STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GENESEE TOWNSHIP,
Public Employer-Respondent,

Case No. C10 E-113

-and-

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

APPEARANCES:

Michael R. Kluck and Associates, by Thomas H. Derderian, Esq., for Respondent

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

DECISION AND ORDER

On September 14, 2010, 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

_____
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:

GENESEE TOWNSHIP,
Public Employer-Respondent,

Case No. C10 E-113

-and-

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

APPEARANCES:

Michael R. Kluck and Associates, by Thomas H. Dederian, for Respondent

M. Catherine Farrell, for Charging Party

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

On May 12, 2010, Charging Party Michigan Association of Police filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against Genesee Township. Charging Party represents a bargaining unit of nonsupervisory uniformed police officers and detectives employed by Respondent in its police department. On May 4, 2010, Respondent announced that it was reducing the work week for Charging Party's members. The charge alleges that Respondent violated Sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, by announcing this change without giving Charging Party an opportunity to bargain. It also alleges that Respondent's action constituted a repudiation and/or mid-term modification of the layoff clause in the parties' contract. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules.

On May 21, 2010, I issued an order to Respondent to show cause why it should not be found to have violated PERA based on the allegations in the original charge. On June 10, Charging Party filed an amended charge alleging that on June 8, 2010, Respondent repudiated its obligations under the contract by laying off full-time police officers while continuing to employ part-time officers. Before it received a copy of the amended charge, Respondent filed a response to my May 21 order and a motion for summary disposition of the original charge. Respondent asserts that the charge should be dismissed for several reasons, including that the charge had become moot when Respondent rescinded the announced change before it took effect.

On July 29, 2010, I issued an order to Respondent to show cause why it should not be found to have violated PERA based on the allegations in the amended charge. On August 9, Respondent filed a response to this second order. Respondent asserts that the parties have a bona fide dispute over the interpretation of the layoff clause and that the amended charge does not state a claim upon which relief can be granted under PERA. Charging Party was given an opportunity to respond and did so on August 23. Based on facts alleged in the charge and not in dispute, and on the arguments of the parties made in these pleadings, I make the following conclusions of law and recommend that the Commission take the following action.

Facts:

Respondent and Charging Party are parties to a collective bargaining agreement covering the period June 1, 2008 to December 1, 2011. Article 11 of this agreement reads as follows:

> 11.1 The word layoff means a reduction in the work force initiated by the Township either full or part-time [sic], excluding the reversal of a temporary or special assignment.
>
> 11.2 Before the Township makes any reduction in personnel, the Township will first inform the union regarding such reduction.
>
> 11.3 In order to avert or minimize layoffs the Township may reduce all or some detectives to patrol.
>
> 11.4 The "Layoff Procedure"
>
> In the event of a layoff, the following shall occur:
>
> > Step 1. Reserve officers shall be laid off first, followed by all part-time employees. If further cuts are necessary, the next to be laid off will be all probationary officers followed by full time officers beginning with the officer with the least amount of seniority.
>
> The above language does not preclude the Township from laying off all or any number of part time officers and retaining only full time employees.
>
> 11.5 If the Township lays off full time officers which leaves the bargaining unit below nine (9) full time officers, it shall proceed as outlined below:
>
> a. All part time officers will be laid off
> b. Further, full time officers may be laid off by inverse seniority.

> 11.6 Any full time seniority officer laid off shall have the option of being reduced to part time provided there are part-time positions available and shall not be required to work more than two (2) shifts per week.

The contract also contains a grievance procedure ending in binding arbitration.

On May 5, 2010, Respondent's Township Supervisor Steven Fuhr sent Charging Party representative Jim Steffes an email stating that, effective May 27, 2010, all of Respondent's employees represented by Charging Party or its affiliate, the Michigan Association of Public Employees, would begin working a thirty-two hour per week full-time schedule at reduced pay. Steffes replied in an email on May 13 as follows:

> Dear Mr. Fuhr:
>
> Upon review of the contracts and applicable law from the Michigan Employment Relations Commission, the current collective bargaining agreements for the POA and MAPE unit each contain provisions for layoffs. These were provisions negotiated by the parties if and when layoffs were necessary. Your May 5, 2010 email is an effort to repudiate the specific terms of the respective agreements. Both MAP and MAPE will not stand by while you repudiate the negotiated collective bargaining agreement.
>
> On Wednesday, May 12, 2010, MAP and MAPE filed unfair labor practice charges against the Township with the Michigan Employment Relations Commission.

