

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

In the Matter of:

BROWNSTOWN TOWNSHIP,  
Public Employer,

-and-

MICHIGAN ASSOCIATION OF POLICE,  
Labor Organization-Incumbent,

Case No. R06 G-077

-and-

TEAMSTERS, LOCAL 214,  
Petitioner.

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**APPEARANCES:**

Cox, Hodgman & Gianmarco, P.C., by John C. Clark, Esq., for Public Employer

Pierce, Duke, Farrell & Tafelski, P.C., by M. Catherine Farrell, Esq., for the Michigan Association of Police

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for Teamsters Local 214

**DECISION AND ORDER ON MOTION FOR RECONSIDERATION**

On October 30, 2006, we issued our Decision and Order in the above case ordering the reinstatement of representation proceedings initiated by a petition filed on July 7, 2006, by Teamsters, Local 214 (Teamsters). Our Order also stayed Act 312 arbitration proceedings between the Public Employer, Brownstown Township (Employer) and the Michigan Association of Police (MAP). On November 17, 2006, MAP filed a timely motion for reconsideration with a statement of service attesting that copies of the motion were served on the opposing parties on November 15, 2006. To be timely, any response to MAP's motion for reconsideration should have been filed on, or before, November 28, 2006. See Rules 161(3) and 183 of the Commission's General Rules, 2002 AACS, R 423.161(3) and R 423.183. However, it was not until December 1, 2006 that the Teamsters filed Local 214's Response to MAP's Motion for Reconsideration and Request for Immediate Action. That document included a proof of service attesting that it had been

served on opposing parties on November 30, 2006. Inasmuch as the Teamsters' response to the motion for reconsideration was neither filed nor served in a timely fashion, we decline to consider it. On December 11, 2006, MAP filed its reply to the Teamsters' response. Since we have not considered the Teamsters' response to the motion for reconsideration MAP's reply to the response is moot.<sup>1</sup>

MAP represents a unit of all full-time and part-time patrol officers, detectives, dispatchers, and clerical employees in the Employer's police department. The Teamsters seek to represent a segment of those employees and, to that end, filed the July 7, 2006 petition in this matter. On July 18, 2006, MAP advised the Bureau of Employment Relations (BER) of a pending Act 312 arbitration between itself and the Employer, which, it asserted, would block the representation proceedings. Noting that MAP filed the petition for Act 312 arbitration on February 24, 2006, and that it appeared, therefore, that the representation petition was barred by our longstanding Act 312 bar policy<sup>2</sup>, the BER director dismissed the representation petition. Subsequently, the Teamsters sought the Commission's review of that dismissal, which we granted in our October 30, 2006 Decision and Order.

In our Decision, we discussed the history of the Act 312 bar policy and past exceptions that the Commission has made to the policy. We considered the rationale behind the policy, to the extent that we have been able to discern it, and considered the possibility that potential abuse of the policy may support its modification. We also explained that continuation of the policy deserves closer scrutiny. Upon further review of this issue, we are persuaded that it is necessary to have a full factual record to support our decision on whether the representation petition should be barred by the pending Act 312 arbitration, whether the unit is appropriate, and whether an election should be directed in this matter. Accordingly, this matter must be referred to an Administrative Law Judge for a hearing at which the parties will be given the opportunity to present evidence and to expound upon all the relevant issues. The record should contain evidence describing the bargaining history of the last collective bargaining agreement between MAP and the Employer, as well as evidence of bargaining for a successor agreement, including the dates on which the parties met to bargain and dates on which mediation occurred. The record should also include evidence of whether Act 312 proceedings have occurred, and the dates

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<sup>1</sup> Apparently, the Teamsters served a supplemental brief on the opposing parties on December 13, 2006. MAP responded by filing a motion to strike the Teamsters' supplemental brief on December 22, 2006. However, the Teamsters' supplemental brief was not filed with MERC until December 27, 2006. MERC's rules do not provide for the filing of a supplemental brief. Moreover, as indicated above, the period for filing a response to the motion for reconsideration, or a brief in support of that response, ended on November 28, 2006. Accordingly, we have not considered the Teamsters' supplemental brief.

<sup>2</sup> The Act 312 bar policy, which was adopted by the Commission on April 25, 1978, provides:

The commission will entertain representation petitions during the established filing period of 150-90 days prior to the expiration date of a collective bargaining agreement even though Act 312 arbitration has been initiated or is pending but, if the collective bargaining agreement has expired and an Act 312 arbitration proceedings [sic] pending, the filing of a representation petition will be barred by the arbitration proceeding.

and nature of any such proceedings. The parties must also be given the opportunity to present arguments on the policy considerations that support or oppose the Act 312 bar policy as it applies to the facts of this case.

**ORDER**

Our October 30, 2006 Decision and Order is set aside to the extent that it is inconsistent with this order. The Petition for Representation Proceedings filed by Teamsters Local 214 is reinstated and referred to an Administrative Law Judge for a full hearing for the purpose of developing the record in this matter. The hearing shall be scheduled forthwith and conducted in accordance with Sections 12 and 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 and MCL 423.213. Proceedings in the Act 312 arbitration between Brownstown Township and the Michigan Association of Police are stayed until the completion of the proceedings in this matter.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_