STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

VILLAGE OF ROMEO,
Respondent-Public Employer,

Case No. C99 C-46

-and-

VILLAGE OF ROMEO FIRE FIGHTERS ASSOCIATION,
Charging Party-Labor Organization.
_____/

APPEARANCES:

McLean, Mijak & Clark, P.C., by Mark L. Clark, Esq., for Respondent

Andary & Andary, by James R. Andary, Esq. and Jeffrey Davis, Esq., for Charging Party

DECISION AND ORDER

On April 17, 2000, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent Village of Romeo did not unlawfully repudiate its contract with Charging Party Village of Romeo Fire Fighters Association or otherwise violate its duty to bargain in good faith under Section 10 of the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.210; MSA 17.455(10)(1), and recommending that the Commission dismiss the charges and complaint. On May 10, 2000, Charging Party filed timely exceptions to the Decision and Recommended Order of the ALJ. Respondent filed a timely response to the exceptions and brief in support of the ALJ's decision on May 18, 2000.

The facts in this case are not materially in dispute. Charging Party represents a unit consisting of all employees of Respondent's fire department, excluding the fire chief and assistant chief. The most recent collective bargaining agreement between the parties expired on June 30, 1998. However, that agreement provided that unless either party gave notice of termination not less than 60 days prior to its expiration, the contract would continue in effect from year to year. Neither party gave notice of termination prior to June 30, 1998, and there is no dispute that the agreement was still in effect on February 8, 1999.

Article 14 of the contract contained various management rights provisions. Article 14, Section

1, gave Respondent the right to "[c]ontract services by others, provided the contract services shall not be for fire services for which regular fire fighters are available or EMS, and all fire, EMS, fire rescue, or fire related services shall first be made available to Romeo Fire Fighters." Article 10 of the contract contained a grievance procedure culminating in final and binding arbitration by a neutral party. This provision gave the Union and Respondent's employees the right to file a grievance "in the event of a dispute, difference or disagreement between the Employees, the Association and the Employer."

The dispute in this case involves Respondent's February 8, 1999, decision to subcontract the work of its fire department to a neighboring township. As a result of that decision, all members of Charging Party's unit were terminated. Immediately thereafter, the Union filed a grievance alleging that the subcontracting violated Article 14(1) of the collective bargaining agreement.[1] On March 8, 1999, the Union filed an unfair labor practice charge alleging that Respondent's action constituted an unlawful repudiation of the collective bargaining agreement. Alternatively, Charging Party argued that Respondent had a duty to bargain with the Union regarding this matter, and that the Employer breached that duty by unilaterally deciding to subcontract bargaining unit work. In recommending dismissal of the charge, the ALJ found that the parties had a bona fide dispute over whether the language of Article 14 of the contract prohibited Respondent from subcontracting the work under the circumstances present in this case. Therefore, the ALJ concluded that this dispute should be resolved not by the Commission, but through the mechanism agreed to by the parties in their collective bargaining agreement.

On exception, Charging Party contends that the ALJ erred in finding that Respondent assigned all work to the Union's members when the evidence clearly demonstrated that the Employer unilaterally terminated the collective bargaining agreement and offered all fire department functions to a third party. This assertion misconstrues the ALJ's findings of fact and conclusions of law. In her decision, the ALJ neither stated nor implied that bargaining unit work was offered exclusively to members of Charging Party's unit. Rather, the ALJ merely set forth the arguments of the parties, including the Employer's contention that it assigned the work first to Charging Party's members, and that it decided to subcontract fire suppression services and EMS work to a third party only after this arrangement proved unsatisfactory. We see no error in the ALJ's characterization of Respondent's argument.

Next, Charging Party contends that the ALJ erred in finding that the collective bargaining agreement entitled Respondent to subcontract both fire suppression and EMS work to Bruce Township. Once again, the Union distorts the ALJ's actual conclusions in this regard. At no point did the ALJ conclude that Respondent was authorized to subcontract bargaining unit work under the terms of the contract. Rather, the ALJ correctly determined that a bona fide dispute existed over whether the language of Article 14 of the agreement prohibited Respondent from subcontracting the work under the circumstances of this case. As noted in the Decision and Recommended Order, it is

[1] The grievance was processed through all steps of the grievance procedure and was pending arbitration at the close of the hearing in this case.

not the function of this Commission to judge the merits of arguments concerning the contract's meaning. We have stated on numerous occasions that an unfair labor practice proceeding is not the proper forum for the resolution of contract disputes. See e.g. *City of Pontiac Police Dept,* 1997 Lab Op 201, 209, and cases cited therein. Since there was a bona fide dispute concerning the interpretation and application of the language of Article 14, it follows that there could be no repudiation of that provision of the agreement. When Respondent entered into the contract containing the subcontracting clause of Article 14, it satisfied its duty to bargain over any decision regarding the subcontracting of bargaining unit work during the term of the contract. Whether Respondent's decision to subcontract all fire department function to a third party was prohibited by the terms of that clause is a matter properly before the grievance mechanism of the agreement.

All other arguments raised by the Union have been carefully considered and do not warrant a change in the result.

