

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ATLAS TOWNSHIP,
Public Employer,

-and-

MICHIGAN ASSOCIATION OF FIRE FIGHTERS,
Labor Organization,

Case No. R03 E-86

-and-

STEVE BULLEN,
Petitioner.

APPEARANCES :

Lyndon J. Lattie, Esq., for the Public Employer

M. Catherine Farrell, Esq., for the Labor Organization

Steve Bullen, in propria persona

DECISION AND ORDER

This case comes before the Michigan Employment Relations Commission pursuant to Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and MCL 423.213. The parties in this matter agreed to submit briefs in lieu of hearing. Based upon the record and briefs filed on or before November 3, 2003, the Commission finds as follows:

The Petition and Background Matters:

The Michigan Association of Fire Fighters (MAFF) represents a bargaining unit consisting of all paid on-call fire fighters of Atlas Township below the rank of Chief. On May 14, 2003, fire fighter Steve Bullen filed a petition seeking to decertify MAFF as representative of this unit. MAFF objects to the decertification petition on the grounds that it is blocked by an Act 312 petition for compulsory arbitration filed with the Commission by MAFF on March 10, 2003.

Discussion:

MAFF was certified as the exclusive representative of the fire fighter bargaining unit on June 26, 2001. Thereafter the parties engaged in extensive bargaining for an initial contract, including several mediation sessions. When the parties failed to reach a contract, MAFF filed a petition for compulsory arbitration under Act 312, 1969 PA 312, as amended by 1976 PA 203, and 1977 PA 303, MCL 423.231-247, with the Bureau of Employment Relations on March 10, 2003. (Case No. L01 G-8009). Pursuant to section 3 of Act 312, this petition was timely, since the dispute “had not been resolved to the agreement of both parties within 30 days of the submission to mediation.”¹

Act 312 is designed to provide “an alternative, expeditious, effective and binding procedure for the resolution of disputes” in police and fire departments, where the right to strike is prohibited. The statute sets forth procedures and timelines for initiating binding arbitration. Briefly, under section 4 of the statute, each side is permitted to choose a delegate to the arbitration panel. Under section 5, within 7 days of the request for compulsory arbitration, the Bureau, acting on behalf of the Commission, submits three names from the Commission’s panel of arbitrators for selection of a chairman of the arbitration panel by the parties, with the parties having the right to strike the name of one of the nominees. An arbitrator is then designated by the Commission and arbitration commences.

In the instant case, although the Act 312 petition was filed on March 10, 2003, no action was taken by the Bureau to submit panel names to the parties until May 20, 2003, over two months later. It was during this period, on May 14, 2003, that the decertification petition was filed. The Employer maintains that the Commission should hold the Act 312 petition in abeyance while a decertification election is held, in order to protect the employees’ freedom of choice. The Union argues that the petition for compulsory arbitration was timely filed and blocks the decertification petition.

Our long-standing policy with regard to a petition for Act 312 arbitration barring the filing of representation petitions was reaffirmed on June 16, 1983, and restated in our decision in *City of Three Rivers*, 1985 MERC Lab Op 108, at 112:

The Commission will entertain representation petitions during the established filing period of 150-90 days prior to the expiration date of a collective bargaining agreement even though Act 312 arbitration has been initiated or pending; but, if the collective bargaining agreement has expired and an Act 312 arbitration proceeding is pending, the filing of representation petitions will be barred by the arbitration proceedings. For

¹ See Consent Judgment in *Police Officers Ass’n of Michigan v Michigan Employment Relations Commission*, Wayne County Circuit Court, entered February 24, 1994, (Docket No. 94-430923): “If a petition for binding arbitration proceedings has been filed by a party more than 30 days after the filing of the mediation submission request, the Employment Relations Commission shall, **without delay**, process the petition for binding arbitration proceedings.” [Emphasis added.]

purposes of this policy, an Act 312 petition shall be considered pending from the date said petition is filed with the Commission.

We recognize that this policy does not specifically address first contract situations. However, the principle inherent in this policy is that as long as there is a period when a representation petition *may* be filed, the balance between the stability of bargaining relationships and employee freedom of choice will be maintained, at the same time preserving the integrity of the Act 312 process. Here, although there was a period of almost a year after the expiration of the “protected” certification year² when a representation petition could have been filed by the employees, this filing did not occur until after the Act 312 petition was filed.

We have reviewed the files in both cases and have carefully considered the arguments of the parties. It is clear that had the Act 312 petition been processed in a timely manner by the Bureau, an arbitration panel would have been in place prior to the filing of the decertification petition. Under these circumstances, we find that the statute and Commission policy dictate that we process the timely filed Act 312 petition. We further note that our ruling is limited to the unique facts of this case.

Based on the above discussion, we issue the order set forth below:

ORDER

It is hereby ordered that the decertification petition be dismissed and the petition for Act 312 compulsory arbitration be immediately processed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____

² Section 14 of PERA provides that “An election shall not be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election was held.”