

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

In the Matter of:

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

-and-

Case No. C02 K-249A
(Compliance)

DETROIT POLICE OFFICERS ASSOCIATION,
Labor Organization-Charging Party.

APPEARANCES:

City of Detroit Law Department, by Dara M. Chenevert, Esq., and Valerie A. Colbert-Osamuede, Esq.,
for Respondent

Gregory, Moore, Jeakle, Heinen & Brooks, P.C., by James M. Moore, Esq., for Charging Party

DECISION AND ORDER ON COMPLIANCE

On November 29, 2004, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order on Compliance finding that Respondent failed to comply with the Commission's April 9, 2004 Decision and Order in this matter. In the absence of exceptions, that Order adopted ALJ Roulhac's February 26, 2004 Decision and Recommended Order. The ALJ found that Respondent City of Detroit (Police Department) failed to bargain in good faith with Charging Party Detroit Police Officers Association (DPOA) in violation of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.201, *et seq.*, when Respondent unilaterally changed the standards and criteria for promoting DPOA members by agreeing to honor an Act 312¹ arbitration award between Respondent and the Detroit Police Lieutenants and Sergeants Association (DPLSA). That arbitration award directed the City to promote certain DPLSA members ahead of DPOA members. The ALJ held that the award did not relieve Respondent of its duty to bargain with the DPOA. Consequently, Respondent was ordered, *inter alia*, to restore to DPOA members the terms and conditions of employment that were applicable prior to the issuance of the Act 312 award and make them whole for any losses suffered because of promotions that did not comply with the parties' past practice.

¹ Act 312, MCL 423.232, provides for compulsory binding arbitration of unresolved contract disputes in municipal police and fire departments.

On May 12, 2004, the DPOA petitioned for a hearing on compliance, arguing that Respondent had not complied with the Commission's April 9, 2004 Decision and Order. In the November 29, 2004 Decision and Recommended Order, the ALJ directed that Respondent: promote to sergeant the ten police officers and investigators identified by stipulation as being eligible for promotion prior to the unilateral change of eligibility standards; and change from March 1, 2004, to February 6, 2004, the effective dates of the promotions of nine employees who were promoted from the eligibility register on July 22, 2004. The ALJ's Decision and Recommended Order on Compliance was served upon the interested parties in accordance with Section 16 of PERA. Respondent filed exceptions on December 6, 2004; on December 16, 2004, Charging Party filed a Brief in Support of the ALJ's Decision and Recommended Order.

In its exceptions, Respondent argues that to promote ten employees based on an expired eligibility register and to move the effective date of nine other promotions goes beyond restoring the *status quo ante*. Respondent also argues that promotions based on the expired register would impair the rights of the employees on a new eligibility register established on July 1, 2004. Upon reviewing the record carefully and thoroughly, we find merit to some of the exceptions.

Facts:

The facts in this case are not in dispute; they were set forth fully in the Decisions and Recommended Orders and need not be repeated in detail here. The Charging Party, DPOA, is the exclusive bargaining agent for all Detroit police officers below the rank of investigator. Investigators are included in a bargaining unit represented by the DPLSA. These parties and Respondent have a longstanding practice of adhering to an eligibility register for promotions to the rank of sergeant. The register in effect at the time of the Decision and Order was issued pursuant to Personnel Order 00-297 and had been in effect since October 17, 2000. It included both police officers belonging to the DPOA unit and investigators in the DPLSA unit. Promotions were made from the register in strict order of listing.

On June 2, 2003, an Act 312 arbitration award was issued in a proceeding between the DPLSA and Respondent. That award, based in part on Respondent's intention to eliminate the position of investigator, provided that "the Department shall promote any and all Investigators to the rank of Sergeant without . . . adhering to past practice." Charging Party did not receive notice from any interested party to the Act 312 proceedings that the panel was considering changes in promotion procedures that might impact DPOA members. Subsequently, Respondent expressed its intention to implement the Act 312 award, including the promotion of investigators to sergeant without regard for past practice. As a result, Charging Party amended its previously filed charge regarding unilateral changes in promotional standards to challenge this action.

On or about February 6, 2004, Respondent promoted ten investigators who were not on the eligibility register to the rank of sergeant. At the same time, eighty-four promotions to the rank of sergeant were granted to persons who were on the eligibility roster. On March 12, 2004, after receiving the ALJ's Decision and Recommended Order, Respondent rescinded these promotions. On April 2, 2004, Charging Party demanded that Respondent promote the next ten individuals on the eligibility roster to the rank of sergeant and make the promotions retroactive to February 6, 2004. Respondent did not agree with this

demand, and on May 12, 2004, Charging Party requested a compliance hearing, asserting that Respondent had failed to follow the Commission's Order.²

Discussion and Conclusions of Law:

The issue presented to this Commission is whether the *status quo ante* relief that was ordered in this case requires Respondent to not only rescind the promotions that were granted pursuant to the Act 312 award, but to promote the next ten individuals on the October 17, 2000 eligibility roster as well. We hold that it does not.

As noted by the ALJ, and as reflected in the parties' stipulation, the ten investigators who received promotions were not on the eligibility register and were promoted *solely to comply with the Act 312 award*. There has been no showing that Respondent would have promoted ten employees in addition to the eighty-four promotions made from the eligibility list, but for the requirements of the Act 312 award. In accordance with the Decision and Order finding that the Act 312 panel had no authority to alter standards and criteria for promotion to the rank of sergeant, these ten promotions have been rescinded. Accordingly, we find that the Respondent fully complied with our previous Order when it rescinded the promotions of ten investigators made pursuant to the Act 312 award.

ORDER

Pursuant to the above findings that Respondent has complied with the Commission Decision and Order issued April 9, 2004, it is hereby ordered that Charging Party's request for further relief is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Dated: _____

² On July 22, 2004, pursuant to an Umpire's Order and Award in Grievance No. 04-042, the next thirty-three persons from the eligibility register were promoted, effective as of March 1, 2004, including nine of the ten individuals whom Charging Party contended should have been promoted pursuant to the Commission's Order; the tenth individual had already retired.

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DETROIT POLICE OFFICERS ASSOCIATION,
Labor Organization - Charging Party.

APPEARANCES:

City of Detroit Law Department, by Dara M. Chenevert, Esq., for the Public Employer

Gregory, Moore, Jeakle, Heinen & Brooks, P.C., by James M. Moore, Esq., for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission (MERC) on August 5, 2004, 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 upon the record and post-hearing briefs filed by November 21, 2004, I make the following findings of fact, conclusions of law and recommended order pursuant to Section 16(b) of PERA.

The Unfair Labor Practice Charge:

On April 9, 2004, the Commission issued a final Decision and Order in Case No. C02 K-249. To remedy an unfair labor practice, Respondent was directed to, among other things: (1) restore to the police officers the terms and conditions of employment that were applicable prior to issuance of a June 23, 2003, Act 312 award that promoted all investigators to sergeant and continue them in effect until the parties reach an agreement or a good-faith impasse in bargaining; (2) make the police officers whole for any losses they may have suffered because of promotions to sergeant that did not comply with the parties' past practice, including interest at the statutory rate; and (3) post copies of the attached Notice to Employees in conspicuous

places on its premises, including all locations where notices to employees are customarily posted for thirty consecutive days.³

On April 9, 2004, pursuant to Rule R 423.177, Charging Party requested that the Commission conduct a formal hearing because Respondent had failed and refused to make police officers whole, and to post the Commission's Notice to Employees as ordered.

Stipulated Facts:

The parties stipulated to the following facts:

1. On or about February 6, 2004 the City of Detroit promoted 94 police officers and investigators to the rank of sergeant. Ten of the investigators who were promoted were not on the Eligible Register dated October 17, 2000 and were promoted solely to comply with the City of Detroit-Detroit Police Lieutenants and Sergeants Association Act 312 Award dated June 4, 2004, in particular pages 43-45 of that decision. ... This exhibit includes handwritten notations identifying each promoted person's numeric place on the Eligible Register (if applicable) and whether the person was an investigator. Unless identified as an investigator, they held the rank of police officer. The Eligible Register for the rank of sergeant contains persons holding the ranks of police officer and investigator. ...
2. The ALJ's Decision and Recommended Order in this case was issued on February 26, 2004.
3. On or about March 12, the City rescinded the promotions of the ten investigators it had promoted on February 6, 2004 pursuant to the City-DPLSA Act 312 Award. ...
4. On April 2, 2004, counsel for the DPOA wrote to counsel for the City and inquired concerning the relief ordered by the ALJ in this case. ...
5. It is the position of the DPOA that the relief ordered in this case requires the promotions of ten persons from the Eligible Register to fill the vacancies created by the rescission of the promotions of the ten investigators that were made pursuant to the City-DPLSA Act 312 award and rescinded as a result of the Order in this case.
6. On July 22, 2004, the department ordered that 33 persons from the Eligible Register be promoted to the rank of sergeant, effective March 1, 2004. This action was taken to comply with an Umpire's Opinion and Award dated June 29, 2004 in Grievance No. 04-042. ...

³As set forth in paragraph 10 below, the notice posting issue has been resolved.

7. The persons promoted pursuant to the aforesaid Opinion and Award included nine of the ten persons originally identified by the Association in its April 2, 2004 correspondence as being entitled to promotion under the MERC Order. (The remaining person, Ronnie Warren, has retired.)
8. It is the position of the Association that the ten persons now entitled to promotion under the relief ordered in this case are the next ten persons on the Eligible Register (irrespective of whether they currently hold the rank of police officer or investigator). These ten persons are 280 James Coles; 281 Troy Debets; 282 Amir Harris; 283 Alex Vinson; 284 Ray Perkins; 285 Derrick Hendrix; 286 Thomas Allen; 287 James Kraszewski; 288 Mark Busch; 289 Jeffrey O'Keefe; and 290 Victoria Shaw. If any of the listed persons are found not to be eligible for promotion, for example, because they have retired or have failed to provide timely documentation of college credit, then an equivalent number of persons from the Eligible Register, in numeric order, shall become the persons entitled to be promoted as part of the ten persons entitled to promotion under the relief ordered in this case.
9. The City agrees that the ten persons as identified above are the next persons on the Eligible Register but disagrees that it is obligated to promote anyone under the MERC Order in this case.
10. The Department agrees that no later than August 4, 2004 and for a period of 30 days, it will post the Notice to Employees in this case at all of the department locations identified in the list of department facilities . . . At any locations where the department establishes that it has, in fact, already posted the Notice to Employees for the required time period, no additional posting shall be required.

Conclusions of Law:

Respondent acknowledges that it erred on February 6, 2004, when it promoted ten investigators to sergeant who were not on the Eligible Register and rescinded the promotions after receiving my February 26, 2004 Recommended Decision and Order. Respondent, however, argues that Charging Party's suggestion that ten additional persons be promoted is without merit and that the promotion of ten additional persons would require it to compound its error. I disagree.

In my Recommended Order, Respondent was required to "restore to the police officers the terms and conditions of employment that were applicable prior to issuance of a June 23, 2003, Act 312 award that promoted all investigators to sergeant and continue them in effect until the parties reach an agreement or a good-faith impasse in bargaining." This means that until the parties reach an agreement or bargain to a good-faith impasse on implementation of the Act 312 award, Respondent is required to restore the terms and conditions of employment that existed prior to the award, i.e., continue using the Eligible Register, in numeric order, to identify

persons to be promoted to sergeant.

Respondent was also required to “make the police officers whole for any losses they may have suffered because of promotions to sergeant that did not comply with the parties’ past practice, including interest at the statutory rate.” The parties agree that on or about February 6, 2004, Respondent promoted ninety-four police officers and investigators to the rank of sergeant and that ten investigators who were promoted were not on the Eligible Register and were promoted solely to comply with the Act 312 Award.

I agree with Charging Party’s assertion that in order to “make the police officers whole,” Respondent is required not only to rescind the promotions of the ten investigators who were promoted to comply with the Act 312 award, which it has already done, but to promote the ten persons identified in paragraph 8 of the parties stipulated facts to sergeant. This finding, contrary to Respondent’s assertion, does not require it to compound its “error.” Rather, it “makes the police officers whole” by restoring the situation, as nearly as possible, to that which would have existed but for Respondent’s failure to adhere to past practice by promoting ten investigators to sergeant who were not on the Eligible Register on February 6, 2004.

If, on February 6, 2004, Respondent had adhered to past practice and based promotions to sergeant on police officers’ and investigators’ numeric order on the Eligible Register, the nine persons identified in the Union’s April 2, 2004 correspondence to Respondent as being entitled to promotion under the February 26, 2004 Recommended Decision and Order of the Administrative Law Judge, would have been promoted instead of ten investigators who were not on the Eligible Register. Rather, on July 22, 2004, those nine persons were among thirty-three persons promoted, effective March 1, 2004, from the Eligible Register to comply with an arbitration award in an unrelated matter. Therefore, in order to comply with the Commission’s “make whole” order in Case No. C02 K-249, Respondent must promote to sergeant, effective March 1, 2004, the ten police officers and investigators identified as now being eligible for promotion in paragraph 8 of the stipulated facts. Moreover, Respondent must change from March 1, 2004, to February 6, 2004, the effective dates of the promotions of the nine persons identified in the Union’s April 2, 2004 correspondence as being entitled to be promoted pursuant to the February 26, 2004 Recommended Decision and Order of the Administrative Law Judge in Case No. C02 K-249.

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

Recommended Order

It is ordered that the City of Detroit, its officers, agents, representatives, and successors shall take the following affirmative action to effectuate the policies of PERA and to remedy the unfair labor practices in the Commission’s Decision and Order in Case No. C02 K-249 issued April 9, 2004:

1. Promote to sergeant, effective March 1, 2004, the ten police officers and investigators identified as now being eligible for promotion in paragraph 8 of the stipulated facts as now being eligible for promotion. These persons are: 280 James Coles; 281 Troy Debets; 282 Amir Harris; 283 Alex Vinson; 284 Ray Perkins; 285 Derrick Hendrix; 286 Thomas Allen; 287 James Kraszewski; 288 Mark Busch; 289 Jeffrey O'Keefe; and 290 Victoria Shaw.⁴ If any of the listed persons are found not to be eligible for promotion, because they have retired or have failed to provide timely documentation of college credits, then an equivalent number of persons from the Eligible Register, in numeric order, shall become the persons entitled to be promoted as part of the ten persons entitled to promotion under the relief ordered in this case.
2. Change from March 1, 2004, to February 6, 2004, the effective dates of the promotions of the nine persons identified in the Union's April 2, 2004 correspondence to Respondent as being entitled to be promoted pursuant to the February 26, 2004 Recommended Decision and Order of the Administrative Law Judge in Case No. C02 K-249.
3. For a period of 30 days, post copies of the attached Notice to Employees in the list of Respondents' facilities identified in a document introduced as Exhibit 6 in this proceeding. The notice shall not be altered, defaced or covered with any other material.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: November 29, 2004

⁴The parties' stipulation includes eleven persons instead of ten.

NOTICE TO EMPLOYEES

After a public hearing before an Administrative Law Judge of the MICHIGAN EMPLOYMENT RELATIONS COMMISSION, the CITY OF DETROIT (POLICE DEPARTMENT) was found to have committed unfair labor practices in violation of the MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). Based upon an ORDER of the COMMISSION, WE HEREBY NOTIFY OUR EMPLOYEES that:

WE WILL promote to sergeant, effective March 1, 2004, the ten police officers and investigators identified as now being eligible for promotion in paragraph 8 of the stipulated facts as now being eligible for promotion. These persons are: 280 James Coles; 281 Troy Debets; 282 Amir Harris; 283 Alex Vinson; 284 Ray Perkins; 285 Derrick Hendrix; 286 Thomas Allen; 287 James Kraszewski; 288 Mark Busch; 289 Jeffrey O'Keefe; and 290 Victoria Shaw.⁵ If any of the listed persons are found not to be eligible for promotion, because they have retired or have failed to provide timely documentation of college credits, then an equivalent number of persons from the Eligible Register, in numeric order, shall become the persons entitled to be promoted as part of the ten persons entitled to promotion under the relief ordered in this case.

WE WILL must change from March 1, 2004, to February 6, 2004, the effective dates of the promotions of the nine persons identified in the Union's April 2, 2004 correspondence as being entitled to be promoted pursuant to the February 26, 2004 Recommended Decision and Order of the Administrative Law Judge in Case No. C02 K-249.

For a period of 30 days, post copies of the attached Notice to Employees in the list of Respondents' facilities identified in a document introduced as Exhibit 6 in this proceeding. The notice shall not be altered, defaced or covered with any other material.

All of our employees are free to engage in lawful, concerted activity through representatives of their own choice for the purpose of collective bargaining or other mutual aid or protection as provided by Section 9 of the Public Employment Relations Act.

CITY OF DETROIT

DATE: _____

⁵The parties' stipulation includes eleven persons instead of ten.