STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

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

Case Nos. C06 C-044
C06 C-045

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 547-E,
EMERGENCY MEDICAL TECHNICIANS &
TRAINEES ASSOCIATION (EMMTTA),
Labor Organization-Charging Party
____/

APPEARANCES:

Sharlena Chaney, Labor Relations Representative, for Respondent

Jeffrey A. Keeton, President, for Charging Party

DECISION AND ORDER

On February 26, 2007, Administrative Law Judge Julia S. Stern issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

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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Labor Organization-Charging Party
____/

APPEARANCES:

Sharlena Chaney, Labor Relations Representative, for Respondent

Jeffrey A. Keeton, Business Representative, for 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, this case was heard at Detroit, Michigan on August 23, 2006, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including evidence and testimony presented at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

Charging Party, the International Union of Operating Engineers, Local 547, Emergency Medical Technicians and Trainees Association (EMMTTA), represents a bargaining unit of nonsupervisory emergency medical technicians and paramedics (here referred to generically as EMTs) employed by the City of Detroit in the emergency medical services (EMS) division of its fire department. On March 6, 2006, Charging Party filed two unfair labor practice charges alleging that the Respondent City of Detroit violated its duty to bargain in good faith by unilaterally changing working conditions for members of Charging Party's unit. The two charges were consolidated for hearing. The charge in Case No. C06 C-044 alleges that on or about October 6, 2005, Respondent unilaterally altered its written "Response to Violence Calls" policy. Under this policy, EMTs

dispatched to an emergency scene where violent activity had been reported, or where there was a potential for violent activity, were permitted to use their own discretion in deciding whether to wait for a police officer before entering the scene to provide medical care. The charge in Case No. C06 C-045 alleges that on or about November 22, 2005, Respondent unilaterally altered an existing disciplinary procedure that gave EMTs charged with misconduct twenty-four hours after their initial conference with their supervisor to submit a written statement responding to the charges.

<u>Alleged Change in Violence Run Policy- Case No. C06 C-044</u>

<u>Findings of Fact</u>:

A "violence run," is defined in EMS division policy as a run where "there have been shootings, psychs [sic], assault/rape, stabbings, overdose, known drug houses, suicides, or runs where violence is in progress." Prior to September 1990, division policy provided that EMTs dispatched to a violence run were to wait for a police officer to secure the scene before entering to provide medical assistance. If EMTs arrived at the scene first, they were to wait until the police arrived. In practice, EMTs frequently entered scenes before the police arrived when, based on their own observation of the scene and information provided by other units and/or supervisors, they decided that there was no danger.

In September 1990, Charging Party and Respondent negotiated a change to the violence run policy that allowed EMTs to decide whether or not to wait for police assistance. In October 1991, Respondent issued a revised policy that required EMTs to enter the scene and begin patient care immediately whenever the dispatcher advised them that the perpetrator had left the scene or that the violence had occurred elsewhere. The dispatcher usually received his or her information from the person who had called to report the emergency. Charging Party filed an unfair labor practice charge alleging that this change in policy was an unlawful unilateral change in terms or conditions of employment. The Commission concluded that the fire department's violence run policy was a mandatory subject of bargaining because it had a direct impact on employee safety. It ordered the Respondent to rescind the change and bargain with the Charging Party over the rules for violence runs. *City of Detroit (Fire Dep't),* 1993 MERC Lab Op 529.

Sometime thereafter, the EMS division promulgated the following written violence run policy:

> When EMS is dispatched on violence runs . . . police assistance will be required to accompany the Medic Unit. The police will attempt to dispatch to the scene the closest available scout car or any other police resource for assistance to EMS. If there is no scout car or other police resource responding to the same scene, the responding EMS unit shall be advised. When waiting for police assistance is necessary, Medic Units shall notify EMS Dispatch they are "In Position –Awaiting Police," and give the exact location. After waiting five (5) minutes, the Medic Unit shall contact dispatch for a status of police response. If after fifteen (15) minutes the police have not arrived, the same information shall be requested. This procedure

shall continue every ten (10) minutes thereafter until police assistance arrives or the unit is removed from the call.

