STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C09 G-103

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Daryl Adams, Assistant Director, Office of Labor Relations, for Respondent

Wayne A. Rudell, P.L.C., by Wayne A. Rudell, for Charging Party

DECISION AND ORDER

On February 17, 2011, Administrative Law Judge (ALJ) Julia C. Stern issued her Supplemental Decision and Recommended Order on Remand in the above matter finding that Respondent, Detroit Public Schools (DPS or Employer) violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e). The ALJ found that Respondent DPS violated its duty to bargain by refusing to recognize Charging Party, Teamsters Local 214 (Teamsters or Union) as exclusive bargaining representative for the newly created position of campus security police officer (CSPO) during the period between March 16, 2009 and December 10, 2009. The ALJ held that Respondent improperly recognized the Police Officers Labor Council (POLC) as bargaining agent for the new positions during the period the CSPOs actually worked as security officers, a classification exclusively represented by Charging Party. The ALJ also found that Respondent DPS failed to timely honor Charging Party's request for information that was necessary and relevant to its duty to engage in collective bargaining and police the administration of the parties' contractual agreement. The ALJ recommended that we order Respondent to pay make whole remedies to Charging Party and the most senior laid off security officer for losses resulting from Respondent's failure to recognize the CPSOs in Charging Party's unit from March 16, 2009 to December 10, 2009.[1] The ALJ's Decision and Recommended Order was served upon the interested

[1] The ALJ's Supplemental Decision and Recommended Order references December 10, 2009 and December 10, 2010 as the date that CSPOs began performing police related duties; and January 22, 2009 and January 22, 2010 are both cited as the date of Charging Party's information request. We have

parties in accordance with Section 16 of PERA. On May 4, 2011, after requesting and receiving an extension of time, Respondent filed exceptions to the ALJ's Supplemental Decision and Recommended Order. Charging Party did not file a response to the exceptions.

In its exceptions, Respondent contends that the ALJ erred by concluding that it violated its duty to bargain. Respondent argues that the CSPOs performed other significant duties in addition to security officer functions that warranted their inclusion into the POLC unit prior to December 10, 2009. Respondent alleges it had no duty to bargain with Charging Party based upon the "totality of circumstances" that include its lack of control over the (1) timeline involved to become a licensed private security police agency, (2) hiring of the CSPOs and assigned duties while awaiting licensing approval, and (3) time period to complete certification and training of the CSPOs as private security police officers. Respondent also contends that the issues pertaining to Charging Party's information request are now moot, and that the ALJ erred in recommending payment of make whole awards.

After carefully considering the arguments, we find merit in Respondent's exceptions on the issue of the placement of the CSPOs into the POLC unit before December 10, 2009.

Factual Summary:

Unless otherwise stated, we adopt the findings of fact contained in the ALJ's Supplemental Decision and Recommended Order and will not repeat them here, except as necessary. Charging Party represents a bargaining unit of nonsupervisory public school security officers[2] (security officers) employed by Respondent. Another bargaining unit comprised of certified police officers and fingerprint technicians represented by the Police Officers Labor Council (POLC) exists within this same public safety department. In late 2008, Respondent created the new CSPO position and signed an agreement allowing the POLC to represent the CSPOs based on Respondent's intent to have the CSPOs exercise police authority by making arrests, conducting investigations and carrying a firearm. During the period that Respondent posted and filled the initial CSPO positions, the application and approval process to employ private security police officers under Act 330 had not been completed. Therefore, the newly assigned CPSOs performed the same job duties as Charging Party's security officers.

Charging Party learned of the limited functioning of the CPSOs and on January 22, 2009, requested Respondent to provide information regarding the distinction between the duties being performed by the CSPOs versus its security officers. Respondent ignored the request. Charging Party filed a petition seeking to place the CPSOs into its

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determined that the 2009 dates are correct and have substituted them for any 2010 dates noted in the ALJ's Supplemental Decision and Recommended Order.

