STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

36TH DISTRICT COURT,
Public Employer –Respondent,

Case No. C01 K-227

-and-

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 25, and LOCAL 917,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Constance J. Allen, Esq., Judicial Assistant, for the Respondent

Miller Cohen, by Lynise Bryant-Weekes, Esq., for the Charging Party

DECISION AND ORDER

On December 27, 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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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 March 19, 2002, 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 June 12, 2002, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The American Federation of State, County and Municipal Employees (AFSCME) Council 25, and Local 917, filed this charge against the 36th District Court on November 13, 2001. Charging Party represents a bargaining unit of court officers and bailiffs employed by Respondent. By statute, bailiffs and court officers are required to keep written records of financial transactions conducted by them in the course of their duties, and to submit these records for audit. Charging Party alleges that in August 2001, Respondent unilaterally changed these employees' terms and conditions of employment by threatening to discipline them for failing to provide an auditor with records of a type they had never been required to keep.

Charging Party also alleges that Respondent unlawfully rejected Charging Party's subsequent demands to bargain over the kind of records the bailiffs and court officers would have to provide to the auditors. Finally, Charging Party alleges that Respondent violated Sections 10(1)(a) and (c) of PERA by suspending certain court officers and bailiffs on or about November 5, 2001. According to Charging Party, Respondent disciplined these employees because Charging Party had demanded to bargain.

Facts:

Section 8322(3) of the Revised Judicature Act, as amended by 1981 PA 8, MCL 600. 8322(3) states:

> A bailiff governed pursuant [sic] to this section shall keep a record of the date, amount and nature of each financial transaction conducted by the bailiff in the course of his or her services as a bailiff. An audit of each bailiff's financial transactions shall be conducted annually by the district control unit and reported immediately to the judges.
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> This subsection applies to court officers as well as bailiffs.1

Respondent employs one civil bailiff, six real estate bailiffs, and court officers who perform both civil and real estate work. All the bailiffs and court officers serve process. The civil bailiff and the court officers also serve writs of garnishment, and serve and execute writs of execution against property. Respondent pays the civil bailiff and court officers for serving process and executing writs. However, when the civil bailiff or court officers execute writs of execution, they have temporary custody of money or property collected from a defendant until it is turned over to Respondent to be paid to the plaintiff. Respondent pays the real estate bailiffs and court officers for serving process in real estate actions. However, real estate bailiffs and court officers spend a significant percentage of their time performing evictions pursuant to court orders. For this work, they are paid directly by plaintiffs. Respondent does not have records of the monies bailiffs and court officers receive for evictions, or the expenses they incur, e.g. renting trucks, hiring casual labor.

Between 1981 and 2000, Respondent and/or its district control unit, the City of Detroit, attempted three times to audit the bailiffs' financial transactions. In 1985, the City's Finance Department attempted to conduct an audit for the period from October 1, 1982 through September 30, 1984. In August 1987, the Finance Department reported to Respondent that the records submitted by the bailiffs were not adequate for it to complete the audit. The Finance Department attempted another audit for the fiscal year ending September 30, 1987. Prior to this audit, Respondent held a training session for bailiffs on record keeping. However, in August 1989, the Finance Department again reported to Respondent that this audit could not

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1 Subsection 4 of MCL 600. 8322 states that upon the existence of a vacancy in the office of bailiff, the chief judge may appoint a court officer. Since 1998, Respondent has appointed court officers to replace bailiffs who have died or retired. Respondent initially considered court officers to be independent contractors. However, in *Detroit Judicial Council,* 2000 MERC Lab Op 7, the Commission adopted its administrative law judge's conclusion that court officers were employees of Respondent. The court officers were placed in the bailiffs' unit.

be completed because the bailiffs did not keep adequate records. Respondent also attempted an audit for the fiscal year ending September 30, 1995. An auditing firm was hired to conduct this audit. Once again, the auditors again concluded that an audit could not be performed because the bailiffs did not maintain records adequate to verify their financial transactions.

