STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TOWNSHIP OF ARGENTINE,
Respondent-Public Employer,

Case No. C99 A-9

-and-

POLICE OFFICERS ASSOCIATION
OF MICHIGAN,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Dean & Fulkerson, P.C., by Kenneth W. Zatkoff, Esq., for Respondent

Peter W. Cravens, Esq., Assistant General Counsel, for Charging Party

DECISION AND ORDER

On April 27, 2000, Administrative Law Judge Nora Lynch issued her 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

_____
Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Date: _____

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APPEARANCES:

Kenneth W. Zatkoff, Dean & Fulkerson, P.C., for the Public Employer

Peter W. Cravens, Assistant General Counsel, POAM, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Detroit, Michigan, on June 21, 1999, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on January 12, 1999, by the Police Officers Association of Michigan, alleging that the Township of Argentine had violated Section 10 of PERA. Based upon the record, including briefs filed by the parties on or before November 2, 1999, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

The charge alleges that:

> The conduct of the Respondent in unilaterally dismissing a mutually selected arbitrator repudiates and renounces the clear and unambiguous arbitration procedure in the collective bargaining agreement and is in violation of section 10(1)(e) of the Public Employment Relations Act.

Facts:

The Police Officers Association of Michigan represents a bargaining unit of all full-time and regular part-time sworn police officers of the Township of Argentine. The Township and the POAM are parties to a collective bargaining agreement which contains a grievance procedure ending in arbitration. Section 4.8 of the grievance procedure reads as follows:

> 4.8 Failure of Settlement - Arbitration. If a settlement is not achieved in Step 3 of the grievance procedure, the Union may request arbitration. The arbitrator shall be selected in a manner determined by both parties to this agreement. In the event the Township and Union cannot agree on an arbitrator, a request will be made by the Union to the Federal Mediation and Conciliation Service. The arbitration shall be conducted under the Federal Mediation and Conciliation Service arbitration policies, functions, procedures and rules and such other provisions of this agreement as they apply.

On January 23, 1998, the POAM filed a grievance concerning the discipline of Officer Rhonda Hernandez. The grievance proceeded through the steps of the grievance procedure and on February 17, 1998, the POAM requested arbitration through the Federal Mediation and Conciliation Services. Rather than waiting for a list of arbitrators from FMCS, POAM business agent Thomas Griffin and Employer attorney Kenneth Zatkoff mutually agreed to utilize Paul Glendon as the arbitrator. Zatkoff testified that they did not discuss his cancellation policy and he did not know what Glendon's policy was at the time they made the selection.

Griffin subsequently notified FMCS of their selection. On May 12, 1998, Glendon wrote to both parties indicating acceptance of the appointment and offering a hearing date of October 19, 1998. Enclosed with this letter was a copy of his fee schedule, including per diem fee, other expenses, and cancellation and postponement fees. Zatkoff testified that he did not look at the fee schedule but simply put it in the file. The October hearing date was acceptable to both sides and was confirmed by Glendon in a letter dated June 3, 1998.

On September 8, 1998, Zatkoff wrote to Glendon explaining that a conflict had arisen in his schedule and he needed to adjourn the October 19 hearing to a mutually acceptable date. By letter of September 14, 1998, Glendon acknowledged receipt of Zatkoff's request, offered other dates, and enclosed a bill for $300 to the Employer for the postponement. The parties subsequently attempted to find another acceptable date. On November 18, Glendon submitted a Statement to Argentine Township, care of Zatkoff, indicating "Unpaid Arbitrator's Bill dated September 14, 1998.....$300. PLEASE REMIT WITHOUT FURTHER DELAY."

