STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (POLICE DEPARTMENT),
Respondent-Public Employer,

Case No. C04 B-043

-and-

DETROIT POLICE OFFICERS ASSOCIATION,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Dara M. Chenevert, Esq., Assistant Corporation Counsel, for the Public Employer

Gregory, Moore, Jeakle, Heinen & Brooks, P.C., by James M. Moore, Esq. for the Labor Organization

DECISION AND ORDER

On April 28, 2005, 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

_____
Nino E. Green, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on August 19, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and post-hearing briefs filed by October 14, 2004, I make the following findings of facts and conclusions of law.

The Unfair Labor Practice Charge:

Charging Party's February 13, 2004 unfair labor practice charge, as amended on August 12, 2004, alleges that Respondent City of Detroit bargained in bad faith and violated Sections 10(1)(a) and (e) of PERA by its January 20, 2004 unilateral elimination of a part-time grievance committee member position and by reneging on its June 2004 agreement to reinstate the position.

Findings of Fact:

Charging Party Detroit Police Officers Association and Respondent City of Detroit were parties to a collective bargaining agreement during all periods relevant to this proceeding. Pertinent sections of the agreement read:

> Article 4(0): Grievance Committee members shall receive two (2) working days off per week in order to investigate and process grievances …[1]

[1] Since at least 1997, grievance committee members have received five days off per week.

> Article 4(P): "Grievance Committee" means a committee of not more than three (3) members designated by the Union to review, screen and adjust grievances presented by employees.

In July or August 1995, the parties created an executive assistant position. Officer Roger Chesney filled the position. He worked full-time for the Union until 1997, when the Chief of Police eliminated the position. To resolve a grievance and unfair labor practice charge filed by the Union, the parties entered into a June 1997 settlement agreement restoring the position. The agreement, executed by Commander Michael Falvo and Charging Party's president Don Johnson, provided that the executive assistant position would be reinstated as a part-time, two days per week position. It also stated that the full extent of the Union's contractual rights concerning persons permitted to conduct union business was set forth in Article 4 of the collective bargaining agreement. Additionally, it provided that the position's reinstatement and the prerogative to modify the arrangement were solely within the Chief of Police's discretion.

In December 1997, following Officer Martin Bandemer's election as Charging Party's president, he met with Chief Isaiah McKinnon to discuss his campaign pledge to "add an additional grievance committee member instead of an unnecessary executive assistant." McKinnon told Bandemer that he had no problem making the position full-time, but that he needed to consult with Commander Falvo, the head of labor relations. Falvo offered the following testimony regarding his response to Chief McKinnon's query:

> Well, I told him that we had just finished signing a settlement agreement about six months before which stipulated that Mr. Chesney had an extra --- he would be allowed, extra-contractual, to work two days a week." And it was my position, and it has always been my position, that how the DPOA uses members that are assigned to it is not my business, not subject to my oversight, and that I opposed changing it back to five days. It had been reduced to zero, and then to two. I had no opposition to having it continued at two days, and what the person did was not my concern.
>
> They could call him whatever --- you know, that was an internal Union matter. What I was --- my issue was how many days would he work. And again, what I emphasized was that the contract provided for three grievance members two days a week, and that anything above and beyond that in the settlement agreement --- it wasn't contractual, as it states here [referring to the June 1997 settlement agreement] – was in the sole discretion of the Chief.
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> In other words, we continued this agreement that we had in effect before Mr. Bandemer came in with his predecessor, and how he utilized that person was his business.

Shortly thereafter, on January 6, 1998, Bandemer sent a letter to Chief McKinnon indicating that "PO Paul Steward . . . will replace Ray Chesney, former Executive Assistant . . . and will be utilized as a fourth member to the Grievance Committee on the same two day per week basis."

After Charging Party's 2003 election of officers, Bandemer wrote to Chief of Police Ella Bully-Cummings to advise her that Officer Stewart had been elected as a union officer and was

being replaced on the grievance committee by Officer Mark O'Leary. In her January 20, 2004, reply to Bandemer's letter, Chief Bully-Cummings wrote that she would not allow O'Leary or any other officer to be appointed to the fourth grievance committee member position because the fourth position had always been extra-contractual and permissive at the Chief's discretion. Thereafter, on February 4, 2004, the instant unfair labor practice charge was filed claiming that Respondent's unilateral decision to eliminate the part-time grievance committee position constituted a repudiation of an existing employment condition and retaliation.

On June 10, 2004, during negotiations for a successor collective bargaining agreement, two issues pertinent to these proceeding were discussed. One involved closing the 4th precinct and the transfer of personnel, including 17 police officers who were under federal indictment and suspended from the Department, to other precincts. Charging Party sought to include the suspended officers on the transfer and seniority lists. In exchange for the Charging Party's agreement to address the suspended officer's seniority and transfer rights as a separate issue later, Respondent agreed to restore the part-time grievance committee member position. The parties agreed to prepare and exchange memoranda of understanding on both issues.

The memoranda were prepared but were never executed. On June 16, a dispute arose regarding the title of the fourth grievance committee member. Charging Party insisted that the position not be called "executive assistant" and Respondent was adamant that it not be referred to as a "fourth grievance committee member." Ultimately, the parties agreed that the position would be titled "DPOA assistant." On June 25, Charging Party advised Respondent that it would not sign the memorandum regarding closing the 4th precinct. Thereafter, Respondent informed Charging Party that it would not agree to the DPOA assistant position because the issues were tie-barred. On August 12, 2004, Charging Party amended it unfair labor practice charge to allege that Respondent bargained in bad faith by failing to execute the parties' June 10, 2004 agreement to reinstate the part-time grievance committee position.

Conclusions of Law:

Charging Party first contends that Respondent committed an unfair labor practice in January 2004 when it unilaterally eliminated the fourth part-time grievance committee member position. According to Charging Party, it is undisputed that in December 1997, Officer Bandemer and Chief McKinnon entered into an agreement allowing Charging Party to have one part-time grievance committee member in addition to the three full-time grievance committee members provided for in the parties' collective bargaining agreement. Moreover, Charging Party asserts, the parties abided by that agreement until January 2004, when Chief Bully-Cummings unilaterally eliminated the position without providing Charging Party with notice or an opportunity to bargain, and without offering an explanation.

I find no factual support in the record for Charging Party's arguments. The record reveals that there was never an agreement to add a fourth, part-time grievance committee position. In 1995, the parties agreed to create an executive assistant position that Officer Chesney held, full-time, until 1997, when it was eliminated. In June 1997, the position was restored as a part-time position after the parties executed a settlement agreement to resolve an unfair labor practice charge and a grievance. The agreement set forth that the position's reinstatement and the prerogative to modify the arrangement were solely within the Chief of Police's discretion. It also provided that the full extent of the Union's contractual rights concerning persons permitted to conduct union business was set forth in Article 4 of the collective bargaining agreement.

Contrary to Charging Party's assertion, there is nothing in the record to demonstrate that the June 1997 agreement was changed. Rather, the undisputed evidence shows that during the December 1997 meeting between Chief McKinnon, Commander Falvo and Officer Bandemer, the parties' June 1997 agreement to restore the executive assistant position was continued. Commander Falvo testified that the parties "continued this agreement that we had in effect before Mr. Bandemer came in with his predecessor, and how he utilized that person was his business."

Charging Party would have this tribunal believe that Respondent's failure to object to Bandemer's January 6, 1998 letter confirming that Stewart would serve as the fourth grievance committee member establishes that the parties verbally agreed to create a fourth, part-time grievance committee position in December 1997. This assertion, however, completely ignores Commander Falvo's testimony that the manner in which Charging Party used the restored-executive assistant position was an internal union matter and not Respondent's business. Charging Party's decision to refer to and utilize the part-time executive assistant position as a fourth grievance committee member did not modify the June 1997 settlement agreement nor its continuation in December 1997. I find, therefore, that Respondent did not violate PERA in January 2004, when the Chief of Police exercised her discretion to eliminate the extra-contractual executive assistant position.

I also find no support in the record for Charging Party's contention that Respondent bargained in bad faith when it reneged on its agreement to reinstate the "fourth grievance committee position" in June 2004. Respondent's restoration of the grievance committee member position was conditioned on Charging Party's agreement to delay negotiating the seniority and transfer of the suspended officers. Respondent refused to sign the agreement restoring the "fourth grievance committee member" only after Charging Party indicated that it would not honor its agreement regarding the suspended officers. Since the parties failed to come to a meeting of the minds and reach an agreement on both issues, there was no agreement for Respondent to repudiate, as Charging Party alleges. *City of Grand Rapids*, 16 MPER 69 (2003). I have carefully considered all other arguments advanced by the parties and conclude they do not warrant a change in the result. 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 unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____