

TRUE COPY

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

In the Matter of:

GROSSE ILE TOWNSHIP  
Public Employer-Respondent,

-and-

MERC Case No. C18 H-081

POLICE OFFICERS ASSOCIATION OF MICHIGAN  
Labor Organization-Charging Party.

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APPEARANCES:

Koltz Sangster Wysocki P.C., by Matthew S. Derby, for Respondent

General Counsel Frank Guido and Assistant General Counsel Christopher Tomasi, for Charging Party


**DECISION AND ORDER**

On June 26, 2019, Administrative Law Judge Travis Calderwood (ALJ) issued his Decision and Recommended Order<sup>1</sup> in the above matter. The matter is currently before us on exceptions timely filed by Respondent Grosse Ile Township. We are aware that a related matter is pending in the Michigan Court of Appeals. See *Grosse Ile Township v. Police Officers Ass'n*, No. 348379 (Mich. Ct. App.). Because the appellate court ruling in that case may be instructive regarding—or even determinative of—the Commission’s decision regarding the alleged unfair labor practice, we have decided to defer our review of this case until the Court of Appeals issues its opinion.

**IT IS ORDERED:**

This matter be held in abeyance pending the decision of the Michigan Court of Appeals in Docket No. 348379. We further request the parties furnish this Commission with a copy of the appellate court decision once issued.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

  
\_\_\_\_\_  
Samuel R. Bagenstos, Commission Chair

<sup>1</sup> MOAHR Hearing Docket No. 18-017731.

*Edward D. Callaghan*

Edward D. Callaghan, Commission Member

*Robert S. LaBrant*

Robert S. LaBrant, Commission Member

Dated: MAR 13 2020

TRUE COPY

STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

GROSSE ILE TOWNSHIP,  
Public Employer-Respondent,

-and-

Case No. C18 H-081  
Docket Number. 18-017731-MERC

POLICE OFFICERS ASSOCIATION OF MICHIGAN,  
Labor Organization-Charging Party.

\_\_\_\_\_ /

APPEARANCES:

Koltz Sangster Wysocki P.C., by Matthew S. Derby, for the Respondent

General Counsel Frank Guido and Assistant General Counsel Christopher Tomasi for the  
Charging Party

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

On August 21, 2018, the Police Officers Association of Michigan (Association or Charging Party) filed the present unfair labor practice charge against Grosse Ile Township (Township or Respondent). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the above captioned case was assigned to Administrative Law Judge Travis Calderwood, of the Michigan Office of Administrative Hearings and Rules, formerly the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission).

Charging Party's premise of its unfair labor practice charge can be summarized as alleging that the Respondent violated PERA relative to its refusal to honor the parties' contractually based grievance process. Based upon the entire record, including the transcript of hearing held on November 14, 2018, the exhibits admitted into the record, and post hearing briefs filed by the parties on January 11, 2019, I make the following findings of fact, conclusions of law and recommended order.

## Findings of Fact:

Charging Party is the recognized collective bargaining representative for a bargaining unit comprised of Police Officers below the rank of Lieutenant, as well as Dispatcher/Clerks and Animal Control Officers – the Grosse Ile Police Officers Association, hereafter the Local. The Chief of Police, Lieutenants and executive secretary positions are explicitly excluded from the Local.

### Contract and Township Ordinances

The parties are both signatories to a collective bargaining agreement effective April 1, 2016, through March 31, 2022. The contract's signature page indicates that the bargaining unit ratified the agreement on September 19, 2016, and that the Township's Board of Trustees (Board) ratified the contract at a meeting of the Board on October 3, 2016. That page further provides that the agreement was executed on October 4, 2016.

Article 25 of the contract, entitled Grievances, sets forth the parties agreed upon grievance procedure. Subsection 1 of Article 25 provides the definition of a grievance and states:

- 25.1 A grievance shall mean a complaint by the Association and/or an employee or group of employees based upon an event, condition or circumstance under which an employee works, allegedly caused by a violation, misapplication or misinterpretation of any of the provisions of this agreement or any unfair, inequitable or unjust treatment.

Subsections 3, 4, 5 and 6, provide the following multi-step grievance procedure, along with strict time requirements, which ends in binding arbitration:

#### Step I

- 25.3 Oral Discussion: The aggrieved employee with a steward will discuss the matter with the Lieutenant in an effort to resolve the issue.