According to Zatkoff, he discussed Glendon's policy with Township representatives and they agreed that the policy was extremely unreasonable. On November 20, 1998, Zatkoff wrote the following letter to Glendon:

> I am in receipt of your bill for postponement of the above-entitled matter and have forwarded the same to Argentine Township for payment. As you know, the hearing in this case was originally scheduled for October 19, 1998. Unfortunately, due to my "on call" travel obligations with another client, I was forced to request an adjournment. Even though I did this some 39 days in advance, my client has been asked to pay a postponement fee of $300.00. While I understand your need to have firm commitments on hearing dates, I cannot in good conscience continue to subject my client to postponement fees when the request for same is made more than 30 days prior to hearing. Because of the fluctuating nature of my travel schedule, it is necessary that I have greater scheduling flexibility than you are willing to allow. Accordingly, by way of this letter, I am advising you and the Union that the Township no longer wishes to utilize your services as an arbitrator for the above-references matter.

Glendon responded as follows:

> This will acknowledge receipt of your letter of November 20 advising that your client "no longer wishes to utilize [my]services in this matter because of my cancelation fee policy and your inability to give "firm commitments" for hearing dates, regarding which three thoughts come to mind: first, this policy was known to the parties when they selected me, since it is on file with FMCS, and was confirmed when I first offered hearing dates, since a copy of my fee schedule accompanied that letter; second, such a policy hardly is unique to *this* arbitrator, and is a virtual necessity to make a living as a full-time arbitrator since the likelihood of rescheduling dates even with thirty-nine days notice is very slim; third, it is interesting that high dudgeon did not set in with you or your client when my bill was sent the first time, on September 14, but two months later, after numerous attempts to get the matter rescheduled, when I had the poor taste to remind you that it had not been paid and ask for remittance without further delay.
>
> Be that as it may, I of course will abide by your client's decision, close the file, and so notify the FMCS, but I still expect the bill for cancellation fee to be paid; please let me know whether your office

> will pay it or I should expect payment directly from your client, and, if the latter, please furnish name and address of the person responsible for payment.

Following this exchange of correspondence, on December 3, POAM attorney Peter Cravens wrote to Zatkoff indicating that the POAM would not stipulate or agree to Zatkoff's unilateral decision to change arbitrators and dismiss Glendon from the case. Cravens requested that Zatkoff rescind his letter of November 20 and acknowledge Glendon as the mutually selected arbitrator, otherwise the POAM would be forced to file an unfair labor practice.

Zatkoff testified that he attempted to discuss the matter with the POAM business agent on numerous occasions, suggesting that they select another arbitrator and proceed to arbitration. The POAM refused to do so.

Discussion and Conclusions:

Charging Party alleges that the Employer's unilateral dismissal of the arbitrator violates Section 10(1)(e) of PERA by repudiating and renouncing the arbitration procedure in the collective bargaining agreement. Respondent maintains that its actions do not rise to the level of an unfair labor practice; the Township has not refused to arbitrate the case and it did not withdraw its acceptance of the arbitrator in order to delay the arbitration process. Respondent characterizes the dispute as a bona-fide question of contract interpretation.

The Commission has consistently held that an employer's alleged breach of contract will not constitute an unfair labor practice unless repudiation of the contract can be demonstrated. A finding of repudiation cannot be based on an insubstantial or isolated breach of contract. *Oakland County Sheriff*, 1983 MERC Lab Op 538, 542. The Commission will find repudiation only when there has been a substantial abandonment of the collective bargaining agreement or relationship. *Cass City Public Schools*, 1980 MERC Lab Op 956, 960.

In the instant case the Employer had second thoughts with respect to the arbitrator chosen informally by both sides, based upon his strict cancellation policy. It notified the Union that it was willing to proceed to arbitration but wished to mutually select another arbitrator. I find no repudiation of the contract established by this action. I further find that the actions of the Employer or its counsel in this matter were not unreasonable under the circumstances and were not intended to delay or frustrate the grievance-arbitration procedure. Absent conduct closing the door to the entire grievance procedure, the Commission does not involve itself in procedural matters relating to grievance processing. *Kalamazoo Public Schools*, 1977 MERC Lab Op 771, 793. It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

DATED: _____