STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

40TH JUDICIAL CIRCUIT COURT, LAPEER COUNTY, (FRIEND OF THE COURT OFFICE),
Respondent-Public Employer,

Case No. C99 C-59

-and-

TEAMSTERS STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 214,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Howard L. Shifman, Esq., for Respondent

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for Charging Party

DECISION AND ORDER

On October 31, 2000, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Dated: _____

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Howard L. Shifman, Esq., for the Respondent

Rudell & O=Neill, P.C., by Wayne A. Rudell, 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), 1965 PA 379, as amended, MCL 423.210 & 423.216; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on January 31, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including briefs and supplemental briefs filed by the parties on or before July 13, 2000, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The charge was filed on March 30, 1999, by Teamsters Local 214 against the 40th Judicial Circuit Court, Lapeer County. Charging Party represents a bargaining unit which includes employees of the Lapeer County Friend of the Court Office, a division of the 40th Judicial Circuit Court. This unit also includes certain employees of Lapeer County working in the Lapeer County Prosecutor=s office; however, only Friend of the Court employees were affected by the unfair labor practices alleged here. The charge alleges that on December 2, 1998, Respondent unilaterally announced a policy requiring employees of the Friend of the Court to sign in and sign out of the office. The charge also alleges that on January 14, 1999, Respondent unilaterally adopted a rule requiring employees to call specified individuals to request time off for unscheduled absences or tardiness.

Charging Party also alleges that Respondent unlawfully repudiated the contract by refusing to respond to Charging Party=s requests to meet at Step 3 on grievances filed over the above policies. Finally, Charging Party alleges that Respondent unlawfully failed to provide it with information necessary for it to administer the collective bargaining agreement. This information was, first, whether employees would be subject to discipline for failing to follow the new rules, and second, which section(s) of the parties= collective bargaining agreement, if any, Respondent relied upon in implementing the above changes.

Facts - The Collective Bargaining Agreement:

The 1993-97 collective bargaining agreement covering Charging Party=s unit contained the expiration date of December 31, 1997. However, the contract was extended by mutual agreement until the parties reached a new contract. The parties to the 1993-97 contract were Charging Party, Lapeer County, and the 40th Judicial Circuit Court.[1] On November 22, 1999, the parties entered into a new agreement for the term January 1, 1998-December 31, 2000.

The recognition clause of the 1993-1997 agreement refers to Friend of the Court employees as employees of the County. The term AEmployer@ is defined in that contract as including both the Court and the County, separately and jointly. Throughout the contract, however, the terms Athe County@ and the Athe Employer@are used interchangeably.

Article XXXII of the 1993-97 contract is entitled AEmployer Policy and Work Rules.@It states, in pertinent part:

> 1. The County shall have the right to establish and uniformly enforce personnel policy and/or work rules that do not conflict with or modify the existing agreement.
>
> 2. All existing rules and regulations and any new rules and regulations must be given to each member of the bargaining unit prior to implementing any disciplinary procedure. Copies must be made available at least ten(10) working days prior to the implementation of any work rules or any work policies.
>
> 3. In the event the proposed work rule or policy is in conflict with or modifies existing agreement, or the Union feels it is unjust, a conference committee shall be convened to discuss and amend or correct the proposed work rule or policy. In such

[1] The Circuit Court is the sole employer of the employees employed in the office of the Friend of the Court. In 1996, the legislature passed a statute making the chief judge of a circuit court and the county funding unit co-employers of court employees. However, this statute was held to be unconstitutional. *Judicial Attorneys Assn. v State of Michigan,* 459 Mich 291 (1998).

case, the work rule or policy shall be placed into effect and may be challenged with respect to unreasonableness only through the grievance procedure.

Article VIII of both contracts is entitled ADischarge and Discipline.@ Article VIII(a) of the 1993-97 contract states:

> All new rules and regulations for the breach of which an employee may be discharged or disciplined shall be negotiated with the Union before the adoption. Copies of work rules shall be made available to all employees. However, if a dispute arises between the parties, the Union shall have the right to arbitrate the issue in dispute prior to it being implemented by the County. (Emphasis added)

The underlined language was deleted from the1998-2000 agreement.

Step 3 of the grievance procedure states:

> In the event the grievance is not settled in Step 2, a meeting shall be held between the Steward, and/or grievant, a representative(s) of the Board of Commissioners, a representative of the Employer, and the immediate supervisor, within fifteen (15) working days after receipt of the written decision in the previous step. Either party may have outside representatives present. The decision of the Employer shall be given in writing within ten (10) working days after the termination of the meeting (In cases of suspension or discharge see Article VIII, Section f).

The grievance procedure also provides for impartial arbitration as Step 4.

The Sign- In Policy:

Employees of the Lapeer County Friend of the Court have offices in the Lapeer County Building. Until March 1999, the Friend of the Court Office was on one floor of this building; it is now split between two floors. During the course of their workday, the regular duties of bargaining unit members may require them to be in other parts of the building, including the circuit court offices and courtrooms. Prior to January 1999,the Friend of the Court office operated on an honor system. That is, employees moved about the building or left the building at will and were not required to inform anyone of their whereabouts.