#### Step II

- 25.4 If the matter is not resolved in Step I, it shall be reduced to writing and presented to the Chief within fourteen (14) calendar days of the oral discussion answer. The Chief shall schedule a formal meeting within seven (7) calendar days and attempt to resolve this issue. The parties shall make available for examination all information they intend to present as evidence at this level of the grievance procedure. Within seven (7) calendar days of the meeting the Chief shall present his/her answer to the Steward in writing.

### Step III

25.5 If the Union is not satisfied with the answer at Step II, the grievance shall be submitted to the Police Commission within seven (7) calendar days. The Police Commission will hear the grievance at its next regular meeting. The Police Commission will answer the grievance in writing within ten (10) calendar days of hearing.

25.6 If the [U]nion is not satisfied with the disposition of the grievance and wishes to file for arbitration, such action must take place within thirty (30) calendar days from the date of the written answer from the Police Commission ... Both Parties agree to be bound by the Award of the Arbitrator...

Subsection 7 requires that the above timelines be strictly observed while also allowing their extension upon the mutual agreement of the parties. Subsection 8 addresses the finality of the process where no appeal of a prior decision is made and states:

25.8 If no appeal is taken within the prescribed time limit, the employee and union shall be deemed to have accepted the decision. Conversely, if an answer in writing is not presented to the union representative or the employee, where required in the prescribed time limit, then the matter shall be deemed to be settled in favor in the grievant.

Article 27, Wages and Fringes, provides in Subsection 10, the parties agreed-upon medical insurance terms. Subsection 10(c), states in the relevant part that “[a]n employee who retires... shall have the same hospital and medical coverage (or equivalent) as he/she was receiving upon retirement...”

Article 30, entitled Adoption by Reference, incorporates Township ordinances as part of the contract, stating:

The parties further agree that any existing ordinance and resolutions of the Township Board as of the date of ratification of this contract relating to working conditions and compensation of bargaining unit employees are incorporated herein by reference and made part hereof to the same extent as if they were specifically set forth, providing they are not in conflict with the terms of the agreement.

Article 31, the contract’s management rights section, provides at Subsection 1:

The Township, on its own behalf and on behalf of its electors, hereby retains and reserves unto itself, all powers, rights, authorities, duties and responsibilities conferred upon and vested in it by the law, the Constitution of the United States and the State of Michigan, and all amendments made thereto and conferred upon and vested in it by virtue of any ordinances or resolutions passed by the elected officials of the Township not in conflict with the express provisions of this

Collective Bargaining Agreement.

Chapter 67 of the Township's ordinances addresses the establishment, and authority and/or scope of the Township's various commissions. Article I of Chapter 67 provides at Ordinance §67-1(A)(1) the following in the relevant part:

Each Township commission is a part of the administration of the Township, not an independent agency. In making decisions, commissions have only those powers and authorities delegated to them by the Board. A commission shall make its decisions within such authority granted to it by the Township Board.

Ordinance §67-1(D)(1), in the relevant part states:

All commission employees are employees of Grosse Ile Township. The Township Board has established overall comprehensive personnel policies which include wage and fringe benefits and which apply to all Township employees, including personnel hired and who work for commissions.

\* \* \*

The Township Board shall establish wages, hours and all other conditions of employment with respect to all personnel hired by commissions. Collective bargaining, where applicable, will be conducted through representatives appointed by the Township Board. Commissions shall make recommendations to the Township Board as to wages, hours, and conditions of employment of commission employees and personnel and with respect to the contents of proposed collective bargaining agreements, where applicable.

Article III of Chapter 67 establishes the Police Commission. Under Ordinance §67-8(a) the Police Commission is comprised of five Township residents appointed by the Board, one of whom is a Board member. Ordinance §67-8(b) prohibits members of the Township's Police Department from serving on the Police Commission. Ordinance §67-10 sets forth the duties of the Police Commission and provides the following provisions relevant to the present proceeding:

The Police Commission is delegated and shall exercise the following authority, powers, duties and responsibilities with respect to the operation of the Grosse Ile Police Department; provided, however, that the following delegated authority, powers, duties and responsibilities shall be specified and shall contain no implied power not otherwise specified unless a following specific grant of power specifically provides for the existence of such implied power as is reasonably necessary for the exercise of the specifically delegated power:

\* \* \*

D. The Police Commission is delegated the authority to hire personnel for available

positions within the organizational structure of the Township's Police Department; provided, however, that the appointment or promotion of all other officers of the Township's Police Department above the rank of sergeant shall be by the Township Board after recommendation thereon has been received by the Township Board from the Police Commission with respect to such appointment or promotion.

