

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

INGHAM COUNTY BOARD OF COMMISSIONERS
and INGHAM COUNTY SHERIFF,
Respondents-Public Employers,

Case No. C98 F-129

- and -

CAPITOL CITY LODGE NO. 141,
FRATERNAL ORDER OF POLICE,
Charging Party - Labor Organization.

APPEARANCES:

Cohl, Stoker & Toskey, P.C., by John R. McGlinchey, Esq., for Respondents

Wilson, Lawler & Lett, P.C., by R. David Wilson, Esq., for Charging Party

ORDER APPROVING SETTLEMENT AND WITHDRAWAL

On May 17, 1999, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above case, finding that Respondents Ingham County Board of Commissioners and Ingham County Sheriff violated Section 10(1) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1); MSA 17.455(10)(1), by unilaterally changing the method for selecting candidates to fill vacant positions in the detective bureau. Respondents filed timely exceptions to the Decision and Recommended Order of the ALJ on June 9, 1999.

On September 3, 1999, the Commission received notice from the parties that the dispute underlying the charge had been settled. The parties stipulated to the dismissal of the exceptions and to the elimination of the requirement that Respondents post the notice attached to the ALJ's Decision and Recommended Order. Pursuant to that stipulation, the Commission hereby adopts as its order in this case the order recommended by the Administrative Law Judge, subject to the modification agreed to by the parties.

ORDER

It is hereby ordered that Respondents, Ingham County Sheriff and Ingham County Board of Commissioners, its officers and agents, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with Capitol City Lodge No. 141, of the Fraternal Order of Police, regarding the implementation and enforcement of the parties' collective bargaining agreement and from unilaterally modifying and refusing to follow procedures set forth in the contract for filling vacancies in the detective bureau.

(b) Interfering with, restraining or coercing employees in the exercise of their rights under PERA by failing or refusing to bargain in good faith in any manner.

2. Upon request, implement and enforce the provisions of the contract regarding filling vacancies in the detective bureau.¹

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

Dated: _____

¹Commissioner Ott did not participate in this decision.

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For Respondents:

Cohl, Stoker & Toskey, P.C.
By John R. McGlinchey, Esq.

For Charging Party:

Wilson, Lawler & Lett, P.C.
By R. David Wilson, Esq.

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 *et seq.*, MSA 17.455 *et seq.*, this case was heard in Lansing, Michigan on October 2, 1998, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC). The proceedings were based upon a June 8, 1998, unfair labor practice charge filed by the Charging Party, Capitol City Lodge No. 141, Fraternal Order of Police (FOP). Based upon the record, including briefs filed by December 28, 1998, I make the following findings of fact and conclusions of law, and issue a recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charge:

Charging Party's June 15, 1998, charge alleges that Respondent repudiated the collective bargaining agreement by unilaterally changing the method for selecting candidates to fill vacant positions in the detective bureau. Respondent did not file an answer, but argued at the hearing that the charge is a grievance in disguise and Charging Party is improperly asking the Commission to interpret the parties' agreement. Respondent also claimed that it did not commit an unfair labor practice because it has the inherent and express rights to temporarily assign personnel.

Findings of Fact:

The FOP is the exclusive bargaining agent for a non-supervisory unit of corrections officers, police officers, and detectives. The parties' latest agreement covers the period January 1, 1996 through December 31, 1998. It contains a management rights clause - article 2, section 2 - which reserves to the sheriff all rights and powers not specifically delegated, and a grievance and arbitration procedure for resolving contract disputes.

Until the instant dispute arose, vacancies in the detective bureau had been filled by following the promotional procedures for detectives set forth in Section 41, section 2, of the contract. This provision grants the sheriff authority to make final selections from a promotional list. The list includes the top sixty percent (60%) of applicants who passed a written and/or oral examination.