Under the above policy, EMTs dispatched on violence runs continued to have discretion to decide whether to enter the scene to provide medical assistance upon arrival or to park their ambulance nearby and wait for police assistance. Individual EMTs differed in their readiness to enter a scene without a police presence. Perhaps in response to this, it became common practice for a supervisor, either a lieutenant or a captain, to come to a scene where the EMTs were waiting for police and to assess the situation. Often the supervisor was able to determine that medical assistance was no longer, or was never, needed, and to send the unit away. Sometimes EMS supervisors entered scenes, placed patients in their cars, and transported them to the ambulance. Sometimes supervisors learned from speaking to bystanders that there was no danger. For example, a unit might be dispatched to a shooting scene and discover that while the victim was there, the shooting had actually taken place somewhere else. It is clear from the record that EMTs frequently entered emergency scenes after their supervisors passed along information that the scenes were not dangerous.

Where the parties disagree is whether it became an established practice for EMT supervisors to order EMTs to enter a scene after the supervisor decided that it was not violent. "Order" is the critical term, since the parties agree that EMTs could voluntarily act on information provided by their supervisor. Charging Party chief steward Robert Olkowski, an EMT, testified that only a few "rogue" supervisors ever ordered EMTs to enter a scene, and that it was not the usual practice for any supervisor. Fire chief William Brem, an EMS field supervisor between 1984 and 2005, testified that when he was an EMS supervisor he regularly gave such directives. There was no indication that any EMT had ever been disciplined for refusing to enter a potentially violent scene.

The charge was filed after Respondent, on October 6, 2005, revised its violence run policy to add the following sentence, "If an EMS supervisor on the scene advises that the scene is NOT VIOLENT, the Medic Unit shall respond to the scene and begin appropriate care." (Emphasis in original). There is no dispute that under this policy, an EMT called out on a violence run must comply with an order by his supervisor to enter the scene. Respondent took the position that it had no duty to bargain over the addition of this language to the policy because the addition merely codified existing practice. It also maintained that there was no adverse impact on safety because supervisors do not order EMTs to enter violent scenes.

Discussion and Conclusions of Law:

It is well established that safe work practices are conditions of employment and, as such, are mandatory subjects of bargaining. *NLRB v Gulf Power Co,* 384 F2d 822, 824 –825, (5th Cir, 1967), enfg *Gulf Power Co,* 156 NLRB 622 (1966). See also concurring opinion of Justice Stewart in *Fibreboard Paper Products Corp v NLRB,* 379 US 203, 222 (1964). A public employer has the duty to bargain even over decisions that are clearly matters of management prerogative, such as staffing, to the extent that they have a direct impact on employee safety. *Detroit Fire Fighters Ass'n v City of Detroit*, 271 Mich App 457, 463 (2006). Discipline in general is also a mandatory subject of bargaining, and an employer has a duty to bargain over changes in

work rules that may lead to discipline. *City of Detroit,* 19 MPER 70 (2006); *Amalgamated Transit Union v SEMTA*, 437 Mich 441 (1991).

In *City of Detroit (Fire Dep't),* 1993 MERC Lab Op 529, the Commission held that the City's October 4, 1991 change in the violence run policy applicable to EMTs had a direct impact on employee safety. As noted above, in that case the City changed its policy to require EMTs dispatched on a violence run to enter the scene and begin providing treatment when informed by a dispatcher that the scene was not dangerous. The administrative law judge in that case described the impact of that change on employees as follows, "Unarmed employees are being directed to enter a crime scene where the total circumstances are unknown and where the evaluation of potential danger has been made by one removed from the scene."