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

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Maris Stella Swift, Chair

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Harry W. Bishop, Member

_____

C. Barry Ott, Member

DATED: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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APPEARANCES:

McLean, Mijak & Clark, P.C., by Mark L. Clark, Esq., for the Respondent

Andary & Andary, by James R. Andary, Esq. and Jeffrey Davis, Esq., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), as amended, MCL 423.210 & 423.216; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on July 1 and October 18, 1999, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before December 7, 1999, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Positions of the Parties:

The charge was filed on March 8, 1999 by the Village of Romeo Fire Fighters Association against the Village of Romeo. On February 8, 1999, Respondent's Board of Trustees voted to subcontract the work of its fire department to a neighboring township. As a result of this decision, Charging Party's entire unit was terminated. The charge asserts, first, that Respondent's action constituted an unlawful repudiation of the parties' collective bargaining agreement. Charging Party also argues, in the alternative, that Respondent had a duty to bargain with Charging Party over the subcontracting decision, and that it violated its duty to bargain in good faith.

Respondent denies that it violated the collective bargaining agreement. Respondent also asserts that because the parties' dispute is over the interpretation of the contract, Charging Party's

claim that it violated its duty to bargain is without merit. Respondent further argues that Charging Party's claim that Respondent failed to bargain in good faith over the subcontracting decision is untimely under Section 16(a) of PERA because Charging Party knew more than six months prior to filing the charge that Respondent was soliciting proposals from other entities to take over Respondent's advanced life support (ALS) emergency medical services. Finally, Respondent insists that it did bargain with Charging Party over the subcontracting decision.

Facts:

The Collective Bargaining Agreement

Charging Party represents a bargaining unit described in its contract as consisting of all employees of Respondent's fire department, excluding the fire chief and assistant chief. The expiration date of the parties' most recent collective bargaining agreement was June 30, 1998. However, the agreement provided that unless either party gave notice of termination not less then 60 days prior to the expiration date of the contract, the agreement would continue in effect from year to year. Neither party gave notice of termination prior to June 30, 1998, and there is no dispute that the contract was still in effect on February 8, 1999.

Article 14 of the contract contained various management rights provisions. Article 14, Section 1, gave Respondent the right to:

> contract services by others, provided the contract services shall not be for fire services for which regular fire fighters are available or EMS, and all fire, EMS, fire rescue, or fire related services shall first be made available to Romeo Fire Fighters.

Article 10 of the contract contained a grievance procedure culminating in final and binding arbitration by a neutral party. Under this provision Charging Party and/or an employee had the right to file a grievance "in the event of a dispute, difference or disagreement between the Employees, the Association and the Employer."

Events Leading to the Subcontracting Decision

Prior to 1997, the Romeo Fire Department provided fire suppression services and basic life support (BLS) emergency medical services utilizing paid on-call firefighters and a part-time fire chief. In 1996, Respondent's Board of Trustees (the Board) formed a committee to discuss upgrading Respondent's emergency medical services to include ALS. On September 16, 1996, the Board adopted its committee's recommendations. Pursuant to these recommendations, the Board agreed that the fire department would provide ALS services for a trial period of one year, commencing April 1, 1997, and that after that period the Board would decide whether it should continue to provide these services. Since only a few of the existing employees possessed ALS certification, the fire department hired a number of part-time ALS-certified employees to handle ALS runs. These employees had no fire suppression responsibilities. They were paid per run, but were also required to be "on duty" at the fire house a certain number of hours per week for which they were paid $1.50

per hour.

In its September 16, 1996 resolution, the Board directed the fire department to:

> Complete negotiations between the Study Committee and the Romeo Fire Fighters Association Bargaining Committee for a comprehensive contract written and adopted [sic] to operate the advanced life support service, which shall address, but not be limited to, such issues as wages, working conditions, including dispatch responsibilities, and new management policies for current services as well as advanced life support service.

On February 10, 1997, Charging Party's vice president sent the fire department a proposed addendum to the 1995-98 collective bargaining agreement. This addendum covered employees who did only ALS work. The fire department did not respond to this proposal, and Charging Party did not make any further requests to bargain for these employees. Prior to February 8, 1999, neither party regarded the ALS employees as part of the bargaining unit.

In early 1998, the Board hired a private consultant to study the operations of the fire department. The consultant's report was presented to the ALS study committee at a public meeting held on September 3, 1998. Charging Party's vice-president and other members of the bargaining unit were present at this meeting. The consultant noted that the fire department was having problems maintaining adequate ALS staffing. The consultant discussed several possible solutions, including upgrading the fire department to a mix of full-time and part-time employees, contracting with the nearby Richmond-Lenox ambulance authority for all emergency medical services (EMS), and contracting with adjoining Bruce Township to provide both fire suppression and EMS. Based on cost, the consultant recommended that the Board maintain its fire department but have its EMS services provided by Richmond-Lenox. The consultant also recommended the hiring of a full-time fire chief and other managerial changes for the fire department. After the meeting the committee sent out requests for proposals to provide EMS services. Three entities responded: Richmond- Lenox, its own fire department, and Bruce Township. The fire department proposed the hiring of six full-time employees qualified to perform both ALS and fire suppression. The Richmond-Lenox proposal covered EMS only. Bruce Township indicated that it was not interested in providing only EMS.