Deputies have also been temporarily assigned to work in the detective bureau. In 1996 or 1997, several deputies worked in the bureau for periods of twenty-eight days. In accordance with the prohibition contained in article 25, section 4, during these assignments the deputies did not receive increased pay or benefits.² Deputies have also worked in the detective bureau in a grant-funded position. At some unspecified time, the sheriff's department received a grant to investigate automobile thefts. During the years grant funds were received, three different deputies were assigned to the bureau. They each received the same pay and benefits earned by detectives. The first deputy assigned to the grant-funded position was promoted to detective and the second retired. Thereafter, the position was posted and a deputy who was on the promotional list, was appointed and worked until the grant was discontinued, about eight months.

On February 23, 1998, the parties met to discuss the Employer's proposal to fill two vacant detective positions by rotating deputies for periods ranging from six months to three years. The Employer explained that rotating deputies through the bureau would allow those interested in becoming detectives to gain knowledge and experience in investigative theories. The Employer's proposal provided that the selected deputies would be paid at the detective level, receive a clothing allowance, and the first two would be selected from names on the detective promotional list. Charging Party indicated that it, "was not agreeable to prematurely altering the terms of the current Collective Bargaining Agreement," and hoped the issue would be a subject during negotiations for a successor contract. Subsequently, the Employer posted a notice inviting all certified police officers interested in a temporary transfer to the detective bureau to submit a written request. According to the announcement, the employee selected would be assigned to the position for not more than three years and receive pay and benefits commensurate with that of a starting detective.

Shortly thereafter, Charging Party filed a grievance complaining that Respondent violated various articles of the collective bargaining agreement including articles 25 and 41. It requested that the posting be withdrawn and the vacancy filled from the promotional list as a permanent position. After candidates were selected and the vacancies filled with employees who were not on the

²Article 25, section 4, provides that employees assigned to the detective bureau for ninety days or less are not entitled to an increase in pay or benefits.

promotional roster, Charging Party filed two additional grievances. The Union complained that Respondent did not follow the promotional procedures set forth in article 41 of the agreement. It requested that the temporary appointees be removed and the vacancies filled with employees on the detective promotional list on a permanent basis. The Employer denied each grievance. Charging Party has filed a demand for arbitration of the grievance involving the position posting.

Conclusions of Law:

Repudiation of a collective bargaining agreement exists when (1) a contract breach is substantial and has a significant impact upon the bargaining unit, and (2) no bona fide dispute over the interpretation of the language of the contract is involved. *St Clair County Road Comm'n*, 1992 MERC Lab Op 316, 320; *Plymouth-Canton Schools*, 1984 MERC Lab Op 894, 897. The Commission has also noted that repudiation exists when there has been a rewriting of the agreement or a refusal to acknowledge its existence. *Central Michigan Univ.*, 1997 MERC Lab Op 501, 507; *Wayne County Juvenile Detention Center*, 1997 MERC Lab Op, 108; *Cass City Schools*, 1982 MERC Lab Op 241, 251. The Commission will not find a repudiation on the basis of an insubstantial or isolated breach. *Linden Community Schools*, 1993 MERC Lab Op 763; *Oakland County Sheriff's Dep't*, 1993 MERC Lab Op 538.

Charging Party's principal argument is that Respondent unilaterally changed the method for filling vacancies in the detective bureau by rotating employees for up to three years with detectives' pay and benefits. Respondent advances several reasons why the charge should be dismissed. It claims that the dispute is covered by the parties' agreement and involves a mere contract dispute which the Commission is without jurisdiction to resolve. Specifically, Respondent contends that article 25, section 4, expressly authorizes it to make temporary assignments and the management rights clause reserves to the sheriff all rights not specifically restricted by the contract. It asserts that it has a fundamental right to assign work, to fill or not fill vacant positions, or even to eliminate positions. According to Respondent, a deputy's eight-month assignment to the detective bureau establishes a past practice for the temporary assignments in this case.

I find no merit to Respondent's claim that this case only involves a matter of contract interpretation. Three-year rotations of employees to the detective bureau to fill vacant positions is not covered by the contract. The contract's only reference to assignments to the detective bureau is contained in article 25, section 4. This section permits employees to be assigned to the detective bureau for ninety days or less without an increase in pay or benefits. Even if, as Respondent alleges, article 25 granted it express authority to make temporary assignments, I find that three-year assignments are not temporary, but are long-term appointments which bypasses the promotional procedures set forth in article 41, section 2, of the contract.

