STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

POLICE OFFICERS LABOR COUNCIL,
Labor Organization-Respondent,

Case No. CU09 G-021

-and-

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

APPEARANCES:

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

Brendan Canfield, for Respondent

DECISION AND ORDER

On September 1, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent, Police Officers Labor Council (POLC), did not violate Section 10(3)(a) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(3)(a), by agreeing to represent employees in the new classification of campus security police officer (CSPO) before any positions were actually filled. The ALJ found that at the time Respondent agreed to represent these new positions, it had a reasonable basis to conclude that the proposed classification appropriately belonged in its existing bargaining unit. The ALJ also concluded that POLC did not violate PERA by continuing to represent the CSPOs pending MERC's final determination on proper unit placement of the new CSPOs. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On October 27, 2009, Charging Party, Teamsters Local 214 (Teamsters), filed exceptions to the ALJ's conclusions after being granted a retroactive extension of time for good cause shown. Respondent also requested and received a time extension, and filed a response and brief in support of the ALJ's Decision and Recommended Order on December 9, 2009.

On May 24, 2010, Charging Party filed a subsequent document entitled "Local 214's Brief Concerning the Decision and Recommended Order of the Administrative Law Judge" asking this Commission to reopen the record and give collateral estoppel effect to an earlier

decision and recommended order issued on April 10, 2010 by the ALJ in a related case[1]. On July 7, 2010, after being granted an extension of time, Respondent filed a motion and supporting brief urging that we disregard Charging Party's latest brief. Respondent asserts that the brief was untimely served on it and not permitted anywhere in the Commission's General Rules.

In its exceptions, Charging Party alleges that the ALJ erred in recommending dismissal of its charge. It argues that POLC did not have a reasonable basis for beginning and continuing to represent the CSPOs who were functioning no differently than the security officers represented by Teamsters. Charging Party also asserts that the ALJ misapplied the proper legal standard for summary disposition by recommending charge dismissal without a hearing, and by not allowing it to amend its initial charge. Respondent asserts in its response and supporting brief that the ALJ appropriately concluded that the charge should be summarily dismissed for lack of a valid PERA claim.

We deny Charging Party's request to reopen the record and give collateral estoppel effect to the ALJ's Decision and Recommended Order of April 10, 2010, as we have already addressed many of Charging Party's concerns in our earlier ruling and remand order[2]. Further, we will disregard Charging Party's brief filed on May 24, 2010, as such filing is not recognized under the Commission's General Rules. After careful and thorough review of the record, including pleadings from each party, we find Charging Party's exceptions to be without merit for reasons discussed below.

Factual Summary:

Unless otherwise stated, we adopt the factual findings contained in the ALJ's Decision and Recommended Order and will not repeat them here, except as necessary. Charging Party Teamsters represents a bargaining unit of nonsupervisory public safety security officers (PSSOs), and Respondent POLC represents a bargaining unit of nonsupervisory public safety police officers (PSPOs) employed by the Detroit Public Schools (Employer or DPS) in the public safety department. The POLC unit came into existence around 1995. Major distinctions exist between the two groups[3]-- PSPOs are authorized to carry firearms and make arrests, while PSSOs are not.

In late 2008, DPS created a new position of CSPO in the public safety department. According to the job description, CSPOs were to carry a firearm, undertake investigations and make arrests. Respondent and DPS agreed to include the CSPOs in its existing bargaining unit. After DPS filled some of the CSPO positions, Charging Party learned that the CSPOs had not completed the necessary state certified police training and were not being permitted to carry firearms. Charging Party concluded that the CPSOs were performing the same or similar duties as the PSSOs in its bargaining unit, and, on March 20, 2009, Charging Party filed a petition seeking to place the CSPOs into its bargaining unit (UC09 C-009). On March 27, 2009, a rival union, Police Officers Association of Michigan (POAM), filed a representation petition seeking