On October 5, the study committee met with the full Board at a public meeting. The Board decided to continue providing EMS services through its fire department. Two Board members were designated to discuss a budget and other details with fire department representatives. Between October 3 and November 30, the fire department representatives provided the Board members with five or six different proposed budgets for a restructured department. On November 30, the Board rescinded its previous decision. It voted to reopen discussions with Bruce Township, and to enter into an agreement with that entity as soon as possible. On February 8, 1999, after heated public discussion, the Board voted to enter into a contract with Bruce Township to take over all fire department functions. At the conclusion of this meeting, fire department employees asked if they were terminated and were told by the Board president that their services were no longer needed.

On February 16, 1999, Charging Party filed a grievance alleging that the subcontracting violated Article 14(1). As of the close of the hearing in this case, the grievance had been processed through all steps of the grievance procedure prior to arbitration.

On April 19, 1999, the Board passed a resolution terminating its contract with Charging Party effective July 1, 1999.

Discussion and Conclusions of Law:

Charging Party asserts that by entering into the agreement with Bruce Township Respondent violated Article 14(1) of the contract. According to Charging Party, the statement "all fire, EMS, fire rescue, or fire related services shall first be made available to Romeo Fire Fighters," unambiguously prohibited Respondent from contracting out work which its existing employees were capable of performing. Respondent, however, argues that it did assign the work first to Charging Party's members, and only decided to subcontract after this arrangement proved unsatisfactory. According to Respondent, therefore, it was entitled under the contract to subcontract both fire suppression and EMS work.

An employer does not breach its duty to bargain in good faith merely by violating a provision of its collective bargaining agreement. The Commission has held that an employer commits an unfair labor practice when it repudiates its collective bargaining agreement and/or its collective bargaining relationship with the union. The Commission has defined "repudiation of a collective bargaining agreement," as an attempt to rewrite the contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501; *Redford Twp Bd of Ed.*, 1992 MERC Lab Op 894; *Jonesville Bd of Ed.*, 1980 MERC Lab Op 891. The Commission has also held that it will find "repudiation" only when (1) the contract breach is substantial and has a substantial impact on the bargaining unit; and (2) no bona fide dispute over contract interpretation is involved. *Plymouth-Canton CS*, 1984 MERC Lab Op 894. In this case, the parties have a bona fide dispute over whether the language of Article 14 of the contract prohibited Respondent from subcontracting the work in these circumstances. In these circumstances, it is not the function of this Commission to judge the merits of the parties' contractual arguments. This dispute should be resolved through the mechanism agreed to by the parties in their collective bargaining agreement. For this reason, I find that Respondent did not "repudiate" its collective bargaining agreement by subcontracting bargaining unit work in this case. [2]

[2] Since Respondent argues in its brief that the grievance and arbitration procedure provided in the terminated contract provides an adequate mechanism for resolving this dispute, I assume that there is no dispute that the grievance filed over the subcontracting is arbitrable. I note that there is, under PERA, no statutory duty to arbitrate grievances after the expiration of a collective bargaining agreement except when the dispute involves rights which "accrue or vest" during the term of the contract. *Gibraltar SD v MESPA*, 443 Mich 326 (1993). See also *Ottawa Co. v Jaklinski*, 423 Mich 1 (1985). However, in this case the dispute arose and the grievance was filed before Respondent terminated the contract. This appears to be the type of dispute

The subcontracting of bargaining unit work, except noninstructional support work performed by employees of a public school employer[3], is, in most circumstances, a mandatory subject of bargaining under PERA. *Van Buren Public School District v Wayne Circuit Judge*, 61 Mich App 6, 28 (1975). However, the Commission has consistently held that an employer satisfies its obligation to bargain by entering into a contract clause specifying the circumstances under which subcontracting may or may not occur. *Central Michigan Univ*, 1995 MERC Lab Op 113; *Village of Constantine*, 1991 MERC Lab Op 468; *City of Muskegon*, 1984 MERC Lab Op 857. When Respondent here entered into the contract clause covering subcontracting, it satisfied its duty to bargain over any decision regarding the subcontracting of bargaining unit work during the term of this contract.

Based on the findings of fact and conclusions of law above, I find that Respondent did not unlawfully repudiate its contract with Charging Party or otherwise violate its duty to bargain in good faith under Section 10(1)(e) of PERA. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge in this case is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____

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which the parties would presume to have intended to be arbitrable even after the termination of the contract. See *Nolde Bros Inc. v Local 358, Bakery and Confectionary Workers Union*, 430 US 243 (1976). Also see *Antioch Bldg Materials*, 316 NLRB No. 107, 148 LRRM 1260 (1995) (employer violated National Labor Relations Act when, after decertification of the union and expiration of the collective bargaining agreement, it refused to arbitrate grievances filed by the union during the term of the contract and before its decertification).

[3] See Section 15(3)(f) of PERA, MCL 423.215; MSA 17.455(15).