226.07). It is further **ORDERED** that judgment on Count II of the complaint enter in favor of plaintiff Sean Flynn against the Martha's Vineyard Airport Commission and its members in their official capacities in the amount of sixty thousand, four hundred and fifty-eight dollars and thirty-five cents (\$60,458.35).

It is **ORDERED** that judgment on Count III of the complaint enter in favor of the defendants Martha's Vineyard Airport Commission and its members in their official capacities.

It is further **ORDERED** that judgment on Count IV of the complaint enter in favor of plaintiff William Weibrecht against the Martha's Vineyard Airport Commission, the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer in the amount of one hundred and seventy thousand, four hundred and fifty-two dollars and fourteen cents (\$170,452.14). It is further **ORDERED** that judgment on Count IV of the complaint enter in favor of Sean Flynn against the Martha's Vineyard Airport Commission, the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer in the amount of one hundred and twenty thousand, nine hundred and sixteen dollars and seventy cents (\$120,916.70). It is **ORDERED** that within thirty (30) days of receipt of this decision, the plaintiffs submit affidavits and supporting documentation concerning the attorney's fees they have incurred in connection with

this matter.

With respect to Count I of the third-party complaint, it is hereby **ORDERED** that judgment enter in favor of third-party plaintiff the Martha's Vineyard Airport Commission against third-party defendants the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer. It is hereby **DECLARED** and **ADJUDGED** that the Martha's Vineyard Airport Commission has the authority pursuant to General Laws Chapter 90, section 51E to set the salaries of the Airport Manager and Assistant Airport Manager, and that the third-party defendants County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer are obligated to pay the salaries of the Airport Manager and Assistant Airport Manager as fixed by the Airport Commission and set forth in the employment agreements at issue in this case.

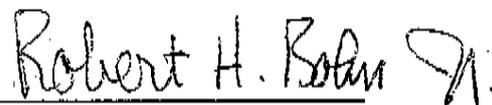
On Count II of the third-party complaint, it is hereby **ORDERED** that judgment enter in favor of third-party defendants the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager and Noreen Mavro Flanders in her official capacity as County Treasurer.

On Count III of the third-party complaint, it is hereby **ORDERED** that judgment enter in favor of third-party defendants the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer.

On Count IV of the third-party complaint, it is hereby **ORDERED** that judgment enter in favor of third-party defendants the County of Dukes County, the County Commission of Dukes

County, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer.

Finally, it is hereby **ORDERED** that judgment on Count II of the plaintiffs' direct complaint against the third-party defendants enter in favor of plaintiffs William Weibrecht and Sean Flynn against the County of Dukes County, the County Commission of Dukes County, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer. It is hereby **DECLARED** and **ADJUDGED** that the County of Dukes County, the County Commission of Dukes County, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer lack legal authority to interfere with the Airport Commission's payment of the plaintiffs' salaries under the written employment agreements at issue in this case.



Robert H. Bohn, Jr.
Justice of the Superior Court

DATED: July 14, 2005

95
Commonwealth of Massachusetts
County of Dukes
The Superior Court

CIVIL DOCKET# DUCV2002-00071

William J. Weibrecht,
Sean C. Flynn
vs
Martha's Vineyard Airport Commission,
Timothy Carroll,
Marc Villa,
John S. Alley,
Francis Daly,
George Balco,
William Mill,
County of Dukes County,
County Commission of Dukes County,
Leslie H Leland,
Daniel Flynn,
John S Alley,
Leonard Jason, Jr.,
E.B. Collins,
Robert M Sawyer,
Roger Wey,
Carol Borer,
Noreen Mavro Flanders

JUDGMENT

This action came on before the Court, Robert H. Bohn, Jr., Justice, presiding, and upon consideration thereof,

It is **ORDERED and ADJUDGED:**

JUDGMENT: 1. Count I judgment for the plaintiffs. Declared and Adjudged that the "Employment Contract for Term 2001-2003" Executed by plaintiff Weibrecht on March 4, 2002, the "Employment Contract for Term 2001-1002" executed by plaintiff Flynn on March 4, 2002, the "Employment Contract for Term 2003-2006" executed by plaintiff Weibrecht on December 26, 2002, and the "Employment Contract for 2003-2006" executed by plaintiff Flynn on December 26, 2002 are valid and enforceable agreements. 2. Count II Judgment for plaintiff William Weibrecht against the Martha's Vineyard Airport Commission and its members in their official capacities in the amount of \$85,226.07. Also on Count II Judgment for Sean Flynn against the Martha's

Commonwealth of Massachusetts
County of Dukes
The Superior Court

Vineyard Airport Commission and its members in their official capacities in the amount of \$60,458.35. 3. Count III Judgment for the defendants Martha's Vineyard Airport Commission and its members in their official capacities. 4. Count IV Judgment for William Weibrecht against the Martha's Vineyard Airport Commission, the County of Dukes County, The County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer in the amount of \$170,452.14. Also on Count IV Judgment for Sean Flynn against the Martha's Vineyard Airport Commission, the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer in the amount of \$120,916.70. Also Ordered that within thirty (30) days of receipt of this decision, the plaintiffs submit affidavits and supporting documentation concerning the attorney's fees they have incurred in connection with this matter. 5. Count I of the Third-Party Complaint Judgment for third-party plaintiff the Martha's Vineyard Airport Commission against third-party defendants the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer. It is Declared and Adjudged that the Martha's Vineyard Airport Commission has the authority pursuant to General Laws Chapter 90, section 51E to set the salaries of the Airport Manager and Assistant Airport Manager, and that the third-party defendants County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer are obligated to pay the salaries of the Airport Manager and Assistant Airport Manager as fixed by the Airport Commission and set forth in the employment agreements at issue in this case. 6. Count II of the Third-Party Complaint Judgment for third-party defendants the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager and Noreen Mavro Flanders in her official capacity as County Treasurer. 7. Count III of the Third-Party Complaint Judgment for third-party defendants the County of Dukes County, the County Commission of Dukes County and its members in their official capacities, Carol Borer in her official capacity as County Manager and Noreen Mavro Flanders in her official capacity as County Treasurer. 8. Count IV of the Third-Party Complaint Judgment for third-party defendants the County of Dukes County, the County Commission of Dukes County, Carol Borer in her official capacity as County Manager and Noreen Mavro Flanders in her official capacity as County Treasurer. 9. Count II of the plaintiffs' direct Complaint against the third-party defendants Judgment for William Weibrecht and Sean Flynn against the County of Dukes County, the County Commission of Dukes County, Carol Borer in her official capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer. 10. It is Declared and Adjudged that the County of Dukes County, the County Commission of Dukes County, Carol Borer in her official Capacity as County Manager, and Noreen Mavro Flanders in her official capacity as County Treasurer lack

Commonwealth of Massachusetts
County of Dukes
The Superior Court

legal authority to interfere with the Airport Commission's payment of the plaintiffs' salaries under the written employment agreements at issue in this case. (Robert H. Bohn, Jr., Justice).

Dated at Edgartown, Massachusetts this 18th day of July, 2005.


Joseph E. Sollitto, Jr.,
Clerk of the Courts

Approved as to Form:

Robert H. Bohn, Jr.

.....
Justice of the Superior Court

Copies mailed 07/18/2005