- E. The Police Commission shall have and is delegated the power and authority to reprimand, discipline, suspend, demote or discharge any member of the Township's Police Department after hearing thereon, provided that [sic] involving the demotion or discharge of any member of the Township's Police Department shall require Township Board approval prior to implementation thereof and shall, in all respects, be subject to the terms of the then-existing collective bargaining agreements between the Township and the Police Officers Associations.

#### Retiree Healthcare Grievance

On February 3, 2017, the Local filed a grievance, Grievance No. 17-37, challenging the Township's action to increase medical insurance premiums for a recently retired member of the Local. According to the grievance, the Local alleged that it had learned on January 25, 2017, that the Township had increased the monthly premium for a recently retired individual from \$77.00 to \$122.00, which according to the grievance violated Article 27.10 of the parties' contract. As relief, the grievance requested that the Township "[c]orrect the increase and reimburse all overages paid by those affected." According to witness testimony, the Lieutenant was unavailable to address Grievance 17-37 at Step I and it was instead referred to the Chief of Police at Step II. The Chief declined to rule on the grievance instead writing on the grievance form:

This grievance cannot be handled by Police [Management] nor the Police Commission. The following is not denied at this step and will be turned over to [the Township] Manager.<sup>1</sup>

By letter dated February 8, 2017, Officer Todd Brozek, the Local's Vice President, referred Grievance No. 17-37 to Township Manager Dale Reaume. The substance of the letter and relief requested was of the same nature as that initially set forth in Grievance No. 17-37.

By email on March 24, 2017, Reaume provided a response to the grievance which stated in the relevant part:

As we discussed during our February meeting both parties agreed to extend the response time for [Grievance No. 17-37] until the end of March. Therefore, please consider the following response:

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<sup>1</sup> The Chief of Police did not testify at the hearing and as such there is no admissible testimony available in order to clarify and/or explain why the Chief believed neither he nor the Police Commission could consider Grievance No. 17-37.

\* \* \*

3. The Union made the request that when a member retires – the monthly medical premium the employee was paying under the Hard Cap Program shall remain the same and shall not increase.
4. Management did not object to the request in item #3, however, explained that under the Hard Cap Program, premium increases above the Hard Cap Allowance would be distributed among the entire pool of employees, excluding the retirees under Section [27.10], thereby increasing active employee monthly premiums.

Reaume's email went on to indicate that the Local had agreed to communicate the above position to its membership and that the Township would go back and confirm its position as related above. Lastly, the email stated that the Township wanted to enter into a Memorandum of Understanding relative to Item #4.

Sometime thereafter, Grievance No. 17-37 was referred to the Police Commission. Reaume, in an email sent on May 3, 2017, to the Police Chief and a Board Trustee, Carl Bloetscher, confirmed that he had notice of Grievance No. 17-37's referral to the Police Commission. That email went on to indicate that Reaume would be out of town on the May 9, 2017, meeting date at which the Police Commission was set to consider the grievance. Reaume stated in that email that he was recommending that the Police Commission deny Grievance 17-37 and further that it was the Township's position that, "an employee who retires under the Hard Cap Program shall be required to make monthly insurance premium increases/decreases in contributions on the same basis as active employees."

The Police Commission met on May 9, 2017, and as part of its regular meeting considered Grievance No 17-37. According to the minutes of that meeting, the Police Commission allowed Brozek and Local President Kevin Counts to present their position and provide certain materials. The Police Commission also took information submitted by Reaume even in his absence. The five-member Police Commission voted to 3-2 in favor of granting Grievance No. 17-37.

According to Counts, the Local believed that the Township had adhered to the Police Commission's decision as it related to Grievance No. 17-37 and retiree health insurance premiums. However, Counts further testified that in early August following the Police Commission's decision, the Local had been made aware through a member who was preparing to retire that the Township was not following the Police Commission's decision. Counts claimed that in discussion with Reaume regarding this, the Township Supervisor confirmed that the Township would continue calculating retirement premiums without any change, i.e., contrary to the Police Commission's decision in Grievance No. 17-37.

The Local, on September 6, 2017, after learning that of the Township's position as it related



to Grievance No. 17-37, filed another grievance, Grievance No. 17-280.<sup>2</sup> The stated subject of that grievance provided in the relevant part:

On May 9, 2017, in accordance with the grievance procedures of the collective bargaining agreement between the Township of Grosse Ile (Township) and the Grosse Ile Police Officers Association (Association), a hearing was held before the Grosse Ile Police Commission (Commission) in reference to grievance 17-37. The association's grievance was upheld in this hearing and the Association considered grievance 17-37 closed at that time. On August 1, 2017, it was brought to the attention of the Association that the Township would not comply with the decision of the Commission in this matter. On August 9, 2017, the Union requested the Employer comply with the contract and enforce the Police Commission granting the grievance (17-37). On September 1, 2017, the Employer gave a written statement refusing to comply with the Police Commission decision. The Township's failure, refusal and neglect to comply with the decision of the Police Commission violates Section 25, section 25.5 of the collective bargaining agreement.

The Police Chief granted Grievance No. 17-280, noting that neither side had sought to advance Grievance 17-37 to arbitration. According to Counts, he discussed the issue with Reaume and was informed that the Township had no intention of following the Police Commission's decision in Grievance 17-37. Following this, Charging Party filed for arbitration.

The arbitration hearing occurred on January 8, 2018. On March 9, 2018, the Arbitrator issued his Opinion and Award setting forth the following:

1. This matter is remanded to parties for up to 30 days for negotiations and potential resolution.
2. If the parties are unsuccessful in their negotiations after 30 days, the parties may mutually refer the case back to me for a decision on the merits of the contract dispute.
3. In the alternative, at the conclusion of the 30 days for negotiation, the Employer will have 30 days to bring a circuit court action to challenge the Police Commission in 17-37.
4. If the Employer is successful in setting aside the Police Commission's decision, the case will be returned to me for decision on the merits.
5. If the Employer is unsuccessful in its circuit court challenge to the Police Commission's decision, grievance 17-37 will be enforced pursuant to the Police Commission's decision.

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<sup>2</sup> There was an earlier grievance filed, Grievance No. 17-258, however that grievance was apparently procedurally defective.

6. If the Township decides not to bring a circuit court action challenging the Police Commission's decision, the Police Commission's decision in grievance 17-37 will stand and will be enforceable.

The parties met following the issuance of the Arbitrator's award to negotiate; however no resolution was reached. On June 4, 2018, the Township filed for Declaratory and Injunctive Relief with the 3<sup>rd</sup> Circuit Court in Wayne County, Case No. 18-006280-CK. The case was initially assigned to the Hon. Brian R. Sullivan but was later reassigned to the Hon. David A. Groner. The Township requested that the Court issue a decision in its favor finding that the Police Commission's decision in Grievance No. 17-37 was "unenforceable, illegal, ultra-vires and in violation of the labor agreement and Township Ordinances and/or Michigan Law." The Association filed its answer on June 25, 2018. Both initial pleadings were entered into this record at the time of the hearing.

On July 10, 2018, Reaume sent two separate memos to the Chief of Police and the Police Commission. The memo to the Chief of Police stated in the relevant part:

This Memo constitutes an order from the Township [that] the Chief of Police and second step grievance responder under the POAM Contract shall not decide or take any action on any grievance under the POAM contract that concerns or in any way affect wages and fringe benefits, personnel policies (except Police Department Rules and Regulations), or collective bargaining matters.

The memo went on to direct the Chief of Police that any grievances filed involving the above issues must be forwarded to the Township manager "without any action or decision by you." The memo to the Police Commission began with an analysis of the relationship between the parties' collective bargaining agreement and Township Ordinances before then stating:

In conclusion, the Police Commission is without authority to hear consider or vote on POAM or individual grievances that concern or in any way affect wage and fringe benefits, personnel policies and collective bargaining matters.

That memo provided the same direction regarding the forwarding of grievances directly to the Township Supervisor. The memo concluding with:

In the unfortunate event the [Police] Commission were to entertain a grievance, schedule a hearing, consider, or in any way attempt to address such an issue, the Township will take all legal actions permitted by the Township ordinance and State law to stop such an action.

