STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

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

Case No. C98 L-250

-and-

CAPITOL CITY LODGE 141, FRATERNAL ORDER OF POLICE, LABOR PROGRAM, INC., INGHAM COUNTY SHERIFF DEP'T NONSUPERVISORY DIVISION,
Charging Party-Labor Organization.
_____/

APPEARANCES:

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

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

DECISION AND ORDER

On February 10, 2000, Administrative Law Judge James P. Kurtz 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

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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:

Cohl, Stoker & Toskey, P.C., by John R. McGlinchey, Atty, for the Respondent Employers

R. David Wilson, Atty, Wilson, Lawler & Lett, PLC, for the Charging Party-Labor Organization

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

This matter was heard at Lansing, Michigan, on March 4, 1999, before James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to a complaint and notice of hearing dated January 8, 1999, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216, MSA 17.455(16). Based upon the record, including post-hearing briefs filed by both parties on or before June 1, 1999, the undersigned makes the following findings of fact, conclusions of law, and recommended order under Section 16(b) of PERA, and Section 81 of the Administrative Procedures Act of 1969, MCL 24.281, MSA 3.560(181):

The Charge and Background Matters:

This charge was filed at the Lansing office on December 30, 1996 by the above-named Union against the public co-employers, Ingham County Board of Commissioners and the Sheriff of Ingham County, herein referred to as the Employer, and it was amended on February 4, 1999. Charging Party represents a bargaining unit consisting of deputized nonsupervisory police officers, corrections officers, and detectives, employed by the Ingham County Sheriff Department; excluding supervisory employees. The Union also represents in a separate bargaining unit the supervisory employees of the

department, including sergeants, lieutenants, and captains, but excluding two majors, the chief deputy, the undersheriff, and the sheriff. The department employs approximately 207 employees. The Union charged that the Employer violated Section 10(1)(a) and (c) of PERA by transferring deputy John Haven from his road patrol assignment at the Webberville office to the corrections division at the jail, effective January 2, 1999. The Union contends that the transfer was in retaliation for Haven's participation in an arbitration hearing on November 24, 1998, relative to a grievance concerning the Employer's disciplinary action imposed against him on April 14, 1998, for an incident occurring in March 1998.

Answers to the charge and amended charge were filed by the Respondents on January 20 and February 17, 1999, respectively. The answers admitted the essential background facts, but denied that the transfer of Haven was in any manner retaliatory or coercive. The answers contended that this dispute involved the interpretation of the collective bargaining agreement, which by its terms expired on January 1, 1999, and that such interpretation should be obtained by the Union under the grievance and arbitration procedures of the contract.

Factual Findings–Haven Arbitration Hearing:

Haven has been employed as a deputy in the sheriff department for more than 16 years. During that time he has held a number of positions in addition to road patrol, including court security and in excess of six years as a corrections officer. His most recent assignment before his transfer was as a contract law enforcement officer for the Village of Webberville, which position he has held since November 1997. The past practice and policy of the department regarding assignments and transfers is that the Sheriff has sole discretion with regard thereto, no explanation or reasons need be advanced to the Union or to the employees, and there is no basis under the contract for a grievance. The Union has attempted unsuccessfully over the years to modify this absolute right of the Sheriff, both in negotiations and in the grievance-arbitration procedure. There are about 40 to 50 transfers of employees each year, which the Employer admits do not conform to any due process standard.

In April 1998 Haven was disciplined by the Sheriff for his alleged failure to respond to a dispatched call outside his assigned area of the Village of Webberville. A grievance was filed contesting the discipline, and a hearing before an arbitrator was held on November 24, 1998. Although the policy of the department is that employees are not to attend arbitration hearings while on duty, Haven testified that he received permission to do so from the lieutenant who is his supervisor. Haven works a straight day shift from 7-3, and he is the only deputy assigned to that shift. There are two deputies assigned to Webberville on the night shift. Haven attended his arbitration hearing on November 24 while on duty and in uniform. The hearing lasted all day until after 4:00 p.m. Since he was two hours over his regular shift by the time he returned to Webberville, Haven asked his sergeant the same day whether he should put in for overtime. He was told that he should account for his time, but not request overtime. Haven did not put in a request for overtime.