Respondent did not discipline the bailiffs for keeping inadequate records after any of the failed audits. Nor did it tell them specifically that these audits had failed because of their inadequate records. In 1990, however, Respondent conducted training sessions in which the bailiffs were told that they were to keep records of their income and expenses from each eviction. In July 1998, after Respondent had begun hiring court officers as independent contractors, it gave them detailed information on the type of records they would need to maintain to have their own businesses and/or comply with the statute. On February 16 and 17, 2000, Respondent conducted refresher training for all bailiffs and court officers. This training included a segment on keeping financial records.

On April 13, 2000, Respondent sent a letter to the bailiffs and courts officers notifying them that an audit would be conducted for the 1998-99 and 1999-2000 fiscal years. The letter instructed them to "assemble their records regarding the date, amount and nature of each financial transaction; copies of receipts, bank statements, cancelled checks, invoices and supporting expenses, and any other documentation necessary to support the receipt of funds during the audited period." In November 2000, each bailiff and court officer was sent a letter with an appointment to meet in December with a member of the firm hired to conduct the audit. The bailiffs and court officers were also sent questionnaires asking them about the work they performed, their knowledge of certain laws relating to their work, and the records they kept.

On December 8, 2000, Charging Party Staff Representative Danny Craig wrote to Respondent demanding to bargain over "the implementation of an audit and how the audit will be conducted." Craig also asked that the audit be delayed until Charging Party and Respondent had a chance to meet on this issue. Shortly thereafter, Craig had a brief discussion with James Meadows, a representative of the Court. Craig told Meadows that the information that the bailiffs and court officers had provided in past audits had been satisfactory at the time, and complained, based on the questionnaire, that Respondent was expecting them to provide more information in this audit. Meadows responded that he expected the bailiffs and court officers to comply. At about the same time, Local 917 President Thornton Jackson, a real estate bailiff, told Meadows that he thought the questionnaire was "too personal," and requested a meeting to discuss the questionnaire. Meadows told him that he would get back with him, but Jackson never received a response. Respondent did not reply to Charging Party's written demand to bargain.

The auditors conducted their first round of interviews with the bailiffs and court officers in December 2000. The purpose of the first round of interviews was simply to determine what records the bailiffs and court officers kept. At these interviews, the auditors took completed questionnaires and asked the bailiffs and court officers about their records.

Between August 9 and August 22, 2001, Respondent sent letters to the court officers and real estate bailiffs stating that the recent audit could not be completed due to their failure to produce the required records. The one civil bailiff did not receive this letter.2 The letter notified the bailiffs and court officers that they would be given new appointments with the auditors after October 1, 2001. It instructed them to compile the information in an attached questionnaire by the time of their appointments with the auditor. The letter also stated that if the bailiffs and court officers did not comply they would be removed from the rotation (i.e., suspended from performing any of their normal services) until they did comply.

After the August letters, Charging Party sent Respondent two letters demanding to bargain. The record did not indicate what these letters actually said, except that Charging Party asked to have the audit held in abeyance until such time as the parties could reach an agreement on "the requirements." Respondent did not respond to either demand.

At the second round of interviews, the auditors asked the court officers and bailiffs if they had any records that they had not mentioned in their first interview. On October 10, the auditing firm submitted its report to Respondent. The report indicated that an audit could not be completed due to the bailiffs' and court officers' incomplete records. According to the auditors, the six real estate bailiffs only had their cash up sheets.3 Cash up sheets are payroll documents issued by the Court to bailiffs and court officers showing the money paid to them for completed work. According to the auditors, all six real estate bailiffs maintained that they did not need to keep or turn over any records relating to evictions, since they performed this work as independent contractors. Of the nine court officers interviewed, all had copies of their cash up sheets. Two court officers had nothing else. Two had cash up sheets, trust accounts, ledgers or journals, and full documentation of their eviction expenses. The fifth had the same records, but lacked documentation for expenses incurred prior to 2000. One court officer had a trust account, but no expense information. Another had adequate documentation for his eviction expenses, but no trust account or ledger. The last two had documentation for some of their eviction expenses, but lacked records relating to labor they hired. According to the auditors, the court officers all believed they performed evictions as independent contractors, and three of the nine were "not willing" to provide records relating to orders of eviction other than their 1099s.The auditors reported that the real estate bailiffs and the majority (all but three) of the court officers were "either unable or unwilling to provide sufficient written records" to enable the auditors to conduct the audit.

