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

In the Matter of:

CITY OF DEARBORN,
Public Employer-Respondent,

Case No. C05 K-284

-and-

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

APPEARANCES:

Kimberly M. Craig, Esq., Assistant Corporation Counsel, for the Respondent

George J. Mertz, Esq., Assistant General Counsel, for the Charging Party

## DECISION AND ORDER

On December 29, 2006, Administrative Law Judge (ALJ) Doyle O'Connor[1] issued his Decision and Recommended Order in this matter finding that Respondent, City of Dearborn, did not violate Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by implementing a reorganization plan without prior bargaining with Charging Party Police Officers Association of Michigan (POAM). The ALJ held that Respondent did not have a duty to bargain prior to implementation, but was required to bargain over the effects of the reorganization and that Charging Party waived its right to bargain by failing to make an appropriate demand. The ALJ concluded that the parties had a bona fide dispute over contract interpretation and that no repudiation had occurred. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

After receiving an extension of time in which to file its exceptions, Charging Party filed exceptions to the ALJ's Decision and Recommended Order on February 21, 2007. Respondent requested and was granted an extension of time in which to file its response to the exceptions and, on April 5, 2007, filed a brief in support of the ALJ's Decision and Recommended Order.

[1] Pursuant to Rule 174 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.174, this matter was reassigned to Administrative Law Judge O'Connor following the retirement of ALJ Rouhlac.

In its exceptions, Charging Party alleges that the ALJ erred in finding that there was a legitimate reorganization of bargaining unit work and that it waived its right to bargain by failing to make a bargaining demand. Charging Party also asserts error by the ALJ in failing to find a repudiation of the collective bargaining agreement. Finally, exception is taken to the ALJ's finding that there is a dispute over contract provisions and that the matter should be resolved via the grievance procedure. We have reviewed Charging Party's exceptions and find them to be without merit.

Factual Summary:

POAM represents a unit of non-supervisory police officers, including corporals and detective sergeants employed by the City. The parties' collective bargaining agreement reserves to the City the right to "classify positions based on duties and responsibilities, or make changes in assigned duties and responsibilities" and to "assign work and determine the number of employees assigned to operations."

In November 2005, the Charter in the City of Dearborn was amended to increase the number of police officers per 1,000 residents, requiring the addition of approximately sixteen new officers. In anticipation of the financial impact of this requirement, Police Chief Michael Celeski drafted a proposed order that would eliminate the rank of detective sergeant and had informal discussions about the issue with POAM representatives. No formal bargaining sessions were held, nor were any requested by either party.

On November 17, 2005, a written order was distributed providing that the rank of detective sergeant would be depleted by attrition. Incumbent detective sergeants would not be replaced upon retirement and their duties would be reassigned to corporals. The City expressed its willingness to bargain over the impact of the decision, but not over the decision itself. POAM did not request to bargain regarding either the decision or the impact, claiming that the City could not reorganize without bargaining first and that there would be no bargaining until the collective bargaining agreement was open for renegotiation.

Discussion and Conclusions of Law:

There has been no subcontracting of bargaining unit work, no transfer of work outside the bargaining unit, and no reduction in personnel. The decision to eliminate the rank in question was the result of the Charter amendment. An increase in bargaining unit personnel prompted the reorganization. The elimination of positions is an employer's prerogative where there is no direct impact on incumbent employees and no transfer of work out of the bargaining unit has occurred. *Center Line Sch Dist*, 1982 MERC Lab Op 756. Here, the parties have in fact bargained in their collective bargaining agreement over the City's right to assign duties, change assignments, and determine the number of employees assigned to particular operations. Consequently, there was no duty to bargain over the decision to reorganize and eliminate the rank of detective sergeant.

An employer is only required to bargain in good faith regarding the impact of a legitimate reorganization plan. *Local 128, AFSCME v Ishpeming*, 1985 MERC Lab Op 687, aff'd in part 155 Mich App 501 (1986). Such duty to bargain on the part of the employer is conditioned on its receipt of an appropriate request. *Local 586, Service Employees International Union v Union City*, 135 Mich App 553 (1984); *St Clair Prosecutor v AFSCME*, 425 Mich 204, 242 (1986). Here, by failing to demand bargaining, POAM waived its right to bargain.

We have considered all other arguments set forth by the parties and conclude that they would not change the result in this case.

ORDER

The unfair labor practice charge is dismissed in its entirety.

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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APPEARANCES:

Kimberly M. Craig, for the Respondent

George J. Mertz, for the Charging Party

## 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 March 20, 2006, before Roy L. Roulhac and briefed before Doyle O'Connor, Administrative Law Judges (ALJs) for the Michigan Employment Relations Commission[2]. Based upon the entire record, including the pleadings, transcript and post-hearing briefs filed by the parties on or before May 11, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Positions of the Parties:

On November 29, 2005, the Police Officers Association of Michigan (POAM or Union) filed the charge in this matter, which asserts that on or about November 17, 2005, the City of Dearborn (Employer or Dearborn) improperly eliminated the bargaining unit ranks of detective sergeant and detective sergeant (R.I.B.) and transferred the relevant work to the rank of corporal without prior notice or opportunity to bargain. The Union contends that the Employer gave a false claim of financial necessity for its decision to eliminate the two classifications.

Respondent Dearborn filed an answer to the charge on December 29, 2005. Dearborn admitted the factual assertions in the charge, but asserted the changes were part of a reorganization that was only

[2] Pursuant to Commission Rule 423.174, this matter was reassigned to Administrative Law Judge O'Connor following the retirement of Administrative Law Judge Roulhac.

partly financially motivated, and that it had retained the express contractual right to alter the assignment of duties to classifications and the right to determine the number of positions in each classification. Dearborn objected to the Commission assertion of jurisdiction over what it characterized as a contractual dispute, noting that the matter was the subject of a then-pending grievance. Dearborn asserted that the work in question would remain within the bargaining unit, that the shift in duties had not resulted in an erosion of the bargaining unit and that it had not reduced the number of personnel in the unit. Finally, Dearborn asserted that it had offered to bargain with the Union over the effects of the change, but that the Union had not responded to the offer to bargain.

Findings of Fact:

The POAM represents a unit of non-supervisory police officers employed by Dearborn, including corporals and detective sergeants, but excluding the supervisory position of police sergeant. Promotion from police officer to corporal is automatic, after a period of years, but there is no requirement of automatic promotion beyond the rank of corporal. The contract does require that an annual exam be given for the promotional opportunity to detective sergeant and for the supervisory police sergeant position. The contract likewise grants the employer the right to "classify positions based on duties and responsibilities, or make changes in assigned duties and responsibilities." The contract also grants the employer the right to "assign work and determine the number of employees assigned to operations."

In November of 2005, the City Charter was amended to require an increase in ratio to a minimum of 2.1 officers per 1,000 residents. This change in ratio would require the addition of approximately sixteen new officers. As a result of the anticipated financial impact of that charter amendment, Police Chief Michael Celeski determined that reorganization would increase efficiency and would aid in addressing the impact of the change. Celeski drafted a proposed order that would eliminate the two ranks in question. While that order was still in draft form, he had several informal discussions about the issue with POAM Local President Sergeant Jeff Gee and another Union representative, Corporal Allgeier. No formal bargaining sessions were held, nor were any requested by either party.

On November 17, 2005, the reorganization was announced in a written order, which provided that the ranks of detective sergeant would be depleted by attrition and the former duties assigned to corporals. Corporals had previously performed much of the same investigative duties as detective sergeants. Incumbents in the detective sergeant positions would be left undisturbed by the reorganization and would simply not be replaced upon retirement. The Employer asserted its willingness to bargain over the impact of the reorganization, but not over the decision to leave detective sergeant positions unfilled in the future. The Union did not seek bargaining over the decision, nor over the impact of the reorganization. The Union insisted that the Employer could not do the reorganization without bargaining first, and that no bargaining could occur until the collective bargaining agreement was up for renegotiation.

Discussion and Conclusions of Law:

The detective sergeants and the corporals are both part of the same bargaining unit. The Employer, pursuant to a reorganization sparked by a legislative change, decided to reorganize in a fashion that would eventually allow the detective sergeant classification to wither away. The duties

would all be performed, at some point in the future, by corporals. There was no sub-contracting of work, nor was there a transfer of work outside the bargaining unit. There was no reduction in personnel, and in fact an increase in bargaining unit personnel prompted the reorganization. The elimination of particular positions is an inherent managerial prerogative where, as here, there was no direct impact on incumbent employees and no transfer of work out of the bargaining unit has occurred. C*enterline School District*, 1982 MERC Lab OP 756. Consequently, there was no duty to bargain over the decision to reorganize.

Reorganization plans that eliminate positions and reassign job functions to existing positions do not require prior bargaining and an employer is only required to bargain in good faith regarding the impact of its plan. *Local 128, AFSCME* v *Ishpeming*, 1985 MERC Lab Op 687, aff'd in part, 155 Mich App 491. To the extent that Dearborn owed a duty to the Union to bargain over the effects of this reorganization, the Union waived that obligation by failing to demand bargaining. An employer's duty to bargain is conditioned on its receipt of an appropriate request. *Local 586, Service Employees International Union v Union City,* 135 Mich App 553, lv den 421 Mich 857 (1995).

Additionally, the parties have in fact bargained over the assignment of duties, changes in assignments, and the right of the Employer to determine the number of employees assigned to particular operations. The parties' agreements on these issues are incorporated in the existing collective bargaining agreement. The Commission does have the authority to interpret the terms of such collective bargaining agreements where necessary to determine whether a party has repudiated its collective bargaining obligations. *University of Michigan,* 1978 MERC Lab Op 994, 996, citing *NLRB v C & C Plywood Corp,* 385 US 421 (1967). However, if the term or condition in dispute is "covered by" a provision in the collective bargaining agreement, and the parties have agreed to a grievance resolution procedure ending in binding arbitration, the details and enforceability of the provision are generally left to arbitration. *Port Huron Ed Ass'n v Port Huron Area Sch Dist,* 452 Mich. 309, 317-321 (1996). As the Commission stated in *St Clair Co Road Comm,* 1992 MERC Lab Op 533 at 538:

> Where there is a contract covering the subject matter of the dispute, which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the Commission finds that the contract controls and no PERA issue is present.

Here, the parties had a bona fide dispute over the meaning of their contract, which could have been resolved through the contractual grievance arbitration procedure. The parties mutually submitted that dispute for resolution through the contractual grievance procedure. No repudiation of the contract, or of the bargaining obligation, occurred and for that reason, there was no violation of the Act.

## RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated:_____