

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

In the Matter of:

COUNTY OF WAYNE and WAYNE COUNTY SHERIFF,
Respondents-Public Employers,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 502,
Charging Party-Labor Organization.

Case Nos. C05 L-311
& C05 I-204

APPEARANCES:

Wayne County Labor Relations Division, by James Oleksinski, Esq. for Respondents

Akhtar, Webb & Ebel, by Jamil Akhtar, Esq. for Charging Party

DECISION AND ORDER

On January 30, 2008, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Wayne County Labor Relations Division, by James Oleksinski, for Respondents

Akhtar, Webb & Ebel, by Jamil Akhtar, 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 and 423.216, this case was heard at Detroit, Michigan on September 19 and 20, 2006, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript, exhibits and post-hearing briefs filed by the parties on or before December 4, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges and Background Matters:

On September 7, 2005, Service Employees International Union (SEIU), Local 502 (the Union) filed an unfair labor practice charge alleging that Wayne County and Wayne County Sheriff (the Employers) violated PERA by refusing to administer a detective examination for members of its bargaining unit. That charge was assigned Case No. C05 I-204. The Union then filed a seven-count charge against Respondents, Case No. C05 L-311, on December 20, 2005.

Following the hearing in this matter, the Union, pursuant to a voluntary settlement agreement, withdrew all but one of its allegations against Respondents. The remaining allegation to be decided in this matter was set forth in Count VII of the charge in Case No. C05 L-311. In that count, Charging Party alleges that Respondents violated PERA by unilaterally assigning police officers, rather than detectives, to its new Deed Fraud Investigations Unit. The

Union contends that police officers assigned to the Deed Fraud Investigations Unit are performing investigative work which has been performed exclusively by detectives for the past forty years.

Finding of Fact:

SEIU Local 502 represents a bargaining unit consisting of all nonsupervisory law enforcement personnel employed by Respondents, including, but not limited to, police officers, corporals and detectives. The most recent collective bargaining agreement in effect between the parties covered the period December 1, 2000 to November 1, 2004. The contract contains a management rights clause, Article 2, which vests the Employers with “the exclusive right to manage its agencies, departments and offices and to direct its affairs, operations and the services of its employees, except where in conflict with or changed by the provisions” of the agreement.

Local 502 represents detectives in Internal Affairs, Secondary Road Patrol, the Wayne County Prosecutor’s Office and the City of Highland Park. Detectives are responsible for conducting criminal investigations. In all units other than the Prosecutor’s Office, detectives are also responsible for processing warrant applications after a suspect has been arrested and then presenting the applications to the Prosecutor’s Office. If the Prosecutor’s Office recommends the issuance of a warrant, the detective prosecutes the case in court on behalf of the Sheriff’s Department. A posting for a detective position in the Highland Park unit lists “good investigative skills” and “good report writing skills” as job requirements.

Police officers employed by Respondents are responsible for conducting initial or basic investigations into alleged criminal activity and writing reports chronicling their findings. The reports are then turned over to a detective for preparation of a warrant application, if necessary. There are, however, several units to which there are no detectives assigned, including Narcotics, Last Call, Fugitive Apprehension Services Team and Warrant Enforcement Bureau. Police officers who are assigned to these units conduct criminal investigations and are also responsible for preparing warrant applications.

In 2001, Charging Party filed a grievance challenging the Employers’ decision to assign Police Officer Becky Tripp to its Internal Affairs Section. The Union argued that Tripp was working out of class as a detective because she was performing background investigations. On July 30, 2002, the arbitrator, George T. Roumell, Jr., issued a decision denying the grievance on the ground that the task of conducting background investigations has historically been assigned to both police officers and detectives.