Respondent, by rotating employees, who were not on the promotional list, for up to three years to fill detective position vacancies, has effectively rewritten the party's agreement and refused to acknowledge the existence of procedures for filling detective bureau vacancies. Further, neither Respondent's past assignments of employees to the detective bureau for twenty-eight day periods, nor a deputy's work in a grant-funded position for eight months, justify its modification of the

contract's promotional procedure. Respondent's 1996-97 assignments of employees to the detective bureau for 28-day periods, without pay, is consistent with the provisions of article 25, section 4. Moreover, the deputy's work in the detective bureau for eight months was a continuation of the parties' past practice of permitting employees to work in a specially created grant-funded position. Her assignment to the bureau ended because the grant funds were terminated, not because she had been temporarily assigned to the bureau for eight months, or for any specific period. Further, neither situation involved filling vacancies of regular detective bureau positions.

Respondent's modification of the contract's promotional procedure is significant. It reduces opportunities for bargaining unit members who have passed written and/or oral examinations to be promoted to the detective classification. If Charging Party fails to object to Respondent's long-term rotation of employees to the detective classification to fill vacancies now, it may, as ALJ Lynch observed in *City of Oak Park*, 1998 MERC Lab Op 368, 374, be found to have waived its bargaining rights in the future. See also *City of Detroit, Police Department*, 1980 MERC Lab Op 663. Compare *Cass City, supra*, where the Employer was found to have violated Section 10(1)(e) of PERA by attempting to rewrite the contract to accommodate the religious belief of an employee who objected to paying service fees under the agreement's agency shop clause.

All other arguments raised by the parties have been carefully considered and do not warrant a change in the result. Included in Respondent's argument that employees promoted to the detective bureau do not occupy permanent positions. Based on the above findings of fact and conclusions of law, I find that Respondent violated its bargaining obligation set forth in Section 10(1)(e) of PERA by modifying an established term and condition of employment. Respondent's conduct also has the effect of discouraging employees from collective bargaining in violation of Section 10(1)(a). I therefore recommended that the Commission issue the following order:

Recommended Order

It is hereby ordered that Respondent, Ingham County Sheriff and Ingham, County Board of Commissioners, its officers and agents, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with Capitol City Lodge No. 141, of the Fraternal Order of Police, regarding the implementation and enforcement of the parties' collective bargaining agreement and from unilaterally modifying and refusing to follow procedures set forth in the contract for filling vacancies in the detective bureau.

(b) Interfering with, restraining or coercing employees in the exercise of their rights under PERA by failing or refusing to bargain in good faith in any manner.

2. Upon request, implement and enforce the provisions of the contract regarding

filling vacancies in the detective bureau.

3. Post, for thirty (30) consecutive days, the attached Notice to Employees in conspicuous places at the Employer's place of business, including all locations where notices to employees are customarily posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

PURSUANT TO AN UNFAIR LABOR PRACTICE PROCEEDING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, AFTER A PUBLIC HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE, THE INGHAM COUNTY SHERIFF AND INGHAM COUNTY BOARD OF COMMISSIONERS WERE FOUND TO HAVE VIOLATED THE PUBLIC EMPLOYMENT RELATIONS ACT OF THE STATE OF MICHIGAN. PURSUANT TO THE ORDER OF THE COMMISSION WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL cease and desist from unilaterally modifying working conditions relating to the selection of candidates to fill vacant positions in the detective bureau without bargaining in good faith with the Capitol City Lodge No. 141, of the Fraternal Order of Police.

WE WILL upon request, bargain with Capitol City Lodge No. 141, of the Fraternal Order of Police regarding any change in working conditions, including appointments to the detective bureau for terms exceeding ninety days.

All of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

By _____

Title _____

Date: _____

This notice must remain posted for a period of thirty (30) consecutive days and must not be altered, defaced, or covered by any other material. Questions concerning this notice should be directed to the Michigan Employment Relations Commission, 1200 6th Street, 14th Floor, Detroit MI 48226, (313) 256-3540.