

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer in Case Nos. UC09 C-009 and R09 C-047,
Respondent in Case No. C09 G-103,

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Petitioner in Case No. UC09 C-009,
Charging Party in Case No. C09 G-103,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Petitioner in Case No. R09 C-047,

-and-

POLICE OFFICERS LABOR COUNCIL,
Incumbent-Labor Organization in Case No. R09 C-047,

APPEARANCES:

Daryl Adams, Esq. and Gordon Anderson, Esq., Assistant Directors, Office of Labor Relations,
for the Detroit Public Schools

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for Teamsters Local 214

REMAND ORDER

On April 30, 2010, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matters pursuant to Sections 10, 12, 13 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, 423.212, 423.213 and 423.216. In MERC Case No. UC09 C-009, the ALJ found that employees with the title campus security police officer (CSPO) working for Respondent Detroit Public Schools (DPS) are performing the duties of a security officer, a position within the bargaining unit represented by Labor Organization Teamsters Local 214. She, therefore, recommended that the bargaining unit of security officers represented by Teamsters Local 214 be clarified to include

employees with the title of campus security police officer. In Case No. R09 C-047, she found that based on the parties' agreement a question concerning representation exists under Section 12 of PERA and recommended that the Commission direct an election in a bargaining unit of police officers and fingerprint technicians employed by Detroit Public Schools in its public safety department that excluded, among others, employees with the title of CSPO. Pursuant to the Direction of Election recommended by the ALJ in the latter case, employees in the aforementioned police officer bargaining unit would vote whether they wish to be represented by the Police Officers Association of Michigan, by the Police Officers Labor Council, or by neither organization. In Case No. C09 G-103, the ALJ found that the Employer violated its duty to bargain by refusing to apply the terms of the Teamsters' contract, including the union security and checkoff provisions, to the CSPOs and failed to provide information to the Teamsters.

On July 6, 2010, we received Respondent Detroit Public School's Exceptions to the ALJ's Decision and Recommended Order¹ and its Motion for Reopening the Record in the above-mentioned cases. DPS asserts in its motion that since the record in this matter closed, DPS has received its license under the Private Security Business and Security Alarm Act, 1968 PA 330 (Act 330), MCL 338. 1051-1092, which allows it to operate as a private security police agency, and employees working as CSPOs have received training on law enforcement and weapons as required under Act 330. They further allege that CSPOs now have authority to make arrests and have prepared arrest reports. Respondent submits an affidavit in support of these assertions and states that if the evidence it presents was adduced and credited, the ALJ's findings about the nature and duties of the CSPOs would be altered resulting in a favorable decision on the unit clarification petition and the unfair labor practice charge. Respondent further asserts that, after considering this "new evidence" pursuant to Rule 166 of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R 423.166, the CSPOs would be appropriately placed in the bargaining unit of police officers and fingerprint technicians currently represented by the Police Officers Labor Council, and not in the bargaining unit of security officers represented, at present, by Teamsters Local 214. They assert further that none of the evidence set forth in the Affidavit was available prior to the closure of the hearing because the Act 330 licensing process had not been completed at that time.

ORDER

The unit clarification petition (UC09 C-009), the petition for a representation election (R09 C-047), and the unfair labor practice charge (C09 G-103) are referred and remanded to the ALJ for further proceedings. After considering Respondent's Motion for Reopening the Record, as well as all of the parties' submissions filed in response,² and conducting oral argument if appropriate, the ALJ shall rule on the motion. If the ALJ finds that it is appropriate to reopen the

¹ We have not reviewed Respondent's exceptions as we find the issues presented by the Motion to Reopen the Record may necessitate a new Decision and Recommended Order by the ALJ. Upon completion of the ALJ's further review of these matters, if the ALJ grants the Motion for Reopening the Record and issues a supplemental recommended order, Respondent may notify us at that time if it wants the exceptions filed July 6, 2010 to be considered in lieu of a new submission.

² Because a separate election petition has been filed by the Michigan Association of Police (MAP) regarding the security officers' bargaining unit (Case No. R10 B-020), the ALJ may consider adding MAP to this case as an interested party.

record in this case to consider additional evidence in any of these matters, she shall promptly notice these matters for hearing to determine whether her recommended order in any of these cases should be altered. Upon the conclusion of said hearing and the closing of the record, the three matters shall be severed and the ALJ shall expeditiously take action pursuant to Sections 12, 13, and 16 of PERA. The ALJ shall make findings of fact and conclusions of law and shall issue a supplemental recommended order in Case No. C09 G-103. Following service on the parties of the supplemental order in Case No. C09 G-103, the provisions of R423.176 through R423.179 of the Commission's Rules and Regulations shall be applicable. Commission Orders shall be issued in Cases No. UC09 C-009 and R09 C-047 separately from the recommended order issued in Case No. C09 G-103.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer in Case Nos. UC09 C-009 and R09 C-047,
Respondent in Case No. C09 G-103,

-and-

TEAMSTERS LOCAL 214,
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POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Petitioner in Case No. R09 C-047,

-and-

POLICE OFFICERS LABOR COUNCIL,
Incumbent-Labor Organization in Case No. R09 C-047.

APPEARANCES:

Daryl Adams, Esq. and Gordon Anderson, Esq., Assistant Directors, Office of Labor Relations,
for the Detroit Public Schools

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for Teamsters Local 214

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan on September 3, October 6, and October 30, 2009 by Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules for the Michigan Employment Relations Commission pursuant to Sections 10, 12, 13 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, 423.212, 423.213 and 423.16. Based upon the entire record, including post-hearing

briefs filed by the Detroit Public Schools and Teamsters Local 214 on or before February 3, 2010, I make the following findings of fact, conclusions of law, and recommended order.³

The Petitions, Unfair Labor Practice Charge and Positions of the Parties:

Teamsters Local 214 (the Teamsters) represents a bargaining unit of nonsupervisory school public safety/security officers employed by the Detroit Board of Education (the Employer). The Police Officers Labor Council (POLC) represents a unit of nonsupervisory public safety/police officers and fingerprint technicians employed by the Employer.⁴ The police officers represented by the POLC are required by the Employer to be certified as police officers by the State of Michigan. The security officers represented by the Teamsters are not required to be certified police officers.

On March 20, 2009, the Teamsters filed a unit clarification petition (Case No. UC09 C-009) seeking to clarify its unit to include employees with the title campus security police officer (CSPO). These employees were placed by Employer in the unit represented by the POLC after they were hired or promoted into this title in March 2009. The Employer asserts that CSPO is a new position. It also asserts that the position shares a community of interest with the POLC unit because, as “private security police officers” under 1968 PA 330, MCL 338. 1031 *et seq*, the CSPOs will have the authority to carry weapons while on duty and will have the authority to make arrests. The Teamsters argue that the CSPO should not be treated as a new position because the employees given this title are not certified police officers and because they continue to perform exactly the same job duties as security officers.

On March 27, 2009, the Police Officers Association of Michigan (POAM) filed a petition for a representation election (Case No. R09 C-047) in the unit represented by the POLC. The only issue in Case No. R09 C-047 is whether the CSPOs are properly included in the POLC unit and, therefore, entitled to vote in the election. The parties in Case No. R09 C-047 agreed that an election should not be held until the Commission determined whether the CSPOs were eligible to vote. The case was, therefore, consolidated for hearing with the unit clarification petition.

On July 10, 2009, the Teamsters filed an unfair labor practice charge against the Employer (Case No. C09 G-103).⁵ The charge alleges that the Employer violated Sections 10(1) (a) and (e) of PERA by: (1) refusing to recognize the Teamsters as the bargaining representative for employees with the title CSPO; (2) refusing to apply the terms of the Teamsters’ collective bargaining agreement to these employees; and (3) failing to provide the Teamsters with accurate information about the alleged new position, as requested on January 22, 2009. The Teamsters also allege that the Employer provided unlawful assistance to the POLC, in violation of Section 10(1)(b) of PERA, by: (1) recognizing the POLC as the bargaining representative for the CSPO

³ Representatives of the Police Officers Labor Council and the Police Officers Association of Michigan participated in pre-hearing conferences in this matter and were served with copies of the notices of hearing. However, neither labor organization appeared at the hearing or filed post-hearing briefs.

⁴ In this decision, I refer to the public safety/security officers as security officers and the public safety/police officers as police officers.

⁵ The Teamsters also filed an unfair labor practice charge against the POLC (Case No. CU09 G-021). On September 1, 2009, I issued a Decision and Recommended Order on Summary Disposition recommending that this charge be dismissed for failure to state a claim under PERA. This case is currently before the Commission on exceptions.

title before any employees were hired, and bargaining with the POLC over terms and conditions of employment for these employees; (2) deducting dues for the POLC from the CSPOs' paychecks without a valid union security or dues deduction provision in place, without written dues checkoff authorizations, and without providing the employees with information regarding their rights to resign from the union and become agency fee payers. Finally, the Teamsters assert that the Employer's actions violated Sections 10(1)(c) and (d) of PERA because these actions constituted retaliation against the Teamsters for positions they took at the bargaining table and because of their filing of numerous unfair labor practice charges against the Employer.

In their charge, the Teamsters request that the Employer be ordered to: (1) provide the information sought in its January 22, 2009 letter and any additional information about such matters it has acquired since then; (2) recognize the Teamsters as the exclusive bargaining representative of the persons the Employer has designated or will designate to be CSPOs; and (3) "make whole in every way Local 214, the persons the Employer has designated CSPOs, and the employees represented by Local 214."

Findings of Fact:

Background

Roderick Grimes is the chief of the Employer's department of public safety (the department). Grimes became chief in June 2009, replacing the former chief. Prior to being promoted to chief, Grimes was a police officer in the department with the rank of sergeant. Grimes reports to John Bell, whose title is inspector general. Bell reports directly to Robert Bobb, the Employer's emergency financial manager.

The department employs between 275 and 290 employees in the classification of security officer. When the record in this case closed, there were also approximately eighty laid off security officers. The department also employs approximately 54 employees in the classification of police officer. The Employer first began employing police officers in the late 1980s or early 1990s. Security officers and police officers were in the same bargaining unit represented by the Teamsters until 1995, when the Teamsters agreed to allow the police officers to form a separate unit. In 2006, the Employer was certified by the Michigan Commission on Law Enforcement Standards (MCOLES), a division of the Michigan State Police, as an independent law enforcement agency pursuant to 2004 PA 378, MCL 28.581 *et seq.* This certification allows the Employer to swear in its own police officers.

When the record in this case closed, there were approximately ten employees with the title of CSPO, although the Employer had plans to add approximately fifteen more. The Employer also employs supervisory police officers with the ranks of lieutenant, sergeant and corporal. These officers supervise security officers, CSPOs, and nonsupervisory police officers. The supervisory officers are included in supervisory bargaining units that also include employees in other departments.

The most recent collective bargaining agreements between the Employer and the POLC and the Employer and the Teamsters both expired on June 30, 2009. Members of the two

bargaining units receive similar benefits. However, the lowest paid police officer is paid more than the highest-paid security officer.

As of the close of the record in this case, there were, in addition to the instant charge, eight pending unfair labor practice charges filed by the Teamsters against the Employer. These included Case No. C07 K-252, filed in November 2007 and alleging that the Employer repudiated a written agreement with the Teamsters over wages; Case No. C07 J-228, filed in October 2007 and alleging that the Employer refused to provide the Teamsters with information, including a seniority list of its members; and Case No. C07 I-203, filed in September 2007 and alleging that the Employer routinely failed and refused to process grievances.