[1] Refer to the joint Decision and Recommended Order issued by ALJ Stern in Case Nos. C09 G-103, UC09 C-009, and R09 C-047. Subsequently in *Detroit Pub Sch*, 23 MPER 61 (2010), we issued a remand order on July 15, 2010 requiring further proceedings by the ALJ on the unfair labor practice and election cases.
[2] See above footnote.
[3] In 2010, DPS eliminated the Public Safety Security Officers (PSSOs) by outsourcing the non-instruction function.

to represent the CSPOs (R09 C-047); and on July 10, 2009, Charging Party filed unfair labor practice charges against POLC in the instant case and the Employer in C09 G-103.

The assigned ALJ consolidated three of the cases, excluding the instant case, and issued a joint decision and recommended order on April 10, 2010. The Employer filed exceptions to the joint decision and recommended order and moved to reopen the record to admit new evidence that since the close of the record, DPS had qualified under Act 330 to employ private security police officers and 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 Employer's motion to reopen the record in Case No. C09 G-103 and issue a separate supplemental decision and recommended order. We also indicated that we would issue separate decisions in UC09 C-009 and R09 C-047. On August 13, 2010, the ALJ issued an order granting the Employer's motion to reopen the record and hearings were held on the new factual assertions in Case No. C09 G-103.

On January 14, 2011, we denied Charging Party's unit clarification petition in Case No. UC09 C-009[4]. We found that since December 2009, the CSPO position included job duties and qualifications different from those of Charging Party's security officers and that the CSPOs share a community of interest with Respondent's police officers. We also directed that an election be held to determine whether the CSPOs wanted to be represented by Respondent, the incumbent union, or the POAM, a petitioning rival union, or neither organization.[5] Finally, on March 21, 2011, election results were certified with POLC maintaining majority status as exclusive bargaining representative for the CSPOs.

Discussion and Conclusions of Law:

Charging Party claims that by initially agreeing and continuing to act as the exclusive bargaining representative of the CSPOs, Respondent POLC restrained and coerced these employees in the exercise of rights under Section 9 of PERA. Charging Party also challenges the ALJ's denial of its request to amend its charge to add an allegation that Respondent should not have agreed to represent CSPOs before the positions were filled. We conclude that such an amended charge would not affect the result here. In determining whether a newly created position is properly included in an established bargaining unit, this Commission looks to whether a community of interest exists between the positions of the established bargaining unit and the newly created position. Such a decision requires an examination of a number of factors including similarities in duties, skills and working conditions. *Lenawee Intermediate Sch Dist*, 24 MPER 28 (2011); *Grand Rapids Pub Schs*, 1997 MERC Lab Op 98; *Covert Pub Sch*, 1997 MERC Lab Op 594. We only require that the unit be appropriate, and will not determine the relative degree of community of interest between multiple bargaining units. See *Henry Ford Community College*, 1996 MERC Lab Op 374, 379-380; *Saginaw Valley State College*, 1988 MERC Lab Op 533, 538. If a position shares a community of interest with more than one bargaining unit, and both units claim the position, we generally will not interfere with the position's unit placement (*City of Lansing*, 2000 MERC Lab Op 380), absent a showing that a

[4] See *Detroit Pub Sch*, 24 MPER 8 (2011).
[5] See *Detroit Pub Sch*, 24 MPER 9 (2011).

community of interest between the disputed position and the current bargaining unit no longer exists. *City of Kalamazoo,* 1983 MERC Lab Op 249.

In this case, it is undisputed that the two bargaining units operated within the same public safety department and performed similar duties. We also note that fundamental distinctions existed. Respondent's bargaining unit members are mostly certified police officers, required to carry firearms, conduct onsite investigations, and exercise arrest powers, while Charging Party's members lack such authority. According to the duties outlined by DPS in the position description, CSPOs would be required to successfully pass a state certified police training program and would perform functions akin to those of the PSPOs. A CSPO would be considered for promotion to a PSPO in Respondent's bargaining unit. Conversely, Charging Party's members were specifically prohibited from performing many of the duties required of CSPOs and PSPOs. PSSOs were not allowed to carry firearms or execute arrests, and police certification training was not a requisite for holding the PSSO classification. The record before us supports the conclusion that, from the beginning, all parties, including Charging Party, clearly understood these distinctions. Further, we previously held in our decision on the related unit clarification and representation petitions that a sufficient community of interest exists between the CSPOs and Respondent's members. Thus, we decline to disrupt the Employer's placement of the CSPOs into the POLC unit.

We also find no basis in the record for the claim that DPS and POLC conspired to misrepresent the actual duties of the proposed CSPOs in order to fraudulently place the new positions into Respondent's bargaining unit. Nor does the record support a finding that the delayed implementation of the certification requirement which initially precluded the new CSPOs from carrying firearms and making arrests was caused or controlled by Respondent. In light of the above, we concur with the ALJ's conclusion that Respondent reasonably relied on the Employer's representations as to the training and duties required of those who would fill the newly created CSPO positions. Thus, we hold that Respondent did not violate PERA by initially agreeing and then continuing to represent CSPOs pending our decision on Charging Party's unit clarification petition in Case No. UC09 C-009.

Charging Party also asserts that the ALJ misapplied the legal standard for summary disposition by recommending dismissal without a hearing. Under Commission Rule 165 (2), summary disposition is appropriate where there is no genuine issue of material fact, or where a charge fails to state a valid claim under PERA. In such instances, the ALJ is authorized to issue an order requiring a party to assert facts and arguments of law in support of its contention to avoid the grant of summary disposition in the opposing party's favor. (*Wayne Cnty*, 24 MPER 25 (2011). Relying on *Smith v Lansing Sch Dist*, 428 Mich 248 (1987), we have consistently held that an evidentiary hearing is not warranted where no genuine material factual dispute exists. *AFSCME Council 25, Local 207*, 23 MPER 101 (2010), *Muskegon Hts. Pub. Sch. Dist*., 1993 MERC Lab Op 869, 870. Based on the charge and other pleadings by Charging Party, we find that the ALJ appropriately concluded that no material facts remained in dispute to justify conducting an evidentiary hearing on Charging Party's claim. Further, Charging Party did not specifically request oral argument in its pleadings or show cause response. *AFSCME Council 25, Local 207*, 23 MPER 99 (2010); *Teamsters Local 214*, 16 MPER 8, 18 (2003). Finding no basis

to support the existence of a PERA violation, the ALJ properly recommended summary dismissal of the charge.

Finally, we have carefully and thoroughly considered the remaining arguments raised by Respondent and find that they would not change the result in this case. Accordingly, we affirm and adopt the ALJ's Decision and Recommended Order.

ORDER

IT IS HEREBY ORDERED that the Order for summary dismissal of the charge recommended by the Administrative Law Judge shall become the Order of this Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
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
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

POLICE OFFICERS LABOR COUNCIL,
Labor Organization-Respondent,

Case No. CU09 G-021

-and-

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

APPEARANCES:

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On July 10, 2009, Teamsters Local 214 filed an unfair labor practice charge with the Michigan Employment Relations Commission against the Police Officers Labor Council (POLC). The charge alleges the Respondent violated Section 10(3)(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. 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 July 10, 2009, Teamsters Local 214 also filed a charge against the Detroit Public Schools (the Employer), docketed as Case No. C09 G-103. The charge against the Employer was consolidated with a unit clarification petition filed by Teamsters Local 214 (Case No. UC09 C-009) and a petition for representation election filed by the Police Officers Association of Michigan (Case No. R09 C-047) and set for hearing before me. The instant charge, the charge against the Employer, and the unit clarification petition involve the Employer's placement of the position campus security police officer in a bargaining unit represented by the POLC. The Police Officers Association of Michigan seeks an election in the unit currently represented by the POLC.

On July 15, 2009, pursuant to my authority under Rules 165(1), 2(d) and (3) of the Commission's General Rules. AACS 2002 423.165, I issued an order to the Charging Party to show cause why its charge against the Respondent POLC should not be summarily dismissed because it failed to state a claim upon which relief could be granted under the Act. Charging Party filed a response to my order on August 19, 2009. Respondent was granted permission to file a reply to this order. Based on facts as set forth in the charge and in Charging Party's pleadings, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Background Facts:

Charging Party represents a bargaining unit of employees of the Employer's department of public safety commonly referred to as security officers. Security officers represented by Charging Party are not required to be certified police officers, do not carry firearms while on duty, and do not have general arrest powers. The POLC represents public safety police officers employed in this same department. The unit now represented by the POLC came into existence in about 1995 after an agreement between Charging Party and the Employer to allow police officers who were required to be certified to leave Charging Party's unit and form their own bargaining unit. Until the events giving rise to the charge, all employees in the POLC's unit were required to be certified police officers, carried firearms, and had general arrest powers.

Sometime prior to December 2008, the Employer decided to create a new classification, campus security police officer. The Employer and the POLC agreed that the classification would be placed in the POLC's bargaining unit. On December 17, 2008, the Employer and the POLC signed a letter of agreement (LOA) modifying the seniority clause of their existing collective bargaining agreement to include provisions specific to the campus security police officer position, including an agreement that the campus security police officers' seniority would begin from the date of their assignment to duties in that position. The (LOA) did not cover wages, benefits or any other terms or conditions of employment for the campus security police officers.

On about January 6, 2009, the Employer posted the position of campus security police officer and invited applications. The posting remained open until about January 20. The posting did not indicate whether the position would be included in a bargaining unit. However, it included the following paragraph:

> Successful candidates must complete a basic Security/Police Training Course as required by Michigan Commission on Law Enforcement Standards (MCOLES). Please see Michigan.gov for details regarding MCOLES. Service as a Campus Security Police Officer will be considered in selecting further Public Safety Police Officers.

According to the posting, the job duties of the campus security police officers were to include detaining or arresting suspects committing or attempting to commit crimes on school facilities or offenses to pupils, school personnel or other persons; conducting on-site investigations of crimes and offenses while collecting evidence and securing witnesses; and testifying in court.

Charging Party was not notified of the posting in advance, and on January 22, 2009 sent the Employer a letter asking for information about the position, including whether the employees were to be employed as certified police officers and whether they were to be armed or unarmed. It also requested a special conference to discuss the position. The Employer did not provide a written response to this letter, but told Charging Party orally that the campus security police officers, after completing MCOLES training at the Employer's expense, would be sworn officers

who would carry firearms on duty. The Employer also told Charging Party that the position would not be included in any bargaining unit.

Nearly all the campus security police officer positions were filled with individuals who had been security officers in Charging Party's unit. The campus security police officers began work and, in accord with the agreement between the Employer and the POLC, became part of the POLC's bargaining unit. However, the campus security police officers were not sent to MCOLES training as the job posting indicated they would be. They are not permitted to carry firearms while on the job and, according to Charging Party, perform essentially the same job duties as security officers.

On March 20, 2009, Charging Party filed a unit clarification petition seeking to have the campus security police officers recognized as part of their unit. Charging Party asserts that as the campus security police officers are not certified police officers and perform essentially the same job duties as its members, there is no new position; alternatively, it asserts that the position should be found to have a community of interest only with Charging Party's unit.

The charge against the POLC alleges that it unlawfully restrained and coerced the campus security police officers in the exercise of their rights under Section 9 of PERA, including their right to bargain collectively with their employer through representatives of their own free choice, by: (1) seeking and accepting the recognition of the Employer as the campus security police officers' collective bargaining representative; and (2) continuing the act as the exclusive bargaining representative of these employees without "meeting the requirements of PERA."

In its response to the order to show cause, Charging Party argues that the POLC violated employees' rights by agreeing to represent the campus security police officers before the position was filled and the wishes of the employees could be determined. It also argues that the POLC violated employees' rights by continuing to represent them after the pertinent facts about the position became clear. That is, it argues that once the POLC realized that the campus security police officers were not going to be certified police officers and that they were working side by side with security officers performing essentially the same duties, it should have repudiated its agreement to represent them. [6]

Discussion and Conclusions of Law:

The only issue in this case is whether Charging Party has alleged facts which, if true, would state a claim against the POLC upon which relief could be granted under PERA. Whether campus security police officer was, in fact, a new position; whether, if so, it was properly placed in the POLC unit; and whether the Employer violated PERA are matters to be decided in the separate unit clarification, representation case and unfair labor practice proceeding now scheduled for hearing before me.

[6] In addition to alleging that the Employer unlawfully recognized the POLC as the bargaining representative of the campus security officers, Charging Party alleges in its charge against the Employer that it created the campus security police officer position and placed it in the POLC unit in order to reduce the size of Charging Party's unit because of Charging Party's past aggressive enforcement of its unit members' rights.

Charging Party claims that the POLC violated Section 10(3)(a) of PERA by seeking or accepting the Employer's recognition as the representative of the campus security police officers when it did not represent a majority of these employees. In support of its claim that the POLC violated PERA by agreeing to include the campus security police officers in its unit before the position was filled, Charging Party cites two cases, both of which arose under the National Labor Relations Act (NLRA), 29 USC 150 et seq, and involved factual scenarios very different from this one. In *Frontier Telephone of Rochester*, 344 NLRB 1270 (2005), an employer and the union which represented a unit of the employer's customer service representatives agreed to accrete a group of unrepresented help desk technicians to the union's bargaining unit. The help desk position was not new, but had existed for more than two years, and the accretion took place one day before another union filed a representation petition to represent these employees. The National Labor Relations Board (NLRB) held that the union violated Section 8(b)(1)(A) of the NLRA by agreeing to accrete the help desk technicians to its unit and applying its union security clause to them. The NLRB noted that accretion is never appropriate as to a group that the parties have historically failed to include in the unit. In the second case, *Dean Transportation Inc*, 350 NLRB 48 (2007), *enf'd* 551 F3d 1055 (2009), a company that provided transportation services contracted with the Grand Rapids Public Schools (GRPS) to take over its bus service and hired most of the former GRPS employees. The NLRB held that the union that represented the company's drivers violated the NLRA by accepting recognition as the bargaining representative of bus drivers employed at the new location when an uncoerced majority of employees had not designated it as their representative. In concluding that the drivers were not an accretion to the existing unit, the NLRB noted that it considers single plants and single facilities to be the presumptively appropriate unit. Although the facts were different in each case, in neither of these cases did the union that agreed to represent the employees have a reasonable basis for viewing the positions as proper accretions to its unit.

Here, Charging Party and the POLC represent historically separate units of employees of the Employer's department of public safety. Both units help ensure the safety of the school district's students, employees and property. The POLC's unit includes certified police officers, while the security officers in Charging Party's unit are not trained as police officers and do not carry weapons or have arrest powers. In 2008, the Employer created a new job title, campus security police officer, in the department of public safety. According to the Employer's job posting, campus security police officers, like members of the POLC's existing unit, were to receive MCOLES training even though they were not required to be certified police officers. Although the exact duties of the position were unclear, the difference in training implied that the campus security police officers would have duties different from those of security officers. I find, based on the facts as alleged by Charging Party, that at the time the POLC agreed to represent what was apparently a new position, it had a reasonable basis to conclude that the position belonged in its unit. I conclude, therefore, that the POLC did not violate Section 10(3)(a) of PERA by agreeing to represent the position before it was filled, or by continuing to represent the position pending resolution by the Commission of the dispute over its proper unit placement. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____