

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF FARMINGTON HILLS,
Public Employer-Respondent

Case No. C01 A-25

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Charging Party

APPEARANCES:

Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C., by Bruce Bagdady, Esq., for the Respondent

Martha M. Champine, Esq., for the Charging Party

DECISION AND ORDER

On February 19, 2002, 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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Martha M. Champine, 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 and 423.216, this case was heard at Detroit, Michigan on June 29, 2001, 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 September 10, 2001, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Police Officers Association of Michigan filed this charge against the City of Farmington Hills on January 23, 2001. Charging Party represents a bargaining unit which includes nonsupervisory police officers employed by Respondent. The charge alleges that on or about September 2000, Respondent violated its duty to bargain by unilaterally changing the job duties of patrol officers to include janitorial work.

Facts:

On about September 1, 2000, the lieutenant in charge of the midnight shift in Respondent's police department issued a directive entitled "Midnight Desk Officer Responsibilities." This directive included the following: Empty garbage at front desk. Sweep floors if needed. Keep the desk area clean and orderly.

The front desk area in Respondent's police station is adjacent to the lobby and consists of: (1) a counter where the desk officer answers the phones and receives the public; (2) an area behind this counter where there are file cabinets, counters, a computer for writing reports, and a television monitor; (3) a hallway about 25 feet long leading from the front desk along the lobby to the main hallway. At the end of the 25-foot hallway is a large trash receptacle where wastebaskets are dumped. The front desk area contains four or five large wastebaskets. Most or all of the front desk area is carpeted.

Most of the time, a police cadet is assigned to the front desk. Certified police officers fill in for police cadets on breaks, but the only times a patrol officer is assigned to work the front desk for an entire shift are the two midnight shifts per week when the one cadet assigned to that shift is not on duty. The lieutenant in charge of the midnight shift assigns officers to work the desk. An officer may work the desk for a single shift, or may be assigned there for several weeks in a row. Unless a patrol officer is working the desk, he or she is generally not in the building for any extended period of time.

According to a departmental directive first issued in 1995, the cadet assigned to the front desk is responsible for keeping the front desk area, as well as the cell block area and other specified areas of the building, neat and clean at all times. This includes picking up and disposing of garbage, disposing of cups and wrappers from cells after prisoners have been fed, emptying waste baskets, and sweeping, mopping and vacuuming as required. This directive states, "If a cadet is not available, a desk officer shall perform this function. Patrol supervisors shall be held accountable for ensuring that this function is performed as needed."

Charging Party maintains, however, that the last part of this directive has never been enforced. Except on weekends and after 11 p.m., a janitorial service performs the above duties. The parties agree also that patrol officers assigned to the desk have never been responsible for cleaning the cellblock area or most of the other areas for which cadets are responsible. They disagree about the front desk. The police chief, the lieutenant who issued the September 2000 directive, and the patrol sergeant on the midnight shift, who was Charging Party's president before he was promoted in 1999, testified that for at least the past 10 years desk officers have removed the plastic bags from all the wastebaskets in the front desk area and carried them down the hallway to the trash receptacle, and have swept or mopped when the floors needed it. Charging Party's current president, who has worked the midnight shift since 1983, admitted that when assigned to the front desk he has sometimes been ordered to empty a wastebasket at the front counter. He also admitted that some patrol officers voluntarily empty wastebaskets and clean the floors by the front desk when they are assigned there. However, Charging Party's president and another patrol officer testified that, except during the period from January to April 1999, patrol officers have never been required to empty the other wastebaskets, sweep, vacuum or mop. As indicated above, patrol officers do not generally spend much time in station unless they are assigned to the desk. The officer who supported the

president's testimony rarely works the front desk because he works the night support shift, which overlaps the afternoon and midnight shifts. Respondent's records indicate neither he nor Charging Party's current president has been assigned to the desk with sufficient regularity to be able to testify regarding all the responsibilities of that job. I credit the testimony of Respondent's witnesses that emptying wastebasket and occasionally cleaning the floors in the front desk area were part of the desk officer's responsibilities prior to September 2000.

Between January and April 1999, patrol officers working the desk were also required, for the first time, to clean areas beyond the front desk. During this period of particularly severe winter weather, patrol officers were ordered on a number of occasions to mop and/or sweep the lobby and hallways leading from the lobby through the building, and to sweep and/or vacuum in the detective bureau. Charging Party filed a grievance over this assignment, which was settled with this memo from the police chief dated April 12, 1999:

After careful review and meeting with Assistant Chief Bledsoe, we agree with the Union that officers should not be utilized on a regular basis for the general cleaning and maintenance of certain areas, other than under emergency weather conditions.

This Grievance is granted in part. First, officers will not be used on a regular basis for general cleaning and maintenance. Secondly, the Union has indicated that they do not object to officers assisting in cleaning such areas, under emergency conditions, that may present a hazard to police personnel and/or citizens.

The police chief, the assistant chief, and the sergeant who was Charging Party's president at the time the grievance was settled agreed that this grievance concerned the expansion of the desk officer's duties to include cleaning the floors in the lobby, hallways and detective bureau. They agreed that the parties did not discuss cleaning in the front desk area, and that the settlement was not intended to change the desk officer's responsibility for keeping the front desk area clean.

Discussion and Conclusions of Law:

Charging Party argues that since janitorial duties are not within the scope of, or related to, the normal job duties of a patrol officer, Respondent had a duty to provide Charging Party with notice and an opportunity to demand bargaining before assigning them these duties. It also argues that in his April 12, 1999 memo, the police chief recognized that janitorial work was not part of a police officer's duties, and that the memo clearly states that officers are not to be used on a regular basis "for general cleaning and maintenance." According to Charging Party, it is undisputed that in September 2000 Respondent issued a directive which ordered employees to perform "non-unit" work without giving Charging Party notice. Charging Party argues that Respondent violated its duty to bargain by this unilateral action.

As set out above, I agree with Respondent that the September 2000 directive did not alter the existing job responsibilities of a desk officer. The record establishes when the parties agreed in 1999 that officers would not be used for "general cleaning and maintenance," they did not intend these

terms to include the emptying of wastebaskets and occasional sweeping which has by practice long been part of the desk officer's job. I find that the September 2000 directive did not constitute a change in terms and conditions of employment. For this reason, I conclude that Charging Party failed to establish that Respondent violated its duty to bargain under PERA, 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

Date: _____