STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF PONTIAC,
Respondent-Public Employer,

Case No. C05 F-118

-and-

MICHIGAN ASSOCIATION OF POLICE,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Keller Thoma, by Bruce M. Bagdady, Esq., for the Respondent

Pierce, Duke, Farrell & Tafelski, PLC, by M. Catherine Farrell, Esq., for the Charging Party

DECISION AND ORDER

On January 30, 2007, Administrative Law Judge David M. Peltz 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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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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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 Detroit, Michigan on September 2, 2005, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission (MERC). Based upon the entire record, including the transcript of hearing, exhibits and post-hearing briefs filed by the parties on or before November 22, 2005, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Charging Party Michigan Association of Police (MAP) is the collective bargaining representative for a unit of police and fire dispatchers employed by Respondent City of Pontiac. The charge, which was filed on June 1, 2005, alleges that Respondent violated its duty to bargain under Section 10(1)(e) of PERA by refusing to meet with MAP to discuss the subcontracting of bargaining unit work and its effects on Charging Party's members. The charge further asserts that Respondent's actions in this regard were in retaliation for MAP having filed a petition for compulsory arbitration under 1969 PA 312.

Findings of Fact:

Charging Party and Respondent are parties to a collective bargaining agreement covering the period July 1, 2000 to June 30, 2004. The parties commenced bargaining on a successor contract on

May 20, 2004. Subsequent bargaining sessions were held on June 8, 29; July 13; and August 23 of 2004. Thereafter, no bargaining took place for several months while the City awaited the results of a financial audit for the years 2003 and 2004. The results of that audit revealed that the City had a deficit of over $20 million. Following the issuance of the auditor's report, the parties engaged in additional bargaining on February 23 and April 26 of 2005.

On May 12, 2005, Larry Marshall, the City's Director of Human Resources and its chief bargaining spokesperson, contacted Ronald Palmquist, the Union's labor relations specialist, and informed him that the City was considering subcontracting the emergency dispatching work to the Oakland County Sheriff's Department. The parties agreed to meet on May 17, 2005 to discuss that issue.

On the morning of May 17, 2005, Charging Party filed an Act 312 petition with MERC. Later that day, the parties met to discuss the subcontracting of dispatching work. During the meeting, Marshall informed the Union that Oakland County was willing to employ its members if the subcontracting were to occur. The Union sought information from Respondent concerning that proposal, including pay, benefits and seniority that unit members could expect to receive from the County. Marshall promised to gather the information and the parties agreed to hold further discussions on the issue on May 23, 2005. At the close of the meeting, Palmquist informed Marshall of the filing of the Act 312 petition.

A few days later, Marshall's secretary contacted Palmquist to cancel the May 23, 2005 meeting. Marshall testified credibly that he directed his secretary to cancel the meeting because the City had not been able to gather all of the information which the Union had requested concerning employment opportunities with the County. According to Marshall, the City still needed to gather information concerning healthcare packages and pension for bargaining unit members who transferred to the County.

Following the cancellation of the May 23 meeting, Marshall contacted Palmquist and rescheduled another session for June 3, 2005. On that date, the parties met and engaged in substantive discussions concerning the City's subcontracting proposal. Marshall also provided Palmquist with some of the information which the Union had requested, including data on wages and pension benefits. Later that day, Marshall faxed to Palmquist additional information relating to healthcare. The parties met again on June 17, 2005, to further discuss the subcontracting issue.

On July 21, 2005, Marshall faxed to the Union what he described as the City's "last best offer" on the terms of a successor contract. Marshall also proposed to Palmquist that the parties engage in further discussions concerning subcontracting dispatcher work to the County. Although some additional discussions ensued between the parties, no agreement was reached on that issue. At the time of the hearing in this matter, the City had not subcontracted the dispatching work.

Discussion and Conclusions of Law:

MAP contends that Respondent breached its statutory obligation to bargain good faith by cancelling the May 23, 2005 meeting at which the parties were scheduled to discuss the subcontracting of dispatching work performed by Charging Party's members. Under Section 15 of the Act, public employers and labor organizations have a duty to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). In determining whether a party has violated its statutory duty to bargain in good faith, the totality of the party's conduct must be examined to determine whether it has "actively engaged in the bargaining process with an open mind and a sincere desire to reach an agreement." See e.g. *Unionville-Sebewaing Area Schools*, 1988 MERC Lab Op 86, 89, quoting *Detroit Police Officers Association v City of Detroit*, 391 Mich 44, 53-54 (1975).

There is no evidence that the City intentionally attempted to delay bargaining over the issue of subcontracting or in any way frustrate the contract negotiations which were ongoing at the time. The parties held seven bargaining sessions on a successor contract from May 20, 2004 through April 26, 2005. On May 12, 2005, Marshall, the City's chief negotiator, disclosed to the Union that Respondent was considering subcontracting dispatcher work. Five days later, the parties met to discuss the issue. At that meeting, the Union requested certain information which the Employer agreed to provide. Although the next meeting, which was scheduled for May 23, 2005, did not occur, the cancellation was reasonably explained by Marshall as being necessary to allow the City additional time to procure the requested information. Following the cancellation of that meeting, Marshall contacted the Union to reschedule and the parties met two additional times to discuss the subcontracting proposal. In the opinion of the undersigned, the record does not support a finding that the Employer's actions constituted a deliberate attempt to avoid bargaining. In so holding, I note that there is no evidence whatsoever suggesting that the cancellation of the single meeting was in retaliation for the Union having filed a petition for Act 312 arbitration. To reach such a conclusion would require this tribunal to engage in speculation and conjecture, and I decline to do so here. See *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974).

For the foregoing reasons, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated:_____