STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:
CITY OF GREENVILLE,
Respondent-Public Employer in Case No. C01 H-153
Charging Party in Case No. CU01 I-051

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Charging Party-Labor Organization in Case No. C01 H-153
Respondent in Case No. CU01 I-051
_____/

APPEARANCES:

Nantz, Litowich, Smith & Girard, P.C., by John H. Gretzinger and Grant T. Pecors, Esqs., for the Public Employer

Peter W. Cravens, Assistant General Counsel, Police Officers Association of Michigan, for the Labor Organization

DECISION AND ORDER

On June 26, 2002, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaints 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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Appearances:

Nantz, Litowich, Smith & Girard, P.C., by John H. Gretzinger and Grant T. Pecors, Esqs., for the Public Employer

Peter W. Cravens, Assistant General Counsel, Police Officers Association of Michigan, for the Labor Organization

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 MCL 423.216, these cases were heard in Detroit, Michigan on January 10, 2002, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. The proceeding was based upon unfair labor practice charges filed by the Labor Organization, the Police Officers Association of Michigan, hereafter, "Union," against the Employer, City of Greenville on August 2, 2001, and by the Employer against the Union on September 13, 2001. Based upon the record and post-hearing briefs filed by February 19, 2002, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charges:

The Union claims in its charge that the City of Greenville violated PERA by its failure to recognize the Union as the bargaining representative for seasonal or part-time bicycle officers and by interfering with, restraining or coercing employees in their rights guaranteed under PERA, including their right to form or join a labor organization. It its charge, the City of Greenville alleges that the Union unlawfully coerced a bicycle

officer to pay dues in violation of his rights under PERA to refrain from participating in concerted activity.

Findings of Fact:

The facts are undisputed. The parties entered into a collective bargaining relationship in 1996. The latest agreement expired in June 2000. The Union represents a bargaining unit described as follows:

> All full time and regular part-time employees of the Greenville Public Safety Department in the classifications of Lieutenant, Sergeant, Corporal, Public Safety Officer, Dispatch Coordinator, and Dispatcher, but excluding the Director of Public Safety, the Administrative Secretary, Auxiliary Patrol Officers, Volunteer Fire Fighters, Meter Attendants, School Crossing Guards and Part-time Patrol Officers who are not regularly scheduled to work thirteen (13) or more shift days per nine (9) week cycle (or its equivalent).

In February 1997, Respondent advised the Union that it was considering hiring four part-time bicycle officers to work forty hours per week for approximately 18 weeks, from May through September, to handle minor complaints and traffic violations at a pay rate of $7 to $7.50 per hour. In a March 6, 1997, letter, the Union made a request to meet with Respondent to negotiate the officers' wages and benefits since they would be working over the 13 days allowed during a nine-week cycle. In an April 6 response, Respondent advised the Union that it did not recognize a duty to bargain over the officers' terms and conditions of employment because the temporary nature of their employment made them seasonal employees who are not appropriately members of the existing bargaining unit.1 Respondent informed the Union that it was, however, willing to bargain over the impact that their employment would have on the terms and conditions of existing bargaining unit members. Subsequently, the parties entered into a letter of understanding that provides in pertinent parts as follows:

> 1. The seasonal police officers are seasonal employees and shall be employed between May 1, 1997 and September 30, 1997.
>
> ***
>
> 8. In reference to Section 2.0 of the collective bargaining agreement, the part-time police officers shall not be members of the bargaining unit.

1 The Union was also told that the officers would be utilized for the summer season only, would not be given any assurances of future employment, nor would the City rehire any of the officers in future years if a decision were made to extend the Cops on Bicycles program for more than one year.

The parties entered into identical letters of understanding in 1998, 1999, and 2000. However, in February 2001, the Union informed the Employer that it had voted not to sign a letter of understanding regarding the seasonal bicycle officers for 2001. The Employer, however, continued its practice of using seasonal bicycle officers and refused the Union's requests to include them in the bargaining unit.

In June 2001, during roll call, Officer Steve Brandow, one of the seasonal bicycle officers hired by the Employer in April 2001, signed a union dues authorization form that permitted the Employer to deduct $30.27 from his wages per month.[2] According to Officer Brandow, the Union officer who asked him to sign the form, explained to him that he did not have to sign the form, but that he signed it, uncoerced, because he thought that being a union member would enhance his chances of getting a full-time job with the City of Greenville.

Conclusions of Law:

The Union contends that the Employer violated Section 10(1)(e) of PERA by refusing to recognize the seasonal bicycle officers as bargaining unit members and to pay them according to the collective bargaining agreement's terms despite being advised that the Union would not enter into a letter of understanding to hire seasonal bicycle officers in 2001.

I find no merit to the Union's argument. As noted by the Employer, it is well-established that questions concerning the unit placement of newly created classifications can be resolved by consent of the parties or by an order of the Commission pursuant to filing by either party of a unit clarification petition. *Muskegon County Sheriff Dept.*, 2000 MERC Lab Op 88; *Allegan County*, 1989 MERC Lab Op 535. When the seasonal bicycle officers were first hired in 1997, the Employer refused the Union's request to voluntarily recognize them as bargaining unit members. Rather than filing a unit clarification petition to challenge the Employer's assertion that the bicycle officers were seasonal employees who would have no expectation of continued employment, the Union entered into a letter of understanding that expressly stated that they were not bargaining unit members. Similar letters of understanding were executed in 1998, 1999, and 2000. The Commission has consistently held that it will not upset parties' agreements or practices concerning unit placement without a sufficient showing that the unit is inappropriate. *City of St. Clair Shores*, 1988 MERC Lab Op 485, 491, citing *Michigan State University*, 1978 MERC Lab Op 1201.

The Union presented no support for its assertion that absent an agreement to exclude seasonal bicycle officers from the bargaining unit in 2001, they are now bargaining unit members and the Employer is obligated to bargain with it as their bargaining representative. Where parties have by agreement or acquiescence excluded positions from an existing bargaining unit, they form a residual unit and cannot later be accreted to the bargaining unit without filing a representation petition. *City of St. Clair Shores*, 1988 MERC Lab Op 485. As in *City of St. Clair Shores*, the Union in this case offered no evidence that there has been any change in the use of seasonable bicycle officers that would justify a finding that they must now

2 Section 4.3 of the collective bargaining agreement provides that bargaining unit employees' obligation to pay a service fee commences upon completion of their probation period. Section 12.1 establishes a twelve-month probationary period for all new employees.

be considered part of the Union's bargaining unit. I, therefore, conclude that the Employer did not violate PERA by refusing the Union's demand to bargain over their terms and conditions of employment.

I also find no factual support for the Employer's claim that the Union violated PERA by coercing Officer Brandow, at roll call, to sign a dues check-off form. Officer Brandow, who was called as a witness by the Employer, testified credibly that he signed the dues authorization form to enhance his chances of gaining full-time employment. Moreover, the Employer cites no authority for its assertion that it is coercion *per se* for the Union not to inform Officer Brandow that he was not obligated to pay dues until he completed a one year probationary period.

Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The charges filed by the Union in Case No. C01 H-153 and by the Employer in Case No. CU01 I-051 are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____