STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (POLICE DEPARTMENT),
Public Employer-Respondent,

Case No. C10 F-132

-and-

DETROIT POLICE LIEUTENANTS AND
SERGEANTS ASSOCIATION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Fraser, Trebilcock, Davis & Dunlap, P.C., by Kenneth S. Wilson, for Respondent

Law Offices of J. Douglas Korney, by J. Douglas Korney, for Charging Party

DECISION AND ORDER

On July 22, 2011, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent, City of Detroit (Employer) did not violate § 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e) when it refused to implement a wage increase that Charging Party, Detroit Police Lieutenants and Sergeants Association, claims is due pursuant to an Act 312[1] arbitration award. Finding that there is a bona fide dispute over the meaning of the contract terms set by the Act 312 award, the ALJ held that Charging Party did not allege facts sufficient to establish that Respondent repudiated the contract. The ALJ concluded that Charging Party failed to state a claim upon which relief could be granted and recommended that the charge be dismissed. The ALJ's Decision and Recommended Order was served on the interested parties in accordance with § 16 of PERA.

On September 13, 2011, after requesting and receiving an extension of time, Charging Party filed exceptions to the ALJ's Decision and Recommended Order on Summary Disposition. After being granted an extension of time to file its response to the exceptions, Respondent filed its brief in support of the ALJ's Decision and Recommended Order on Summary Disposition on October 25, 2011.

[1] Act 312, 1969 PA 312, as amended, MCL 423.231-247, provides for compulsory binding arbitration of unresolved contract disputes in municipal police and fire departments.

In its exceptions, Charging Party argues the ALJ erred by concluding that Respondent did not repudiate the contract. Charging Party contends Respondent unlawfully repudiated the parties' contract when it refused to pay the wage increases Charging Party claims are required by the contract terms set by the Act 312 award.

In its brief in support of the ALJ's Decision and Recommended Order, Respondent asserts that the parties have a bona fide dispute over the interpretation of the contract terms, and, therefore, no repudiation occurred.

We have considered the arguments made in Charging Party's exceptions and find them to be without merit.

Factual Summary:

On July 1, 2008, Respondent increased wages for Charging Party's supervisory bargaining unit members by three percent pursuant to Article 54(B) of the parties' expired contract. Article 54(B) established percentage differentials between the salaries of Charging Party's bargaining unit members and the salaries of police officers represented by the Detroit Police Officers Association (DPOA). The wage increase followed a three percent increase for members of the DPOA bargaining unit.

On December 15, 2008, an Act 312 arbitration award was issued that established the terms of a collective bargaining agreement between Charging Party and Respondent for the period of July 1, 2006, through June 30, 2009. The Act 312 award included a provision, Article 54(A), for a three percent wage increase effective July 1, 2008. Article 54(B), establishing percentage differentials between the salaries of Charging Party's bargaining unit members and the DPOA salaries, remained unchanged.

The parties disagree as to whether the July 1, 2008 increase paid to Charging Party's bargaining unit members in order to maintain the contractual differentials also satisfied the July 1, 2008 salary increase called for by the Act 312 award. Charging Party claims that two increases of three percent each were called for, one under Article 54(B), the provision for a salary differential, and the other under Article 54(A), the separate provision for the salary increase awarded under the Act 312 award. Respondent disagrees and has refused to pay the second increase. On March 17, 2009, Charging Party filed a grievance.

The grievance resulted in a January 29, 2010 grievance arbitration opinion and award that directed Respondent to "review the wage adjustments provided to the Association during the period the Master Agreement is in effect to ascertain if the wage adjustments that have been made are in compliance with the provisions of Article 54A and 54B." The award also ordered Respondent to "make the wage adjustments necessary or provide retroactive wage adjustments as necessary to assure compliance with Article 54A and 54B."

Charging Party filed a circuit court complaint for enforcement of the grievance arbitration award. Respondent provided Charging Party with calculations alleged to support its claim that it

had made the salary adjustments required by the collective bargaining agreement. Respondent filed a counterclaim for enforcement of the award and a motion for summary disposition.

On June 1, 2010, Charging Party filed its charge in this matter alleging that Respondent failed to implement the wage increases required by the Act 312 arbitration award.

On June 18, 2010, the circuit court remanded the matter to the arbitrator to determine whether Respondent had satisfied the grievance arbitration award. In a supplemental opinion and award issued October 28, 2010, the arbitrator rejected Charging Party's contention that members of its bargaining unit were entitled to two wage increases of three percent each on July 1, 2008, and denied Charging Party's grievance. Thereafter, the circuit court issued an order confirming the arbitration award.