On May 14, Fuhr told Steffes that Respondent was rescinding its decision to reduce the work week. He also sent Steffes the following memo:

> Effective this day at 9:00 am, the proposed action to reduce all full-time employees to a 32 hour work week schedule is rescinded.

In May 2010, Charging Party's bargaining unit consisted of fifteen full-time and six part-time positions. On June 8, 2010, Respondent announced that, effective June 10, six full-time positions would be eliminated and the employees laid off. No part-time positions were eliminated. Charging Party filed a grievance over the layoffs and the parties were proceeding to arbitration at the time Respondent filed its motion to dismiss the amended charge.

Discussion and Conclusions of Law:

The fact that an employer voluntarily corrects its course of conduct after an unfair labor practice charge is filed does not necessarily mean that the Commission will dismiss the charge as moot. In *Wayne State Univ*, 1991 MERC Lab Op 496, 499-500, the Commission observed:

> The defense of mootness is not an uncommon one; frequently in labor relations the parties' underlying disputes are resolved before the legal issues can be joined and decided in the legal forum. However, we have held that where the statutory issues are

> of sufficient importance, resolution of the specific underlying dispute between the parties does not require granting a motion to dismiss for mootness, even if the employer voluntarily corrects its course of conduct.

If an employer has corrected its conduct, the determination of whether the statutory issues are of sufficient importance is made on a case-by-case basis; the Commission considers factors such as how long it took for the employer to correct its conduct, whether a practical remedy exists for the alleged unfair labor practice, and the effect on the parties of a Commission order. *City of Bay Cit*y, 22 MPER 60 (2009); *Brighton Area Schools,* 22 MPER 88 (2009) (no exceptions). The charge here alleges that Respondent violated its duty to bargain by announcing, on May 5, 2010, a unilateral change in the established work hours. Respondent unconditionally rescinded the announced change in work hours immediately after Charging Party communicated its objections to the change and before the change took effect. Nothing indicates that an actual controversy continues to exist between the parties over the propriety of Respondent's May 5 action. I find that a decision by the Commission as to whether Respondent violated its statutory duty to bargain by announcing the change in work hours would advance no statutory purpose. I conclude, therefore, that this allegation is moot and recommend that it be dismissed on this basis.

The amended charge alleges that Respondent repudiated and/or modified the layoff provision of the parties' contract during its term by laying off full-time officers while retaining part-time employees. The Commission has the authority to interpret the terms of a collective bargaining agreement where necessary to determine whether a party has breached its statutory obligations. *Univ of Michigan*, 1971 MERC Lab Op 994, 996, citing *NLRB v C & C Plywood Corp*, 385 US 421 (1967); *Detroit Fire Fighters Ass'n v Detroit*, 408 Mich 663 (1980). However, a party satisfies its statutory duty to bargain over a mandatory subject during the term of a collective bargaining agreement by entering into a contract provision that covers that subject. 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.

The Commission's role in disputes involving alleged contract breaches is limited. The Commission will find an unfair labor practice where a party's breach of contract amounts to a repudiation of the collective bargaining agreement manifesting a disregard for that party's collective bargaining obligations. See, e.g., *City of Detroit (Transportation Dept),* 1984 MERC Lab Op 937, *aff'd* 150 Mich App 605 (1983); *Jonesville Bd of Ed,* 180 MERC Lab Op 891, 900-902. 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 other words, where the contract language can be construed as ambiguous and provides an arguable basis for the employer's action, the Commission does not resolve the ambiguity, but leaves the union to its contractual remedies.

Charging Party asserts that Article 11.4 requires that Respondent lay off reserve and part-time officers before laying off any full-time officers. Respondent argues Charging Party's argument is inconsistent with the language of Article 11.5 and 11.6. I agree with both parties; Article 11.4 seems clear on its face, but inconsistent with Articles 11.5 and 11.6. Because Article 11 is ambiguous, I find that Respondent can reasonably argue that its actions did not violate the contract. As discussed above, the Commission does not resolve bona fide disputes over contract interpretation. I conclude that the amended charge should be dismissed because it does not state a claim upon which relief can be granted. Based on this conclusion and my conclusion that the allegation in the original charge is moot, I recommend that the Commission take the following action.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____