STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (LABOR RELATIONS),
Respondent-Public Employer,

-and- Case No. C98 F-123

DETROIT POLICE LIEUTENANTS AND
SERGEANTS ASSOCIATION,
Charging Party-Labor Organization.
_____/

APPEARANCES:

City of Detroit Law Department, by David J. Masson, Esq., for Respondent

Bernard Feldman, Esq., for Charging Party

DECISION AND ORDER

On March 29, 1999, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above case, recommending dismissal of an unfair labor practice charge filed by the Detroit Police Lieutenants and Sergeants Association (DPLSA) under Section 10(1)(a), (c), and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210; MSA 17.455 (10). The ALJ held that Respondent City of Detroit did not violate PERA by requiring lieutenants to answer grievances filed by members of their own bargaining unit. The ALJ concluded that the charge involves a question of contract interpretation which is not within the jurisdiction of the Commission. The ALJ also found that we lack jurisdiction over this case because the events giving rise to the dispute occurred more than six months before the charge was filed.

On April 21, 1999, Charging Party filed timely exceptions to the Decision and Recommended Order of the ALJ. Respondent did not file a brief in response to the Union's exceptions on or before the May 4, 1999, due date. See Rule 66, R423.466, of the General Rules of the Employment Relations Commission. On May 10, 1999, Respondent moved for a retroactive extension of time to file a response brief on the ground that the exceptions had been misfiled. We conclude that Respondent has not shown good cause for failing to file its exceptions in a timely manner and hereby deny its request for a retroactive extension.

Discussion and Conclusions of Law:

On exception, Charging Party argues that the ALJ erred in finding that the Union is the exclusive bargaining agent for "inspectors, sergeants, and lieutenants" employed by the City of Detroit, and that this error represents a failure on the part of the ALJ to appreciate and understand the rank structure of the Employer. We disagree. While it is true that the Union actually represents "investigators" as opposed to "inspectors," there is nothing in the ALJ's decision to suggest that he did not comprehend the difference between the two positions, nor is there any indication that the error contributed to his substantive conclusions. To the extent necessary, the decision is accordingly corrected to show that the Union represents investigators, sergeants, and lieutenants.

The Union further contends that the ALJ ignored record evidence concerning the bargaining history between the parties which resulted in modification of the contractual grievance procedure. As discussed more fully in the Decision and Recommended Order, the parties have a long history of collective bargaining. Prior to 1977, their collective bargaining agreements called for lieutenants and inspectors to respond to grievances at the first two steps of the grievance procedure. In subsequent contracts, however, the term "commanding officers" has replaced the rank designations of lieutenant and inspector. The Union maintains that the intended purpose of the change was to prevent lieutenants from having to answer grievances concerning members of their own bargaining unit. We find this argument to be irrelevant. Regardless of the motivation behind the change, Article 8 of the current collective bargaining agreement explicitly states that grievances may be answered by a "commanding officer" of a section or unit at steps one and two of the grievance procedure. While the contract itself does not define the term "commanding officer," the police manual provides that the term means any supervisor designated by the chief of police. Moreover, the record indicates that lieutenants have been designated as commanding officers for many years, and the Union does not seriously dispute this fact. Under such circumstances, we agree with the conclusion of the ALJ that the issue in this case involves a bona fide dispute between the parties over the interpretation of contract language. We have consistently held that where such a dispute exists, we will not find a violation of PERA absent a showing of repudiation of the contract or the collective bargaining relationship. *County of Oakland Sheriff's Dept*, 1983 MERC Lab OP 538, *Twp of Redford*, 1985 MERC Lab Op 1180; *Taylor Bd. Of Ed*, 1983 MERC Lab Op 77. There has been no such showing in this case.

Next, Charging Party contends that the use of lieutenants to respond to grievances violates PERA because it encourages dissension and confusion within the unit. In support of this contention, the Union continues to rely on *City of Muskegon Heights*, 1979 MERC Lab Op 1013 (charge withdrawn), and *City of Pontiac*, 1981 MERC Lab Op 57 (no exceptions) as standing for the proposition that an employer may not require its employees to act against the interests of their own union. Even assuming arguendo that this characterization of *Muskegon Heights* and *Pontiac* is accurate, there is nothing in the record to suggest that unit members are required to answer grievances in a manner which favors the Employer. To the contrary, the 1998 memorandum of understanding indicates that Lieutenant Patrick McKane recently agreed to a settlement which granted the relief sought by the Union. That fact that this agreement was ultimately rejected by management does not, as Charging Party argues, establish that McKane himself was somehow biased in favor of the Employer. Moreover, there is no evidence in the record to support the Union's

assertion that the use of lieutenants to answer grievances negatively impacts the bargaining unit. DPLSA president Ronald Stempien's testimony to that effect was, for the most part, conclusory. The only specific incidents referred to by Stempien in support of this assertion occurred more than twenty-one years prior to the filing of the charge. Therefore, we conclude that Charging Party has failed to establish a PERA violation on this basis.

In view of our findings above, it is not necessary for us to address Charging Party's exceptions to the finding of the ALJ that the charge in this case does not comply with the limitations period set forth in Section 16(a) of PERA.

ORDER

Pursuant to Section 16 of PERA, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

_____
Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Dated:_____