On November 5, 2001, the real estate bailiffs and five of the court officers (those who had not produced adequate documentation for their eviction expenses for the current fiscal year) were notified by the Respondent that they would be suspended for 30 days for failure to submit adequate records to the

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2 She maintained a receipt book and a ledger. The auditors considered her records adequate.

3 The real estate bailiffs also had copies of their Federal Tax Form 1099s from plaintiffs for whom they had performed evictions. A 1099 form shows how much money a particular plaintiff has paid a particular bailiff during that tax year; plaintiffs who paid the real estate bailiff less than $600 would not have to give the bailiff a 1099 form. The auditor in charge of the 1998-2000 audit testified that the 1099s were not satisfactory documentation of the bailiffs' financial transactions with respect to evictions.

auditors.

Discussion and Conclusions of Law:

Respondent first asserts that it had no duty to bargain with Charging Party over the manner in which the audit was conducted and/or the types of information the bailiffs and court officers had to produce for the audit. I agree. MCL 600.8322 requires court officers and bailiffs to keep records of financial transactions performed by them in the course of their services. It also requires that these records be audited. There is only one reasonable interpretation of this statute; the court officers and bailiffs have to provide the auditors with the financial records the auditors need to complete the audit. It is the auditors, exercising their professional judgment, who must determine how the audit will be conducted. It is also the auditors who must determine what types of records the court officers and bailiffs have to submit. Since Respondent does not have control over these issues, it obviously cannot be required to bargain over them.

Respondent also argues that the types of records and information the auditors requested in the 1998-2000 audit were the same as the auditors had requested in at least two previous audits. Charging Party asserts, however, that court officers and bailiffs were required to provide information in the 1998-2000 audit that Respondent had not previously required of them. Charging Party relies, in large part, on the fact that the bailiffs were not disciplined after the previous failed audit. I find, however, that even if these matters were within its control, Respondent would have no duty to bargain over a decision to require the bailiffs and court officers to keep and provide the auditors with more extensive information about their financial transactions. Keeping records of their financial transactions is clearly part of the bailiffs' and court officers' normal job duties. The Commission has consistently held that an employer has no duty to bargain over the assignment of new duties which are the same or substantially similar to existing duties, and which do not change the nature of the job, although it does have a duty to discuss the impact of the new duties on employees. See, e.g., *Pontiac School District*, 2002 MERC Lab Op ___ (Case No. C98 K-236, decided February 1, 2002); *City of St. Joseph,* 1996 MERC Lab Op 274.

Charging Party and Respondent disagree over whether Respondent gave the bailiffs and court officers sufficient notice of what they would be required to provide to the auditors in the 1998-2000 audit. Charging Party asserts that because the bailiffs and court officers did not have notice, their discipline was improper. However, even if Respondent's decision to discipline these employees was part of the impact of new record keeping requirements, it had no duty to bargain unless and until Charging Party demanded to bargain. *SEIU v Union City,* 135 Mich App 553 (1984). Here, Charging Party never sought to bargain over the discipline, but only the requirements themselves.

For all the reasons set forth above, I conclude that Respondent did not violate its duty to bargain.

Charging Party's final argument is that Respondent disciplined the court officers and bailiffs in November 2001 because Charging Party's had demanded to bargain. Respondent suspended certain bailiffs and court officers after receiving the auditors' report concluding that most of the bailiffs and court

officers kept insufficient records to permit an audit. The report detailed the records each bailiff and court officer kept. Respondent suspended only real estate bailiffs and court officers who did not submit adequate documentation for their eviction expenses. I find no evidence to support a finding that Respondent suspended these employees because Charging Party had demanded to bargain.

In accord with the findings of fact and discussion above, I conclude that Respondent did not violate its duty to bargain under Section 10(1)(e) of PERA. I also conclude that Respondent did not unlawfully discriminate against employees in violation of Sections 10(1)(a) or (c) of the Act. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____