STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF GRAND RAPIDS,
Public Employer - Respondent,

-and- Case Nos. C03 C-053 & C03 C-054

GRAND RAPIDS EMPLOYEES
INDEPENDENT UNION,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Nantz, Litowich, Smith & Girard, by John H. Gretzinger, Esq., for Respondent

Kalniz, Iorio & Feldstein Co., L.P.A., by Fillipe S. Iorio, Esq., for Charging Party

DECISION AND ORDER ON MOTION FOR RECONSIDERATION

On October 19, 2006, the Commission issued a Decision and Order in this matter affirming in part and reversing in part the May 19, 2005 Decision and Recommended Order of the Administrative Law Judge (ALJ). We agreed with the ALJ's conclusion that Respondent City of Grand Rapids violated its duty to bargain in good faith under Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by unilaterally removing two positions from the bargaining unit represented by Charging Party Grand Rapids Employees Independent Union (GREIU). However, because the ALJ concluded that the disputed positions possessed supervisory authority at the time of the hearing, she did not recommend that we order their return to the bargaining unit. The Commission reversed the ALJ on that issue, found that the positions lacked supervisory authority, and ordered their return to the bargaining unit.

On November 9, 2006, we received notice from Respondent that it had appealed this matter to the Court of Appeals. On November 13, 2006, Respondent filed a motion for reconsideration of our Decision and Order.[1] Charging Party filed a timely response to Respondent's motion on

[1] It appears that Respondent appealed our Decision and Order to the Court of Appeals before Respondent filed the motion for reconsideration. We, therefore, question whether we would have jurisdiction to reconsider our decision if grounds for doing so were properly set forth in Respondent's motion.

November 17, 2006. Respondent asserts that the Commission should reconsider our finding that the two positions at issue lacked supervisory authority and contends that we should address the standards for determining supervisory status under the National Labor Relations Act (NLRA) as set forth in *Oakwood Healthcare, Inc*, 348 NLRB No. 37 (2006), a case decided prior to our decision in this matter. Respondent asserts that our conclusion is in conflict with the standards elucidated in *Oakwood Healthcare, Inc* and seeks to submit a brief and present oral argument on the application of that case to this matter. Respondent also requests leave to submit further evidence regarding the current supervisory status of the two positions in question.

Rule 167 of the Commission's General Rules, 2002 AACS, R 423.167, governs motions for reconsideration and states in pertinent part:

> A motion for reconsideration shall state with particularity the material error claimed. . . . Generally, and without restricting the discretion of the commission, a motion for reconsideration which merely presents the same issues ruled on by the commission, either expressly or by reasonable implication, will not be granted. (Emphasis added.)

In the motion for reconsideration, Respondent raises the same issue that we ruled on in our Decision and Order: the supervisory status of the two positions removed from the bargaining unit. This is the very issue on which we overruled the ALJ. For this reason and those that follow, we do not believe that this issue merits reconsideration.

Respondent asks that we consider this issue under the standard for supervisory status determined by the National Labor Relations Board, instead of the standard established by Commission precedent. Respondent seeks leave to submit a brief and present oral argument on the application of the NLRB decision in *Oakwood Healthcare, Inc* to this matter. Respondent's request is denied. In those cases where PERA's language is identical to that of the NLRA, federal precedent is to be given great weight in interpreting PERA. However, this Commission is not bound to follow Board precedent on issues where, as here, there are distinct differences between PERA and the NLRA and we have an established body of law applicable to the issue at hand. See *Battle Creek Police Dep't*, 1998 MERC Lab Op 684; *Marquette Co Health Dep't*, 1993 MERC Lab Op 901, 906. See also *Rockwell v Bd of Ed of Sch Dist of Crestwood*, 393 Mich 616 (1975); *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004); *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 537.

In addition, Respondent requests that we reconsider our Decision and Order "after allowing the parties an opportunity to submit further evidence regarding the current supervisory status" of the two positions at issue. Although it is not titled as a motion for reopening of the record, that is essentially what this request entails. A motion for reopening is governed by Rule 166 of the Commission's General Rules, R 423.166. Under Rule 166, reopening of the record can only be granted upon a showing that the additional evidence Respondent seeks to offer is newly discovered material evidence which, if adduced and credited, would require a different result. Respondent has not identified the additional evidence it seeks to offer. Without knowing what the evidence is and

how it affects the issues in this case, we cannot conclude that it would require a different result. *Police Officers Ass'n of Michigan*, 16 MPER 46 (2003). Moreover, Respondent has failed to provide any explanation for failing to submit the additional evidence before the record closed. Accordingly, Respondent's request to submit additional evidence is denied.

ORDER

The motion for reconsideration is denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____