STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

36TH DISTRICT COURT,
Respondent - Public Employer,

Case No. C02 G-149

- and -

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

APPEARANCES:

Kotz, Sangster, Wysocki and Berg, P. C., by Heather G. Ptasznik, Esq., and Jeffrey M. Sangster, Esq., for Respondent

Miller Cohen, P. L. C., by Richard C. Mack, Esq., and Bruce A. Miller, Esq., for Charging Party

DECISION AND ORDER

On April 15, 2004, Administrative Law Judge Roy L. Roulhac issued his 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

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Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

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Maris Stella Swift, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

I. The Unfair Labor Practice Charge:

On July 2, 2002, Charging Party, the American Federation of State County and Municipal Employees, Council 25 and its affiliate, Local 917, filed an unfair labor practice charge against Respondent 36th District Court. Pertinent parts of the charge read:

> Charging Party alleges that the Respondent, 36th District Court has violated the Public Employment Relations Act (PERA) MCLA Section 423.210(1)(c), by refusing to honor the subjects of bargaining (hours, wages, & conditions of employment). The Board Decision and Order of December 16, 1999, directs the Respondent 36th District Court to bargain with respect to the above, however, the Court has failed to do so and unilaterally imposed conditions of employment.[1]

In an amended charge filed on July 29, 2002, Charging Party stated that it was charging Respondent with the following:

[1]In *Detroit Judicial Council*, 2000 MERC Lab OP 7 the Commission found that court officers, life bailiffs, were employees, rather than independent contractors, ordered Respondents to recognize Charging Party as the court officers' bargaining agent and to bargain, upon demand, over their wages, hours and other terms and conditions of employment.

1. Not bargaining in good faith, in that the Employer has ceased to bargain and when bargaining, not bargaining to resolve the one and only outstanding issue which precludes the contract from being completely T.A.'d.

2. Further, the Employer is violating the order issued by MERC and violating the bargaining unit members' rights and the Union's rights by treating the bargaining unit members as contractual or independent contractors and discharging members without cause.

Charging Party filed a response to a Motion for a More Definite Statement on October 3, 2002. It reads:

1. The only outstanding issue is the Bailiff/Court Officer status as an employee as opposed to a contractor. As an employee if a Bailiff/Court Officer is not re-appointed pursuant to the Court rule the Court must find the employee a neither [sic] position [sic] only contractor can be terminated without cause. Further, related to the status issue is the rotation of the officers with respect to civil and real estate. The issue of Bailiff/Officer is the only outstanding issue which [sic] MERC has already decided that this group are employees and [sic] entitled to be treated as such.

2. A term of employment is a mandatory subject of bargaining (condition of employment) [sic] this arbitrary term imposed for contractors not employees hampers the Unions [sic] ability to negotiate the conditions of employment for the Bailiffs/Court Officers because the Respondent is attempting to treat the employees like contractors with renewable two year contract terms.

3. The Respondent has refused to honor the subjects of bargaining in that they refuse to bargain concerning the conditions of employment. The Union asserts that we are not attempting to get the Commission to impose a term or condition of employment, but rather to order the respondent [sic] negotiate as to the terms or condition of employment and the impact thereof.

4. The Respondent is failing to bargaining [sic] with respect to a condition of employment (term of employment) and is unilaterally imposing this condition as it did with Brother Terence Couch. This unilateral decision to impose this condition of employment on the Union is a violation of PERA.

Respondent filed a Motion for Summary Disposition on December 16, 2003. It contends that because the parties have entered into a collective bargaining agreement on behalf of court officers and bailiffs, the failure to bargain aspect of the charge is moot. Even it were not moot, the Respondent argues, it is not required to bargain with court officers regarding "termination for cause" and duration of employment because Michigan Court Rule (MCR) 3.106(C) specifically states that court officers are to be appointed for a term not to exceed two years. Respondent also alleges that the portion of the charge dealing with Terence Couch's discharge is improper and time-barred.

II. Background Facts:

In 1981, the legislature established the State Judicial Council as the employer of various court employees, created the 36th District Court and created two classes of bailiffs – the then-existing bailiffs and a new classification of court officers who were to be appointed to fill vacancies created by the retirement or resignation of bailiffs. By July 1998, nine court officers had been appointed. Court officers who had been Court employees were required to resign their positions and sign three-year independent contractor agreements that were subject to automatic renewal unless breached or terminated for cause.

In February 1999, Charging Party filed the unit clarification petition and unfair labor practice charge that was the subject of the Commission's Decision and Order in *Detroit Judicial Council, Supra*. In a January 13, 2000 Decision and Order, the Commission found that court officers, like bailiffs, were employees, rather than independent contractors, ordered Respondents to recognize Charging Party as the court officers' bargaining agent and to bargain, upon demand, over their wages, hours and other terms and conditions of employment. In the meantime, on September 12, 1999, seven months after the charge was filed in *Detroit Judicial Council*, the Michigan Supreme Court issued MCR 3.106. Among other things, MCR 3.106 provided that court officers may be appointed for a term not to exceed two years.

On June 28, 2002, a few days before the instant charge was filed, Respondent terminated Terence Couch's employment as a court officer. Neither Couch nor Charging Party filed a grievance challenging Couch's termination although a memorandum of understanding entered into in 1983 by the State Judicial Council and Charging Party contained a grievance procedure that applied to bailiffs and courts officers. A week after Couch was terminated, the parties began bargaining for an initial contract for court officers and bailiffs. They entered into a collective bargaining agreement on April 21, 2003.

III. Conclusions of Law:

In its February 5, 2004, response to Respondent's Motion for Summary Disposition, Charging Party frames the issue as whether the Michigan Supreme Court can issue a court rule that makes union-represented court officers at-will employees with two-year terms of employment. It argues that MCR 3.106(C) should not trump a negotiated collective bargaining agreement or PERA.

I find that it is unnecessary for the Commission to decide whether the Supreme Count has the authority to issue a court rule that regulates the terms and conditions of court officers' employment. I agree with Respondent's assertion that when the parties entered into a collective bargaining agreement, Charging Party's allegation that Respondent violated PERA by refusing to bargain about the court officers' terms and conditions of employment became moot. Charging Party notes correctly that the Commission, in *Detroit Judicial Council*, *supra,* found that court officers were employees and ordered Respondents to recognize Charging Party as their bargaining agent and to bargain, upon demand, over their wages, hours and other terms and conditions of employment. However, Section

15 of PERA (MCL 423.215), which requires parties to bargain in good faith, does not compel either party to agree to a proposal or make a concession. See *Michigan Federation of Teachers v. Lake Michigan College*, 60 Mich App 747 (1975), a*ff'g* 1974 MERC Lab Op 219. The record establishes that the parties bargained and entered into a collective bargaining agreement that incorporated terms and conditions of employment for bailiffs and court officers. Even if no agreement were reached, Charging Party has not alleged that Respondent's conduct during bargaining was hostile to the bargaining process, that Respondent was intent on avoiding an agreement, or that Respondent otherwise bargained in bad faith.

Charging Party also argues that the parties' agreement and the Commission's ruling in *Detroit Judicial Council, supra,* prohibit Respondent from terminating court officers after two years. According to Charging Party, Respondent repudiated the collective bargaining agreement by ignoring its terms and terminating Terence Couch. The record, however, contains no factual support for this assertion. Couch was terminated on June 28, 2002, almost a year before the parties entered into a collective bargaining agreement. If, as Charging Party claims, Couch's discharge were improper, it had the right to utilize the grievance procedure set forth in a memorandum of understanding that the parties executed in 1983.

Based on the above discussion, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is summarily dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____