Discussion and Conclusions of Law:

Charging Party claims the ALJ erred by not finding Respondent repudiated the parties' collective bargaining agreement. Repudiation warranting Commission involvement can be found only when there has been a substantial abandonment of the collective bargaining agreement or the bargaining relationship. *AFSCME Council 25*, 22 MPER 102 (2009). Repudiation exists only when both of the following occur: (1) the contract breach is substantial and has a significant impact on the bargaining unit; and (2) no bona fide dispute over interpretation of the contract is involved. *Gibraltar Sch Dist,* 18 MPER 20 (2005); *Eastern Michigan Univ*, 17 MPER 72 (2004). See also *Plymouth-Canton Cmty Sch*, 1984 MERC Lab Op 894, 897, where the Commission explained that parties' ability to resort to a mandatory binding dispute resolution procedure is an important factor when the Commission declines to exercise jurisdiction over alleged contract breaches that do not rise to the level of repudiation.

Charging Party argues that Respondent's refusal to pay a second, three per cent wage increase on July 1, 2008, was a substantial breach of the parties' collective bargaining agreement and had a significant impact on the bargaining unit. However, the issue before the Commission in this matter is whether there is a bona fide dispute over the interpretation of the parties' contract. When binding arbitration is included in the parties' grievance resolution procedure, minor contract breaches and bona fide disputes over contract interpretation can and should be resolved through the mechanism agreed to by the parties. It is only where the parties have not agreed to a mandatory binding procedure for dispute resolution that the Commission would exercise jurisdiction over a bona fide dispute about contract interpretation. *Plymouth-Canton* at 898.

Here, the dispute over Respondent's contractual obligation was grieved, the grievance was arbitrated, the arbitration award was reviewed and remanded by the circuit court, the arbitrator issued a final opinion that was favorable to Respondent, and the circuit court confirmed that award. Charging Party argues that the grievance arbitrator's final opinion and award contradicts his original opinion and award, i.e., that the arbitrator erred. We do not determine whether an arbitrator's award is proper. See e.g. *City of Detroit (Police Dep't),* 23 MPER 4 (2010). A challenge to an arbitrator's award lies with the circuit court. As the Commission explained in *West Bloomfield Bd of Ed*, 1977 MERC Lab Op 512, 515-16:

> A policy of deferring to arbitration contemplates that such deferral will encompass the entire arbitration process including, if necessary, the enforcement of arbitral awards in court . . . Assuming arguendo that the Commission has jurisdiction in this matter concurrently with that of a circuit court to review a party's compliance with an arbitration award or lack thereof, we conclude that declining to exercise our jurisdiction will best ensure that the procedures to which the parties have contractually committed themselves will be afforded a full opportunity to function.

See also *City of Romulus*, 1991 MERC Lab Op 566; 4 MPER 22092.

Here, the parties' collective bargaining agreement included a grievance process ending in binding arbitration; a final arbitration award was issued which was confirmed by the circuit court. Implicit in the circuit court's order is a finding that the arbitrator's award drew its essence from the parties' contract. Both an arbitrator and a circuit court have rejected Charging Party's interpretation of the contract and have held that Respondent has complied with the provisions that are in dispute. Although Charging Party argues that the arbitrator got it wrong, we will not venture to second guess the merits of the dispute. In these circumstances, we are constrained to hold that the dispute was bona fide. Thus, we affirm the ALJ's finding that Charging Party has not alleged facts sufficient to support the charge that Respondent repudiated its contract with Charging Party.

ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Robert S. LaBrant, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT (POLICE DEPARTMENT),
Respondent-Public Employer,

Case No. C10 F-132

-and-

DETROIT POLICE LIEUTENANTS
AND SERGEANTS ASSOCIATION,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Fraser Trebilcock, by Kenneth S. Wilson, for Respondent

J. Douglas Korney for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On June 1, 2010, the Detroit Police Lieutenants and Sergeants Association (DPLSA) filed an unfair labor practice charge alleging that the City of Detroit violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by failing or refusing to implement a three percent wage increase which was to be effective for Charging Party's bargaining unit on July 1, 2008. Pursuant to Sections 10 and 16 of PERA, this case was assigned to David M. Peltz, Administrative Law Judge of the Michigan Administrative Hearing System, on behalf of the Michigan Employment Relations Commission.

Findings of Fact:

Charging Party represents a bargaining unit of supervisory employees of the City of Detroit Police Department, including investigators, sergeants, and lieutenants. On December 15, 2008, an arbitration award was issued pursuant to the Compulsory Arbitration Act (Act 312), MCL 423.231 *et seq*. The award established terms of a collective bargaining agreement for DPLSA bargaining unit members for the period July 1, 2006 to June 30, 2009.

The Act 312 award, which was issued by arbitrator William E. Long, included Article 54(A), a provision for wage increases for Charging Party's members in the amount of three percent effective July 1, 2003, five percent effective July 1, 2004 and three percent effective July

1, 2005. Article 54(B), which remains unchanged from the prior collective bargaining agreement, contains a wage schedule specifying the required percentage wage differential between the salaries of police investigators, police sergeants and police lieutenants and the maximum salary of police officers represented by the Detroit Police Officers Association (DPOA). For example, the contract provides that the differential between the salary of a sergeant upon confirmation or upon completion of one year in rank, whichever occurs later, shall be 21 percent or more than the salary of a police officer.

On July 1, 2008, the City, in compliance with Article 54(B) of the then-expired contract with the DPLSA, increased wages for Charging Party's members by three percent following the issuance of an Act 312 award covering DPOA members. The DPOA award provided for a series of wage increases for police officers, including a three percent increase effective July 1, 2008.

On March 17, 2009, Charging Party filed a grievance claiming that the City failed to implement what amounts to a six percent wage increase to DPLSA members which Charging Party claimed was required by the DPLSA award issued December 15, 2008. Charging Party asserted that the language in Article 54(B) required the City to provide a three percent wage revision effective July 1, 2008 as a result of the need to comply with the award in the Act 312 DPOA case, and that the language in Article 54(A) required the City to provide an additional three percent increase effective July 1, 2008 in order to comply with the arbitration award covering DPLSA members. The City took the position that the three percent wage increase provided to Charging Party's members effective July 1, 2008 as a result of the DPOA award fulfilled its obligations for compliance with the DPLSA award.

The grievance was also heard by arbitrator William Long. On January 29, 2010, Long issued an award directing the City to review the payments made to Charging Party's members. Specifically, the award provided, in pertinent part:

> The Arbitrator grants the grievance to the extent necessary for the City to be in compliance with Article 54A and Article 54B of the Master Agreement as described herein. The City shall, within a reasonable time following issuance of this Opinion and Award, review the wage adjustments provided to the Association during the period the Master Agreement is in effect to ascertain if the wage adjustments that have been made are in compliance with the provisions of Article 54A and 54B using the procedure for that calculation as described in this Opinion and Award. If the wage adjustments that have been made are not in compliance with Article 54A and Article 54B using the procedure for that calculation as described in this Opinion and Award, the City shall make the wage adjustments necessary or provide retroactive wage adjustments as necessary to assure compliance with Article 54A and 54B.

On March 4, 2010, the Union filed a complaint in Wayne Circuit Court to enforce the grievance arbitration award. On March 9, 2010, Respondent provided to the Union calculations which purportedly established that the City had made the necessary wage adjustments to comply with Articles 54(A) and 54(B) of the collective bargaining agreement. Thereafter, the City filed a counterclaim seeking enforcement of the award and a motion for summary disposition. In an

order issued on June 18, 2010, the circuit court remanded the case to Arbitrator Long to ascertain whether the wage adjustments satisfied the City's obligations set forth in Articles 54(A) and 54(B) of the contract, as specified in the January 29, 2010 grievance award.

Following the submission of additional written materials and briefs, Arbitrator Long issued a supplemental opinion and award on October 28, 2010. The arbitrator denied the grievance, finding that the wage adjustments made by the City were in compliance with the provisions of Articles 54(A) and 54(B) of the collective bargaining agreement. In so holding, the arbitrator specifically rejected Charging Party's contention that its members were entitled to a three percent wage increase on January 1, 2008 and another three percent wage increase on July 1, 2008. Based upon a thorough review of the parties' proposals to the Act 312 panel, as well as the documentation submitted by the City and attested to by affidavit of the City's labor relations manager, Long concluded that "at no time during the period of the agreement did the differential provision of Article 54B require an adjustment of Association member wages." On May 20, 2011, the circuit court issued an order "confirming" the arbitration award and closing the case.

Charging Party filed the instant charge on June 1, 2010. On October 12, 2010, the City moved to have the case dismissed on summary disposition, arguing that the DPLSA had failed to allege facts constituting a repudiation of the collective bargaining agreement. The City asserted that the charge pertains to a dispute over the meaning and interpretation of the contract and, therefore, does not allege a violation of PERA. In support of that position, the City relied upon the January 29, 2010 grievance award.

Following the issuance of the supplemental opinion and award by Arbitrator Long, the City renewed its motion for summary disposition on February 14, 2010. The Union responded to that motion the following day, arguing that the matter was properly before the Commission because the City had repudiated the contract by failing to make the wage adjustments required by Article 54(A) of the contract. In its response, the Union made no reference to the existence of the supplemental opinion and award or the findings of the arbitrator set forth therein. On March 15, 2011, I ordered the parties to appear for oral argument on the City's motion for summary disposition.

Oral argument was held on June 16, 2011. After considering the extensive arguments made by counsel for both parties on the record, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition was appropriate pursuant to Commission Rule R 423.165 (1). See also *Detroit Pub Sch*, 22 MPER 19 (2009) and *Oakland Cty and Oakland Cty Sheriff v Oakland Cty Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a bench decision, finding that Charging Party had failed to state a valid claim under PERA for breach of the duty to bargain in good faith under Section 10(1)(e) of PERA. The substantive portion of my findings of fact and conclusions of law are set forth below

> [T]he issue before the Commission today is not whether in fact Articles 54(A) and (B) require what either party says [what] they require. The issue before me today is whether there is a PERA claim that has been stated.

The Commission's jurisdiction is limited with respect to its involvement in contract disputes. [A]lthough the award came from [an Act] 312 panel as opposed to a negotiated agreement, it is treated as . . . a contract by MERC and under PERA. In such instances the law is clear that an employer's alleged breach of a collective bargaining agreement does not in and of itself constitute an unfair labor practice. A PERA violation can be established only where the charging party has alleged and proven that the employer has repudiated the agreement.

The finding of repudiation cannot be made on [an] insubstantial or isolated breach of contract. *Oakland Cty Sheriff*, 1983 MERC Lab Op 538, 542. Repudiation exists only when both of the following occur: (1) the contract breach is substantial and has a significant impact on the bargaining unit; and (2) no bona fide dispute over interpretation of the contract is involved. *Plymouth Canton Community Sch*, 1984 MERC Lab Op 894, 897. The Commission will find [a] repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507.

To the extent in this case that a repudiation has been alleged, I do not find the undisputed facts to support such a conclusion. In the instant case, what we had initially was . . . a good faith dispute over the meaning of Article 54 of the contract. Both sides . . . did and continue today to present reasonable interpretations of that provision and how it should be applied. In such a situation, there cannot be a repudiation and, therefore, there could be no issue [about] which the Commission has jurisdiction to consider. What instead is [supposed] to occur in such a situation is that the good faith bona fide dispute be resolved via the grievance arbitration procedure.

And that is in fact what did occur in this matter. There was a grievance filed. There were two grievance arbitration decisions, both by the same individual who was the Chair of the [Act] 312 panel that essentially, [for] lack of a better word, wrote this [collective bargaining] agreement. The second decision, [in] October of 2008, that decision found, and I will quote again from the arbitrator's decision, "The arbitrator finds the wage adjustments that have been made by the City are in compliance with the provisions of Articles 54(A) and 54(B) of the contract between the parties required by the Act 312 Award, and in compliance with the procedure for calculating the wage adjustments described in the January 29th grievance award."

Again, it's not the Commission's job to determine whether the arbitrator was correct or incorrect. Once we determine that there was a bona fide dispute about the meaning [of the contract language], that ends the Commission's inquiry.

* * *

> To the extent that there were erroneous findings of fact by the arbitrator, as Mr. Korney, you've alleged, to the extent that you assert that the arbitrator got it wrong . . . those are reasonable arguments. But they're not arguments that can be made to the Commission. The Commission has held that alleged non-compliance with an arbitration award or enforcement of the interpretation of an arbitration award is a matter for the circuit court as part of its authority to enforce arbitration awards and [that] such matters are not unfair labor practices under PERA. *City of Romulus*, 1991 MERC Lab Op 566, 569; *Ingham County Bd of Comm's*, 7 MPER 25 (1994); *Kalamazoo Pub Sch*, 4 MPER 22 (1991).
>
> So in conclusion, I find that there has been no PERA claim stated in this matter. There has been rather a good faith bona fide dispute [over] the interpretation of the contract, a matter that is properly resolved via the grievance arbitration procedure, and it has been.[2]

Based on the findings of fact and conclusions of law set forth above, I issue the following recommended order:

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: July 22, 2011

[2] The transcript excerpt reproduced herein contains typographical corrections and other minor edits for clarity purposes. The completed unedited transcript is maintained within the Commission case file.