The next day on November 25, Haven was called into the department during his work day to meet with Captain Ryan. Haven was asked by Ryan where he received permission to attend the

arbitration hearing while on duty and in uniform. Haven explained that he had received permission from his lieutenant. Ryan told Haven that he would have to put in a request for a vacation day or personal time for the hearing, which Haven did. Ryan also asked Haven about his coaching of cross-county at his daughter's school, the Williamston Middle School. One of Ryan's responsibilities is to monitor any outside employment by employees of the department, who must receive permission for any compensated services. Ryan's wife, who is teacher at the school, had seen Haven performing his coaching duties. Haven stressed that his coaching was on a strictly voluntary basis, and that he received no remuneration for the coaching. After satisfying himself that Haven was not being paid for work outside the department, no further action was taken by Ryan in regard to his volunteer coaching.

Transfer of Haven:

In early November 1998 Undersheriff Myers received a telephone call from a member of the Webberville Village council, who asked that he attend a meeting with council members. This meeting was held on November 10, with Myers, Ryan, and the chief deputy in attendance. The Village representatives were concerned that there had been a number of events, such as football games and field days, where the Village wanted coverage by the department, but did not receive it. Haven had stated that he would like to attend such functions, but the administration was against it. This information distressed the undersheriff, who testified that the department intended to provide under its contract with the Village coverage for such special events.

Immediately after the meeting with Webberville representatives, the undersheriff, the chief deputy, and Ryan met in a restaurant and discussed the job performance of Haven, including his April discipline. The Webberville office has no command officer, and there is very loose supervision of the deputies assigned to that office, since the department is located in Mason which is 20 to 30 minutes away. The undersheriff concluded, on the basis of the disciplinary action, and his discussion with the Webberville officials and department representatives, that Haven would leave or stay in the Village whenever he felt like it, and that Haven was undermining the department and needed closer supervision. Myers decided at this restaurant meeting to recommend to the Sheriff that Haven be transferred to the corrections division as soon as possible. He testified that this decision occurred before, and had nothing to do with, the arbitration hearing or the attendance of Haven while on duty and in uniform, or Haven's coaching responsibilities, which he knew nothing about until after the charge was filed. The officers agreed that Ryan would notify Haven of the transfer after its approval by the Sheriff.

At some unspecified time after the November 10 meetings, Undersheriff Myers met with the Sheriff and the latter approved the transfer of Haven to the corrections division. Myers testified that their decision to transfer Haven was based only on the March and November 10 incidents. According to Myers, such matters as Haven's attendance at the arbitration hearing and his overtime request in regard thereto, his volunteer coaching, and the other matters raised in the record, which were handled by lower supervision, had nothing to do with the transfer. A notice to all certified police officers, dated November 25 by Major Spyke, was posted on or after that date, regarding the Webberville

assignment. The notice asked that any interested officer submit a written request to Spyke's office by December 3. The notice indicated that, "You must be self motivated, have good public relation skills, and be willing to work with various community members." The department issued an "Official Bulletin," dated December 16, listing the transfers of Haven and two other deputies, effective January 2, 1999.

On December 2 or 3, Captains Ryan and Wilcox, the latter being in charge of corrections, met with Haven, informed him of the transfer, and gave him a training schedule. Haven asked why he was being transferred to the corrections division. According to Haven he was told by Ryan that "it was the results from the arbitration hearing," and because "I was not keeping my command officers abreast of what was going on." He also testified that there was some discussion in regard to Haven not getting permission to go to the arbitration hearing on duty and in uniform, and not getting permission from his sergeant to attend an ordinance violation meeting with the Webberville Village Council back in August or September. Haven denied that he had not received the proper permission to attend the arbitration and council meetings, and pointed out the facts as to each, including the preparation of a report to his sergeant relative to the council meeting. Ryan concluded with the statement that it was not his decision to transfer Haven, but it was the decision of the administration. The transfer did not affect Haven's rate of pay, but instead of eight hour shifts that he worked in Webberville, the jail works 12-hour shifts.

