STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF GROSSE POINTE PARK,
Respondent-Public Employer,

Case No. C00 C-49

-and-

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

APPEARANCES:

Bodman, Longley & Dahling, LLP, by David A. Shand, Esq., for Respondent

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

DECISION AND ORDER

On June 29, 2001, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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APPEARANCES:

Bodman, Longley & Dahling, LLP, by David A. Shand, Esq., for the Respondent

John A. Lyons, P.C., by Mark P. Douma, 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 September 22, 2000, 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 5, 2000, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Police Officers Labor Council filed this charge on March 22, 2000, against the City of Grosse Pointe Park. Charging Party alleges that on or about March 8, 2000, Respondent violated its duty to bargain by unilaterally instituting a "signing bonus" for newly hired public safety officers.

Facts:

At the time the charge was filed, Charging Party represented a unit of Respondent's public safety officers. The parties' collective bargaining agreement covering the term July 1, 1998 through June 30, 2001 resulted from an arbitration award issued on April 5, 1999, pursuant to the authority of the Compulsory Arbitration Act, 1969 PA 312, 1969 PA 312 (Act 312), MCL 423.231 *et seq;* MSA 17.455. Like the

parties' previous contracts, the award contained a salary scale pursuant to which public safety officers employed for less than 61 months received a percentage of the maximum salary based on their length of service. Officers employed from zero to 12 months received 60% of maximum pay. In March 2000, the salary of a new officer under the contract was $28,088.

During the Act 312 arbitration proceeding, Charging Party proposed an across-the-board wage increase of 4% for each year of the agreement. Respondent's offer was 3% across-the-board per year. The arbitration panel adopted Respondent's offer. In January 2000, and again in February of that year, Respondent approached Charging Party with offers to modify the salary scale. In both Respondent's proposals, the salary increases for officers with less than one year's seniority were substantially more than the increases for officers at the higher steps. Respondent told Charging Party that it was having difficulty filling vacancies and believed that the reason was the starting pay. Charging Party rejected both proposals.

In early March 2000, Respondent visited the police academy to attempt to recruit new public safety officers. Prospective candidates were informed that they would be required to pass a written examination, oral examination, and interview, and that successful applicants would be placed on an eligibility list. Candidates would then be ranked according to their combined scores. Respondent informed candidates that as an opening occurred, an offer of probationary employment would be made to the top-ranked candidate conditioned on his passing physical and psychological examinations and a comprehensive background check. Prospective candidates were also informed that after they passed the psychological and physical exams and the background check they would be eligible for a one-time payment of $2,000 as a signing bonus.

As a result of its visit to the police academy, Respondent received 39 job applications. Respondent interviewed 20 applicants, and compiled a list which ranked all 20. As Respondent had three vacancies to fill, it made conditional offers of employment, as outlined above, to the top three applicants. The top-ranked applicant accepted the conditional offer and passed the physical and psychological exams and background check. His $2,000 check was given to him on the first morning he reported for work, just before he was sworn in by the Director of Public Safety. The second-ranked applicant also accepted the offer and satisfied its conditions. He received his check on the same day as the first applicant. He was not sworn in and did not start work until he had graduated from the police academy, about two weeks later. The third-ranked applicant accepted the offer but did not pass the exams and background check; he did not receive a check. Respondent made the same conditional offer to the fourth-ranked applicant, who also failed to fulfill its conditions. The fifth-ranked applicant accepted the conditional offer and passed the examinations and background check. He received his $2,000 check on July 20, 2000, two days before beginning work.

Discussion and Conclusions of Law:

It appears that an Employer's duty to bargain over the payment of "signing bonuses" to either applicants or new employees is a question of first impression for this Commission. Moreover, the only case I could find addressing this issue under the National Labor Relations Act (NLRA), 29 USC §150 *et seq*. is an administrative law judge's decision, *Regency House of Wallingford, Inc.*, 2001 NLRB Lexis 100, decided on February 21, 2001. In this case, the administrative law judge for the National Labor Relations Board (NLRB) held that a signing bonus payable upon successful completion of an employee's probationary period was a form of compensation, and that the Employer violated its duty to bargain under the NLRA by unilaterally instituting this bonus.