On August 5, 1997, Emil Joseph, the appointed Friend of the Court, notified Charging Party=s steward, Laura Ruby, that he intended to begin requiring employees to sign in and out at the beginning and end of the workday, and for breaks and lunch periods. Les Barrett, a Charging Party Business Representative, requested a special conference to discuss the issue. Barrett and Joseph later exchanged several letters on the topic. In one of these letters, Barrett proposed that the policy apply only to employees identified as having an attendance problem. The last piece of correspondence was a letter from Barrett to Joseph dated November 19, 1997. There were no further discussions about a sign-in policy until December 1998.

On December 2, 1998, Joseph sent Ruby a copy of a memo addressed to the Friend of the

Court staff:

> Effective December 16, 1998, the attached Sign-In Sign-Out Sheet will be used. The top section will be used when reporting to work in the morning and when leaving work in the evening. However, if you are working until 5:00 p.m., it will not be necessary for you to sign out. The bottom section and second page will be used whenever you leave your work station (breaks, lunch, Court, etc.) The sheet will be located on the outside of (Deputy Friend of the Court) Yard=s office door. When we relocate, there will be a Sign-In Sign-Out Sheet on each floor. (Emphasis in original)

The bottom section of the sign-in sheet required employees to put their initials, their destination, the time they left, and the time they returned. In his cover memo to Ruby, Joseph stated that Athis notice is being given pursuant to the labor contract.@

On December 8, 1998, Charging Party filed a written grievance over the sign-in policy. The grievance alleged violations of Article XXXII and Article I, entitled APurpose and Intent.@ The grievance stated that not all employees had received a copy of the memo. It also stated that the issue was in negotiations. Joseph denied the grievance in writing on December 10, 1998. On December 14, Joseph and Ruby held a second step meeting on the grievance. Ruby asked which article of the contract Joseph was referring to. Joseph said it was the Acontract article about the 10 days notice.@ Ruby also asked what discipline there would be if employees violated the policy. Joseph replied that he considered the policy a direct order, and that if anyone disobeyed it would be dealt with at that time. Ruby noted that Charging Party had not received a reply to its November 19, 1997 letter, and said that the issue was Ain negotiations.@

On December 15, 1998, Joseph sent Ruby his second step answer denying the grievance. This memo included the following:

> Relative to the terms of the contract, which are not being violated, obviously it would encompass both Articles I and XXXII. In addition I am not cognizant of any other violation of the contract.

The effective date of the sign-in policy was moved forward to January 11, 1999 to allow Respondent to provide each member of the bargaining unit with a copy.

On December 11, 1998, Charging Party made a written request to for a Step 3 meeting to John Biscoe, Director of Administrative Services for the County. Biscoe routinely represents the County Board of Commissioners in grievance hearings at Step 3. Charging Party did not get a response to its letter. Between December 1998 and the filing of the charge in March 1999, Barrett made several oral requests to the County for an answer to the grievance, but received no response. Charging Party subsequently made a demand for arbitration. In January 2000, when this unfair labor practice charge was heard, the arbitration was scheduled for July 2000.

Call-In Procedure

Prior to January 1999, the Friend of the Court office had no formal procedure for requesting unscheduled time off. An employee simply called the front desk to report that he or she would not be in to work that day, or would be tardy, and indicated what type of leave the employee wanted to use. The employee was required later to request in writing that the time be paid as sick leave, personal time, funeral leave, or vacation. Employees were not usually allowed to use vacation time for unscheduled absences, although this had been permitted in some cases.

On January 14, 1999, Joseph issued a memo to Friend of the Court Staff. The memo stated that if an employee was unable to report to work at 8:00 a.m., he or she should contact Tamara Yard between 8:00 a.m. and 8:30 a.m. In Yard=s absence, employees were instructed to contact Joseph or one of two other supervisors. The memo stated that in the event all four of these individuals were unavailable, the employee was to leave a detailed message on Yard=s answering machine indicating the reason for the absence and what type of leave the employee wished to use. The memo also stated, APlease remember that vacation time must be pre-approved.@ (Emphasis in original).

Ruby filed a grievance over this memo on January 27, 1999. In the grievance Ruby cited the language of Article VIII(a) giving the Union the right to arbitrate the issue in dispute prior to it being implemented. Ruby stated in the grievance that Yard had told her to use the procedure that there might be discipline if it was not used. After a meeting, Joseph denied the grievance at Step 2. Charging Party wrote a letter to John Biscoe requesting a Step 3 meeting, but did not get a reply. The record does not indicate whether Charging Party demanded to arbitrate this grievance.

Negotiations for the 1998-2000 contract started sometime after November 1997 and continued until the parties reached agreement in November 1999. During these negotiations the parties agreed to delete the phrase Aprior to it being implemented by the County@ from Article VIII (a) of the contract. Charging Party did not raise either the sign-in rule or the call-in policy at the bargaining table.

Discussion and Conclusions of Law:

Respondent asserts, first, that neither the sign-in nor the call-in policies constituted a unilateral change in a mandatory subject of bargaining. Respondent maintains that it has an inherent managerial right to keep track of where its employees are during the course of the workday. Respondent maintains that the sign-in sheet is merely a tool to assist in enforcing this right, and not a term or condition of employment. Respondent also points out that employees have always been required to call in to report unscheduled absences. Under the January 14, 1999 memo, employees are now required to contact one of three specific individuals, instead of merely speaking to the receptionist. According to Respondent, this change had no significant impact on employees and did not rise to the level of a unilateral change.

In *Michigan Education Special Services Association*, 1969 MERC Lab Op 536, a Commission Administrative Law Judge concluded that an employer=s decision to require employees to keep track of the number of sales stops they made during a day was not a unilateral change in a mandatory subject of bargaining. In *Hurley Hospital (City of Flint)*, 1973 MERC Lab Op 74, the Commission itself concluded that an employer had a managerial right to change from handwritten sign-in sheets to a time clock. I agree with the Respondent that an employer has an inherent managerial right to keep track of the location of its employees during the workday. Because the sign-in sheet merely assisted Respondent in exercising its right, it was not a mandatory subject of bargaining. I also conclude that Respondent has an inherent managerial right to require employees to give reasons for being absent or tardy, just as it has the right to require employees to meet the established criteria for using paid leave time. Requiring employees to speak to a supervisor when they call to report an unscheduled absence simply allows the Respondent to monitor its attendance policy more efficiently. For these reasons, I conclude that neither the sign-in rule nor the call-in policy were mandatory subjects of bargaining.

Even if the sign-in and call-in rules were mandatory subjects of bargaining, however, I would not find an unfair labor practice in this case. Where the Charging Party=s claim is based on the alleged breach of a collective bargaining agreement, and the parties have a bona fide dispute over the interpretation of their contract, an unfair labor practice hearing is not the proper forum for the resolution of the dispute. *MESPA v Schoolcraft College*, 156 Mich 754,761 (1986).

Here, the collective bargaining agreement contains two separate clauses covering the promulgation of rules. The obligations of the parties under both of these clauses differ from the obligations imposed by the duty to bargain under PERA. Article VIII(a) requires Respondent to Anegotiate with the Union before the adoption@ of rules for which an employee may be disciplined. However, it also gives Charging Party the right to arbitrate before the rules are implemented, even if the parties have reached impasse. Under Article XXXII, Respondent must hold a special conference to discuss, although not necessarily negotiate, a proposed rule. However, under this article Respondent may implement the new rule while Charging Party grieves. Charging Party asserts that Respondent violated Article VII(a) in promulgating the sign-in and call-in policies. The parties have a bona fide disagreement over whether Respondent was required to comply with the procedures set out in Article VII(a) or Article XXXII. As noted above, the Commission does not take jurisdiction over bona fide disputes over contract language when the parties have agreed to a final and binding means for resolving such disputes. See *Detroit Dept of Transportation*, 1990 MERC Lab Op 254, 257; *Oakland County Sheriff=s Dept*, 1983 MERC Lab Op 538.

In a separate claim, Charging Party alleges that Respondent unlawfully repudiated the contract by refusing to respond to Charging Party=s requests for Step 3 grievance meetings. Respondent notes that Charging Party=s requests were directed to the County=s representatives, and it argues that Respondent bears no responsibility for the County=s failure to act. The Commission has held that where there is no evidence of bad faith, an Employer=s failure to comply with deadlines set out in the grievance procedure does not constitute an unfair labor practice. *City of Pontiac*, 1991 MERC Lab Op 419. As the Commission reiterated in that case, a failure to provide a timely response to a grievance constitutes a denial of the grievance at that step and gives the grievant the right to move the grievance to the next step. The record does not explain why County representative Biscoe failed to

respond to Charging Party=s requests to meet on these grievances. However, there is no indication that Charging Party ever requested to meet at the 3rd Step with Respondent, in the person either of Joseph or the chief judge. I find no evidence that Respondent repudiated its obligation to process grievances under the contract in this case.

Charging Party=s third claim is that Respondent unlawfully refused to respond to its requests for information. I find, however, that Respondent gave Charging Party the information it requested. On December 14, 1998, Ruby asked Joseph what discipline there would be if employees violated the sign-in policy. Joseph told her that he considered the policy a direct order, and that violations would be deal with as they arose. In other word, Joseph told Ruby that employees would be disciplined, and that the discipline would depend on the circumstances. As for the call-in policy, in her January 27, 1999 grievance Ruby stated that Yard had told her Athat there might be discipline if it was not used.@ Charging Party also claims that Respondent refused to tell it what sections of the contract, if any, it was relying upon when it instituted these policies. Joseph, in his December 15, 1998 memo regarding the sign-in policy, told Charging Party that he believed Article I and Article XXXII were the relevant articles, that Respondent had complied with those articles, and that he was not aware of any other contract provisions which pertained. The record does not reflect that Charging Party ever asked Respondent which sections of the contract it was relying upon in instituting the call-in procedure. In conclusion, the record does not establish that the Respondent refused to furnish Charging Party with any information it requested.

In accord with findings of fact, discussion and conclusions of law above, I conclude that Respondent did not violate its duty to bargain under Section 10(1)(3), and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: