

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

In the Matter of:

INGHAM COUNTY and INGHAM COUNTY SHERIFF,
Public Employers-Respondents,

Case No. C03 D-089

-and-

CAPITOL CITY LODGE NO. 141 OF THE FRATERNAL
ORDER OF POLICE, LABOR PROGRAM, INC.,
Labor Organization-Charging Party.

APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., by John R. McGlinchey, Esq., for the Respondents

Wilson, Lawler & Lett, P.L.C., by R. David Wilson, Esq., and Steven T. Lett, Esq., for the Charging Party

DECISION AND ORDER

On June 30, 2004, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents Ingham County and Ingham County Sheriff (Employer) committed an unfair labor practice in violation of Section 10(1)(a) and (c) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a) and (c). The ALJ found that the violation occurred when the Employer disciplined Laurie Siegrist, Charging Party's Division President, by giving her a written verbal warning because she gave Charging Party's attorney a copy of a memo regarding the wearing of pagers by off-duty detectives.

The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. The Employer filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions, to which Charging Party filed a timely response. In its exceptions, the Employer alleges that the ALJ erred in concluding that Siegrist was engaged in protected activity when she disclosed the Employer's memo to Charging Party's attorney, and erred in holding that the Employer lacked a legitimate business justification for prohibiting that disclosure.

Factual Summary:

We accept the findings of fact set out in the ALJ's Decision and Recommended Order and only summarize them here as needed. Charging Party is the bargaining representative for all deputy sheriffs, detectives, and jail corrections officers employed by the Ingham County Sheriff's Department. On March 20, 2003, Charging Party's Division President, Laurie Siegrist, was given a written verbal warning for giving Charging Party's attorney a copy of a memo that the Employer had sent to all detectives in the bargaining unit requiring the wearing of pagers both on and off duty.

Rule 106 of the Employer's internal rules and regulations, entitled "Records and Information Security," provides in relevant part:

No Departmental documents to include, but not limited to, reports, photographs, memos, and official records shall be released to the public without authorization and in compliance with the Freedom of Information Act.

On March 11, 2003, the Employer sent the following memo to all of its detectives, including Siegrist:

Re: Pagers

It's been brought to my attention that some of you are under the impression that you do not have to carry your department pager with you off duty. This is [sic] memo is to inform you that you are required to carry your pager with you when you are on and off duty. If you have any questions, I will be available.

Later that day, Siegrist phoned Charging Party's attorney, R. David Wilson. They discussed the matter and Wilson asked her to fax him a copy of the memo, which she did.

On March 12, Wilson sent the Employer a letter demanding to bargain the requirement that detectives carry pagers while off duty, which he alleged was a change in working conditions. On March 20, Siegrist received a written verbal warning for violating Rule 106. The warning, which was placed in Siegrist's personnel file, stated in pertinent part: "The Sheriff's Office can not and will not tolerate employees (even those who are union representatives) freely circulating Sheriff's Office documents."

Discussion and Conclusions of Law:

No claim is made, nor is there evidence to support a claim, that Siegrist's disclosure to Charging Party's attorney dealt with a confidential matter pertaining to security. The Employer argues that Charging Party had no right to receive the document

disclosed by Siegrist. It does not dispute Charging Party's right to receive the information contained in that document. We are asked to hold that the Employer's legitimate business interest permits it to ban disclosures that categorically include communications protected by PERA. We decline to do so. See *City of Detroit (Fire Dep't)*, 1982 MERC Lab Op 1220.

Although an employer has a legitimate business interest in preventing the unauthorized disclosure of confidential information, there has been no showing here of a business justification for prohibiting Siegrist from giving Charging Party's attorney a document pertaining to a condition of employment affecting bargaining unit employees. Siegrist was engaged in lawful concerted activity within the meaning of Section 9 of PERA when she sought Wilson's opinion as to her Employer's right to require, without bargaining, that bargaining unit members wear pagers while off duty. Where there is no overriding legitimate business interest in protecting the information from disclosure, rights guaranteed by PERA remain paramount.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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APPEARANCES:

Cohl, Stoker & Toskey, P.C., by John R. McGlinchey, Esq., for the Respondent

Wilson, Lawler & Lett, P.C., by R. David Wilson, 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 Lansing, Michigan, on September 9, 2003, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by both parties on or before October 27, 2003, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge:

Capitol City Lodge No. 141 of the Fraternal Order Police, Labor Program Inc. filed this charge against Ingham County and the Ingham County Sheriff on April 22, 2003. Charging Party is the bargaining representative for all deputy sheriffs, detectives and jail corrections officers employed by the Respondents in the Ingham County Sheriff's Department. Charging Party alleges that on March 20, 2003, Respondent violated Section 10(1)(a) and (c) of PERA by disciplining Charging Party Division President Laurie Siegrist for giving Charging Party's attorney a copy of a memo that Respondent had sent to all detectives in the bargaining unit concerning the wearing of pagers.

Facts:

Rule 106 of Respondent's internal rules and regulations is entitled "Records and Information Security." It provides, in relevant part:

The Department recognizes that its Members, by virtue of their position, will gain access to sensitive and restricted information. What is learned as a Member cannot be disseminated for other than Departmental purposes and then only through approved procedures.

All information, records, software, hardware, data and related equipment used, maintained, owned, produced, licensed, or managed by the Department are the property of the Department and may not be used, copied, reproduced, released, or viewed except in accordance with Department procedures.

No Departmental documents to include, but not limited to, reports, photographs, memos, and official records shall be released to the public without authorization and in compliance with the Freedom of Information Act.

On March 11, 2003, Lieutenant Jeff Joy used Respondent's e-mail system to send the following memo to all Respondent's detectives, including Siegrist:

Re: Pagers

It's been brought to my attention that some of you are under the impression that you do not have to carry your department pager with you off duty. This is [sic] memo is to inform you that you are required to carry your pager with you when you are **on** and **off duty**. If you have any questions, I will be available. [Emphasis in original]

Later that day, two detectives asked Siegrist if Respondent could lawfully implement a new rule requiring them to wear pagers off duty. Siegrist told them she was not sure. Siegrist phoned Charging Party's attorney, R. David Wilson. They discussed the issue, and Wilson asked her to fax him a copy of the memo.

On March 12, Wilson sent Respondent Undersheriff Matthew Myers the following letter:

The attached memorandum was just forwarded to my office by Lodge representatives for my consideration and review.

I am informed that members of the Detective Bureau have never been required to carry their Department pager when they are off duty. Obviously, the attached memorandum changes this requirement. Aside from on-call overtime considerations, such a change constitutes a change in working conditions that

requires collective bargaining before the change can be implemented. As I am sure you know, no bargaining regarding this issue has ever taken place.

The purpose of this letter is to demand that collective bargaining proceedings regarding this issue occur **before** this change in working conditions is implemented. [Emphasis in original]

On March 17, Myers sent a memo to all detectives with a copy of the Wilson's March 12 letter attached. The memo stated that an internal document authored by Lieutenant Joy was distributed to Wilson without authorization, and that this action violated Department Rule 106.

On March 20, Siegrist received a written verbal warning for violating Rule 106. The warning, which was placed in Siegrist's personnel file, stated:

Even though you are the Union President you do not have the right to freely distribute Department memo's [sic] and/or documents. It is not for you to decide which documents are to be made public. You union has the ability to request public documents and certainly knows the procedure for doing this. The Sheriff's Office cannot and will not tolerate employees (even those who are union representative s) freely circulating Sheriff's Office documents. Procedures are in place to release documents and those procedures must be followed.

Discussion and Conclusions of Law:

In *City of Detroit (Fire Dep't)*, 1982 MERC Lab Op 1220, the Commission held that an employer violated Sections 10(1)(a) and (c) of PERA when it disciplined employees for violating an otherwise legitimate work rule while they were engaged in activity protected by Section 9 of PERA. In that case, a proposal to amend the Detroit City Charter to change the way promotions in the fire department were made was placed on the ballot. The fire fighters' union opposed the amendment. Fire fighters appeared, wearing their departmental uniforms, in print and television advertisements opposing the amendment. Fire fighters also wore their uniforms while distributing materials outside polling places. The fire department had a long-standing rule prohibiting fire fighters from wearing their uniforms while off duty without permission. After the election, the employer disciplined 12 fire fighters for violating the uniform rule. The union filed an unfair labor practice charge alleging that this discipline interfered with the fire fighters' exercise of their Section 9 rights.

