

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF TAYLOR,
Public Employer,

Case No. R01 G-098

-and-

COMMAND OFFICERS ASSOCIATION OF MICHIGAN,
Petitioner – Labor Organization,

-and-

POLICE OFFICERS LABOR COUNCIL,
Incumbent Labor Organization.

APPEARANCES:

Frank A. Guido, Esq., for the Petitioner

John A. Lyons, P. C., by Mark P. Douma, Esq., the Incumbent Labor Organization

DECISION AND DIRECTION OF ELECTION

Pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.212 and 423.213, this case was heard in Detroit, Michigan, on September 14, 2001, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based on the record, including post-hearing briefs filed by October 26, 2001, we find as follows:

Facts:

The parties stipulated to the following facts: Petitioner, the Command Officers Association of Michigan (COAM), filed an election petition on July 30, 2001, to represent City of Taylor police supervisory officers who are currently represented by the Police Officers Labor Council (POLC). The collective bargaining agreement contains all of the operative dates for consideration in this proceeding and was introduced into the record as a joint exhibit. The exhibit's cover reads: "Labor Contract between the City of Taylor and the Taylor Command Officers' Association, July 1, 1995 - June 30, 2004." However, the exhibit consists of two separate collective bargaining agreements. The first, executed on December 16, 1997, covers the period July 1, 1995 through June 30, 1999. Two Letters of Understanding and the second collective bargaining agreement follow it. The second agreement, executed on July 23, 1998, modifies and renews the 1995-1999 agreement and covers the period of July 1, 1999, to June 30, 2004.

Conclusions of Law:

The only issue to be decided is whether Section 14 of PERA bars the COAM's petition for election.

Section 14 provides in pertinent part:

An election shall not be directed in any bargaining unit or subdivision thereof where there is in force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration. A collective bargaining agreement shall not bar an election upon the petition of persons not parties thereto where more than 3 years have elapsed since the agreement's execution or last timely renewal, whichever was later.

In *City of Wyandotte*, 1999 MERC Lab Op 289, we held that the date of execution of a memorandum or document evidencing the collective agreement of the parties is the beginning of the contract bar period under Section 14 of PERA.

The POLC claims that the COAM's petition must be dismissed because less than three years have elapsed since the collective bargaining agreement was renewed. According to the POLC, the contract bar period in this case should begin on July 1, 1999, the effective date of its current agreement with the City of Taylor, rather than July 23, 1998, the date the agreement was executed. The POLC reasons that although its current agreement was executed on July 23, 1998, it did not effectively renew and modify the then existing agreement until July 1, 1999, the day after the prior agreement expired. The POLC notes that in *City of Wyandotte*, the contract's execution date was after the agreement's effective date, whereas in this case, the execution date (July 23, 1998) was before the effective date (July 1, 1999) and during the existence of an agreement that would not expire until June 30, 1999. The POLC argues that in order to give the statutory language its full effect, July 1, 1999, is clearly the date which should be considered as the beginning of the contract bar period. The POLC asserts that to hold otherwise simply negates the phrase "last timely renewal" in Section 14.

The COAM contends that in view of our decision in *City of Wyandotte*, the POLC's reliance on July 1, 1999, the effective date of its five-year agreement with the City of Taylor, is misplaced. According to the COAM, if the "execution" date were used, the first contract, which was executed on December 16, 1997, barred any rival petition for election through its June 30, 1999 expiration, since the period from the date of execution to the end of the agreement was less than three years. The COAM contends that if the POLC is allowed to prevail on its argument, that would effectively bar an election petition, not just for a three-year period beginning July 1, 1999, but also continuously from December 16, 1997, the date the first contract was executed, to June 30, 2002, three years beyond July 1, 1999. Such a result, the COAM asserts, was obviously neither contemplated nor allowed by PERA. Therefore, the COAM claims that its petition is not barred because it was filed more than three years after the date the POLC and the City of Taylor executed a renewal of their agreement. We agree.

In *City of Wyandotte*, we emphasized that the use of the execution date for contract bar purposes not only fulfills the statutory mandate, but also fulfills our mandate in contract bar cases "to balance the sometimes conflicting public interests and stability of bargaining relationships on the one hand and employee freedom of choice on the other." We noted that if the legislature had wanted to use the "retroactive" or "effective" dates, when those dates differ from the "execution" date, as the beginning of the bar period it would have explicitly indicated as such. Therefore, consistent with our policy expressed in *City of Wyandotte*, we hold that the contract bar period in this case begins on June 23, 1998, when the parties executed a document to renew their then-existing agreement.

We find no merit to the POLC's argument that the use of the contract's execution date, June 23, 1998, rather than the contract's effective date, July 1, 1999, negates Section 14's "last timely renewal" language. We interpret the legislature's use of the word "or" in the phrase "execution *or* last timely renewal" to mean that "execution" or "last timely renewal" are equivalent expressions rather than phrases denoting choice. In

any event, we see no reason to equate the phrase “last timely renewal” with the “effective date” of a contract. We draw no distinction between whether the effective date is before or after the date an agreement is executed.

Pursuant to the stipulated facts and conclusions of law set forth above, we conclude that the petition filed by the COAM on July 30, 2001, is not barred by the existing contract between the City of Taylor and the POLC that expires on June 30, 2004.

DIRECTION OF ELECTION

We find that a question of representation exists under Section 12 of PERA and direct an election in the following unit that we find appropriate under Section 13 of PERA:

Command officers of the City of Taylor Police Department holding the rank of sergeant, lieutenant or commander.

Pursuant to the attached Direction of Election, the above employees shall vote to determine whether or not they wish to be represented by the Command Officers Association of Michigan or the Police Officers Labor Council or neither.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chairman

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Date: _____