Security Officers

Security officers wear uniforms identifying them as Employer security officers. The majority of security officers are assigned to a specific school building. The security officers assist administrators in keeping order within the school. Their duties include patrolling within the school; clearing hallways; operating metal detectors and searching bags when necessary; and monitoring visitors. Security officers confiscate prohibited items from students and turn these items over to administrators. If a fight occurs on school property, security officers break it up. Security officers notify the Employer's police officers through the department's dispatcher if they need assistance and whenever conduct which might result in an arrest occurs within the school. For example, security officers notify police officers if a fight results in a serious injury and, therefore, might be prosecuted as an assault. They also notify police officers if they confiscate narcotics or other illegal items. Security officers are authorized to detain unruly individuals or those who commit crimes in the school building - including students and outsiders - handcuff them if necessary, take them to a security office within the school, pat them down for weapons, and hold them until they are picked up by the Employer's police officers or until they are released. Security officers are responsible for collecting contraband and other evidence from crimes occurring in their buildings and putting these items in a lockbox to maintain a chain of custody. They locate witnesses to crimes and other incidents and interview them. Security officers testify in court when they have witnessed crimes. Security officers are required to prepare reports on all incidents, whether or not the incident involves a crime. They also keep detailed daily logs of their activities and incidents occurring within the school.

A security officer can legally detain an individual on the Employer's property. This means that a security officer can handcuff and otherwise physically prevent an individual from leaving the Employer's premises. Security officers do not have the legal authority to arrest. Although the Teamsters argue that there is no practical difference between detainment and arrest, an individual who flees after he or she is arrested is legally a fugitive, even if he or she has not yet been booked. Security officers do not carry weapons.

There are also security officers assigned to night response patrol. Night patrol officers patrol outside schools in vehicles after school hours and respond to alarms and calls about suspected intruders at school buildings. When night patrol security officers find evidence of a break-in, they inspect the area and secure the building, if necessary. If they spot an intruder or

identify a point of entry, the security officers radio the Employer's police officers for assistance. The security officers, however, may detain an intruder until a police officer arrives.

Security officers perform a variety of other duties. They guard vacant school buildings to protect them from vandalism. They provide security for community functions and after-school events. Some security officers serve as dispatchers in the department's communication control center. Security officers provide security in the Employer's central administrative offices, including the school district's Welcome Center. There are security officers assigned to the department's substations who perform semi-clerical functions, including timekeeping and the preparation of various reports. Several security officers work as guards/drivers for executive-level officials.

New security officers are required to complete a formal training course. Security officers hired in 1987 and 1993 testified that they were sent to the Detroit Metropolitan Police Academy, an institution that also conducts the training necessary to become a certified police officer, and a third hired in 1997 attended a training course conducted by Detroit police officers at a high school. Two of the officers testified that their training lasted eight weeks, while the third recalled that it lasted one week. It was not clear from the record how the curriculum for the security officers' training was established or whether the curriculum is MCOLES-approved. The Employer also regularly provides security officers with refresher training. Subjects in which the security officers have been trained at different times include crimes and offenses, juvenile laws, procedures for confronting and detaining unruly persons, defensive techniques, securing evidence, radio communication, report writing, dealing with explosive devices, first aid and CPR, and crowd control. Security officers also receive bonus pay for having college degrees in certain areas, including criminal justice and psychology.

Police Officers

As noted above, Employer police officers are required to be police officers certified by the State of Michigan. To be hired, individuals must present evidence either of current certification or a pre-certification certificate establishing that they have completed all the training necessary to become a certified police officer. To become a certified police officer, an individual must successfully complete between 450-650 hours of MCOLES-approved training. Police officers and security officers are trained in some of the same subjects, but police officer training is more extensive. Police officers are also trained in areas not covered by the course for security officers, such as physical fitness and the use of various types of weapons. As certified police officers employed by a police agency, the Employer's police officers have the authority to arrest individuals both on and off the Employer's property. The police officers, therefore, can pursue individuals fleeing from a crime committed on the Employer's property and can arrest individuals in the vicinity of, but not on, the Employer's property. The police officers carry weapons, including guns and pepper spray.

Most of the Employer's police officers are assigned to vehicle patrol units. On an average school day, the Employer has fifteen patrol cars staffed with police officers on duty. Each unit is assigned to patrol around the outside of a high school, including the adjoining neighborhood. When they get a call for service inside the school or at an elementary school or middle school,

they respond to the call. Usually the call comes from the security officer assigned to that school. When the police officer arrives at the school, he or she either assists the security officers or, if the incident has concluded, investigates it. If the incident involves criminal property damage, the police officer prepares a police report. If the police officer determines that an arrest has to be made, the police officer makes the arrest, transports the arrestee to a City of Detroit police facility, and completes the necessary paperwork for the arrest or for the detention of a juvenile. Police officers also take custody of evidence or contraband and transport it to a police facility. As indicated above, the arrestee may already have been handcuffed and detained at the school by a security officer. Police officers also perform other assignments where a show of force may assist in keeping order. For example, police officers are sometimes called to help disburse crowds. At some schools, police officers, wearing their weapons belts, regularly stand outside the doors of the building while school is letting out until the students have dispersed.

Some high schools have police officers, as well as security officers, stationed inside the school. The record does not indicate what specific duties the police officers perform inside the school. Police officers, like security officers, are also assigned to night response patrol, although the police officers and security officers patrol in separate cars. Police officers also provide protection for high-level Employer executives.

Creation of the CSPO Position/Title

Private Security Police Officers and 1968 PA 330

The Private Security Guard Act of 1968, 1968 PA 330 (Act 330), MCL 338. 1031 *et seq*, regulates and provides a licensing procedure for security alarm contractors, private security guards, private security guard agencies, and “private security police agencies.” In addition to requiring contractors and private firms to be licensed, Act 330 sets minimum age and education requirements for private security guards; prohibits the employment of individuals convicted of felonies, dishonorably discharged from the military service, adjudged insane, or with outstanding arrest warrants; mandates background checks and the keeping of certain personnel records by employers, and establishes requirements for uniforms and badges. The Employer’s security officers are subject to the employment requirements in Act 330. Act 330 also states explicitly that license or employment as a security guard does not authorize a person to carry a deadly weapon unless he or she is individually licensed to do so in accord with the laws of the state.

Act 330 also allows any “person, firm, limited liability company, business organization, educational institution or corporation maintaining a private security police organization” to apply to become a “private security police agency” employing “private security police officers.” Pursuant to Section 30 of Act 330, private security police officers have the same authority as public peace officers to arrest persons without warrants for misdemeanor offenses when those persons are on their employer’s premises if the arrest is made during the private security police officer’s hours of work and the private security police officer is wearing the full uniform of the employer. Private security police officers are allowed to carry firearms while protecting the property of their employers. The firearms are considered the employer’s property and must remain in its custody except when the employee is working.

In order to become a private security police agency, the educational institution or other employer must apply for and receive a private security police agency license from the Michigan State Police. To obtain the license, the employer must designate a representative to be the license holder. The representative's background and experience must meet the criteria set by the State of Michigan. In addition, the license application must be approved by law enforcement authorities in whose jurisdiction the private security police agency is to operate. When the record in this case closed, according to the Michigan State Police website, there were eleven licensed private security police agencies in Michigan. These included hospitals, universities, and a few school districts.⁶ The Employer was not a licensed private security police agency under Act 330.

Each private security police officer employed by a licensed private security police agency must meet minimum requirements for age, security or law enforcement experience and background established by MCOLES. In addition, each private security police officer must complete a course of training approved by MCOLES specifically for licensed private security police officers. This course consists of a minimum of 90 to 120 hours of training, with additional hours required if the private security police officer is to carry a firearm. According to the MCOLES website, the prescribed training includes courses in criminal law and procedure; civil law and diversity; CPR/first aid; non-violent intervention; emergency preparedness; and patrol operations. If the private security police officer is to carry a firearm, additional hours of training are required in firearms familiarization or proficiency and in defensive tactics. Private security police officers are also required to attend annual MCOLES-approved "maintenance" training.

Letter of Agreement between the Employer and the POLC

For at least five years prior to 2009, there was discussion within the department about employing private security police officers. In fact, this was included in a news release about public safety department initiatives the Employer issued at the beginning of the 2007-2008 school year. The record does not indicate whether the department took any steps at that time to apply for a license as a private security police agency.

On December 17, 2008, the Employer and the POLC signed a letter of agreement addressing the CSPO position. There is nothing in the record about what immediately preceded this letter of agreement or how the agreement came about. The letter of agreement modified the POLC's July 1, 2003- June 30, 2009 collective bargaining agreement to "include the position of Campus Security Police Officer." In addition to bringing the position under the POLC agreement, the letter of agreement also amended Article XIV, the seniority provision of the contract, to provide for separate seniority for public safety officers and CSPOs. That is, seniority within the department as public safety officer was defined as the employee's length of continuous service with the Employer as a public safety officer, and seniority within the department as a CSPO was defined as the employee's length of continuous service with the Employer as a CSPO. The letter of agreement also carried over from the POLC contract a provision requiring a six-month probationary period for individuals newly hired into a position.

The CSPO Position is Posted and Filled, and CSPOs are Assigned to Work as Security Officers

⁶ See www.michigan.gov/mcoles

Sometime in the latter part of December 2008, David Sutton, the Teamsters business representative for the security officers' unit, received a call from Gwendolyn de Jongh, the head of the Employer's office of labor relations. She told Sutton that the Employer was going to create a new classification, that the employees were going to be "certified officers," and that members of the Teamsters' unit would be given the opportunity to apply for the job. They did not discuss what bargaining unit this classification would be in, but Sutton testified that he assumed that it would be in the POLC unit since he thought it would consist of certified police officers. Sutton replied that this was fine, because his members were always looking for promotional opportunities.

On January 6, 2009, the Employer posted the CSPO position and invited applications. The posting contained only a general description of the duties of the position. This general description was the same as the general description for the duties of a police officer in the most recent posting for that position, and not dissimilar from the general description of the duties of a security officer contained in the most recent posting for that position.

According to the CSPO posting, the position, like a security officer, required only a high school diploma or GED. Under training, the CSPO posting stated:

Selected candidate must complete a basic Security-Police Training Course as required by the Michigan Commission on Law Enforcement Standards. Please see Michigan.gov for details regarding MCOLES.

Service as a campus security police officer will be considered in selecting future public safety police officers.

By contrast, the most recent security officer posting stated,

Applicants must successfully complete the Criminal Justice Training Program.

The CSPO posting did not mention whether the position was in a bargaining unit. It stated that it included medical, dental, vision and life insurance benefits, as well as sick and vacation days. The posting listed a salary range which was slightly higher than the salary range for a security officer.

After the posting went up, Sutton received a phone call from a security officer asking him for information about the position. Sutton said that he had been told that the position was going to be a certified police officer, but that security officers could apply. The security officer replied that this did not seem to be what the posting said. After Sutton looked at the posting himself, he called de Jongh. Sutton pointed out that the posting said that the CSPOs would be considered in selecting future police officers. He told her that he thought she had said that the new classification would consist of certified officers. De Jongh assured him that it would. Sutton also asked if the CSPOs would be armed, and de Jongh said that she did not know.

On January 22, Sutton sent a letter to de Jongh asking for a special conference under the collective bargaining agreement. The letter also asked for information about the CSPO position, as follows:

Employment opportunities in the job title of Campus Security Police Officers (12 month) were recently posted for recruitment. The recruitment job description provides that persons hired in this job classification must complete Michigan Commission on Law Enforcement Standards training. The posting, however, fails to specify if the Campus Security Police Officers will be employed as certified police officers under MCOLES, employed under the Private Security Act, or be classified under some other security auspices. With this lack of specificity, it is unclear what representation, if any, should or will be afforded to persons in the employment group.

We seek clarity of the duties and responsibilities that will be performed by employees in the Campus Security Police Officers classification in order to determine if there is a community of interest with Security Officers represented by Teamsters Local 214. It should be noted that heretofore, non-certified security staff employed by Detroit Public Schools have been represented by this Local Union. Further, it is unclear if Campus Security Police Officers will be armed or unarmed and what impact the presence of employees in this classification will have on positions currently filled by members of this bargaining unit.

Soon after he sent the letter, Sutton had another conversation with de Jongh in which she told him that the CSPOs would be certified, but not certified police officers. She also told him that they would be represented by the POLC. Sutton said that if the CSPOs were not going to be certified police officers, they should be in the Teamsters unit. There is no indication in the record that the Employer provided answers to the other questions Sutton asked in his January 22 letter at any time before the hearing in this case began.

From the responses it received to the posting, the Employer selected ten individuals for the CSPO position. Nine of the ten had been working as security officers, while the tenth was a new hire. An orientation meeting was held for the new CSPOs on March 16, 2009. A POLC representative introduced himself at the meeting, and the CSPOs were given papers to sign. A CSPO testified that these papers included a "blue card" from the POLC, but that he did not remember signing this card. At this meeting, the Employer explained to the CSPOs that after they received additional training, they would have arrest authority and would carry a weapon. They were told that after they received this training, they would be assigned to specific school buildings, primarily high schools. They were told that although they would have the authority to transport arrestees to the police station or juvenile facility, they would probably not do this because they would not have cars. However, they were told that they would complete the paperwork for arrests. They were told that they would go to court as the arresting officer and that this would free up police officers for other duties.

The employees received their new job titles and a new pay rate effective March 16, 2009. For the majority who had been employed as security officers at the top of that salary scale, this

amounted to a wage increase of between seventy and eighty cents per hour. The insurance benefits provided to the CSPOs were the same as those provided to security officers. The Employer began deducting dues from the paychecks of CSPOs and transmitting them to the POLC in the pay period following March 16. However, after the March 16 meeting, the CSPOs, including the one CSPO who was a new hire, were given security officer uniforms and assigned to work as security officers.

Sometime between March and September 2009, the CSPOs were each assigned to ride along with a police officer for some period of time. They were taken to a City of Detroit police station and the arrest process was explained to them. The police officers also showed the CSPOs how to do arrest reports. CSPOs were taken on a one-day “field trip” to a firing range to experience firing a gun. There is no dispute, however, that as of the close of the record in this case, the CSPOs were still performing exactly the same day-to-day duties as security officers.

In March 2009, after Sutton learned that the newly-titled CSPOs were working alongside his members doing the same work, the Teamsters filed this unit clarification petition. Sutton then received a letter from de Jongh stating that since the Teamsters had filed the petition, she presumed that there was no need for the special conference they had requested in January.

Events after the Filing of the Unit Clarification Petition

Grimes testified that he knew little about the CSPOs before he became chief of the department on June 18, 2009. Either shortly before or shortly after he became chief, he was told by the former deputy chief that the department had hired CSPOs to be Act 330 private security police officers, but was waiting for approval from Kym Worthy, the Wayne County Prosecutor, to proceed. After he became chief, Grimes learned that there were grant funds available to pay for private security police officer training for the CSPOs, but was told by his executive deputy that the Employer had to have Worthy’s approval. In late June, Grimes asked his superior, Bell, to contact Worthy. Around the first part of July, Grimes learned from Worthy that she had serious reservations about the Employer’s plan to put private security police officers in the schools and that she was not going to approve giving the employees the additional authority. Grimes testified that he had the impression that Worthy had had previous contact with the department about this issue, but that he was not sure. Around this time, Grimes found a packet of materials from his predecessor that indicated that the department had planned to use a private company to provide the CSPOs’ training. The cost of this contract was very high, however, and Grimes discovered that the department could obtain the same training from Schoolcraft College at one-third the cost.

The unfair labor practice charge in this case was filed on July 10, 2009 and consolidated with the pending unit clarification and representation petitions. On July 28 and August 18, 2009, I held telephone conferences with representatives of all the parties, including representatives from the Employer’s Office of Labor Relations. Grimes did not participate in these conferences.

⁷ At the hearing, the Teamsters attempted to introduce evidence regarding alleged misrepresentations of fact made by Employer’s representatives at these conferences. I ruled that this evidence was irrelevant.

The first day of hearing on the consolidated cases was held on September 3, 2009. At this hearing, the Employer introduced as an exhibit an email exchange between Bell and Worthy. Bell's August 14, 2009 email to Worthy read as follows:

Next Tuesday Public Safety Chief Grimes has to appear before a MERC hearing with regard to the union status of the 10 School security officers which were selected to undergo PA 330 training. Because their new duties would involve supervision of regular security officers in the high schools, during the tenure of former Chief Mitchell they were moved to the Organization of School Administrators, Local 28. This move was in anticipation of their impending management responsibilities. Since the PA 330 request has not been approved, Teamsters Local 214 is attempting to get them back. It is still our hope that you will approve the PA 330 request in view of the new leadership at DPS and Public Safety. We are ready to initiate the training required for these positions upon your approval. We consider it important to our safe schools strategy that each group of security officers at a high school has a supervisor who can assign responsibilities and hold his/her subordinates responsible for their performance, in addition to collaborating with the principal to address the school administrator's concerns. I know that I have taken a lot of your time here but it would help Chief Grimes immensely at the hearing if he could report the PA 330 program has your approval and we are moving forward.

Nothing else in the record indicates that the CSPOs were ever placed in the unit of supervisory employees represented by the Organization of School Administrators.

In her August 16 response, Worthy responded that, "with some trepidation" she was giving Bell the "go ahead" on his request to create a classification of private security police officers. She told Bell that she had reviewed the materials he had submitted, that she had more questions, and that she, Bell and Grimes needed to meet to address her concerns. Worthy said that she had to be assured that the training needed would commence immediately and that due diligence would be exercised in screening the personnel assigned to the Act 330 positions. In this email, Worthy commented that both she and Bell knew the deficiencies of the department's previous management, but that she had confidence in Bell and in the new leadership of the department.

On the final day of hearing in this case, October 30, 2009, the Employer introduced a letter from Schoolcraft College confirming that it had an agreement with the Employer to provide 160 hours of MCOLES-approved Act 330 training, tentatively scheduled to begin November 9, 2009. Grimes also testified that the Employer had submitted an application to purchase the bond required to obtain its license as a private security police agency. The Employer introduced a letter from Worthy dated October 28, 2009 reconfirming that she had approved the Employer's request to create the CSPO position and had further agreed that her office would provide some additional training. However, according to Grimes, he had learned that, in addition to Worthy, either the chief of police for the City of Detroit or the Wayne County Sheriff had to approve its license application. As of the close of the record in this case, the

Employer had not yet filed its application with MCOLES to be licensed as a private security police agency.

Sometime between September 3 and October 30, 2009, the Employer posted the CSPO position again and tested and interviewed applicants for fourteen or fifteen vacancies. Grimes testified on October 30 that the Employer planned to fill these positions before November 9 and to send the new CSPOs to training with the ones hired in March 2009.

According to Grimes, after CSPOS are trained, the Employer's immediate plan is to assign each of them to a high school where they will patrol inside and outside the building on school property. Grimes testified that the Employer may purchase small motorcycles for them to ride. Grimes testified that the CSPOs will be additional staff with arrest powers, so that when the police officers assigned to a high school have to leave to respond to calls at other schools, the school will not be left without officers with arrest authority. Grimes testified that he and Bell were also discussing making the CSPOs team leaders of the security officers at the schools to which they are assigned.

Discussion and Conclusions of Law:

The Unit Clarification Petition

In determining whether a new position shares a community of interest with an existing bargaining unit, the Commission considers a number of factors, including similarities in duties, skills and working conditions, similarities in wages and employee benefits, the amount of day-to-day contact between the position and positions in the bargaining unit, the amount of interchange or transfer, whether the position's function is integrated with that of the bargaining unit, and common promotion ladders and/or common supervision. *Grosse Pointe Public Library*, 1999 MERC Lab Op 151, *Covert Pub Schs*, 1997 MERC Lab Op 594, *Saginaw Valley State College*, 1988 MERC Lab Op 533. When two unions claim the same new position, however, the Commission does not determine whether the position has a greater community of interest with one unit or the other. *Henry Ford Community College*, 1996 MERC Lab Op 372, 379-380, *Saginaw Valley State College*, *supra*. If the Employer has placed the position in one of these bargaining units, the Commission will defer to the Employer's good faith decision as long as the evidence establishes that the position shares a community of interest with the unit in which it has been placed, even if it also shares a community of interest with the competing union's unit. *Swartz Creek Cmty Schs*, 2001 MERC Lab Op 372; *City of Bay City*, 16 MPER 31 (2003).

The Teamsters argue that even if the CSPO position is considered a new position, the Employer unlawfully recognized the POLC when a majority of the CSPOs had not designated the POLC as their bargaining agent. When an employer accretes a new position into one of its existing units without evidence that the union represents a majority of these employees, the National Labor Relations Board (NLRB) determines whether the position constitutes an appropriate accretion to this unit or has a separate identity such that it could constitute a separate bargaining unit. If the position does not constitute an appropriate accretion, the employer violates Sections 8(a) (1), (2) and (3) of the National Labor Relations Act (NLRA), 29 USC 150 (corresponding to Sections 10(1) (a) (b) and (c) of PERA) if it enters into and/or enforces a union

security agreement with this union for these employees. *Frontier Telephone of Rochester*, 344 NLRB 1270 (2005); *Dedicated Services, Inc.*, 352 NLRB 753 (2008). The Commission, however, has not adopted the NLRB's accretion principles. Perhaps because the proliferation of separate bargaining units is discouraged under PERA, *Hotel Olds v State Labor Mediation Bd.*, 333 Mich 382, 387 (1952), the Commission has not required an employer creating a new position to demonstrate that the majority of the employees selected for the new position have designated the union it has recognized as their bargaining representative.

The Commission defers to an employer's decision regarding unit placement, however, only when the Employer has created a new position with new job duties. It is well established that an employer cannot lawfully remove a position from its existing unit simply by changing its title. *City of St Clair Shores*, 1988 MERC Lab Op 485. An employer does not have the right to reclassify a position and unilaterally remove it from its bargaining unit without a change in its job duties. *Ingham Co.*, 1993 MERC Lab Op 808, 812. Moreover, an employer violates its duty to bargain if it removes a position from a bargaining unit without the union's agreement or an order from the Commission. *City of Grand Rapids*, 19 MPER 69 (2006); *Livonia Pub Schs.*, 1996 MERC Lab Op 479; *Northern Mich Univ.*, 1989 MERC Lab Op 139.

In the instant case, the Employer asserts that the CSPO is a new position, while the Teamsters argue that the CSPO should not be treated as a new position because, at all pertinent times, the CSPOs had no more authority than security officers and performed the same duties. I agree. I find that when the record in this case closed, the Employer had not yet established the CSPO as a new position with defined job duties and the employees with this title were working as security officers. I recommend, therefore, that Commission grant Teamsters' request and clarify its bargaining unit to include employees with this title.

The record indicates that the Employer still has plans to create a new private security police officer position with job duties that are not identical to those of either a security officer or a police officer. Based on what the CSPOs were told about their prospective duties, and Grimes' testimony about what the Employer intends, it appears that if the Employer carries out its plans the CSPOs will take over some of the paperwork for arrests and detentions now handled by police officers, and will go to court in place of police officers in some situations. If CSPOs become armed, it seems likely that there will be other differences between the day-to-day job duties of a CSPO and those of a security officer. The future duties of the new position, however, are still merely matters of speculation, and I conclude that it would not be appropriate for the Commission to make a determination regarding this future position's community of interest, or its appropriate placement in a bargaining unit, at this time.

The Unfair Labor Practice Charge

The Teamsters allege that the Employer violated Section 10(1) (e) of PERA by refusing to recognize it as the bargaining representative for employees with the title CSPO and by refusing to apply the terms of the Teamsters' collective bargaining agreement to these employees. As discussed above, an employer violates its duty to bargain under PERA if it removes a position from a union's bargaining unit without the union's agreement or an order from the Commission. For example, in *Northern Michigan Univ.*, *supra*, the employer had two

separate bargaining units of teaching employees represented by different unions. Unit A excluded employees “without faculty rank.” When the employer decided to begin awarding university credit to classes taught by certain positions in Unit B, it transferred these positions to Unit A. The Commission concluded that the employer violated its duty to bargain with the union representing Unit B by transferring the positions without any significant change in their job duties or other change that destroyed their community of interest with their existing unit, even though the position now arguably fell within the existing recognition description for Unit A.

In this case, the Employer created a new job title, placed it in a bargaining unit, and hired and/or promoted individuals into the new classification. It then assigned these individuals to perform duties identical to those of another classification in another bargaining unit. More than six months later, when the record in this case closed, they were still performing these duties. According to the record, the Employer had plans to create a new position and had made progress toward doing so. However it still faced several hurdles before it could legally do so, including obtaining the formal approval of police agencies other than the Wayne County Prosecutor’s Office, filing its license application with the State of Michigan, and receiving the approval of MCOLES. I find that although the Employer gave ten individuals the title of CSPO, these individuals were working as security officers at all times pertinent to this case. I conclude, therefore, that the Employer had the obligation to recognize their positions as part of the security officers’ bargaining unit and to bargain with the Teamsters over their terms and conditions of employment. It follows that the Employer also violated its duty to bargain by refusing to apply the terms of the Teamsters’ contract, including the union security and dues checkoff provisions in Article I, to these individuals.

The charge also alleges that the Employer violated Section 10(1) (e) of PERA by failing or refusing to provide the Teamsters with the information requested by Sutton in his letter of January 22, 2009. It is well established that in order to satisfy its bargaining obligation under Section 10(1) (e) of PERA, an employer must supply in a timely manner requested information which will permit the union to engage in collective bargaining and police the administration of the contract. *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387. Where the information sought relates to discipline or to the wages, hours or working conditions of bargaining unit employees, the information is presumptively relevant and will be ordered disclosed unless the employer rebuts the presumption. *City of Detroit, Department of Transportation*, 1998 MERC Lab Op 205; *Wayne Co, supra*. See also *EI DuPont de Nemours & Co v NLRB*, 744 F2d 536, 538 (CA 6, 1984). Information about nonunit employees is not presumptively relevant, and a union must demonstrate relevance in order to obtain this information. *Traverse City Pub Schs*, 1969 MERC Lab Op 395 (no exceptions); *City of Pontiac*, 1981 MERC Lab Op 57, 62 (no exceptions); *SMART*, 1993 MERC Lab Op 355. However, 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 Co; SMART*, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916 (1984), *enfd* 763 F2d 887 (CA 7, 1985).

I find that information about the duties, qualifications and authority of the posted CSPO position was clearly relevant to the Teamsters’ statutory duty to police the administration of its contract by assessing whether the position belonged in its bargaining unit. The record indicates

that shortly after Sutton's January 22 letter, de Jongh told Sutton orally that the CSPOs would be in the POLC unit and that they would be "certified, although not certified police officers." However, there is no indication that de Jongh explained that the Employer intended them to be private security police officers, told Sutton that they would be armed, or explained what duties the Employer expected them to have at any time before the hearing in this case. I conclude, therefore, that the Employer violated its duty to provide this information to the Teamsters in a timely manner.

The Teamsters also allege that the Employer's recognition of the POLC as representative for the CSPOs constituted unlawful assistance to this labor organization in violation of Section 10(1) (b) of PERA. As noted above, the Commission has not adopted the NLRB's accretion doctrine. The Commission has held that an employer violates Section 10(1) (b) by recognizing a unit which includes both supervisors and nonsupervisory employees. *Michigan State University*, 1984 MERC Lab Op 592; *Macomb Co*, 1997 MERC Lab Op 233. However, the Teamsters have not cited any cases, and I have not discovered any, in which the Commission has found an employer's unlawful transfer of a position from one bargaining unit to another to violate Section 10(1) (b) as well as Section 10(1) (e). I conclude, therefore, that the Employer should not be found to have violated Section 10(1) (b) by its conduct in this case.

Finally, the Teamsters allege that the Employer's conduct in this case constituted unlawful discrimination under Sections 10(1) (c) and 10(1) (d) of PERA. According to the charge, the Employer was motivated by a desire to retaliate against the Teamsters for exercising their protected rights, including their right to file unfair labor practice charges. In order to establish a prima facie case of unlawful discrimination under Section 10(1)(c), a charging party must show that it engaged in conduct protected by the Act, and that the employer had anti-union animus or was hostile towards the exercise of its protected rights. The charging party must also produce evidence of suspicious timing or other evidence sufficient to support a finding that protected activity was at least a motivating factor in the Employer's decision. *City of St Clair Shores*, 17 MPER 76 (2004); *City of Grand Rapids (Fire Dep't)*, 1998 MERC Lab Op 703, 706; *Univ of Michigan*, 1990 MERC Lab Op 272, 288. Anti-union animus can be established by circumstantial, as well as direct, evidence. *Tubular Corp*, 337 NLRB 99 (2001); *Fluor Daniel, Inc*, 304 NLRB 970 (1991). Once a prima facie case is established, the burden shifts to the employer to produce credible evidence that the same action would have taken place even in the absence of the protected conduct. *MESPA v Evart Public Schools*, 125 Mich App 71, 74 (1982); *City of Grand Rapids (Fire Dep't)*, 1998 MERC Lab Op 703, 706; *Residential Systems Co*, 1991 MERC Lab Op 394, 405.

