STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF HARPER WOODS,
Public Employer-Respondent,

- and - Case No. C06 D-087

HARPER WOODS FIRE FIGHTERS ASSOCIATION,
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1188,
Labor Organization-Charging Party.
_____/

APPEARANCES:

James Leidlein, City Manager, for the Respondent

Alison L. Paton, Esq., for the Charging Party

DECISION AND ORDER

On August 3, 2007, Administrative Law Judge Julia C. 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

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated:_____

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APPEARANCES:

James Leidlein, City Manager, for the Respondent

Alison L. Paton, Esq., 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, this case was heard at Detroit, Michigan on November 17, 2006, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before January 19, 2007, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Harper Woods Fire Fighters Association, International Association of Fire Fighters (IAFF), Local 1188, filed this charge against the City of Harper Woods on April 13, 2006. Charging Party represents a bargaining unit of uniformed fire fighters employed by Respondent. The charge alleges that Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA on January 4, 2006, when its city council adopted the following resolution:

> The City Council of the City of Harper Woods hereby directs that all labor contract negotiations, mediations, Act 312 arbitrations, grievance arbitration hearings or sessions where the City of Harper Woods is a party to the proceeding be held in City facilities located within the City of Harper Woods unless otherwise ordered by a court of competent jurisdiction.

Facts:

On March 13, 2006, Charging Party's counsel wrote to Respondent's city manager as follows:

> Dear Mr. Leidlein:
>
> The Union recently shared with me a copy of a resolution passed by City Council on January 4, 2006. Myself and the Union are uncertain as to the meaning of this resolution, and hereby request clarification from you.
>
> Does the resolution simply mean that City Council has directed you and other employer representatives *to seek* to have all such proceedings held in City facilities? Or on the other hand, does the resolution mean that the City Council is purporting to *make it binding* upon the Union, AAA grievance arbitrators, MERC mediators and Act 312 arbitrators that all proceedings be held in City facilities? [Emphasis in original]
>
> If the latter, then please know that the Union will be faced with no choice but to file a ULP charge against the City for, *inter alia* contract repudiation and unilateral action. With regard to grievance arbitration, the contract provides for arbitration "in accordance with AAA rules," under which the grievance arbitrator will decide hearing location in the event the parties cannot agree. With regard to mediation, the location is up to the mediator, who may decide that a "neutral location" (such as MERC offices) is best. Likewise with Act 312 arbitration, absent mutual agreement of the parties, the location is up to the Panel Chairman, who may decide that some location other than the City facilities would be best.
>
> I look forward to your response to this request for clarification. Please know that if I have received no response by April 15, 2006, we will assume that the resolution is intended by Council to be binding on the Union (as well as AAA grievance arbitrators MERC mediators, and Act 312 arbitrators) and we will proceed to file a ULP charge with MERC. Thank you for your attention to this matter.

Leidlein responded by letter dated March 20, 2006:

> Dear Ms. Paton:
>
> This is in response to your letter of March 13, 2006 regarding a resolution adopted by the City Council of the City of Harper Woods on January 4, 2006.
>
> You have requested a clarification as to whether this resolution directs me to seek to have such proceedings be held in city facilities or does it make it binding that arbitrations and mediation be held on city facilities? I believe that the resolution says what it says. It *directs* that all "labor contract negotiations mediations Act

> 312 arbitrations, grievance arbitration hearings or sessions … be held in City facilities, unless otherwise ordered by a court of competent jurisdiction."
>
> I suspect that a "court of competent jurisdiction" could be interpreted to mean the Michigan Employment Relations Commission.
>
> I suggest that you take whatever action you deem appropriate in the interest of your bargaining unit members.

The parties' most recent collective bargaining agreement covers the term June 1, 2004 through December 31, 2006. When the hearing on the unfair labor practice charge was held in November 2006, the parties had not yet begun negotiating a successor to this agreement. The parties entered into their 2004-2006 contract in approximately October 2005, after Charging Party filed a petition for compulsory arbitration pursuant to 1969 PA 312 (Act 312), MCL 423.231 et seq. In 2001 and 1998, terms and conditions of employment for members of the bargaining unit were established by arbitration awards issued pursuant to Act 312.

The parties have traditionally held their contract negotiations in city facilities. However, when the parties have met with a Commission-appointed mediator, they have done so at the Commission's offices in Detroit, approximately ten miles from Respondent's city hall. As indicated above, the parties participated in two Act 312 arbitrations during the last decade. The record does not indicate where these arbitration hearings were held.

Article XII, Section 2 of the parties' contract provides for mandatory arbitration of contract interpretation disputes. Article XII, Section 2 provides, in pertinent part:

> Step 3. If the Union wishes to appeal denial of a grievance in Step Two (2), it shall, within thirty (30) calendar days after the date of the answer in that step, file at the appropriate office of the American Arbitration Association that Association's "Demand for Arbitration" duly completed. The matter shall thereafter be administered by the Association in accordance with its "Voluntary Labor Arbitration Rules."

The Voluntary Labor Arbitration Rules of the American Arbitration Association (AAA) state:

> The parties may mutually agree on the geographic region (locale) where the arbitration is to be held. If the locale is not designated in the collective bargaining agreement or submission, and if there is a dispute as to the appropriate locale, the AAA shall have the power to determine the locale and its decision shall be binding.

Charging Party's president testified that all the grievance arbitration hearings between the parties that he has personally attended have been held either at the Commission's offices in Detroit or at the AAA's offices in Southfield, Michigan. The record did not indicate whether the

parties agreed to hold the hearings at these locations or whether the AAA exercised its authority to determine the locale in the event of a dispute.

