STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MUNDY TOWNSHIP,
Public Employer-Respondent,

Case No. C05 L-308

-and-

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

APPEARANCES:

Howard R. Grossman, P.C., by Howard R. Grossman, Esq., for Respondent

Pierce, Duke, Farrell & Tafelski, P.L.C., by M. Catherine Farrell, Esq., for Charging Party

DECISION AND ORDER

On October 8, 2007, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent, Mundy Township, did not violate its duty to bargain when it refused to comply with the information request of Charging Party Michigan Association of Police (MAP or the Union) seeking a copy of the "Officer Complaint Log." The ALJ found that Respondent did not violate Section 10(1)(a) or (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a) or (e), as alleged, and recommended that the charges be dismissed. The ALJ held that MAP failed to prove that the information sought was not a confidential internal affairs investigation record that was exempt from disclosure under PERA. In the absence of such proof, the ALJ concluded that Respondent had no duty to provide the information. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

On October 30, 2007, Charging Party filed exceptions to the ALJ's Decision and Recommended Order. In its exceptions, MAP alleges that the ALJ erred in finding that Respondent did not violate its duty to bargain by failing to provide an unredacted complaint log to Charging Party. Charging Party contends that it sought to use the log in the grievance/arbitration procedure of the discipline of a bargaining unit member. In that matter, Charging Party took the position that there was disparate treatment in the discipline of road patrol officers. It claims that the redacted log provided by Respondent was useless in that

effort, and argues that the complaint log is a business record maintained in the ordinary course of business. The Union further asserts that the complaint log does not fall within the confines of documents exempt from disclosure as part of an internal investigation, as that term is defined in the cases cited by the ALJ. Charging Party asserts, therefore, that the complaint log must be disclosed as part of Respondent's duty to bargain. On November 8, 2007, Respondent filed a Brief in Support of the ALJ's Decision and Recommended Order.

We have reviewed Charging Party's exceptions and find them to be without merit.

Factual Summary:

We adopt the factual findings of the ALJ and repeat them only as necessary here.

MAP represents full-time police officers employed by Mundy Township. The parties' collective bargaining agreement contained a five-step grievance procedure, ending in binding arbitration. In June 2005, MAP requested that Respondent provide it with an internal investigation file. The Union intended to utilize this information to support the position it was asserting during the grievance/arbitration process of a bargaining unit member who had been disciplined following a citizen complaint. The Union later clarified its request, asking only for a copy of the Officer Complaint Log that identifies: 1) the name of the officer against whom the complaint is made; 2) the date of complaint; and 3) the name of the supervisor assigned to investigate the complaint.

In October 2005, Charging Party received a redacted copy of the Officer Complaint Log, spanning from December 2000 to August 2005. Because the names of officers against whom citizen complaints had been filed had been blacked out on this copy, Charging Party requested an unredacted copy of the log. The Union claimed that an unaltered copy of the Officer Complaint Log was relevant and necessary to determine whether police officers were being disparately treated with respect to citizen complaints. The Township refused to provide the Union with an unredacted copy of the log, relying on our decision in *City of Battle Creek (Police Dep't)*, 1998 MERC Lab Op 684, to support its position that the requested information was exempt from disclosure. Charging Party countered that *Battle Creek* was not binding on this case and, later, renewed its request for an unredacted copy of the log.

Discussion and Conclusions of Law:

To satisfy its duty to bargain in good faith under Section 10(1)(e) of PERA, an employer must supply, in a timely manner, requested information that permits the union to engage in collective bargaining and police administration of the contract. *City of Detroit*, 21 MPER 48 (2008). A liberal discovery standard is applied and as such, the employer has a duty to disclose requested information as long as there is a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Id.* When the information sought concerns the wages, hours, and working conditions of bargaining unit employees, it is presumed to be relevant and must be disclosed unless the employer rebuts this presumption with evidence to the contrary. *Wayne Co Cmty Coll Dist*, 20 MPER 98 (2007).

