

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

In the Matter of:

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

Case No. C04 C-085

-and-

DETROIT POLICE LIEUTENANTS AND SERGEANTS  
ASSOCIATION,  
Labor Organization-Charging Party.

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APPEARANCES:

City of Detroit Law Department, by Dara M. Chenevert, Esq., for the Public Employer

Korney & Heldt, by J. Douglas Korney, Esq., for the Labor Organization

**DECISION AND ORDER**

On March 1, 2005, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above case, finding that Respondent City of Detroit (Police Department) had not violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e), and recommending that the charge be dismissed in its entirety. The ALJ found that Respondent did not violate its duty to bargain in good faith when it implemented new promotional standards and criteria for the rank of sergeant without first bargaining with Charging Party Detroit Police Lieutenants and Sergeants Association (DPLSA). He concluded that the DPLSA had effectively agreed to the implementation of new standards for promotion to sergeant because, despite numerous opportunities to do so, it did not demand bargaining over those standards.

The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On March 17, 2005, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. On March 29, 2005, Respondent filed a timely brief in support of the ALJ's Decision and Recommended Order. In its exceptions, Charging Party contends that the ALJ erred when he concluded that Charging Party had agreed to the standards for promotion to sergeant that were set forth in Personnel Order 04-13. Charging Party asserts that it did not seek to bargain over the standards for promotion to sergeant in

reliance upon an Act 312 award. Because the Act 312 award mandated the promotion of all investigators to the rank of sergeant, there was no need at the time for the DPLSA to request bargaining with the City over promotional standards for the position of sergeant. We find that the exceptions have merit.

Facts:

The facts in this case were set forth fully in the Decision and Recommended Order and need not be repeated in detail here. It is also evident that the facts of this case are intertwined with those of *City of Detroit (Police Dep't) -and- Detroit Police Officers Ass'n*.<sup>1</sup> Charging Party is the exclusive bargaining representative for all lieutenants, sergeants, and investigators employed by Respondent. There are approximately 140 investigators in the bargaining unit. Investigators compete with police officers, who are represented by the Detroit Police Officers Association (DPOA)<sup>2</sup>, for promotions to sergeant.

Before June 2, 2003, all promotions to the rank of sergeant were made strictly by order of placement on an eligibility roster that included both police officers in the DPOA bargaining unit and investigators in the DPLSA bargaining unit. The eligibility roster had been in effect since October 17, 2000.<sup>3</sup> On June 2, 2003, an arbitration award was issued in an Act 312 proceeding between Respondent and the DPLSA. The award included the following language with respect to promotions:

The LSA presented credible testimony that members holding the rank of Investigator performed many of the same duties and assumed the same responsibilities as Sergeants. . . . Based on the foregoing, the Association first asks the panel to include, as a part of its award, an order to promote all Investigators to Sergeant.

The Act requires this panel to consider the interests and welfare of the public. The availability of proper supervision is important to the safety of the officers as well as the citizens of Detroit. Because it will take time to implement these new promotional procedures and criteria and, since we have found validity in the Association's arguments that this panel's conclusion and award should attempt to avoid harming the immediate employment equities of Association members, in the interim, *the Department shall promote any and all Investigators to the rank of Sergeant without either adhering to past practice or adhering to these new criteria as it deems necessary.* [Emphasis added]

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<sup>1</sup> See the Decision on the unfair labor practice charge in *City of Detroit (Police Dep't) -and- Detroit Police Officers Ass'n*, 17 MPER 18, (Case No. C02 K-249 issued April 9, 2004) and our Decision on compliance in *City of Detroit (Police Dep't) -and- Detroit Police Officers Ass'n*, 18 MPER \_\_\_\_ (Case No. C02 K-249A, issued concurrently with this decision).

<sup>2</sup> See 18 MPER \_\_\_\_ (Case No. C02 K-249A, issued concurrently with this decision).

<sup>3</sup> *Id.*

On June 12, 2003, Respondent and the DPLSA executed a Memorandum of Understanding clarifying the Act 312 award and agreeing that the language quoted above “shall mean that the Department shall promote all current Investigators to the rank of Sergeant.” Subsequently, on February 6, 2004, Respondent promoted ten investigators who were not on the eligibility register to the rank of sergeant.<sup>4</sup> On or about February 10, 2004, Respondent and the DPLSA held a special conference in which discussions took place regarding the use of the Assessment Center for promotions to lieutenant. Relying on the Act 312 Award, the DPLSA did not request bargaining over the criteria for promotion to sergeant at that time since its membership would no longer be involved in these promotions. Also attending the special conference were representatives of the DPOA, who were present to negotiate with Respondent over the criteria for promotion to sergeant.

In the meantime, Case No. C02 K-249 involving the DPOA had proceeded to hearing. In that case, the DPOA charged that Respondent unilaterally changed the standards and criteria for promoting DPOA members by agreeing to honor the Act 312 arbitration award between Respondent and the DPLSA.<sup>5</sup> The DPLSA was not a party to Case No. C02 K-249.<sup>6</sup> After the special conference had taken place, on February 26, 2004, ALJ Roulhac issued his Decision and Recommended Order in the DPOA case, *City of Detroit (Police Dep’t) -and- Detroit Police Officers Ass’n*, 17 MPER 18. The ALJ found that Respondent failed to bargain in good faith with the DPOA and recommended that Respondent be ordered to restore the terms and conditions of employment that were applicable prior to issuance of the Act 312 award promoting all investigators to sergeant.

On March 2, 2004, Respondent issued Personnel Order 04-13, “Notice of Promotional Examination for the Rank of Sergeant.” The notice included new criteria for promotions to the rank of sergeant, which Respondent had not bargained with the DPLSA. On March 12, 2004, after receiving the ALJ’s February 26, 2004 Decision and Recommended Order, Respondent rescinded the promotions of the ten investigators who were not on the eligibility roster and had been promoted solely because of the Act 312 award.<sup>7</sup> The DPLSA filed the instant charge on March 24, 2004.

#### Discussion and Conclusions of Law:

This case presents the intersection of conflicting interests and decisions, involving two different bargaining units, an Act 312 award, and a mandatory subject of bargaining, promotions. See *Detroit Police Officers Ass’n v City of Detroit*, 61 Mich App 487 (1975). At the outset, we are guided by certain principles. First, when a mandatory subject of bargaining, such as promotions, impacts more than one bargaining unit, it must be bargained with all affected units. *City of Port Huron*, 1985 MERC Lab Op 872. Secondly, Act 312 is supplementary to PERA, and an Act 312 panel must follow applicable Commission decisions. *City of Jackson*, 227 Mich App 520 (1995). It is clear, as found

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<sup>4</sup> See 18 MPER \_\_\_\_\_ (Case No. C02 K-249A, issued concurrently with this decision).

<sup>5</sup> See 17 MPER 18.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

by the ALJ in the DPOA case, that an Act 312 arbitrator does not have authority to issue an award contrary to PERA.

In this case, there appears to be a lack of communication between the DPOA, the DPLSA, and the City. Since the City was a party to each of the cases involved here, we believe that it was the City's responsibility to address the competing interests and to ensure that all parties were informed of potential changes in procedures involving promotion to sergeant. The record establishes that the DPLSA did not initially demand bargaining over changes in the criteria for promotion to sergeant because it relied on the Act 312 award. Had that award gone unchallenged, the DPLSA would not have had bargaining unit members below the rank of sergeant and promotion to sergeant would have involved issues to be bargained only between Respondent and the DPOA.

We conclude that at the time of the February 10 conference, the DPLSA had a basis to rely on the Act 312 award. Despite the long delay in implementation, the City gave no indication to the DPLSA that it would not honor the award. To the contrary, the City signed a Memorandum of Understanding with the DPLSA to this effect in June of 2003, and promoted ten investigators pursuant to the award in February of 2004. However, on March 12, 2004, to comply with the ALJ's recommended order in Case No. C02 K-249, the City rescinded the promotions of investigators, an indication that it no longer intended to comply with the Act 312 award. Since this change would obviously have an impact on the DPLSA bargaining unit, we find that at that time, the City had a duty to inform the DPLSA of its change in position and give the DPLSA notice and the opportunity to request bargaining over promotional criteria for the rank of sergeant.<sup>8</sup> By its failure to do so, we find that the City violated Section 10(1)(e) of PERA. *City of Jackson*, 1985 MERC Lab Op 138. Accordingly, we issue the order set forth below:

### **ORDER**

The City of Detroit, its agents and representatives, shall:

A. Cease and desist from:

1. Refusing to bargain collectively with the Detroit Police Lieutenants and Sergeants Association regarding promotional standards and criteria for the rank of sergeant.
2. Unilaterally imposing promotional standards and criteria for the rank of sergeant in the absence of a lawful impasse.

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<sup>8</sup> We note that in the City's brief in Case No. C02 K-249A, Compliance, issued concurrently with this decision, the City acknowledged that Personnel Order 04-13 changed several significant criteria for promotion.

3. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 9 of the Act.

B. Take the following affirmative action to effectuate the policies of PERA:

1. Upon request, bargain collectively and in good faith concerning promotional standards and criteria for the rank of sergeant with the Detroit Police Lieutenants and Sergeants Association and with any other affected bargaining unit, including the bargaining unit represented by the Detroit Police Officers Association.
2. Upon request of the Detroit Police Lieutenants and Sergeants Association, rescind Personnel Order 4-13 and any promotions made pursuant to that order, and restore to all affected employees the terms and conditions of employment that were applicable prior to its issuance.
3. Post the attached notice in conspicuous places on its premises, including all places where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

Dated: \_\_\_\_\_

**NOTICE TO EMPLOYEES**

After a public hearing before the Michigan Employment Relations Commission, the City of Detroit (Police Department) has 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** refuse to bargain collectively with the Detroit Police Lieutenants and Sergeants Association regarding promotional standards and criteria for the rank of sergeant.

**WE WILL NOT** unilaterally impose promotional standards and criteria for the rank of sergeant in the absence of a lawful impasse.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 9 of PERA.

**WE WILL**, upon request, bargain collectively and in good faith concerning promotional standards and criteria for the rank of sergeant with the Detroit Police Lieutenants and Sergeants Association and with any other affected bargaining unit, including the bargaining unit represented by the Detroit Police Officers Association.

**WE WILL**, upon request of the Detroit Police Lieutenants and Sergeants Association, rescind Personnel Order 04-13 and any promotions made pursuant to that order, and restore to all affected employees the terms and conditions of employment that were applicable prior to its issuance.

**CITY OF DETROIT (POLICE DEPARTMENT)**

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.





STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
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CITY OF DETROIT (POLICE DEPARTMENT),  
Respondent-Public Employer,

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-and-

DETROIT POLICE LIEUTENANTS AND SERGEANTS  
ASSOCIATION,  
Charging Party-Labor Organization.

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APPEARANCES:

City of Detroit Law Department, by Dara M. Chenevert, Esq. for the Public Employer

Korney & Heldt, by J. Douglas Korney, Esq., for the Labor Organization

DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on July 30, 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 6, 2004, I make the following findings of facts and conclusions of law.

The Unfair Labor Practice Charge:

The unfair labor practice charge filed by Charging Party on March 24, 2004, alleges that Respondent violated Section 10(1)(e) of PERA by engaging in the following conduct:

On or about March 3, 2004, the City of Detroit Police Department unilaterally implemented promotional standards and criteria for the rank of sergeant.

Findings of Fact:

Charging Party Detroit Police Lieutenants and Sergeants Association is the exclusive bargaining representative for all lieutenants, sergeants and investigators employed by Respondent City of Detroit.

Police officers, who are represented by a different bargaining agent, and investigators compete for promotion to sergeant in accordance with procedures outlined in personnel orders issued by Respondent.

Prior to June 2, 2003, the criteria for promotions to sergeant were set forth in Personnel Order 00-297. This order, issued on May 19, 2000, after bargaining by the parties, included the following standards and the weight to be assigned to each standard:

Written Examination	65%
Performance Evaluation Rating	15%
Promotional Evaluation Board	10%
Seniority (maximum)	06%
College Credit (maximum)	02%
Veteran's Preference (maximum)	02%
Total	100%

Until June 2, 2003, when an Act 312 arbitration award granted Respondent's proposal to revise the criteria for promoting sergeants to lieutenant, the criteria for promoting sergeants to lieutenant was the same as the criteria set forth above for making promotions to sergeant. In its award, the arbitration panel adopted the following criteria, as set forth in City Exhibit 111, to govern promotions to lieutenant:

Written Examination	26%
In-grade Seniority Points	10%
Regular Seniority	6%
Assessment Center Results	50%
Veteran's Points	2%
Four-year College Degree	4%

Additionally, after Respondent announced during the arbitration that the investigator rank would be eliminated, Charging Party asked the panel to include, as part of its award, an order to promote all investigators to sergeant. In adopting Charging Party's recommendation, the panel ordered that all investigators be promoted to "the rank of sergeant without either adhering to past practice or adhering to these new criteria [for promotions from sergeant to lieutenant] as it deems necessary."