The Employer and the Teamsters have a series of unresolved disputes, evidenced by the pending unfair labor practice charges, dating back to 2007. The timing of the Employer's decision to remove security officers from the Teamsters unit in the midst of these many unresolved disputes might be considered suspicious. However, suspicious timing, by itself, is not sufficient to establish unlawful intent. *Macomb Twp (Fire Dep't)*, 2002 MERC Lab Op 64, 73; *North Central Community Mental Health*, 1998 MERC Lab Op 417, 437; *Univ of Michigan*, 1990 MERC Lab Op 242, 249. I find the evidence here insufficient to establish that activity protected by the Act was even a motivating factor in the Employer's decision.

Remedy

As discussed above, I have found that employees with the title CSPO are performing the duties of a security officer, a position within the Teamsters' bargaining unit, and that the Employer had and has a duty to recognize the Teamsters as the bargaining agent for these employees. I will, therefore, recommend that the Employer be ordered to recognize the Teamsters as the bargaining agent for employees with this title, cease and desist from recognizing the POLC as their bargaining agent, and bargain in good faith with the Teamsters over their terms and conditions of employment. Since the Employer has not yet established the CSPO as a new position with defined job duties, I will also recommend that the Commission grant the Teamsters' request to clarify its bargaining unit to include employees with this title since, at the time the record closed, these employees were security officers.

I will also recommend that the Employer be ordered to provide the Teamsters with the information they sought in their letter of January 22, 2009, to the extent that it has not yet done so.

The employees who accepted what they thought were new positions should not be penalized for the Employer's unfair labor practices. I will, therefore, recommend that the Employer be ordered to maintain the wage rates of the employees with the CSPO title at their current levels until reaching agreement or impasse with the Teamsters over a new wage rate for them. Since I have found that the CSPOs who were formerly classified as security officers should not have been removed from the Teamsters' bargaining unit, I also recommend that the Employer be ordered to recognize the employees' service under the title of CSPO as continuous service in the department for purposes of determining their seniority in the Teamsters' bargaining unit. In the case of the individual hired as a new hire into the CSPO title, the employee's seniority date shall be March 16, 2009.

I also recommend that the Commission direct an election in Case No. R09 C-047 in a unit excluding employees with the title of campus security police officer.

The final question is what make whole relief should be ordered in this case. I find no evidence that any employee given the title CSPO suffered monetary harm as a result of the Employer's unfair labor practice. However, a laid off security officer was harmed by the Employer's decision to hire a new employee in March 2009 to perform a security officer's job instead of recalling him or her. I will, therefore, recommend that the Commission order the Employer to recall the most senior laid off security officer eligible for recall on March 16, 2009 and make him or her whole for wages lost. Finally, I will also recommend that the Employer make the Teamsters whole for the loss of dues and/or agency fees it suffered as a result of the unlawful removal of positions from its unit, in accord with the remedy ordered in *City of Grand Rapids, supra*. I recommend that the Commission issue the following orders.

RECOMMENDED ORDER IN CASE NO. C09 G-103

The Detroit Public Schools, its officers and agents, are hereby ordered to:

1. Cease and desist from:

- a. Refusing to recognize Teamsters Local 214 as the bargaining agent for employees with the title campus security police officer;
- b. Recognizing the Police Officers Labor Council as the bargaining agent for employees with the title campus security police officer;
- d. Failing and refusing to provide Teamsters Local 214 in a timely manner with information necessary and relevant to its duty to police its collective bargaining agreement.

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

- a. Restore the positions filled by employees with the title campus security police officer to the bargaining unit represented by Teamsters Local 214 and bargain in good faith with that labor organization over the terms and conditions of employment of these positions;
- b. Maintain the wage rates currently paid to individuals with the title campus security police officer until reaching agreement or a good faith impasse with Teamsters Local 214 over new wage rates;
- c. Recognize the employees' service under the title campus security police officer as continuous service in the Employer's department of public safety for purposes of determining their seniority in the Teamsters' bargaining unit. In the case of the individual hired as a new hire into the CSPO title, the employee's seniority date in that unit shall be March 16, 2009;
- d. Recall or rehire the most senior laid off security officer eligible for recall on March 16, 2009 and make him or her whole for wages and other benefits lost between March 16, 2009 and the date of his or her recall or rehire, including interest at the statutory rate of six percent (6%) computed quarterly. The full method of calculating the amounts due this individual shall be disclosed to Teamsters Local 214 prior to payment.
- e. Make Teamsters Local 214 whole for the loss of dues and agency fees resulting from the removal of the positions filled by employees given the title campus security police officer from its unit by paying Teamsters Local 214 a sum equivalent to the dues or fees that the employees in each of these positions would have paid from the date the positions were removed from the unit, March 16, 2009, until such time as each position is returned to the unit and the employee in each position begins paying Teamsters Local 214 either dues or agency fees.

f. Provide Teamsters Local 214 with the information requested by it in its letter dated January 22, 2009, to the extent it has not already done so.

g. Post the attached notice to employees in conspicuous places on the premises of the Detroit Public Schools, including all places where notices to employees in the department of public safety are normally posted, for a period of thirty (30) consecutive days.

RECOMMENDED ORDER IN CASE NO. UC09 C-009

The bargaining unit of security officers represented by Teamsters Local 214 is clarified to include employees with the title campus security police officer.

RECOMMENDED ORDER IN CASE NO. R09 C-047

Based on the agreement of the parties, we find that a question concerning representation exists under Section 12 of PERA. Accordingly, we direct an election in the following unit which we find appropriate under Section 13 of the Act:

All full-time and regular part-time police officers and fingerprint technicians employed by the Detroit Public Schools in its department of public safety, but excluding supervisors, employees with the title campus security police officer, and all other employees.

Pursuant to the attached Direction of Election, employees in the above unit shall vote whether they wish to be represented by the Police Officers Association of Michigan, by the Police Officers Labor Council, or by neither organization.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____