Respondent argues that requiring EMTs to enter a scene to provide medical care after their supervisor has determined it is safe has no impact on their safety, since supervisors do not order EMTs to enter violent scenes. However, as the Commission found in the case above, who determines whether a scene is safe can have an impact on safety. Supervisors on the scene would seem to be in a better position than dispatchers relying on information from a caller to correctly evaluate whether a scene is dangerous. However, since supervisors are responsible for the overall performance of their units, there may be pressure on them to underestimate the risks rather than leave a unit waiting uselessly on the street. I agree with Charging Party that eliminating the EMTs' discretion to decide whether to enter a potentially dangerous scene would have a significant impact on their safety.

Respondent also contends that there was no change in existing policy with respect to violence runs, and that the October 6, 2005 modification to the written policy merely reflected longstanding practice. It is clear that when EMTs are dispatched on a violence run call and there are no police at the scene, it is an established practice for a supervisor to come to the scene, assess the situation, and tell the EMTs that it is safe for them to enter. I recognize that unless an EMT chooses to challenge his supervisor's judgment, there is no practical distinction between a supervisor merely telling employees that the scene is safe and his ordering them to enter and begin treatment. However, the record indicates that, historically, EMTs have had the right to determine for themselves whether to enter a scene without a police presence after being dispatched on a violence run. Nothing indicates that Charging Party gave up this right, even if EMTs rarely exercised it. When Respondent modified its written violence run policy on October 6, 2005, it removed this right. Respondent also changed established work rules by making EMTs who disagree with their supervisors' evaluation of the danger subject to discipline for disobeying their supervisors' orders to enter a potentially violent scene. I conclude, therefore, that Respondent's October 6, 2005 modification of its written violence run policy constituted a change in existing terms and conditions of employment. I find that Respondent violated its duty to bargain in good faith by failing to give Charging Party notice and an opportunity to bargain before making this change. In accord with this finding, I will recommend to the Commission that it order Respondent, upon demand, to bargain with Charging Party over the change in the violence run policy and to rescind the October 6, 2005 change pending satisfaction of its obligation to bargain. I note that this order, if adopted, should not be construed as prohibiting a supervisor at an emergency scene from telling EMTs that the supervisor believes that the scene is safe, since this has been a longstanding practice.

Alleged Change in Disciplinary Procedures – Case No. C06 C-045

Findings of Fact:

The fire department's written General Rules apply to all employees of the fire department, except as modified by the specific terms of an applicable collective bargaining agreement. General Rule 6 covers discipline. Subrule 6.2 is entitled "Discipline Guidelines," and describes the circumstances under which oral reprimands, written reprimands, and suspensions are appropriate. The last paragraph of Subrule 6.2(C) reads as follows:

> Whenever any member of the Department is charged, the Charge Sheet shall be prepared in eight (8) copies and distributed as indicated on the form. The form shall be prepared under the direction of the charged member's immediate supervisor, or, if he is not available, the immediate superior in charge of the charged member's unit. The initial charge shall be indicated on the form with a brief description of the alleged act for which the member is being charged (See General Rule 10.1). All copies must be distributed immediately. A hearing must be held before the Division Head/Battalion Chief, the Executive Fire Commissioners Hearing, or the Trial Board, within ten (10 days) after the charges are filed, …

Pursuant to Subsections 6.3 and 6.4, a hearing may be conducted by a division head or battalion chief or by the executive fire commissioner. Employees have ten days after that hearing to request a trial board hearing. Subsection 6.5 describes how trial board proceedings are to be conducted, and the rights of employees at trial board hearings. Paragraph D of that subsection reads as follows:

> D. Statement of Member: Members against whom a misconduct report has been filed may submit their version of the case in writing to the immediate superior in charge. The member's statement shall be attached to, and remain part of, the Charge Sheet. Before any member shall be required to make a written statement or written reply pertaining to any alleged misconduct on his part, the matter shall first be discussed between the member and his superior in charge. The member shall have twenty-four (24) hours after such conference to make the written statement. This shall not apply to the completion of the preliminary complaint charge or other normal Departmental report forms. The conference between the member and his immediate superior shall be a private proceeding, and no part of the conversation between the member and his immediate superior (or between the union representative, if requested, and the immediate supervisor), shall be recorded by either sound or transcript.