There are, however, exceptions to the employer's disclosure requirement. In *Kent Co & Kent Co Sheriff*, 1991 MERC Lab Op 374, we held that internal investigatory reports relating to alleged misconduct of union members are exempt from disclosure as a matter of law. In the subsequent Commission decision of *City of Battle Creek (Police Dep't)*, 1998 MERC Lab Op 684, we held that internal investigatory reports are exempt as a matter of law, and when there is no dispute concerning whether the information sought to be disclosed pertains to an internal investigatory file, the party in possession of the reports has no duty to disclose the materials.

In its exceptions, Charging Party argues that the confidentiality exception does not apply to this case because the Officer Complaint Log is not part of an internal investigatory file. However, during the hearing, Charging Party's own witness (and the only witness to testify in this case) described the log as an instrument used to establish an internal complaint number in response to a citizen complaint. Furthermore, the log contains information that discloses the existence of internal affairs investigations, including the names of the officers against whom citizen complaints have been filed, as well as the names of the officers assigned to investigate the alleged misconduct. Under these circumstances, we agree with the ALJ that the Officer Complaint Log pertains to an internal investigatory file and need not be disclosed by the employer.

We agree with the ALJ that Charging Party has failed to prove that the Officer Complaint Log is not a confidential internal affairs investigation record that is exempt from disclosure. We have considered all other arguments submitted by the parties and conclude that they would not change the result in this case.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION[1]

_____
Christine A. Derdarian, Commission Chair

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Eugene Lumberg, Commission Member

Dated: _____

[1] Commissioner Nino E. Green was unable to participate in the decision in this matter.

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APPEARANCES:

Howard R. Grossman for Respondent

Pierce, Duke, Farrell & Tafelski, P.L.C., by M. Catherine Farrell, 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 May 11, 2006, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits and post-hearing briefs filed by the parties on or before July 26, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On December 15, 2005, the Michigan Association of Police (MAP) filed this unfair labor practice charge against Mundy Township. The charge alleges that Respondent violated Sections 10(1)(a) and (e) of PERA by refusing to comply with the Union's request for information pertaining to an ongoing grievance over the discipline of a bargaining unit member. Respondent filed an answer to the charge on April 10, 2006. At the hearing, only one witness, MAP labor relations specialist Ronald Palmquist, was called to testify.

Findings of Fact:

Charging Party represents a bargaining unit consisting of all full-time police officers employed by Respondent. The Union and the Employer are parties to a collective bargaining

agreement covering the period April 2003 to March 2006. The contract contains a five-step grievance procedure culminating in final and binding arbitration.

On June 28, 2005, Charging Party filed a grievance challenging the discipline of a bargaining unit member arising from a citizen complaint brought against the officer. As part of the grievance process, the Union requested that Respondent provide it with the internal investigation file. The Union subsequently clarified that it was requesting only a copy of the Officer Complaint Log. According to Palmquist, the Officer Complaint Log is a document used by Respondent to establish "an internal complaint number" when a citizen makes a complaint about a specific officer. The log identifies the name of the officer about whom the complaint was made, the date of the complaint, and the name of the supervisor assigned to investigate the allegation against the officer.

In October of 2005, the Township provided Charging Party with a redacted copy of the Officer Complaint Log which covered the period December 7, 2000 to August 3, 2005. The names of the individual officers about whom complaints had been made were blacked out. Following receipt of the redacted complaint log, Palmquist contacted the Employer and requested that an unaltered copy of the document be provided to the Union. At hearing, Palmquist asserted that the document was relevant and necessary for the Union to determine whether the Employer was treating police officers differently than other Township employees with respect to citizen complaints.

In a letter to the Union dated December 1, 2005, the Township indicated that it would not disclose the unredacted log on the advice of counsel. Attached to the letter was a copy of the Commission's decision in *City of Battle Creek (Police Dep't)*, 1998 MERC Lab Op 684, which the Employer claimed stood for the proposition that the requested information was confidential and, therefore, exempt from disclosure under PERA. Palmquist responded by letter on December 6, 2005, asserting that *Battle Creek* was not controlling and renewing the Union's request for an unredacted copy of the log.

Discussion and Conclusions of Law:

Pursuant to Section 15 of PERA, 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 order to satisfy its bargaining obligation under PERA, an employer must supply, in a timely manner, requested information which will permit the union to engage in collective bargaining and to police administration of the contract. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387. The standard applied is a liberal discovery-type standard. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne County, SMART*, 1993 MERC Lab Op 355, 357. Information relating to terms and conditions of employment, such as wages, job descriptions, and other information pertaining to bargaining unit employees is presumptively relevant and the employer must provide it unless it rebuts the presumption. *Plymouth Canton Comm Schs*, 1998 MERC Lab Op 545; *City of Detroit, Dep't of Transp*, 1998 MERC Lab Op 205.

Exceptions to the employer's duty to provide information exist where the requested information could be either confidential or readily available to the union from other sources. See e.g. *Michigan State University*, 1986 MERC Lab Op 407. With respect to information related to internal disciplinary investigations, the Commission recognized in *Kent Co v Kent Co Deputy Sheriffs Ass'n*, 1991 MERC Lab Op 374, the right of the employer to withhold witness statements and other internal affairs investigation records relating to union members' alleged misconduct.

More recently, the Commission emphasized the expansive nature of that exception. In *City of Battle Creek (Police Dep't)*, 1998 MERC Lab Op 684, a police officer was terminated following an investigation into charges which included sexual assault and abuse of authority. The union filed a grievance and requested all information relied upon by the employer in connection with the discharge. Although the employer provided certain information to the union, it refused to disclose any witness statements or internal investigative materials. The ALJ found a violation of PERA based upon the fact that there was no evidence in the record establishing that disclosure of the requested materials would have destroyed or diminished the employer's ability to conduct an internal affairs investigation. On exception, the Commission held that the ALJ had interpreted the confidential information exception too narrowly:

> In [*Kent County*], we held that internal investigatory reports, including witness statements, are exempt from disclosure *as a matter of law*. Therefore, any factual differences which may exist between the instant case and *Kent County* with regard to possible adverse affects on the Employer are immaterial. Because there is no dispute that the information request *pertained to* an internal investigative file, Respondent had no duty to make the materials available to the Union.

Battle Creek, *supra* at 688-689 (citations omitted) (emphasis supplied).[2]

Charging Party asserts that the confidentiality exception is inapplicable in the instant case because the information which it requested from the Township is not actually part of an internal investigatory file. According to the Union, the log is merely a document maintained by the Employer in the ordinary course of business. However, Palmquist, the only witness to testify in this matter, described the log as "establishing an internal complaint number" in response to a citizen complaint. Moreover, the document includes information which would clearly disclose

[2] In so holding, the Commission expressly rejected the application of federal law to cases arising under PERA involving requests for internal investigation reports. I disagree and would find the balancing test employed by the National Labor Relations Board to be the better approach. See e.g. *N.J. Bell Telephone Co*, 300 NLRB 42 (1990), enf'd 936 F2d 144 (CA 3 1991). It should be noted that in rejecting the NLRB's balancing test, the Commission, relying on *Newark Morning Ledger Co v Saginaw County Sheriff*, 204 Mich App 215 (1994), stated that its adoption of a per se rule prohibiting the disclosure of internal affairs investigation records was consistent with the requirements of FOIA. In fact, both FOIA and *Newark Morning Ledger* require a balancing of interests in making a determination as to the disclosure of personnel records of law enforcement agencies, including internal investigation records. MCL 15.243(1)(s)(ix); *Newark Morning Ledger*, *supra* at 224. See also *Kent County Deputy Sheriff's Association v Kent County Sheriff*, 463 Mich 353, 365-366 (2000).

the existence of internal affairs investigations, such as the names of the officers about whom complaints have been made and the identities of the investigating officers. On this very limited record, I find that Charging Party has failed to prove that the log is not a confidential internal affairs investigation record within the meaning of *Battle Creek*. Accordingly, I recommend that the Commission issue the following order:

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:_____