[2] In July, 2010, DPS eliminated the Public Safety Security Officers (PSSOs) by outsourcing the non-instruction function.

bargaining unit (Case No. UC09 C-009[3]) and separate unfair labor practice charges against the Employer in the instant case, and POLC in Case No. CU09 G-21[4]. The unit clarification petition and instant charge were consolidated for hearing and the ALJ issued a joint Decision and Recommended Order on April 10, 2010 finding that Respondent breached its duty to bargain with Charging Party over the placement of the CSPOs.

The Employer filed exceptions to the joint Decision and Recommended Order, and moved to reopen the record to admit new evidence asserting that since the close of the record, Respondent had qualified under Act 330 to employ private security police officers and that the CSPOs had completed police certification training and been assigned new duties. On July 15, 2010, we issued a remand order directing the ALJ to rule on the motion to reopen the record in this matter and issue a separate supplemental order.[5] The ALJ granted the motion and conducted hearings on the new factual assertions in early September, 2010. On January 14, 2011, we denied Charging Party's unit clarification petition in UC09 C-009. We held that since December, 2009, the CSPO position included duties and qualifications different from Charging Party's security officers; however, we also found that the CSPOs shared a community of interest with both Charging Party's security officers and the police officers in the POLC unit. As such, we upheld the Employer's placement of the CSPOs into the POLC unit. *Detroit Pub Sch*, 24 MPER 8 (2011).

Discussion and Conclusions of Law:

As noted in the ALJ's Supplemental Decision and Recommended Order, the central issue here is whether Respondent DPS violated its duty to bargain with Charging Party over the placement of the CSPOs prior to December 10, 2009. In the April 10th joint Decision and Recommended Order, the ALJ found that based on the record at that time, Respondent failed to establish the CSPO as a new position with defined duties distinguishable from Charging Party's security officers. The ALJ concluded that since the CSPOs were only working as security officers, DPS violated Section 10(1)(e) of PERA by recognizing POLC rather than Charging Party as exclusive bargaining representative for the new CSPOs. The ALJ recommended, *inter alia*, a cease and desist order and make whole remedies. On remand, the ALJ modified her earlier determination by limiting the period of the PERA violation. The ALJ now proposes the same relief contained in her initial recommended order, except that it be confined to the period between March 16, 2009 and December 10, 2009. We disagree.

In its exceptions, Respondent acknowledges that the CSPOs assumed law enforcement duties in December, 2009 but argues that the earlier placement of the CSPOs into the POLC unit was appropriate because of "other significant duties." We note that Respondent asserted this same argument in the unit clarification case where we determined that CSPOs did not assume significant duties differentiating them from

[3] Refer to *Detroit Pub Sch*, 24 MPER 8 (2011).
[4] A separate decision is being issued concurrently on this case.
[5] Refer to Detroit Pub Sch, 23 MPER 61 (2010).

Charging Party's security officers until December 10, 2009. However, we also concluded in the unit clarification decision that the newly created CSPO position shared a community of interest with Charging Party's security officers and POLC's police officers.

As the ALJ correctly indicates, the commission has consistently upheld an employer's placement of a newly created position into a bargaining unit even when that position shares a community of interest with other bargaining units of the same employer (*City of Lansing*, 2000 MERC Lab Op 380), absent a showing that the community of interest no longer exists. *City of Kalamazoo*, 1983 MERC Lab Op 249. We are unaware of any showing made in the record here, or in the prior related cases[6], suggesting that the CSPOs lacked a community of interest with the POLC unit either before or after December 2009. Further, Respondent's efforts to satisfy the qualifying processes necessary to employ private security police officers is evidence of its ongoing intent to carry out its initial goal of creating a new group of officers with limited law enforcement authority more akin to the members in the POLC unit. Consequently, we reaffirm our earlier finding in case UC09 C-09 that the CSPOs shared a community of interest with both the Teamsters and POLC bargaining units. Respondent's placement of the CSPOs into the POLC unit prior to December 2009 was not contrary to section 10 of PERA. We also conclude that a PERA violation did not result from Respondent's placement of the CSPOs into the rival POLC unit in which the disputed positions shared a community of interest. Because there was no bargaining violation, we find no basis upon which to award the make whole remedies recommended by the ALJ.