When a complaint or report of misconduct is made against a member of Charging Party's unit, the employee's supervisor, usually his immediate supervisor, conducts an investigation. The

supervisor instructs the employee, and sometimes the other members of his EMS crew, to submit a written letter, or statement, giving his or her version of events. The employee has the right to consult a union representative before submitting the letter. The employee's written statement can be used as a basis for discipline. The supervisor may ask the employee to submit a second written statement if something new comes up in the course of his investigation. If, after concluding his investigation, the employee's supervisor believes that there was wrongdoing, he consults with his supervisor and they decide whether to draw up a formal charge as described in Section 6.2(C). This charge, along with the employee's statement, is sent to the superintendent or assistant superintendent of the EMS division. A "charge hearing" is then scheduled. At the "charge hearing," the charges are read before the employee and his union representative, but neither is allowed to respond. The verdict, guilty or not guilty, is announced, and an employee found guilty is told what his disciplinary penalty will be. The employee then has ten days to appeal and may, at this point, ask for a trial board hearing. The charges and the complete investigatory file, including the written statement that the employee initially submitted to his supervisor, are sent to the trial board. Employees are not required to submit another written statement when they appeal to the trial board, although they may do so. The employee can testify and have witnesses testify on his behalf at the trial board hearing.

Charging Party's chief steward Olkowski and Charging Party representative Rachel Howell, also an EMT, testified that when members of Charging Party's unit were asked by their immediate supervisors to submit letters in response to a complaint or report of misconduct, they were routinely told that their responses were due in twenty-four hours, or at the end of the next duty-day. According to Olkowski, the only exceptions were statements submitted in connection with work place violence incidents or motor vehicle accidents. Both these situations are covered by separate written policies that specifically require employees to submit statements sooner than twenty-four hours. Olkowski testified that it was his understanding that Rule 6.5(D) applied to letters submitted at the initial stage of the investigation of a complaint of misconduct.

Fire chief Brem and Cheryl Campbell, formerly an EMT and EMT supervisor and now second deputy fire commissioner, denied that Respondent had a uniform practice of allowing EMTs, or any fire department employee, twenty-four hours to submit their response to a complaint or report of misconduct. They testified that there could be a number of reasons why a supervisor might request a statement from an employee, that the supervisor had the discretion to determine how much time to give the employee to draft his response, and that the amount of time given varied with circumstances, including the severity of the alleged misconduct and the time and day of the week the complaint was made. Both Campbell and Brem mentioned incidents involving on-the-job injuries as situations where employees routinely had to submit statements as soon as possible after the incident. Campbell also testified that when the City's law department receives a sexual harassment complaint, it reviews the file. If the law department believes that the file is incomplete, it may ask the fire department to direct an employee to submit a statement immediately. Both Brem and Campbell testified that it was their understanding that Rule 6.5(D) applied only to the statements employees were allowed to submit to the trial board after filing an appeal with that body.

On November 22, 2005, Gary Kelly, the chief superintendent of the EMS division, issued a memo to all EMS supervisors that included the following:

> Requesting Letters
>
> There is no 24-hour entitlement for an employee to respond to a request for a letter. If the employee requests consultation with a Union representative prior to writing a letter, the request should be granted. Once the employee has had a chance to confer with a Union representative, then the letter is immediately deliverable. There is no policy automatically granting a 24-hour period to produce the letter. Questions may be referred to this office.

On November 28, Charging Party requested that the fire department provide it with any correspondence or other documents relating to the modification of Rule 6.5(D). Later the same day, Charging Party repeated its request to Deputy Fire Commissioner Seth Doyle during a grievance meeting on another matter. Doyle replied that there were no such documents, and stated that he knew of no change in the policy. Respondent subsequently took the position that it had no duty to bargain because there had been no change in existing policy.

