

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

DELHI CHARTER TOWNSHIP,  
Public Employer,

Case No. UC11 J-018

-and-

DELHI TOWNSHIP FIREFIGHTERS,  
INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, LOCAL 5359,  
Labor Organization-Petitioner.

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APPEARANCES:

Sherry L. Hedrington, for the Public Employer

Michael L. O'Hearon, P.L.C., by Michael L. O'Hearon, for the Labor Organization

**DECISION AND ORDER DENYING  
MOTION FOR RECONSIDERATION**

On October 31, 2013, the Commission issued its Decision and Order on Petition for Unit Clarification in the above-entitled matter granting the petition filed by Local 5359 of the International Association of Fire Fighters (IAFF). Petitioner sought to include the newly created position of recruitment and retention coordinator (coordinator) in its bargaining unit of full-time fire fighters employed by Delhi Charter Township (Employer). We found that the coordinator position has a community of interest with Petitioner's bargaining unit and must be included therein despite the Employer's argument that the coordinator's duties were inconsistent with policy positions taken by the IAFF.

The Employer filed "exceptions" to our October 31, 2013 Decision and Order, as well as a motion and brief in support of reconsideration on November 25, 2013. After requesting and receiving an extension of time, Petitioner submitted a brief in response to the Employer's "exceptions" and motion for reconsideration on December 12, 2013. On December 23, 2013, by e-mail to Commission staff, the Employer requested an extension of time to file a reply to Petitioner's response to the Employer's motion for

reconsideration. The same day, Commission staff responded to the Employer's extension request by sending an e-mail to both parties explaining:

The Commission's rules do not provide for a reply brief after a response to a motion for reconsideration. Accordingly, the rules make no provision for granting an extension of time to file a reply to a response to motion for reconsideration.

However, in analogous situations in unfair labor practice charge cases, the Commission has reviewed replies to responses to motions where there has been no objection to the filing of the reply from the opposing party. Therefore, if the Petitioner does not object to the Employer filing a reply to the Petitioner's response to the Employer's motion for reconsideration, the Commission may consider the reply.

Later that day, Petitioner e-mailed its response to Commission staff and to the Employer's attorney indicating that it objected to the filing of a reply brief. On January 17, 2014, the Employer filed a motion to extend the time for filing a reply brief along with its reply in support of its motion for reconsideration.

Procedural issues:

In Petitioner's brief, it argues that the Employer's "exceptions" should be disregarded, as Commission rules do not provide for exceptions to Commission decisions. The filing of exceptions to the Commission is governed by Rule 176 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.176. Under Rule 176, exceptions may be filed when a party seeks Commission review of an administrative law judge's decision and recommended order. In this case, however, the Employer is questioning the correctness of a Commission decision. Therefore, the filing of exceptions is not appropriate. Nevertheless, it is evident that the Employer is requesting that the Commission review its own decision. Accordingly, we will treat the Employer's "exceptions" as a motion for reconsideration.

Petitioner also contends that the Employer's November 25, 2013 filing is untimely. As pointed out in Petitioner's brief, Rule 167 allows for the filing of a motion for reconsideration of a Commission decision no later than twenty days after the issuance of the decision. Petitioner correctly notes that twenty days from the date the Commission Decision and Order was issued is November 20, 2013. However, Rule 183 provides: "Whenever a party has the right or is required to do some act within a prescribed period after being served with a document or pleading by mail, three days shall be added to the prescribed period." Based on that part of Rule 183, the Employer would have had until Saturday, November 23 to file its motion. Rule 183 also extends the time period for filing to the next business day if the end of the prescribed period is a Saturday, Sunday, or legal holiday. Therefore, the deadline for filing a motion for reconsideration in this matter was November 25, 2013. The Employer's motion for reconsideration is timely.

However, the Employer's January 17, 2014 request for an extension of time to file a reply brief must be denied. The General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R 423.101 - 423.484 do not provide for the filing of a reply brief. Therefore, the rules do not provide for the granting of an extension of time to file a reply brief. Although we may consider a reply brief where the adverse party does not object, Petitioner objected when the Employer initially inquired about filing a reply brief. Therefore, the Employer's reply brief cannot be considered in this case. See *University of Michigan*, 25 MPER 48 (2011).

### Issues Raised by the Motion for Reconsideration

In its brief in support of reconsideration, the Employer argues that there is no community of interest between Petitioner's bargaining unit and the coordinator position. The Employer also asserts that the coordinator position is a management position responsible for supervising volunteer paid on-call fire fighters. The Employer contends that, therefore, the coordinator should be exempted from the Union. Each of these issues was discussed in our October 31, 2013 Decision and Order.

Our Decision also addressed the Employer's concerns over the IAFF policy with respect to the employment of part-time paid on-call fire fighters, which it has raised again in its brief in support of reconsideration. The Employer argues that it is critical that we review the Union's policies in the light of the enactment of Public Act 349 of 2012, which occurred after the close of the record in this matter. Public Act 349 amended the Public Employment Relations Act to end agency shop in public sector employment in Michigan, with the exception of employees of public police or fire departments, as defined by § 2 of Act 312<sup>1</sup>. As we stated previously: "The IAFF policy at issue is an internal union policy that has no bearing on whether the newly created position of recruitment and retention coordinator has a community of interest with Petitioner's bargaining unit." The enactment of 2012 PA 349 does not change that.

Rule 167 of the Commission's General Rules, 2002 AACRS, R 423.167, governs motions for reconsideration and states in pertinent part:

A motion for reconsideration shall state with particularity the material error claimed. . . . Generally, and without restricting the discretion of the commission, a motion for reconsideration which merely presents the same issues ruled on by the commission, either expressly or by reasonable implication, will not be granted. (Emphasis added)

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<sup>1</sup> Act 312, 1969 PA 312, as amended by 1976 PA 203, 1977 PA 303, and 2011 PA 116, MCL 423.231-247.

Inasmuch as the motion for reconsideration essentially restates the arguments the Employer made previously, which were carefully reviewed in our Decision and Order, the Employer has not set forth grounds for reconsideration of our Decision. See *American Ass'n of Univ Profs* 18 MPER 9 (2005), aff'd *American Ass'n of Univ Profs v Sabol*, unpublished opinion per curiam of the Court of Appeals, issued July 12, 2005 (Docket No. 260751), 18 MPER 47; *Wayne Co Cmty College*, 16 MPER 50 (2003).

Additionally, the Employer contends that we concluded on pages 5 and 6 of our Decision and Order that "since this is a new position all of the working conditions had not yet been determined." We made no such conclusion in our October 31, 2013 Decision and Order on Petition for Unit Clarification in this case. The Employer has failed to set forth any basis for reconsideration.

**ORDER**

The Employer's motion for reconsideration is denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie B. Yaw, Commission Member

Dated: February 14, 2014