STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INGHAM COUNTY AND INGHAM COUNTY SHERIFF,
Respondents-Public Employer,

Case No. C04 I-219

-and-

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

APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., By John R. McGlinchey, Esq., for the Public Employer

Wilson, Lett & Kerbawy, PLC., by Steven T. Lett, Esq., for the Labor Organization

DECISION AND ORDER

On July 29, 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

_____
Nora Lynch, Commission Chairman

_____
Nino E. Green, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Lansing, Michigan, on February 8, 2005, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (Commission) 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 April 14, 2005, I make the following findings of fact and conclusions of law.

The Unfair Labor Practice Charge:

On September 2, 2004, Charging Party Capitol City Lodge No. 141 filed an unfair labor practice charge alleging that Respondents Ingham County and Ingham County Sheriff violated Section 10(1)(a) of PERA by limiting its executive director's access to the sheriff's department.

Findings of Fact:

Charging Party is the exclusive bargaining representative for a number of Respondents' employees, including corrections officers, who work at the Ingham County jail. Respondents employed Thomas Krug for twenty-five years before he was hired as Charging Party's executive director. Prior to his retirement, Krug served as a lieutenant. As part of his duties as executive director, Krug occasionally visits the Ingham County jail to confer with bargaining unit members and to negotiate contracts. Prior to March 2004, Krug, unlike other

union representatives, had unlimited access to the Sheriff's facilities because of his status as a former employee..

On February 25, 2004, Respondent issued a memorandum to members of the road patrol division who are represented by the Michigan Association of Police. The deputies were informed of a contest that offered prizes for deputies who received the most points for making arrests or engaging in other law enforcement activities, such as property and bar checks, and traffic stops. Without authorization, Tim Currin, a member of Charging Party's bargaining unit, removed a copy of the memo from a bulletin board in the Sheriff's office, made a copy, and took it to Krug's office.

On March 14, 2004, a reporter from a local television station advised Chief Deputy Vicki Harrison that she had a copy of the memo and requested to interview Harrison. During the interview, Harrison learned that the memo had been anonymously faxed to the television station from a Kinko's store. Harrison ordered an investigation. A review of a video of Kinko's fax machines users showed Krug sending the memo to the television station on March 11, 2004, at 3:03 p.m. Undersheriff Matthew J. Myers contacted Currin, who admitted making a copy of the memo and taking it Krug's office, but denied giving a copy to Krug. Myers immediately telephoned Krug, who admitted that Currin had shown him the memo, but denied that Currin gave him a copy. Krug also denied that he knew who faxed the memo to the television station.

On March 16, 2004, Myers conducted a pre-determination meeting with Currin. During the meeting, Krug, who was Currin's representative, stated that Currin had shown him a copy of the memo but that someone else, whom he refused to identify, gave him a copy. Later, during the meeting, Krug explained that he could not identify the person who gave the memo to him because it had been left in his office anonymously. After the pre-determination hearing, Respondent concluded that Currin had violated Department rules by copying the memo and by denying knowing how Krug obtained it. Currin was suspended, without pay, for forty hours.

In a January 4, 2005 opinion and award, an arbitrator upheld Currin's suspension. He also found that Krug's statements to Respondent during the pre-determination hearing were untruthful and that Krug acted in concert with Currin to disparage Respondent. Two months later, Myers limited Krug's access to the lobby areas of the Sheriff's offices and facilities, unless otherwise approved by the Sheriff's administration. Other union representatives, unlike Krug, had always been required to meet with their bargaining unit members in designated non-secure areas of the jail.

During the two times that Krug has visited the Sheriff's office to meet with employees since his access was restricted, he was permitted to conduct his business with bargaining unit members in a training room in a non-secured area.

Conclusions of Law:

Charging Party argues that Respondent, in violation of Section 10(1)(a) of PERA, interfered with the administration of the Union by severely restricting its executive director's access to Union members. According to Charging Party, Respondent not only singled out Krug and the Union, it also discriminated against the Union because other unions do not have the same restrictions placed upon them. To support these assertions, Charging Party cites *Michigan State*

Univ, 1998 MERC Lab Op 217, for the view that Respondent unlawfully adopted a "special rule" for Krug that restricted his access to the jail.

I find no merit to Charging Party's claim. In *Michigan State*, the Employer refused to allow the union's president, who had been discharged from employment, to attend a union meeting at the workplace, but allowed the union's non-employee executive director to attend. The Commission found that the employer's denial of the former employee's access to the workplace was an unfair labor practice because it interfered with the rights of employees to designate a bargaining representative since other non-employee representatives were permitted to enter the facility. The Commission observed that if the employer had changed its policy to ban all non-employees from entering the premises, it likely would have reached a contrary result.

The record in this case demonstrates that Respondent has not interfered with the rights of employees to designate a bargaining representative. Krug has not been denied access to Respondent's premises to carry out his duties as executive director. He continues to meet with bargaining unit members at the workplace, albeit, in designated areas because of his role in providing an internal Employer document to a television station. However, Krug's "special privileges" to travel unescorted throughout the Sheriff's facilities, which were conferred upon him because of his status as a former employee, have been eliminated.

I find that the Employer's action is consistent with the well-established principle that an employer may promulgate reasonable rules regarding the use of its facilities by bargaining unit members and their representatives. *Michigan State*. See also *Univ of Michigan*, 95 Mich App 482 (1980), where the Court held that unions do not have the unqualified right to meet at any place on the employer's premises of its choosing. I find that Respondent's new policy, which limits Krug's access to designated areas of Respondent's facilities, is not unreasonable and does not violate PERA.

I have carefully considered all other arguments advanced by Charging Party and conclude that they do not warrant a change in the result. I, therefore, find that Respondent did not violate Section 10(1)(a) of PERA and 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: