STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Public Employer-Respondent,

Case No. CU11 I-024

-and-

FRATERNAL ORDER OF POLICE LABOR COUNCIL,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Frank A. Guido, for the Respondent

Mark A. Porter, for the Charging Party

DECISION AND ORDER

On October 27, 2011, Administrative Law Judge Julia C. Stern issued a 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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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Christine A. Derdarian, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Respondent,

Case No. CU11 I-024

-and-

FRATERNAL ORDER OF POLICE LABOR COUNCIL,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Frank A. Guido, General Counsel, Police Officers Association of Michigan, for Respondent

Mark A. Porter, Counsel, Fraternal Order of Police, for Charging Party

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

On September 1, 2011, the Fraternal Order of Police Labor Council (FOPLC) filed the above charge with the Michigan Employment Relations Commission (the Commission) against the Police Officers Association of Michigan (POAM) alleging that the POAM violated Section 10(3) of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210(3). The charge, as clarified in a supplemental statement filed on September 19, 2011, alleges that the POAM violated PERA by publicly announcing itself to be the collective bargaining representative of a unit of police employees of the City of Bay City (the Employer) represented by the FOPLC and by demanding that the Employer recognize it as the representative for this unit. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System.

On September 22, 2011, the POAM filed a motion for summary disposition asserting that the FOPLC lacks standing to file the instant charge because is not the certified or recognized collective bargaining representative for the unit in question, but was merely hired to assist the certified representative, FOP Lodge No. 103, with collective bargaining matters. It also asserts that the charge fails to state a claim upon which relief can be granted. On October 3, the FOPLC filed a response to the motion reiterating its claim to be the duly authorized representative. According to the FOPLC, FOP Lodge No. 103 does not exist as a legal entity separate from the FOPLC. On October 12, the POAM filed a supplemental brief in support of its motion. On October 10, the FOPLC filed a motion to strike the supplemental brief, which I denied in a letter dated October 12. Based on the facts as alleged by the FOPLC and the arguments made by the parties in these pleadings, I make the following conclusions of law and recommend that the Commission issue the following order.

Facts:

According to the charge, the Michigan Lodge of the Fraternal Order of Police (State Lodge) is a statewide organization with approximately 10,500 members. The State Lodge is an arm of the national Grand Lodge Fraternal Order of Police. The Fraternal Order of Police Labor Council (FOPLC) is a non-profit Michigan corporation controlled by the State Lodge whose purpose is to provide labor representation to members of the State Lodge.

The State Lodge incorporates and recognizes in its constitution subordinate lodges. FOP Lodge No. 103 was issued a charter by the State Lodge on June 9, 1941. In 1971, with the permission of the State Lodge, FOP Lodge 103 incorporated as a non-profit Michigan corporation with the stated purposes of providing labor representation for Bay City police officers and conducting fund raising for charitable activities. In 1975, a petition for representation election was filed with the Commission by the "Fraternal Order of Police, Lodge No. 103 – Patrolmens [sic] Division." That entity was certified by the Commission on January 19, 1976 as the bargaining representative of all nonsupervisory employees of the Bay City Police Department, excluding all supervisory police employees and all civilian employees not specifically listed in the unit description. The unit is referred to by the parties as the patrol unit.1

During the 1970s and thereafter, the elected president of FOP Lodge No. 103 both oversaw that entity's fraternal and charitable activities and served as the chief bargaining spokesperson for the patrol unit. On or about July 23, 2008, FOP Lodge No. 103, under its alternate name the Bay City Police Officer Association, sent a letter to the Employer stating that the Association had voted to affiliate with the FOPLC. The letter stated, "The FOPLC is now the exclusive bargaining agent for the Association, pursuant to the Michigan Public Employment Relations Act as defined at MCL 423.209 and 423.211." The letter was signed by the president of FOP Lodge No. 103, Pat Lochinski.

Sometime prior to August 2010, the Employer and FOPLC representatives entered into negotiations for a new collective bargaining agreement for the patrol unit. On or about August 30, 2010, the Employer filed a petition for compulsory interest arbitration of its contract dispute pursuant to 1969 PA 312 (Act 312), MCL 423.231 et. seq. The labor organization named in the petition was "Lodge No. 103, Fraternal Order of Police, Patrol Officers Association." The arbitration has not yet been completed.

On or about August 26, 2011, an "emergency" meeting was called for members of the patrol bargaining unit. The charge does not indicate who called this meeting. A representative or representatives of the POAM were present at the meeting. During this meeting, the members of the unit voted, by voice vote, to "switch unions" from the FOPLC to the POAM.

On August 24, POAM representative Dan Kuhn sent an email to the Employer's director of human resources, Wendy White. The email began:

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1 Supervisory police officers employed by the Employer are represented by the POAM in another unit (the command unit.).

> The meeting the other night went very good. From the inside reports I'm getting the local board is doing the vote as we speak, and odds look good for a switch to the POAM.

Kuhn told White that if that occurred, he would like to sit down with the Employer as soon as possible. He said that although the POAM had made a commitment to proceed with the Act 312 arbitration, he would like to make an attempt to get the contract resolved without it. White responded that she would be happy to hold discussions "if the POAM does begin representing the FOP," and asked Kuhn to advise her of the results of the vote as soon as possible.

On or about August 29, 2011, the POAM sent a press release to the *Bay City Times* newspaper. The press release stated that on August 26, patrol officers employed by the Employer had "voted unanimously to switch their union affiliation" to the POAM. The press release also stated, "The group had previously contracted those services through the Fraternal Order of Police Labor Council."