Subsequently, on June 12, 2003, in order to clarify the order dealing with the investigators' promotion, the parties executed a memorandum of understanding that provides, in part, as follows:

\* \* \*

2. All those promoted pursuant to the Award shall attend a promotional assessment course;

\* \* \*

5. Exhibit 111, Section 12, first paragraph shall read as follows:

The Assessment Center Process shall be job related and as objective as possible. All segments of the Assessment Center shall be designated at the sole discretion of the Chief of Police. The Department and Association shall agree to confer, only, regarding the content of the Assessment Center.

Seven months later, on January 12, 2004, James Gawlowski, Charging Party's president, sent Respondent the following letter requesting a special conference to discuss promotional examinations:

The Detroit Police Lieutenants and Sergeants Association request [sic] a Special Conference pertaining to the promotional exams on April 17, 2004 [for promotion to sergeant] and April 18, 2004 [for promotion to lieutenant]. Subject of discussion will be Bibliography, Assessment Centers and Subjects and Weighting Factors.<sup>9</sup>

Beginning January 20, 2004, a few days after Charging Party's request for a special conference, investigators began submitting applications to take the sergeant's promotional examination. By February 10, when a special conference was held, twenty-nine investigators had filed examination applications. Gawlowski testified that negotiations during the special conference were limited to the assessment center for promotions to lieutenant. According to Gawlowski, Charging Party's "concerns were not for those candidates for the rank of sergeant, because at that time we were under the impression, pursuant to our 312 award, and we had no reason per any other judgment, that all concerned members . . . holding the rank of investigator, were already going to be promoted to the rank of sergeant pursuant to our 312 award. Therefore, . . . the issue was moot with us." Gawlowski also testified that during a later meeting with Respondent's representatives designated to proctor the examinations, "another labor organization was in the room as they pertained to their own constituents regarding assessment centers for the rank of sergeant."

On March 2, 2004, Respondent issued Personnel Order 04-3, "Notice of Promotional Examination for the Rank of Sergeant" to be held on April 17, 2004. The notice included the following subjects and weighting factors:

Written Examination	.26
Seniority (maximum)	.12
Assessment Center	.50
Veteran's Preference	.02
Education (Bachelors Degree or higher	.10

Conclusions of Law:

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<sup>9</sup>The formal announcement for the lieutenants' and sergeants' examination was not issued until February 17, 2004 and March 2, 2004, respectively.

Section 10(3) of PERA makes it an unfair labor practice for public employers to refuse to bargain collectively with its employees' representatives and confer in good faith with respect to wages, hours, and other terms and conditions of employment. An employer's bargaining duty is conditioned upon a request for bargaining from the bargaining agent. *Local 58, SEIU v Village of Union City*, 135 Mich App 553, 558 (1984).

Charging Party claims that Respondent violated its bargaining obligation by unilaterally issuing promotional standards and criteria for the rank of sergeant in Personnel Order 4-13 on March 2, 2004. I disagree. There is nothing on the record to support a conclusion that Respondent failed to bargain about the sergeant's promotional examination. Rather, it demonstrates that Respondent reacted to Charging Party's January 12, 2004 request to discuss "Bibliography, Assessment Centers and Subjects and Weighting Factors" for promotional examinations by holding a special conference.

Negotiations during the February 10, 2004 special conference were limited to the promotional examination to lieutenant. As Sgt. Gawlowski explained, Charging Party was not concerned about the sergeant's promotional examination because all investigators would be promoted to sergeant pursuant to the Act 312 award. This explanation, however, fails to take into consideration that on June 12, 2003, less than two weeks after the Act 312 award was issued, Charging Party and Respondent executed a memorandum of understanding and agreed that investigators would attend a promotional assessment course. Moreover, by February 10, when the special conference was held to discuss promotional examinations for sergeants and lieutenants, twenty-nine investigators had already submitted applications to take the sergeant's examination. Further, during a subsequent meeting with Respondent's representatives designated to proctor the examinations, Charging Party failed to bargain about the promotional examination for sergeant, although the issue was being discussed with another labor organization.

Charging Party presented no evidence that Respondent was responsible for limiting the negotiations during the February 10, 2004 special conference, or the follow-up meeting to the promotional examination for lieutenant. Rather, the record shows that after expressly requesting a special conference to discuss the promotional examinations for both sergeants and lieutenants, Charging Party did not negotiate about promoting investigators to sergeant because of its belief that they would be promoted to sergeant pursuant to the 312 award and the issue was, therefore, moot. Under these circumstances, I find that Respondent did not, as alleged by Charging Party, unilaterally implement promotional standards and criteria for the rank of sergeant without providing Charging Party with notice and an opportunity to bargain. Based on the above discussion, 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: