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

In the Matter of:

DEWITT TOWNSHIP,
Respondent-Public Employer,

Case No. C98 K-222

-and-

POLICE OFFICERS LABOR COUNCIL,
Charging Party-Labor Organization.
_____/

APPEARANCES:

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

John A. Lyons, P.C., by Mark Douma, Esq., for Charging Party

## DECISION AND ORDER

On October 29, 1999, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

## ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date: _____

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APPEARANCES:

For the Public Employer: Cohl, Stoker & Toskey, P.C.
by John R. McGlinchey, Esq.

For Labor Organization: John A. Lyons, P.C.
by Mark Douma, 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(10) *et seq.*, this case was heard in Detroit, Michigan on May 11, 1999, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC). The proceeding was based upon an unfair labor practice charge filed by the Police Officers Labor Council against Dewitt Township on November 5, 1998. Based upon the record and post-hearing briefs filed by July 19, 1999, 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 November 5, 1998, charge asserted that Respondent threatened to change bargaining unit members' working hours for filing grievances and unilaterally changed working hours without bargaining. Respondent filed an answer denying the charges on November 30, 1998.

Finding of Facts:

Charging Party is the exclusive bargaining representative for full-time patrolmen employed by Respondent. The parties' latest collective bargaining agreement covers the period January 1, 1996 through December 31, 1998, and contains a grievance and binding arbitration procedure for resolving disputes. Article 19, Section 1 reads:

> Employees covered hereby are required to be on duty either a minimum of eight (8) hours during each scheduled working day or a maximum of ten (10) hours during each scheduled duty day ... The Township reserves the right to establish a twelve (12) hour work day at its sole discretion. This Article may be opened by either party through the duration of the contract for the purpose of implementation of a twelve (12) hour work day.[1]

In August 1992, Respondent unilaterally switched from ten hour shifts to eight hour shifts and denied a grievance filed by Charging Party challenging the propriety of the shift change. A year later, in July 1993, the patrol officers' shifts were changed from eight hours back to ten hours. The change to a ten hour shift caused a few employees to complain about schedule changes resulting from unplanned illnesses or injuries. On or about April 1998, a grievance involving a changed schedule was resolved when the police chief worked the affected officer's shift.

During a May 29, 1998, staff meeting, patrolman Bartlett asked the police chief, "Why is it every time things don't go your way, you threaten us with 8-hour shifts?" The chief testified that he answered by stating that no one was being threatened, but if the department could not meet the needs of the community through cooperation by the members within the department, then they may need to look at the shift selection. Union steward Steven Brandman recalled the chief saying something to the effect that "people up front" were not going to be happy and they could find themselves back on eight hour shifts if officers could not work together to resolve scheduling conflicts and continued to file grievances. Brandman testified that he did not characterize the chief's statement as a threat because the eight hour shifts, which were to be effective October 1, 1998, had already been posted. Respondent's witness, officer Scott Ciupak, testified that he did not recall the chief making a threat to implement an eight hour shift if he received anymore grievances. Officers Melanie Briggs and James Terrill, called as rebuttal witnesses by Charging Party, both testified that the chief responded to Officer Bartlett's question by stating that if any more grievances were filed, they would go on eight hour shifts.

After the May 29 meeting, two grievances were filed because of schedule changes. Both were resolved. During the last week of September, a few days before the eight hour shifts were to take effect, Union steward Brandman asked the chief about "the possibility of, at some point, of going back to the ten hour shift."

Conclusions of Law:

Charging Party claims that the police chief violated Section 10(1)(a) of PERA when he made a clear threat at the May 29, 1998, meeting by stating that shift hours would be changed from ten hour shifts to eight hour shifts if any more grievances were filed. According to Charging Party, the words were meant to discourage and penalize employees from filing grievances.

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[1]A similar provision was included in the parties' prior contract.

It is well settled that a public employer may not threaten to penalize employees because they filed grievances. *Detroit Board of Education*, 1994 MERC Lab Op 841. The record developed in this case, however, fails to show that the employer threatened to change shifts from ten hours to eight if employees continued to file grievances. The evidence presented by Charging Party was contradictory and no more persuasive than that presented by Respondent. While two of Charging Party's witnesses, Terrill and Briggs, testified that the police chief threatened to change work hours if more grievances were filed, its chief witness, Union steward Brandman, whom I credit, disagreed. Brandman related that he did not characterize the chief's remarks as a threat because in May 1998, when the remarks were made, the shift change had already been posted.

Charging Party also claims that Respondent's unilateral change of shifts hours without bargaining violated Section 10(1)(e) of PERA. I find no merit to this assertion because the parties have already bargained about the length of the work day. Article 19, Section 1 of the parties' contract provides that employees may be required to work a minimum of eight *or* ten hours each day. The Commission will not engage in the interpretation of labor contract, where as here, the matter is covered by the contract and the parties have agreed to a final and binding method of resolving disputes. *City of Saginaw*, 1986 MERC Lab Op 209. Significantly, Charging Party recognized that changes in shift schedules present questions of contract interpretation and filed grievances in 1992 and April 1998 challenging Respondent's right to do so. However, to address Respondent's decision to change work schedules in October 1998, Charging Party acknowledges that it elected to file the instant unfair labor practice charge rather than file a grievance.

## Recommended Order

The unfair labor practice charge is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____