Discussion and Conclusions of Law

Fire department General Rule 6 set outs disciplinary procedures applicable to all fire department employees. I agree with Charging Party that Rule 6.5(D) gives employees about whom a complaint of misconduct has been made twenty-four hours after their initial conference with their supervisor to submit a written statement in response to the complaint. Respondent's interpretation of Rule 6.5(D) as applying only to statements submitted to the trial board is not consistent with the language of that paragraph. Rule 6.5(D) states that employees have twenty-four hours from their initial conference with their supervisor to submit their statements. A trial board proceeding does not take place until after the fire department has completed its investigation and made a decision to discipline the employee. There is no indication that the trial board stage of the disciplinary procedure includes a conference between the employee and his or her supervisor as referenced in Rule 6.5(D). Moreover, by the time the case reaches the trial board, the employee has already submitted his written statement in response to the charges, and the trial board receives that statement along with the rest of the investigatory file.

As indicated by its inclusion in Rule 6, however, Rule 6.5(D) applies only when a "misconduct report" has been filed against an employee and the employee is required to submit a statement in response. As the record indicates, there are numerous situations not involving a specific complaint against that employee where the department may require an employee to submit a written statement. These include workplace injury reports, statements made by employees who may have witnessed misconduct by others, and statements by complainants and witnesses in sexual harassment cases. Also, as Charging Party testified, Rule 6.5(D) does not apply to situations where another written policy supersedes it; i.e., work place violence situations and motor vehicle accidents.

Both Brem and Campbell testified that the length of time employees are given to submit a written statement varies with circumstances, including the severity of the alleged complaint. It was not clear from their testimony whether employees charged with more severe misconduct received less or more time to respond. Neither Brem's nor Campbell's testimony persuades me that the EMS

division has had a consistent practice, in contradiction to Rule 6.5(D), of giving employees charged with misconduct less than twenty-four hours after their conference with their supervisor to submit their written responses. I find that Kelly's November 22, 2005 memo constituted a change in an existing disciplinary policy, and that Respondent violated its duty to bargain with Charging Party over this change. In accord with this finding, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondent City of Detroit, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to bargain in good faith with the International Union of Operating Engineers, Local 547-E, Emergency Medical Technicians and Trainees Association (EMMTTA), by unilaterally altering existing terms and conditions of employment, including disciplinary rules and policies, work rules, and safety practices applicable to employees represented by that labor organization.

2. Take the following affirmative action to effectuate the purposes of the Act:

   a. Rescind the October 6, 2005 modification to the fire department policy entitled "Response to Violence Calls," pending satisfaction of its obligation to bargain over this change to existing policy.
   b. Reinstate the practice of allowing EMTs charged with misconduct to have twenty-four hours after their initial conference with their supervisor to submit a written statement in response to the charge, as set out in fire department General Rule 6.5(D), and, upon demand, bargain in good faith with EMMTTA over any proposed change to this practice.
   c. Post the attached notice to employees in conspicuous places on the Respondent's premises, including all places where notices to employees are customarily posted, for a period of thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _______________

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **CITY OF DETROIT** TO HAVE COMMITTED UNFAIR LABOR PRACTICES 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 in good faith with the International Union of Operating Engineers, Local 547-E, Emergency Medical Technicians and Trainees Association (EMMTTA), by unilaterally altering existing terms and conditions of employment, including disciplinary rules and policies, work rules, and safety practices applicable to employees represented by that labor organization.

WE WILL rescind the October 6, 2005 modification to the fire department policy entitled "Response to Violence Calls," pending satisfaction of our obligation to bargain over this change to existing policy.

WE WILL reinstate the practice of allowing EMTs charged with misconduct to have twenty-four hours after their initial conference with their supervisor to submit a written statement in response to the charge, as set out in fire department General Rule 6.5(D), and, upon demand, bargain in good faith with EMMTTA over any proposed change to this practice.

As a public employer under the PERA, we are obligated to bargain in good faith with representatives selected by the majority of our employees with respect to rates of pay, wages, hour of employment or other conditions of employment. All of our employees are free to form, join or assist in labor organizations and to engage in lawful concerted activity through representatives of their own choice for the purpose of collective bargaining or other mutual aid and protection.

CITY OF DETROIT

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 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.