In 2005, Respondents created a new unit, the Deed Fraud Investigations Unit, to work in conjunction with the Wayne County Register of Deeds and the Wayne County Prosecutor’s Office in investigating and enforcing criminal and civil laws and ordinances pertaining to suspicious or fraudulent real estate deeds and other related matters. The Deed Fraud Investigations Unit is a plainclothes unit funded by the Register of Deeds with one budgeted sergeant position and two police officers. Charging Party first learned of the existence of the Deed Fraud Investigations Unit on or about October 5, 2005, when Respondents issued a job

posting seeking police officers to staff the new unit. The job posting lists “basic investigative skills” as a requirement for the position.

The police officers assigned to the Deed Fraud Investigations Unit are responsible for investigating cases, processing warrant applications, presenting the applications to the Prosecutor’s Office and prosecuting claims in court on behalf of the Sheriff’s Department. At hearing, Chief of Staff Darryl Fordham, the third highest ranking officer at the Sheriff’s Department, acknowledged that police officers assigned to the Deed Fraud Investigations Unit perform work similar to the detectives employed at the Prosecutor’s Office.

Discussion and Conclusions of Law:

It should be noted at the outset that this is not a dispute involving an alleged transfer or subcontracting of bargaining unit work, as both police officers and detectives are included within Local 502. Rather, the sole issue in this matter is whether Respondents violated PERA in assigning police officers, rather than detectives, to its newly created Deed Fraud Investigations Unit. Generally, the assignment of job duties to bargaining unit employees is a management right which is not subject to bargaining. See e.g. *Pontiac Sch Dist*, 2002 MERC Lab Op 20; *City of St. Joseph*, 1996 MERC Lab Op 274; *Charlotte Sch Dist*, 1996 MERC Lab Op 193; *Kalamazoo Pub Library*, 1994 MERC Lab Op 486. In the instant case, however, Charging Party asserts that the assignment of police officers to the Deed Fraud Investigations Unit was contrary to a mutually accepted past practice of assigning investigative duties only to those members of Local 502 holding the classification of detective. The Union contends that this past practice has become a term of the collective bargaining agreement and cannot be modified without its consent.

A past practice which does not derive from the parties' collective bargaining agreement may become a term or condition of employment which is binding on the parties. *Amalgamated Transit Union v SEMTA*, 437 Mich 441, 454-455 (1991). In order to create a term or condition of employment through past practice, the practice must be mutually accepted by both parties. Where the collective bargaining agreement is ambiguous or silent on the subject for which the past practice has developed, there need only be "tacit agreement that the practice would continue." *Id.* However, where the contract unambiguously covers a term of employment that conflicts with a party’s behavior, a higher standard of proof is required. In such situations, the unambiguous language controls unless the past practice is so widely acknowledged and mutually accepted that it creates an amendment to the contract. *Port Huron Ed Ass’n v Port Huron Area Sch Dist*, 452 Mich 309, 329 (1996).

In the instant case, there is no evidence in the record suggesting that the parties had even a tacit agreement that the type of work being performed by police officers in the Deed Fraud Investigations Unit would be assigned only to detectives. To the contrary, the evidence reveals that work of this nature is routinely performed by both detectives and police officers. Although detectives are responsible for the bulk of the investigatory work, the record overwhelmingly establishes that police officers also perform basic investigations as part of their regular duties. With respect to the processing of warrant applications, Respondents presented credible and uncontroverted testimony establishing that such work is also regularly performed by both

detectives and police officers. On these facts, I conclude that Charging Party has failed to establish the existence of a past practice mandating the assignment of investigative duties to detectives.

I have carefully considered the remaining arguments of the parties and conclude that they do not warrant a change in the result.¹ Based upon the above facts and conclusions of law, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____

¹ At hearing, Charging Party asserted that the assignment of police officers to the Deed Fraud Investigations Unit violated Article 1.02 of the parties' contract, which states "Bargaining Unit positions shall not be reclassified or retitled without prior written agreement between the parties." In its post-hearing brief, the Union relied instead upon its contention that a past practice existed governing the assignment of investigative duties. In any event, there is nothing in the record which suggests that any bargaining unit positions were reclassified or retitled as a result of the creation of the new unit.