We, however, agree with the ALJ that Respondent violated its duty to bargain by failing to provide Charging Party with information relevant to the CSPO position. In a letter date January 22, 2010 and addressed to Respondent's chief labor negotiator, Charging Party wrote: "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." Respondent failed to respond, but now claims the issue is moot.

An issue is moot if an event has occurred that renders it impossible for a court to grant relief (*City of Warren v Detroit*, 261 Mich App 165, 166 n 1; 680 NW2d 57 (2004)), or if a judgment on an issue cannot have a practical legal effect on an existing controversy. *People v Richmond*, 486 Mich 29, 34-35; 782 NW2d 187 (2010). However, a moot issue may be still reviewed if it is publicly significant and likely to reoccur. *City of Warren*, 261 Mich App at 166 n 1. We acknowledge that Charging Party's need for the previously requested information is diminished and now moot. However, if we were to ignore Charging Party's claim merely because it has little practical value today, we could unwittingly encourage similar misconduct to reoccur. We decline to encourage parties to ignore legitimate information requests where the need for the sought after material would become moot before intervention can be obtained from this commission. Consequently, we concur with the ALJ that a bargaining violation occurred from

[6] Refer to *Detroit Pub Sch*, 23 MPER 61 (2010), *Detroit Pub Sch*, 24 MPER 8 (2011) and *Detroit Pub Sch*, 24 MPER 9 (2011).

Respondent's failure to honor Charging Party's information request of January 22, 2009.

We have considered the remaining arguments submitted by Respondent and conclude that they would not change the result in this case. Therefore, we reverse in part, and affirm in part the ALJ's factual findings and conclusions of law consistent with the above discussion.

ORDER

IT IS HEREBY ORDERED that the Detroit Public Schools, its officers and agents:

1. Cease and desist from refusing or failing to provide Teamsters Local 214 in a timely manner with information necessary and relevant to its duty to police its collective bargaining agreement.

2. 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.

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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Dated: _____ Christine A. Derdarian, Commission Member

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer- Respondent

Case No. C09 G-103

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.
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APPEARANCES:

Daryl Adams, Assistant Director, Office of Labor Relations, for the Public-Employer Respondent

Wayne A. Rudell, for the Charging Party

SUPPLEMENTAL DECISION AND RECOMMENDED ORDER

OF
ADMINISTRATIVE LAW JUDGE ON REMAND

On April 20, 2010, I issued the attached Decision and Recommended Order in consolidated Case Nos. UC09 C-009, R09 C-047, and C09 G-103 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. Case No. UC09 C-009 involved a petition by Teamsters Local 214 (the Teamsters) to clarify its bargaining unit of security officers employed by the Detroit Public Schools (the Employer) to include employees with the title campus security police officer (CSPO). In March 2009, the Employer gave this title to ten employees, nine of whom had formerly been classified as security officers and one of whom was a new hire. It recognized the Police Officers Labor Council (POLC) as the bargaining agent for these employees and placed them in a unit of certified police officers represented by the POLC. The unfair labor practice charge in Case No. C09 G-103 was related to the dispute over the placement of these employees in the POLC's unit. The unit clarification petition and charge were consolidated and assigned to me for hearing and decision together with Case No. R09 C-047, a petition for a representation election in the unit represented by the POLC filed by the Police Officers Association of Michigan.

In my April 20 Decision and Recommended Order, I held that the Employer

violated Sections 10(1)(a) and (e) of PERA by refusing to recognize Teamsters Local 214 as the bargaining agent for the ten employees who had been given the CSPO title. I found that, at all pertinent times, these ten employees had been performing the duties of a security officer. I concluded that since these employees, despite their title, were security officers, the Employer had a duty to recognize them as members of the Teamsters' bargaining unit. I held that the Employer violated its duty to bargain by recognizing the POLC as the bargaining agent for these employees, by refusing to bargain with the Teamsters over the terms and conditions of their employment, and by refusing to apply the terms of the Teamsters' collective bargaining agreement, including the union security and dues checkoff provisions, to them. Finally, I found that Respondent violated its duty to bargain by failing to provide the Teamsters with certain information about the newly posted CSPO position which the Teamsters requested on January 22, 2009. I recommended that the Commission dismiss allegations that the Employer violated Sections 10(1) (b), (c), and (d) of PERA.[7]

As a remedy for the Employer's violations of its duty to bargain, I recommended that the Employer be ordered to recognize the Teamsters as the bargaining agent for employees with the CSPO title and to cease and desist from recognizing the POLC. I recommended that the Commission order the Employer to provide the information requested by the Teamsters to the extent that it had not already done so. I recommended the Employer be required to make the Teamsters whole for the loss of dues and agency fees resulting from the Employer's removal of security officer positions from its bargaining unit. Finally, I found that a laid off security officer had been harmed by the Employer's decision to hire a new employee in March 2009 to perform the duties of a security officer instead of recalling a security officer on layoff. I recommended, therefore, that the Employer be order to 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 as a result of the Employer's decision to hire a new employee for a security officer position.

On July 6, 2010, Respondent filed exceptions to my April 20 Decision and Recommended Order. It also filed a motion to reopen the record to admit evidence of events occurring after October 30, 2009, the final day of hearing. On July 15, 2010, the Commission remanded these cases to me to rule on the Employer's motion to reopen and, if appropriate, to hold an evidentiary hearing on the new evidence. Upon conclusion of the evidentiary hearing, the cases were to be severed. The Commission was to issue separate orders in Case No. UC09 C-009 and R09 C-047, and I was directed to issue a supplemental decision and recommended order in Case. No. C09 G-103.

On August 13, 2010, I issued an order granting the motion to reopen the record. Additional hearings were held on September 1 and September 8, 2010. On November 3, 2010, both the Employer and Teamsters Local 214 filed supplemental briefs. On January

[7] Since the charge was consolidated with the unit clarification and representation petitions, I also made recommendations regarding the disposition of these petitions. I recommended that the Commission grant the Teamsters' petition to clarify the unit to include the CSPOs and that an election be directed in Case No R09 C-047 in a unit that excluded them.

14, 2011, the Commission issued a Decision and Order on Petition for Unit Clarification in Case No. UC09 C-009. It found that in December 2009, after the record in the consolidated representation and unfair labor practice cases had closed, the Employer created the CSPO as a new position with job duties and qualifications different from those of the security officers. It concluded that this new position was appropriately placed in the unit represented by the POLC. On this same date, the Commission also issued a Decision and Direction of Election in Case No. R09 C-047 in which it directed an election in a unit of certified police officers and CSPOs.

As noted above, the Commission directed me to issue a supplemental decision and recommended order in Case No. C09 G-103. Based on the entire record, including evidence presented at hearings conducted in September and October 2009 and on September 1 and September 8, 2010, and briefs filed by the parties in February and November 2010, I make the following supplemental findings of fact and conclusions of law and recommend that the Commission issue the following order in Case No. C09 G-103.

Supplemental Findings of Fact:

As set out in my April 20 Decision and Recommended Order, on December 17, 2008, the Employer entered into a letter of agreement (LOA) with the POLC recognizing the POLC as the bargaining agent for the CSPO position and agreeing that the POLC's current collective bargaining agreement would apply to the CSPOs, with certain exceptions set out in the LOA. At the time the Employer entered into the LOA, it had not hired any CSPOs. In late December 2008, the Employer notified the Teamsters of its intention to create a new position. However, since the Employer told the Teamsters that the CSPOs were to be "certified officers," the Teamsters assumed that they would be certified police officers, a classification clearly excluded from its bargaining unit.

In January 2009, Respondent posted the CSPO position and invited applications. The job description stated that CSPOs would be required to complete a "basic Security – Police Training Course required by the Michigan Commission on Law Enforcement Standards (MCOLES)." This was a reference to the training MCOLES requires for "private security police officers," a term used in the Private Security Guard Act of 1968, 1968 PA 330 (Act 330), MCL 338.1031 to describe individuals with certain law enforcement powers specified in that statute. These powers are discussed in detail in my April 20 Decision and Recommended Order.

The individuals responsible for creating the CSPO position did not testify, and there was no direct evidence of what the Employer intended when it posted the position in January 2009. However, it is clear from the record that the Employer had not taken the steps required to legally employ Act 330 private security police officers when it posted the CSPO position in January 2009.

In late January, after the Teamsters had made a written request for information about the position, the Employer told the Teamsters that the CSPOs would not be

certified police officers. The Teamsters asserted that if the CSPOs were not certified police officers, they should be included in its bargaining unit.

On March 16, 2009, the Employer hired one new employee and selected nine former security officers from among the applicants for the CSPO position. These ten individuals were given the CSPO title and rate of pay. They met with a POLC representative and were told that they were in the POLC's bargaining unit, and after this meeting they had dues deducted from their paychecks for the POLC. The Employer met with the employees and told them something about what their future job duties might be. However, the ten new CSPOs were then assigned to work as security officers. These ten individuals were still performing the duties of a security officer when the first round of hearings in this case concluded on October 30, 2009.

In June 2009, after the unit clarification petition was filed but before the filing of the charge, Roderick Grimes became the chief of the Employer's department of public safety. After Grimes became chief, he was told by his deputy that the Employer had hired the CSPOs to be Act 330 private security police officers and that the Employer had to send them to be trained first. He was also told that the Employer was waiting for approval from Kim Worthy, the Wayne County Prosecutor, to proceed. As detailed in my April 20 Decision and Recommended Order, between June and October 30, 2009, Grimes tried to complete the steps required to make the CSPOs Act 330 private security police officers. He discovered that the Employer first had to become a "private security police agency," which entailed filing a license application with MCOLES. He learned that representatives of local law enforcement agencies, including Worthy, had to sign the license application. He also discovered that Worthy had reservations about whether Respondent should be employing private security police officers and that she did not intend to sign the application.

Worthy was eventually persuaded to change her position, but Worthy and the Employer did not reach full agreement until October 2009. While these negotiations were taking place, the Employer posted the CSPO position again and selected fifteen additional CSPOs. This time the position was open only to internal candidates, and all the individuals chosen were security officers. Throughout this period, individuals with the CSPO title continued to work as security officers while paying dues or agency fees to the POLC.

At the hearings held in September 2010 pursuant to the Employer's motion to reopen the record, the Employer presented evidence that after the record closed in October 2009, its designee submitted his application for a private security police agency license to MCOLES with the necessary signatures, including Worthy's. Between November 5 and December 9, 2010, the ten individuals selected to be CSPOs in March 2010 and the fifteen selected in the fall of 2010 completed 167 hours of training at Schoolcraft College that met MCOLES requirements for private security police officer training. All twenty-five passed the course. On December 9, 2010, they received certificates/identification cards from MCOLES that identified them as private security police officers. On this same date, the Employer's designee received the Employer's

private security police agency license. In early 2010, the Employer posted the CSPO position again and hired twenty-five additional CSPOs, all of whom formerly worked for the Employer as security officers. Between March 5 and April 12, 2010, these CSPOs attended the same 167-hour Act 330 training course at Schoolcraft College that the other CSPOs had attended in November and December. All twenty-five received certificates indicating their status as private security police officers on April 12, 2010.

On the next working day following their completion of their Act 330 training, all the CSPOs in the December 2009 class were assigned to high schools where they were assigned a team of security officers. The CSPOs performed the day-to-day duties of a security officer at these schools. However, as team leaders the CSPOs also provided assistance and direction to the security officers on their teams, made up lunch schedules, and assigned security officers to specific locations within the building. The CSPOs were responsible for the security equipment in the building and for ensuring that reports were properly submitted. They also met with building principals to devise security plans.

The Employer also trained the CSPOs to prepare and submit arrest and other types of reports electronically through the Detroit Police Department's CRISNET system, as the Employer's certified police officers had been doing. When individuals were arrested and transported to a police facility, either a police officer or the CSPO prepared an arrest report. The police officer or CSPO preparing the arrest report became the arresting officer responsible for, among other things, appearing in court if necessary to testify regarding the circumstances of the arrest. As private security police officers under Act 330, the CSPOs had the authority to arrest for misdemeanors.

After completing their Act 330 training, the CSPOs were given a security belt with a baton and chemical spray in addition to handcuffs. At some point, the CSPOs were also assigned firearms to carry while on duty. The Employer requires the CSPOs to have individual concealed weapon (CCW) permits before it gives them firearms. Some of the CSPOs did not obtain CCWs right away, and were not issued firearms. However, all the CSPOs will eventually be required to have a CCW and will carry a firearm.

After the second class of CSPOs graduated in April 2010, CSPOs were assigned to some kindergarten through eighth grade buildings as well as to high schools. The Employer also began replacing security officers with CSPOs on night patrol. Certified police officers continue to transport intruders arrested by night patrol officers to the local police precinct. However, CSPOs sometimes follow police officers to the precincts to complete arrest reports.

Between March 2009 and December 2009, the Employer entered into a contract or contracts with a third party to provide security services at selected schools, replacing the security officers there. In July 2010, the remaining security officers were terminated after their work was subcontracted. As the security officers were replaced by employees of a third party contractor, the CSPOs became team leaders for the contract employees. They now assist the supervisor employed by the contractor in making assignments and schedules in addition to providing assistance and direction to the contract security guards.

Supplemental Conclusions of Law:

In its decision on the unit clarification petition in Case No. UC09 C-009, the Commission concluded that in December 2009, Respondent created the CSPO as a new position with job duties and qualifications different from those of the security officers It noted that when two unions representing different bargaining units both claim a new position, it does not attempt to determine the "optimum" placement of the position but defers to the employer's reasonable decision to place the position in one of the two units if the position shares a community of interest with the unit in which it is placed. *City of Bay City* 16 MPER 31 (2003); *Swartz Creek Cmty Sch*, 2001 MERC Lab Op 372, 375. The Commission found that the CSPOs shared a community of interest with both the security officers' and the police officers' bargaining units. The Commission also held that the Employer's placement of the CSPO position in the POLC unit was reasonable because, like the police officers in that unit, the CSPOs have well-defined police powers, are required to meet standards set by MCOLES, and are armed. *Detroit Pub Schs*, 24 MPER ____ (Case No. UC09 C-009, decided January 14, 2011).

The Commission has determined that since December 2009, the CSPOs have been appropriately included in the unit represented by the POLC. What remains for me to determine is whether the Employer violated its duty to bargain by refusing to recognize the Teamsters as the bargaining agent for the CSPOs prior to December 2009 and, if so, what the remedy for this violation should be. I see no reason to alter my conclusion that the Employer had a duty to recognize the Teamsters as the bargaining representative for the individuals who had the CSPO title prior to December 10, 2009. During that period, the CSPOs had exactly the same legal law enforcement authority and performed exactly the same job duties as the security officers represented by the Teamsters. Whatever their title, they were security officers. The Employer, of course, had to select the CSPOs before sending them to be trained as private security police officers. However, this fact does not justify the Employer's refusal to recognize the Teamsters as their bargaining agent while they were working, even temporarily, as security officers. I conclude that from March 16, 2009 until December 10, 2009, when the first group of CSPOs completed their training and received new job duties, the Employer had the obligation to recognize the Teamsters as the CSPOs' bargaining representative and apply the terms of the Teamsters' contract to them. It follows that the Employer also violated its duty to bargain by recognizing the POLC as bargaining representative for the CSPOs while they were working as security officers.

The additional evidence presented in September 2010 does not affect my conclusion that the Employer violated its duty to bargain by failing to provide the Teamsters with the information about the CSPO position that the Teamsters requested on January 22, 2009. I also conclude, for the reasons set out in my April 20 Decision and Recommended Order, that the allegations that the Employer violated Sections 10(1)(b), (c) and (d) of PERA should be dismissed. I note that the Employer did not explain why it hired the CSPOs at a time when it was not prepared to make them private security police officers or give them new job duties. The Teamsters argue that in the absence of a reasonable explanation for the timing of this action, the Commission should conclude that

the Employer's actual motive was to retaliate against the members of its bargaining unit for exercising their Section 9 rights and for filing unfair labor practice charges by transferring their positions to another unit. However, the Employer's failure to explain the timing of its actions was at least partially explained by the fact that, by the time this case was heard, the chief of its department of public safety had been replaced and was not available to testify. In any case, as discussed in the April 20 Decision and Recommended Order, it is a charging party's burden to produce evidence that the employer's decision to take the adverse action was motivated, at least in part, by anti-union animus or the employees' exercise of their Section 9 rights. I conclude that the evidence here is insufficient to establish that the Employer's transfer of these positions to the POLC unit was caused, even in part, by hostility toward the Teamsters or their unit members.

In sum, I conclude that the Employer violated Section 10(1) (e) of PERA by recognizing the POLC and refusing to recognize the Teamsters as the bargaining representative for individuals with the title CSPO between March 16 and December 10, 2009 and by refusing to apply the terms and conditions of the Teamsters' contract, including the union security and dues checkoff provision, to these individuals during this period. I also find that the Employer violated Section 10(1) (e) by failing and refusing to provide the Teamsters with the information the Teamsters requested about the CSPO position on January 22, 2010. Since the Commission has determined that the CSPOs have been appropriately included in the unit represented by the POLC since December 2010, the recommended order in my April 20 Decision and Recommended Order must be modified to reflect this determination. Accordingly, I recommend that the Commission issue the following modified order in Case No. C09 G-103.

MODIFIED RECOMMENDED ORDER

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 for the period between March 16 and December 10, 2009 when these employees were working as security officers;

   b. Recognizing the Police Officers Labor Council as the bargaining agent for employees with the title campus security police officer for the period between March 16 and December 10, 2009;

   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. Make the most senior laid off security officer eligible for recall on March 16, 2009 whole for wages and benefits he or she would have earned between March 16, 2009 and December 10, 2010, including interest at the statutory rate of six percent (6%) computed quarterly. This sum shall include a sum equivalent to overtime, if any, earned between March 16, 2009 and December 10, 2009 by the new hire who worked as a security officer during that period. The full method of calculating the amounts due this individual shall be disclosed to Teamsters Local 214 prior to payment.

b. Make Teamsters Local 214 whole for the loss of dues and agency fees resulting from the removal from its unit of the security officer positions filled by employees with the title campus security police between March 16 and December 10, 2009 by paying Teamsters Local 214 a sum equivalent to the dues or fees that the employees in each of these positions would have paid between March 16 and December 10, 2009.

c. 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.

d. 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 and mail copies of this notice to all security officers terminated on or after March 16, 2009 at their last address on file.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

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

Dated: _____