

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Respondent –Labor Organization,

Case No. CU04 A-004

-and-

CITY OF DEARBORN,
Charging Party-Public Employer.

APPEARANCES:

Peter W. Cravens, Esq., For the Labor Organization

Dykema Gossett, PLLC, by John A. Entenman, For the Public Employer

DECISION AND ORDER

On January 27, 2005, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 76, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on February 22, 2005.

No exceptions were filed on or before the specified date. Rather, we received Charging Party's exceptions on February 23, 2005. Although the cover letter enclosed with the exceptions was dated on February 18, 2005, it is well established that the date of filing of exceptions is the date the document is received. See e.g. *City of Detroit (Finance Department, Income Tax Division)*, 1999 MERC Lab Op 444,445; *Battle Creek Police Dep't*, 1998 MERC Lab Op 684, 686; *Frenchtown Charter Township*, 1998 MERC Lab Op 106, 110. Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on May 28, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record, including post-hearing briefs filed by August 10, 2004, I make the following findings of facts and conclusions of law.

The Unfair Labor Practice Charge:

On January 20, 2004, Charging Party City of Dearborn filed an unfair labor practice charge against Respondent Police Officers Association of Michigan alleging that it violated Section 10(3)(c) of PERA. The charge alleges that Respondent violated the Act by raising new issues for the first time during an Act 312 arbitration proceeding and by submitting a brief to the Act 312 arbitrator without providing a copy to Charging Party.

Findings of Fact:

The facts are essentially undisputed. Respondent and Charging Party were parties to a collective bargaining agreement that covered the period July 1, 1999 through June 30, 2003. They began negotiations for a successor contract on April 22, 2003, and on June 24, 2003, Respondent filed for mediation. Two months later, on August 27, 2003, Charging Party filed for Act 312 arbitration.

During a December 4 pre-hearing conference before the Act 312 arbitrator, the parties were directed to file briefs on the issue of the contract's duration. Respondent submitted its brief

to the arbitrator on December 10, but did not send a copy to Charging Party. Charging Party submitted its brief to the arbitrator and to Respondent on December 22, 2003.

At the December 4 pre-hearing conference, the arbitrator also directed the parties to submit a list of outstanding issues. The list provided by Respondent included two issues – pension contributions and deferred retiree medical insurance – that had not been mentioned during negotiations and had never been mediated.

Conclusions of Law:

Charging Party alleges that Respondent failed to bargain in good faith by submitting issues to the Act 312 arbitration panel that had never been negotiated or mediated.

Section 8 of the Compulsory Arbitration Act, MCL 423.238, provides in relevant part:

At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last best offer of settlement of each economic issue.

The issue presented in this case was considered in *POAM v Ottawa Co Sheriff and Ottawa Co Bd of Comm*, 263 Mich App 358 (2004); *POAM v Ottawa Co Sheriff and Ottawa Co Bd of Comm,(On Reconsideration)*, 264 Mich App 133 (2004). The Court noted that the Legislature’s use of the disjunctive “or” in the phrase “at or before the conclusion of a hearing” in Section 8, indicated its intent to grant arbitration panels discretion to determine the economic issues in dispute either at the hearing or before the conclusion of the hearing. The Court concluded that there nothing in the plain language of MCL 423.238 that precludes a party from identifying a disputed issue at the arbitration hearing. In view of the Court’s ruling, I find that Respondent did not violate PERA by submitting issues to the Act 312 arbitration panel that had not negotiated or mediated.

Charging Party provides no support, and I have found none, for its assertion that Respondent violated its duty to bargain under PERA by failing to provide a copy of its arbitration brief to the City. It is not the Commission’s role to police the conduct of parties during Act 312 proceedings. I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: