STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (POLICE DEPT),
Public Employer-Respondent,

Case No. C09 F-093

-and-

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

APPEARANCES:

Fraser, Trebilcock, Davis and Dunlap, P.C., by Kenneth S. Wilson, Esq., for Public Employer

Gregory, Moore, Jeakle, Heinen & Brooks, P.C., by James M. Moore, Esq., for Labor Organization

DECISION AND ORDER

On August 12, 2009, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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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: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

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CITY OF DETROIT (POLICE DEPT),
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DETROIT POLICE OFFICERS ASSOCIATION,
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APPEARANCES:

Fraser, Trebilcock, Davis and Dunlap, P.C., by Kenneth S. Wilson, Esq., for Respondent

James M. Moore, Esq., for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION FOR SUMMARY DISPOSITION

On June 26, 2009, the Detroit Police Officers Association filed the above charges against the City of Detroit alleging that the Respondent violated Sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 by repudiating a term of the parties' collective bargaining agreement. On July 15, 2009, Respondent filed a motion for summary disposition pursuant to Rules 165(2) (b), (d) and (f) the Commission's General Rules, 2002 AACS, R 423.165. Charging Party filed a timely response opposing the motion. Based on the facts as set forth in Charging Party's pleadings and the arguments made by both parties, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Background:

Charging Party represents a bargaining unit of nonsupervisory police officers employed by Respondent in its police department. For some time, the terms of collective bargaining agreements covering this unit have been established by arbitration awards issued pursuant to 1969 PA 312 (Act 312), MCL 423.231 et. seq. The 1998-2001 agreement came about as a result of an award issued on July 21, 2000 (Case No. D98 E-0840). The award establishing the terms of the 2001-2004 contract (Case No. C01-0568) was issued on August 28, 2003. The parties' current agreement, covering the term 2004-2009, resulted from an award (Case No. D04 D-0919) issued on March 7, 2007.

As a result of the July 2000 Act 312 award, a deferred retirement option program (DROP) was added to the employees' pension plan in the 1998-2001 agreement. DROP gives employees eligible to retire who continue to work the option of having their vested pension benefits frozen and pension payments made on their behalf put into a DROP account. When the employees retire, they have access to the funds in their DROP account in addition to their pension. Under the 1998-2001 contract, a regular service retirement required twenty-five years of active service. Members were also required to have at least twenty-five years of active service with Respondent as a member of the policemen and firemen's retirement system in order to participate in the DROP.

The July 2000 award provided that the DROP was not to be put into effect unless the Internal Revenue Service (IRS) certified that the program would not affect the tax-exempt status of the retirement system. A favorable determination letter from the IRS was issued in November 2007. Thereafter, Charging Party and other unions with employees participating in the policemen and firemen's retirement system, Respondent, and the board of trustees of the retirement system engaged in discussions to set up the program, including choosing an administrator and investment advisor. The arrangements were not completed until sometime early in 2009.

Meanwhile, as noted above, two more Act 312 awards were issued establishing the terms of contracts covering the terms 2001-2004 and 2004-2009. The latter award, issued on March 7, 2007, lowered the eligibility requirement for a regular service pension from twenty-five to twenty years. Article 33(F) of this contract now reads:

> Effective July 1, 1983, the requirement that a member as defined in Article IV, Section 1(d) of the Policemen and Firemen Retirement System shall attain age 55 to be eligible for retirement shall be eliminated. *Effective March 8, 2007, such members will be eligible to retire after twenty (20) years of service regardless of age.* [Emphasis added]
>
> Effective July 1, 1989, the minimum age 55 requirement for deferred pension payable for post 1969 members hired before June 30, 1985 shall be eliminated.
>
> Employees [sic] hired on or after July 1, 1985 who leaves City employment after being vested shall not be eligible for pension benefits until said individual reaches his or her sixty-second birthday.
>
> Effective June 30, 2001, any member who has been laid off shall be eligible to retire at what would have been the member's 25th anniversary. To determine eligibility for retirement, the member's actual service time and time on lay off shall be combined. To calculate the member's retirement allowance, however, only actual service time shall be used.

However, the section covering the DROP, Article 33(P), still reads as follows:

> 1. To participate in the program a member must have at least twenty-five (25) years of active service with the City as a member of the Policemen and Firemen Retirement System.

On or about June 22, 2009, Respondent notified Charging Party of its position that Charging Party members with less than twenty-five years of service would not be eligible to participate in the DROP.

Charging Party contends that it was the understanding of the parties during negotiations and the Act 312 proceeding leading to the March 7, 2007 award that the "20 and Out" pension provision sought by Charging Party and awarded by the arbitration panel would apply to and supersede provisions of the City-DPOA collective bargaining agreement that specified twenty-five years as the minimum service time for eligibility for a regular retirement. It does not assert that the parties specifically discussed changing the language in Article 33(P). Respondent denies that there was any agreement to change DROP eligibility requirements or that Charging Party sought this change. It attached to its motion a statement from the plan's actuary, admitted into the record in the Act 312 proceeding as a Charging Party exhibit, estimating the increase in Respondent's pension contributions from the change in retirement eligibility from twenty-five to twenty years. The statement explicitly states that it assumes that employees would not be eligible for DROP until acquiring twenty-five years of service time.

The instant unfair labor practice charge alleges that Respondent unilaterally changed existing terms and conditions of employment and repudiated the parties' collective bargaining agreement by "failing and refusing to acknowledge and agree that Charging Party's members with at least twenty (20) years of service are eligible to participate in the DROP."

Discussion and Conclusions of Law:

The Commission has the authority to interpret the terms of a collective bargaining agreement where necessary to determine whether a party has breached 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 a term or condition of employment is "covered by" a provision in a current 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.

An exception is where a party's actions constitute a "repudiation" of the collective bargaining agreement manifesting a disregard for the party's collective bargaining obligations. The Commission has described repudiation as a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960. The Commission has held that in order for it to find repudiation: (1) the contract breach must be substantial, and have a significant impact on the bargaining unit, and (2) there must be no bona fide dispute over interpretation of the contract. *Gibraltar Sch Dist*, 16 MPER 36 (2003);

Crawford Co, 1998 MERC Lab Op 17, 21; *Plymouth-Canton Cmty Schs*, 1984 MERC Lab Op 894, 897.

In the instant case, Respondent takes the position that the parties' current contract, at Article 33(P), unambiguously requires employees to have at least twenty-five years of active service to be eligible to participate in the DROP. Charging Party characterizes Respondent's position as a spurious argument that ignores the context within which the language of the 2004-2009 collective bargaining agreement was created.

As noted above, the Commission does not find unfair labor practices based on alleged contract breaches when the parties have a bona fide dispute over the interpretation of their agreement and a grievance procedure ending in binding arbitration to resolve such disputes. In this case, there is no specific language in the contract which Respondent is alleged to have disregarded. I conclude that the facts as alleged by Charging Party demonstrate that the parties have a bona fide contract dispute over contract interpretation which should be resolved by an arbitrator. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____