

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

In the Matter of:

**GREEN OAK TOWNSHIP,**  
Respondent-Public Employer,

**Case No. C97 F-134**

-and-

**MICHIGAN ASSOCIATION OF PUBLIC  
EMPLOYEES,**  
Charging Party-Labor Organization.

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APPEARANCES:

Cohl, Stoker & Toskey, P.C., by John R. McGlinchey, Esq., for Respondent

Hoekenga and Associates, by Daniel J. Hoekenga, Esq., for Charging Party

**DECISION AND ORDER**

On October 13, 1998, Administrative Law Judge James P. Kurtz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

**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

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date: \_\_\_\_\_

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

In the Matter of:

GREEN OAK TOWNSHIP,  
Public Employer-Respondent

- and -

Case No. C97 F-134

MICHIGAN ASSOCIATION OF PUBLIC EMPLOYEES (MAPE),  
Labor Organization-Charging Party

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APPEARANCES:

Cohl, Stoker & Toskey, P.C., by John R. McGlinchey, Atty, for Public Employer-Respondent

Hoekenga and Associates, by Daniel J. Hoekenga, Atty, for Labor Organization-Charging Party

**DECISION AND RECOMMENDED ORDER**  
**OF**  
**ADMINISTRATIVE LAW JUDGE**

Pursuant to the provisions of Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216, MSA 17.455(16), this matter was heard in Lansing, Michigan, on November 7, 1997, by James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission, after issuance of a complaint and notice of hearing dated July 7, 1997. Based upon the record and post-hearing briefs filed on or before March 19, 1998,<sup>1</sup> the undersigned makes the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

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<sup>1</sup>As requested by Charging Party, the parties agreed to two extensions of time for the filing of briefs, the last one allowing briefs to be postmarked by March 13, 1998. The Employer's brief was mailed on March 11 and received the next day. Charging Party's brief was mailed on March 17 and received on March 19. The Employer protested the late filing of the Union's brief after having received the Employer's brief, and it deferred to the ALJ "as to what, if any, remedy shall issue for the untimely filing." Charging Party responded that the Commission has accepted late briefs, or no briefs, in the past, that the late filing did not delay "the wheels of justice," and apologized for any inconvenience. Although the Commission has recently refused to accept late-filed exceptions to an ALJ decision in *Frenchtown Twp*, 1998 MERC Lab Op 106, 110, and on motion for reconsideration at 271, 272, I find no prejudice to the Employer in this case and will accept the brief of Charging Party as filed.

### Charge and Background Matters:

The unfair labor practice charge, filed on June 20, 1997, set forth in detail the factual allegations relative to an alleged unilateral modification of Township practices in regard to the employment of Stacia DeNoyer, a clerical employee in the police department. Specifically, the charge contended that the Employer had violated or refused to apply its “annual salary increase procedure” with respect to DeNoyer by denying her a performance review, an annual increase, and an appeal of the denial to the Township Board. Further, the charge alleged that the Township discriminated against DeNoyer because of her union activity by the failure to pay her for March 14, 1997 when the Township offices were closed due to weather conditions.

The Township filed an answer to the charge on July 15, 1997, admitting most of the underlying facts, but denying any unfair labor practice. The Township affirmatively alleged that on March 14, 1997 the police department where DeNoyer worked was not closed and that she failed to report for work that day. It further admitted that it refused to deal directly with DeNoyer over mandatory subjects of bargaining in view of her inclusion in the bargaining unit. The Employer also denied that there was any established past practice relative to wage increases.

### Certification of Union:

The Union, MAPE, filed a petition for a certification election on August 2, 1996, Case No. R96 G-125, seeking to represent a bargaining unit composed of all nonsupervisory employees of the Township. A consent election agreement was subsequently entered into, defining the bargaining unit as, all clerical personnel, including assessor I and II, senior clerical to Township treasurer and clerk; clericals in the police department, administrative assistant and clericals in the building/zoning department; but excluding all other employees. The Union won the election held on September 18, 1996 by a vote of 8-1. A Certification of Representative was dated September 30, 1996, but it named the wrong labor organization, Michigan Association of Police instead of MAPE. A corrected certification was sent out at an undetermined later date.

The Union offered as background testimony two incidents of alleged Employer interference with employees’ organizational activities, occurring in August 1996 after the filing of its petition for election. In the first incident, the elected Township treasurer asked the two employees in his office, the deputy treasurer and a unit clerical, who started the Union. They indicated that they did not know, and the treasurer stated that he had heard that “Stacia started it because of a question she asked.” DeNoyer solicited authorization cards for the Union, and she served on the Union’s bargaining committee for one meeting when negotiations began in about June of 1997. On another occasion, the elected Township clerk was talking with three employees in the building department when the subject of the Union was raised. The clerk is alleged to have indicated that the employees would get nothing with a union. The clerk testified that she told the employees that a union does not always get the people what they want.

### Factual Findings—Wage Increase Issue:

Since 1988 the Township has had a “Personnel Manual” that applies only to its “non-union personnel.” This manual explicitly states that it does not create a contract with any applicable employees, and that the employees covered by it are “employees at will.” With respect to salary increases, the manual stresses that they are not automatic; that department heads wishing to recommend an increase are to submit a request to the Township Supervisor by April 1 for approval by the Township Board. Increases are to go into effect in July, and department heads are to notify employees in writing if a raise was not being recommended. As noted below, this procedure was not followed for the most part by the Employer, but has been modified by the use of a personnel committee of the Township board. The manual provides that new hires are eligible for an increase after six months of employment. The manual also contains “complaint procedures,” which directs aggrieved employees to first present their problem to their department head. If the department head’s answer is unsatisfactory, then the employee is to direct his/her complaint to the Township board which will issue a final and binding decision.

The personnel committee is made up of Township officials and it usually meets once a month. The committee recommends to the Township board wage increases for employees and other personnel action. This committee also considers the increases for employees being promoted to a higher classification or a different job, and the standard step increases for new hires. Performance reviews are not provided for, as such, by the Employer’s manual, but as a matter of practice they usually accompany a wage increase recommendation to the personnel committee. According to the record, such reviews are supposed to be made yearly, but their timing varies considerably, if they are made at all. Where an employee has gone a length of time without an increase, the committee can recommend one on its own without an evaluation. Both the amount and the timing of wage increases are discretionary with the committee and board, and they depend on the state of the Township budget, the performance of the employee, any change in duties, and similar factors. Sometimes no increase is given. There are no automatic wage increases, but there were two across-the-board increases for all non-union Township employees, one in January 1995, and another in October 1997.

The personnel committee continued to recommend promotion, new hire, and regular step increases for bargaining unit employees through its November 14, 1996 meeting. After that meeting a new Township Supervisor and board took over, and the board decided on advice of counsel that no further increases should be granted unit employees in view of the forthcoming negotiations. The only increase given to a unit employee after that time, according to the record, was a six-month promotional type increase given in February 1997 to Lesa Beardsley, who had been hired by the Township on July 29, 1996. A second clerical, hired on October 7, 1996, Ellen Troian, received no increase. The remaining eight clericals in the unit, including DeNoyer, all received some type of increase during the year prior to November 1996, as follows: October, 1995--Adams; February, 1996--DeNoyer; September, 1996--Berz, Doyle (promotion), Klein (promotion), and Soave (promotion); November, 1996--Downing and O’Connell. In regard to the foregoing raises, except for DeNoyer, the record does not set forth the date of the individual’s last increase, but only gives their original hire or anniversary date. In the case of DeNoyer, she was hired February 2, 1994, received an evaluation and wage increase on or about August 17, 1994, and a year and a half later, on February 6, 1996, she was again evaluated and given a raise.

In February 1997, DeNoyer began to press for an evaluation and a raise. Her supervisor, Police Chief Brookins, answered that evaluations were not being done. He, nevertheless, checked with the Township Supervisor who told him that it was the policy of the board not to conduct evaluations during periods of negotiation. DeNoyer put her request for a performance review and raise in writing to her supervisor on March 5, 1997. He responded on March 21, indicating that, "At this time, performance reviews are not being conducted, and pay raises are not being considered." Using the Township's complaint procedure, DeNoyer then took her complaint to the Township board. She appeared at the April 2, 1997 meeting of the board, and requested the evaluation and raise. The Township Supervisor stated that the board could not discuss the matter on advice of legal counsel.

Payment for March 14, 1997:

On March 14, 1997, an ice storm struck the Township resulting in the loss of power for the Township hall and adjacent building department offices. The Township police department is located in a separate building some distance from the hall and it did not lose power. The Township offices were closed for the day, and those employees who reported for work were sent home. The police department, however, remained open. DeNoyer did not report to work because of the storm, but the other clerical working there, Karen Adams, did report to work. Subsequently, the Township board authorized payment to the hall and office employees affected by the power failure, but those working in the police building were required to use sick or personal leave in order to be paid for that day, if they did not report to work.

Discussion and Conclusions:

The Union contends that the Employer violated its bargaining obligation by changing its established working conditions set forth in the Township manual relative to evaluations, pay raises, and employee grievance procedure. While the record is devoted to the attempts of DeNoyer to be evaluated and given an increase in pay, beginning in February 1997, the Union's brief added the other clerical in the police department, Karen Adams, as an employee unlawfully denied an increase and discriminated against by the refusal to pay or give compensatory time for the power outage on March 14, 1997. This addition does not affect the determination in this case under the particular circumstances herein.

The Township manual relied on by the Union limited its scope by its very terms to the non-union personnel of the Township. Once the Union was certified, the Employer was legally required under Section 11 of PERA to deal only with that organization relative to wages, hours, and working conditions of employees in the collective bargaining unit. See *Fire Fighters, Local 1383 v City of Warren*, 411 Mich 642, 662-667 (1981); *City of Ecorse*, 1998 MERC Lab Op 306, 310-311; *Detroit Fire Dep't*, 1991 MERC Lab Op 443, 448, and cases referred to at 459-462. Thus, such matters as evaluation procedures, pay increases, and complaint procedures must all be dealt with through the Union, rather than directly with represented employees. The refusal of the Township to deal directly with DeNoyer regarding a pay increase, and the procedures incident thereto, are clearly justified in view of the representative status of the Union. The Union contends that DeNoyer was representing

it in this regard, but the record does not support such a finding.

A further problem with the Township manual with regard to pay increases is that not only does it stress that pay increases are not automatic, but also the provisions of the manual were not followed by the Employer. There is no evidence that the April and July deadlines for increases were ever followed, and the procedure that was outlined in the record was at best haphazard in nature and at the will of the Employer. While the Union contends that employees were annually given a performance review and a wage increase, this is not established in the record. In DeNoyer's own case she was given a six-month from hire evaluation and increase,<sup>2</sup> but did not receive her next evaluation and increase until a year and a half later. The increases that the Employer did give to employees varied in amounts with the individual employee, and they were in no way a definite amount at a time certain for purposes of establishing a practice that would bind the Employer. With regard to the necessity for a promised wage increase to be certain as to date and amount before an employer can be held to such promise in the face of an election and certification of a bargaining representative, compare two recent decisions of ALJ Lynch, *Oakland Community College*, 1998 MERC Lab Op 34, 40-42 (wage adjustment denied where indefinite and contingent), and *Detroit Public Library*, 1997 MERC Lab Op 689, 692-694 (wage increase definite as to amount and timing became condition of employment when announced).

The Union contends that the refusals of the Employer to give DeNoyer and Adams a performance evaluation and wage increase, as well as not paying DeNoyer for March 14, 1997, was discriminatory under PERA and directly related to the statement of the Township clerk in August 1996 that employees might get nothing with a union. The refusal of the Employer to consider further wage increases for unit employees after November 1996 is explained above and is completely reasonable under the facts of this case. Similarly, the shutdown of the Township hall on March 14 for lack of power and paying the employees assigned there for the lost time, while keeping the police offices open, does not translate into an act of discrimination by the Employer on the facts of this case. The Employer was free to require police employees to work, while paying other employees, including unit employees, for the day lost due to the power outage. See *Roscommon County, Mini-Bus System*, 1998 MERC Lab Op \_\_\_ (8-20-98).

Except for the two rather mild references to the Union and DeNoyer in August 1996, there is no concrete evidence of Employer animus toward the representation of its employees, or in regard to any activity on behalf of the Union that might have been engaged in by DeNoyer. I conclude that the Charging Party has not sustained its burden of proving that the foregoing actions of the Employer were motivated by a desire to punish DeNoyer and Adams for their protected activity under Section 9 of PERA, or that it in any other way discriminated against employees within the meaning of Section 10(1)(a), (c), or (e) of PERA. Accordingly, relative to all of the above, I conclude there is insufficient evidence of a violation of PERA, and I recommend that the Commission issue the following order:

ORDER RECOMMENDING DISMISSAL

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<sup>2</sup>This newly-hired employee evaluation and increase procedure after six months appears to be the only established practice of the Employer regarding wage increases in this record.

The unfair labor practice charge and complaint in this case are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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James P. Kurtz,  
Administrative Law Judge

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