Captain Ryan testified that when he notified Haven of his transfer he did not go into any detail about the reasons in accord with the policy of the Sheriff on transfers or assignments, except to respond to Haven's questions. He informed Haven that he was being transferred because "we had a concern about him keeping his command officers abreast of what he was doing, and that we were moving him to corrections where he'd be in a closer supervised environment." Ryan testified that the question of attending the arbitration hearing on duty, and whether he had permission to do so, was raised by Haven, but as far as Ryan was concerned the arbitration hearing itself was not a factor in the transfer. At that time Ryan had not checked on whether Haven had received permission from his command officer to attend the arbitration hearing on duty, and this was another example of not keeping his command officers apprized of what was going on. When Haven convinced him that he had informed his sergeant that he would be at the hearing, Ryan stated, "irregardless, we serve where the Sheriff wants us to serve."

Discussion and Conclusions:

The only issue presented by the charge is whether the evidence establishes that the transfer of Haven from the road patrol to the corrections division was motivated by his protected activity in pressing his grievance and attending his arbitration hearing on November 24, 1998. Compare *Huron County Sheriff*, 1976 MERC Lab Op 481, 488-489 (transfer from desk to road patrol found not discriminatory), with *Washtenaw County Sheriff*, 1969 MERC Lab Op 118, 135 (demotion of union president because of union activity). I find that the evidence is insufficient to make such a conclusion. See, generally, *Muskegon-Oceana Comm. Action Against Poverty*, 1998 MERC Lab Op 601, 609-610. In the instant case, the decision to transfer Haven was made by Undersheriff Myers on

November 10, immediately after he and the other two officers met with officials of the Village of Webberville. At that time, the March incident involving an alleged failure to follow orders, and the dissatisfaction of Webberville officials with the service the Village was receiving under its contract with the sheriff, were the two expressed reasons that prompted the transfer decision, two weeks before the arbitration hearing and the events that surrounded it.

The fact that one of the two main motivating factors for the decision to transfer Haven was the March incident does not have any PERA implications of itself, and there is no contention or evidential showing that the administration of the department was upset by Haven's use of the contractual grievance-arbitration procedure, as such. Charging Party relies on the reference by Ryan to the arbitration hearing, when notifying Haven of his transfer, for a finding that Haven's transfer was motivated by hostility toward his exercise of his contractual rights and, thus, caused by his protected activity. Assuming the statement of Ryan was made as testified by Haven, Charging Party reads more into it than is justified under the facts in this case. One of the main reasons for the transfer was admittedly the subject of the arbitration hearing, so a reference to it in that context is clearly not animus. The March failure to respond to a dispatch was only another example of what the Sheriff and Undersheriff considered to be Haven's failure to carry out departmental policies and to follow orders, and which entered into their decision that Haven required closer supervision.

Whatever Ryan's intention might have been when notifying Haven of his transfer, his remarks about the arbitration hearing are at best ambiguous. Further, the decision to transfer had been made by the Undersheriff two weeks before the arbitration hearing, and then approved by the Sheriff, and Ryan was merely the conduit to notify Haven of the decision. The fact that the transfer decision was made two weeks before the hearing on Haven's March discipline, and that he was notified of the transfer a week after the hearing, does not, without more, taint that decision and make the transfer discriminatory or retaliatory under the record herein. Thus, I conclude that Ryan's alleged statements to Haven when notifying him of his transfer do not affect the legitimacy of the original decision of the Undersheriff and Sheriff to transfer him and do not prove animus in the making of that decision. *St. Joseph Hospital*, 1973 MERC Lab Op 170, 176-177 (remarks of supervisor had no bearing on transfer decision); *Gladwin Comm. Schools*, 1969 MERC Lab Op 275, 282-283 (decision on transfer made before confrontation at bargaining table).

Based on the above, and having examined carefully all of the allegations and contentions of the parties hereto, including any not specifically addressed in this decision, I conclude that there is insufficient evidence of a violation of PERA in regard to the transfer of deputy Haven from the road patrol to the corrections division. In view of this conclusion, there is no need to address the contentions of the parties relative to remedy and the exclusive right of the Sheriff under Michigan law to assign law enforcement powers to his or her employees. See *Monroe County Sheriff v FOP, Lodge 113*, 136 Mich App 709, and cases cited at 720; see also *Escanaba v MLMB*, 19 Mich App 273, 73 LRRM 2057 (1969). There being no other evidence of a violation of PERA herein, I recommend that the Commission issue the following order:

ORDER DISMISSING CHARGE

Pursuant to Section 16 of PERA, and based upon the findings and conclusions set forth in the above decision, the charge filed in this matter is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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James P. Kurtz
Administrative Law Judge

DATED: _____