On September 1, the POAM sent the FOPLC a letter in which it argued that the FOPLC was not, and had never been, the certified or recognized collective bargaining representative for the patrol unit. The letter claimed that "several years ago" the certified representative, FOP Lodge No. 103, had entered into a relationship with the FOPLC under which the FOPLC provided legal representation and assistance in collective bargaining, contract administration, and grievance arbitration to FOP Lodge No. 103. However, according to the letter, FOP Lodge No. 103 had now made the internal decision to utilize the services of the POAM to assist it these matters.

On September 9, White sent a letter to FOP Lodge No. 103 stating that she had received communications from several different individuals claiming to speak for it and asking for clarification. White's letter noted that FOP Lodge No. 103 was identified on the Commission's certification as the collective bargaining representative for the patrol unit, and that subsequent collective bargaining agreements between the parties reflected this. White stated, "Let me reaffirm that the City recognizes Lodge No. 103 as the representative of the bargaining unit." White then asked about the relationship of Lodge No. 103 to the FOPLC and the POAM, and who was authorized to speak for Lodge No. 103. In a letter dated September 12, 2011, Lochinski told White that FOP Lodge No. 103 had terminated its relationship with the FOPLC and had retained POAM to assist it on issues relating to collective bargaining, grievances and arbitrations, contract administration, and all other labor related issues.

On October 7, the FOPLC sent Lochinski a letter reprimanding him for his "unauthorized communications" with the Employer. The letter reminded Lochinski that on July 23, 2008 he had sent the Employer a letter "confirming that the State Lodge and Labor Council were the exclusive bargaining representative for the Bay City officers." Lochinski was informed that he no longer had any authority to speak for the State Lodge, the FOPLC, or FOP Lodge No. 103, and that proceedings would be commenced to expel him from these organizations.

Discussion and Conclusions of Law:

Section 16(a) of PERA gives the Commission the authority to remedy violations of Section 10 of the Act as unfair labor practices. The FOPLC has not cited the specific subsection of Section 10 the POAM is alleged to have violated in this case. However, since it cites *Wayne Co Regional Educational Service Agency*, 1994 MERC Lab Op 996 as authority for its claim that the POAM's conduct

constituted an unfair labor practice, the charge appears to be based on Section 10(3) (a) (i) of the Act. That is, the FOPLC appears to allege that the POAM unlawfully restrained or coerced the Employer's employees by demanding that the Employer recognize it as the bargaining representative for the patrol unit when a majority of these employees had not authorized it to represent their interests.

In *Wayne Co Regional Educational Service Agency,* the Commission held that an employer committed an unfair labor practice by improperly granting voluntary recognition to a union that did not have the majority support of the employees. It also found the union that accepted recognition under these circumstances guilty of violating PERA. The Commission relied on *Int'l Ladies Garment Workers Union v NLRB,* 366 US 731 (1961), a case arising under the National Labor Relations Act (NLRA), 29 USC 150 et seq. In *Ladies Garment Workers,* the Supreme Court affirmed the finding of the National Labor Relations Board (NLRB) that an employer's voluntary recognition of a union as the exclusive bargaining representative of certain of its employees on a date when a majority of these employees had not authorized the union to represent them violated the employees' rights under Section 7 of the NLRA, the section corresponding to Section 9 of PERA, by forcing a representative upon an nonconsenting majority. It found that the employer's actions also constituted unlawful support for a labor organization in violation of the NLRA provision corresponding to Section 10(1)(b) of PERA. The Court also affirmed the NLRB's finding that the union's acceptance of this recognition constituted unlawful restraint and coercion in violation of Section 8(b) (1) (a) of the NLRA, the provision corresponding to Section 10(3) (a) (i) of PERA. The Court agreed with the NLRB that the employer's and union's good faith belief that the union represented a majority did not excuse their conduct. Per *Ladies Garment Workers,* it continues to be the law under both PERA and the NLRA that an employer may lawfully offer voluntary recognition to a labor organization without an election. However, the voluntary recognition must be based upon evidence of majority support; absent majority support, the voluntary recognition is unlawful. See, e.g., *Lamons Gasket Co,* 357 NLRB No. 72, (2011).

Wayne Co Regional Educational Service Agency also involved a standing issue. The charges in that case were filed by a union that had filed a representation petition seeking an election in the unit for which the employer had voluntarily recognized the respondent union. The respondent union asserted that the charging party union had no standing to file the charges since it had no legally recognized rights of its own to assert. The administrative law judge (ALJ) found that the charging party union had standing because it was asserting the rights of the employees who had signed authorization cards designating it as their representative, and that denying standing to the charging party union would effectively deprive employees of their right to challenge their employer's recognition of a minority union. The ALJ's findings were adopted by the Commission when no exceptions were filed.

I find the POAM's argument that the FOPLC lacks standing to be without merit. As noted above, the charge in this case appears to be that the POAM restrained and coerced employees in the exercise of their Section 9 rights by demanding recognition as a minority union. It is well established that a union may bring charges to enforce the rights of employees under Section 9 of PERA, even if it is not their exclusive bargaining representative.

I conclude, however, that the FOPLC has failed to state a claim against the POAM under PERA. I find that, according to the facts as alleged by the FOPLC, the POAM has neither demanded nor accepted recognition as the bargaining agent for the patrol unit. First, the POAM does not claim to represent the employees in this unit. Rather, it asserts that the local union, FOP Local No. 103, agreed to designate the POAM as its agent to provide collective bargaining and contract administration

services. The FOPLC does not dispute that this occurred. What the FOPLC does dispute is the local union's authority to take this action, as well as the Employer's right to meet with the representatives the local union has designated. Second, according to the fact as alleged by the FOPLC, the Employer has neither recognized the POAM as the bargaining agent nor agreed to meet with it as the agent of the local union. I find nothing in the actions of the POAM in this case that could be construed as unlawful restraint or coercion in violation of Section 10(3) (a) (i). 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: _____