Discussion and Conclusions of Law:

Section 15 of PERA requires a public employer and the representative of its employees to "meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment…" Subjects included within the phrase "wages, hours and other terms and conditions of employment" are referred to as mandatory subjects of bargaining. Once a subject has been classified as a mandatory subject of bargaining, the parties are required to bargain concerning the subject if it has been proposed by either party, and neither party may take unilateral action on the subject absent an impasse in the negotiations. *Detroit Police Officers Ass'n v City of Detroit*, 391 Mich. 44, 54-55, (1974); *Metropolitan Council No 23, American Federation of State, County and Mun Employees (AFSCME) v City of Center Line,* 414 Mich 642, 651 (1982). Matters not classified as mandatory subjects of bargaining are referred to as either permissive or illegal subjects of bargaining. The parties may bargain by mutual agreement on a permissive subject, but neither side may insist on bargaining to the point of impasse. *Detroit Police Officers Ass'n,* fn 6; *Metropolitan Council No 23,* at 653. See also *National Labor Relations Board v Wooster Division of Borg-Warner Corp,* 356 US 342, 349 (1958).

In *Taylor Sch Dist*, 1976 MERC Lab Op 1006, the Commission held that bargaining "ground rules," i.e., rules for the parties to follow in conducting their contract negotiations, were permissive subjects of bargaining because they were unrelated to wages, hours and other terms and conditions of employment. In *Taylor*, both the employer and union presented proposals at the beginning of their contract negotiations addressing such matters as how proposals were to be exchanged, how the parties would communicate with each other and with the media, and how the times and dates of meetings would be established. When the parties could not agree on set of ground rules, the employer refused to begin negotiating the terms of the contract until the union agreed to the employer's proposed rules. The Commission held that by refusing to meet until the union agreed to its proposed ground rules, the employer unlawfully insisted to impasse on a permissive subject of bargaining. In *Kenowa Hills Pub Schs,* 1980 MERC Lab Op 967 (no exceptions) and *Carrollton Twp,* 1983 MERC Lab Op 346 (no exceptions), employers were found to have violated their duty to bargain in good faith by refusing to meet to negotiate contract terms unless the unions agreed to permit the employers to tape record their negotiation sessions. In concluding that the employers unlawfully insisted to impasse on a permissive subject of bargaining, the administrative law judges in *Kenowa Hills* and *Carrolton Twp* held that the tape recording of negotiation session was a "threshold" matter unrelated to wages, hours or terms and conditions of employment.

I find that the location of bargaining sessions, like the tape recording of negotiations sessions and the ground rules involved in *Taylor*, is a "threshold" issue unrelated to wages, hours or terms and conditions of employment and is, therefore, a permissive subject of bargaining. As discussed above, a party may make a proposal on a permissive subject of bargaining but cannot lawfully insist to impasse on that issue. Therefore, while Respondent could lawfully propose that the parties hold all bargaining sessions in city facilities, it cannot lawfully insist on this meeting place as a condition of its participation in contract negotiations. The parties were not in negotiations when the city council passed its resolution on January 4, 2006, and there was no

actual disagreement between the parties regarding where bargaining would take place. However, the resolution "directs" that contract negotiations be held in city facilities "unless ordered otherwise by a court of competent jurisdiction." The clear implication is that Respondent will in the future refuse to negotiate with Charging Party unless it agrees to meet only in a city facility or a "court of competent jurisdiction" orders Respondent to meet somewhere else. I find that the January 4, 2006 resolution effectively made Charging Party's agreement on a permissive subject of bargaining a precondition to Respondent's future participation in contract negotiations, and I conclude that by this action Respondent unlawfully insisted to impasse on a permissive subject of bargaining.[1] I will, therefore, recommend that the Commission issue the following order.

RECOMMENDED ORDER

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

1. Cease and desist from insisting to impasse on a nonmandatory subject of bargaining, in violation of its duty to bargain in good faith with Harper Woods Fire Fighters Association, IAFF Local 1188.

2. Rescind the ordinance passed by Respondent's city council on January 4, 2006 conditioning Respondent's participation in future negotiations with Local 1188 on Charging Party's agreement to hold all bargaining sessions on Respondent's premises.

3. Post copies of the attached notice to employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted, for a period of thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____

[1] The January 4, 2006 resolution also "directs" that mediations, Act 312 arbitrations, grievance arbitration hearings, and "sessions where the City of Harper Woods is a party to the proceeding" be held in city facilities. As Charging Party pointed out in its March 13, 2006 letter to Respondent's city manager, MERC-appointed mediators have the authority to decide where they will hold their mediation sessions. The rules of the AAA, to which Respondent has agreed to be bound, allow the AAA to select the location for a grievance arbitration if the parties do not agree. An Act 312 arbitration panel has the power to "regulate the date, time, place and course of the hearings." See Rule 9(2)(d) of the Commission's Compulsory Arbitration Rules, 1995 AACS, R 423.509. It is unclear from the wording of the resolution whether it was Respondent's intent to refuse to participate in a mediation session or arbitration hearing if scheduled by a mediator, Act 312 panel, or the AAA at some other location.

NOTICE TO EMPLOYEES

After a public hearing, the Michigan Employment Relations Commission has found the **City of Harper Woods** to have committed an unfair labor practice 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 insist to impasse on a nonmandatory subject of bargaining, in violation of our duty to bargain in good faith with Harper Woods Fire Fighters Association, IAFF Local 1188.

WE WILL rescind the ordinance passed by the City Council on January 4, 2006 conditioning our participation in future negotiations with Local 1188 on its agreement to hold all bargaining sessions in city facilities.

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, hours 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 HARPER WOODS

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.