In analyzing whether the employer could lawfully apply its uniform rule to discipline fire fighters for engaging in what would otherwise be protected activity, the Commission and its administrative law judge adopted a three-part test set out in *Jeannette Corp v NLRB*, 532 F2d 916 (CA 3, 1976). Applying the first arm of this test, the Commission found that disciplining fire fighters for wearing their uniforms while campaigning against the proposed charter amendment adversely affected their rights under Section 7 of the National Labor Relations Act, 29 USC 151, et seq, the counterpart to Section 9 of PERA. The Commission then analyzed whether the employer had demonstrated a legitimate and substantial business justification for instituting the rule and applying it. The employer justified its uniform rule as necessary to

maintain the sanctity of the uniform and instill public confidence in the department. The Commission found, however, that while there were legitimate reasons for placing reasonable restrictions on the employees' use of the uniform, there was no evidence that the fire fighters engaged in offensive or disruptive conduct while campaigning in their uniforms, or that wearing the uniform in that context had any effect on the public's confidence in the fire fighters' abilities. Finally, the Commission balanced the diminution of the employees' rights as a result of the application of the rule against the employer interests being protected by the rule. Based on this analysis, the Commission concluded that the employer violated Sections 10(1)(a) and (c) of PERA when it disciplined the fire fighters.

When Siegrist, Charging Party's division head, communicated with Wilson, Charging Party's attorney, regarding a possible violation of Respondent's duty to bargain under Section 10(1)(e) of PERA, she was engaged in "lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection" within the meaning of Section 9 of PERA. Moreover, as was the case in *City of Detroit (Fire Dep't)*, *supra*, the Union here does not assert that Respondent's Rule 106, per se, constitutes an unlawful restriction on employees' exercise of their Section 9 rights. As in that case, the only issue here is whether Respondent could lawfully discipline an employee for violating an otherwise legitimate work rule in the course of conduct that would otherwise be protected by PERA.

Applying the test set out in *City of Detroit*, I first find that disciplining Siegrist for giving Wilson a copy of an internal memo regarding a condition of employment to determine whether Respondent violated its duty to bargain adversely affected her right to engaged in Section 9 activity. Respondent argues that instead of giving Wilson a copy of the memo, Siegrist could have made a formal request for the document.¹ However, Siegrist testified that when she read the memo she did not know whether it constituted a violation of Respondent's bargaining duty. Siegrist had a legitimate interest in discussing the memo with Wilson without Respondent knowing about their discussion. Moreover, by providing Wilson with a copy of the memo, Siegrist ensured that Wilson knew exactly what Respondent had told employees, so he could accurately determine whether Respondent had overstepped its rights. I also conclude that Respondent did not establish a legitimate and substantial business justification for applying Rule 106 to Siegrist's conduct. Respondent has a legitimate interest in preventing the unauthorized disclosure of confidential information and documents to the public. However, Respondent did not offer a business justification for prohibiting Siegrist, a member of Charging Party's bargaining, from giving Wilson, a non-employee agent of Charging Party, a document clearly relevant to the wages, hours, and terms and conditions of employment of bargaining unit employees. Balancing Respondent's general interest in protecting the confidentiality of its information against the effect of the discipline on Siegrist's ability to exercise her Section 9 rights, I conclude that Respondent violated Section 10(1)(a) and (c) by disciplining Siegrist on March 20, 2003. I recommend, therefore, that the Commission issue the following order.

¹ Respondent admits that, upon receipt of a proper request, it would have been required to provide Charging Party with a copy of Joy's memo pursuant to Respondent's duty to provide information and /or the Michigan Freedom of Information Act, MCL 15.231 et seq.

RECOMMENDED ORDER

Respondents Ingham County and Ingham County Sheriff, their officers and agents, are hereby ordered to:

1. Cease and desist from applying Department Rule 106 in a manner which interferes, restrains or coerces employees in the exercise of their rights guaranteed under Section 9 of PERA.
2. Take the following affirmative action to effectuate the purposes of the Act:
 - a. Remove from Detective Laurie Siegrist's personnel file the verbal written warning issued to her on March 20, 2003.
 - b. Post the attached notice in conspicuous places on their premises, including all places where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, Ingham County and the Ingham County Sheriff have been found to have committed an unfair labor practice in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT apply Department Rule 106 in a manner which interferes, restrains or coerces employees in the exercise of their rights guaranteed under Section 9 of PERA.

WE WILL remove from Detective Laurie Siegrist's personnel file the verbal written warning issued to her on March 20, 2003.

INGHAM COUNTY AND INGHAM COUNTY SHERIFF

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.