In the instant case, applicants received their "signing bonus" before they were formally sworn in as public safety officers. It is well established that an employer has no duty to bargain with the union over issues relating to individuals who are not employees, including retirees and job applicants, unless these issues "vitally affect" the terms and conditions of employment of unit members. In the lead case, *Allied Chemical & Alkali Workers of America, v Pittsburgh Plate Glass,* 404 US 157 (1971), the Supreme Court held that an employer had no duty under the NLRA to bargain over benefits paid to retirees. In *West Ottawa EA v West Ottawa Bd of Ed,* 126 Mich App 306 (1983), *aff'g* 1982 MERC Lab Op 629, our Court of Appeals held that a school district had no duty to bargain under PERA over a plan to employ retired teachers as consultants. In *Woodhaven SD,* 1990 MERC Lab Op 221, the Commission held that there was no duty to bargain over the institution of a pre-employment physical for job applicants, and in *City of Detroit*, 1989 MERC Lab Op 788, the Commission held that an employer had no duty to bargain over the drug testing of job applicant. See also *Star* Tribune, 295 NLRB No. 63 (1989) (no duty to bargain over drug testing of job applicants under the NLRA).

Charging Party and Respondent disagree over whether the signing bonus in this case is a "pre-hire" benefit." Respondent asserts that none of the three individuals who received signing bonuses were employees at the time they received their checks. According to Respondent, job candidates are neither employees nor public safety officers until they are sworn in by Respondent's Director of Public Safety. Respondent points out that under the term of its offer, a candidate is entitled to the bonus after he passes the physical and psychological examinations and background check, even if he accepts another employer's job offer and never works a day for Respondent. According to Respondent, this case is indistinguishable from *Woodhaven SD, supra.* Charging Party points out that prior to becoming eligible for the signing bonus applicants must accept Respondent's conditional employment offer and meet all Respondent's pre-hire requirements. According to Charging Party, the swearing in is merely a ministerial act.

I agree with the Charging Party that by the time they become eligible to receive Respondent's signing bonus, job applicants have become employees of the Respondent. Under the terms set by Respondent, three events must occur before an individual becomes eligible to receive the bonus. First, Respondent must make an offer of employment conditioned on the individual passing the physical and psychological examinations and the background check. Second, the individual must accept that offer. Finally, the individual must fulfill the specified conditions. I find that a contract of

employment comes into existence at the time that these conditions are fulfilled. The individual becomes Respondent's employee at that moment, and not when he is sworn in as a law enforcement officer or when he begins providing services to the Respondent. The fact that the employee is free to give up his employment before performing any services for which he must be compensated has no bearing on the question of when he becomes an employee under the Act. I conclude that because the signing bonus is an aspect of employee compensation, Respondent acted unlawfully when it unilaterally instituted this bonus.

The bonus in this case is clearly distinguishable from the pre-hire physical examination in *Woodhaven SD*. In *Woodhaven*, the issue was the employer's right to unilaterally require a physical examination as a precondition to employment. That is, applicants for teacher positions were given offers conditioned on their passing this examination. The physical examination in that case was analogous to the physical and psychological examinations and background check which Respondent required in this case, i.e. they were conditions precedent to the formation of an employment contract. The bonus in this case is a benefit paid after the contract has come into existence.

I would also find that even if the individuals were not employees of the Respondent at the time they became eligible to receive the bonus, Respondent would have a duty to bargain over the bonus. The record establishes that all new public safety officers Respondent hires will receive, either before or after they actually become employees, a payment equivalent to about 7% of the salary normally paid to officers with less than 12 months seniority under the contract. The payment of this bonus obviously reduces Respondent's incentive to agree to salary increases for officers already employed. It also reduces the salary disparity between new and more seniority officers provided for in the contract. I conclude that the signing bonus here vitally affects the terms and conditions of employment of the bargaining unit and thus is a mandatory subject of bargaining.

Based on the findings of fact, discussion and conclusions of law above, I find the Respondent City of Grosse Pointe Park violated its duty to bargain in good faith under Section 10(1)(e) of PERA by unilaterally instituting a $2,000 signing bonus. In accord with these findings, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondent City of Grosse Pointe Park, its officers and agents, is hereby ordered to:

1. Cease and desist from paying a signing bonus to newly hired public safety officers pending satisfaction of its obligation to bargain under Section 10(1)(e) of PERA.

2. Post the attached notice to employees in conspicuous places on the Respondent's premises, including all places where employee notices are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____