On August 21, 2018, the Association filed this unfair labor practice charge. The parties appeared before the undersigned on November 14, 2018, and post-hearing briefs were filed by the parties on or before January 11, 2019.

In early June of 2019, while preparing to issue this Decision and Recommended Order, the undersigned learned that on February 19, 2019, the parties filed cross-motions for summary disposition in Case No. 18-006280-CK; reply briefs on March 6, 2019; and response briefs March 8, 2019, and March 14, 2019, respectively. On March 20, 2019, the parties appeared before Judge Groner for a motion hearing. On March 22, 2019, Judge Groner issued an Order, without written opinion, granting the Township's motion and denying the Association's motion. On April 8, 2019, the Association filed its appeal of the Circuit Court's order with the Court of Appeals. That appeal, *Grosse Ile Township v POAM*, Docket No. 348379, has not yet been considered by the Court.

#### Discussion and Conclusions of Law:

The only question before the undersigned is whether the Township's July 10, 2018, memorandums removing the Chief of Police and the Police Commission from the grievance chain with respect to issues that involve wages, fringe benefits, and/or collective bargaining matters repudiated the parties' contract. The Association requests as part of its unfair labor practice charge that the undersigned also order the Township to comply with Grievance 17-37 and Grievance 17-280. However, to the extent that any unfair labor practice could be found with respect to either of those grievances, PERA's statute of limitations has long since passed and I am precluded from making any such order. MCL 423.216(a).

Our Supreme Court has consistently held that PERA is the dominant law regulating public employee labor relations. See *Rockwell v Crestwood Sch Dist Bd of Ed*, 393 Mich 616, 629 (1975). In *Rockwell* at 630, the Court held that "[t]he supremacy of the provisions of the PERA is predicated on the constitution (Const 1963, art 4, s 48) and the apparent legislative intent that the PERA be the governing law for public employee labor relations." As such, the Court has consistently held that the bargaining obligation under PERA prevails over conflicting legislation, charters, ordinances, or resolutions. See *Local 1383 IAFF v City of Warren*, 411 Mich 642 (1981).

Under Section 15 of the PERA, public employers and labor organizations have a duty to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. *Detroit Police Officers Ass 'n v Detroit*, 391 Mich 44, 54-55 (1974). Included within "other terms and conditions of employment" and thereby a mandatory subject, are grievance procedures. *Id.*

A party can fulfill its obligation under Section 15 of PERA by bargaining about a subject and memorializing the resolution of that subject in the collective bargaining agreement. Under such circumstances, the matter is "covered by" the agreement. *Port Huron Ed Ass 'n v Port Huron Area Sch Dist*, 452 Mich 309, 318 (1996). A party violates Section 10(1)(e) of PERA if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless that party has fulfilled its statutory obligation or has been freed from it. *Id.* at 317. Bargaining unit members have a right to rely upon the terms and conditions in the contract and to expect that they will continue unchanged. *Detroit Bd of Ed*, 2000 MERC Lab Op 375.

The above principles notwithstanding, our Commission has consistently held that it will not involve itself with purely contractual disputes or decide questions of mere contract

interpretation. To that end, where the alleged unfair labor practice amounts to no more than an isolated breach of a contract and not a repudiation of the collective bargaining agreement, the charges will be dismissed. *C.S. Mott Community College*, 1982 MERC Lab Op 1478. An alleged breach of contract will be considered a repudiation when (1) the contract breach is substantial and has significant impact on the bargaining unit and, (2) no bona fide dispute exists over interpretation of that contract. See *Plymouth Canton Community School District*, 1984 MERC Lab Op 894. The Commission has defined repudiation as an attempt to rewrite the parties' contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501.

The Township makes several arguments as to why this charge should be dismissed, however, irrespective of how each argument is phrased, each appears predominately based on the premise that the present dispute is merely a contractual dispute. The Township's post-hearing brief does briefly address the issue of a possible conflict between PERA and its ordinances; however it does not appear to challenge the Act's dominance over other statutes and ordinances but rather relies on its contractual arguments as set forth above. The Township states:

The instant [c]harge does not involve a conflict between a bargaining agreement provision and an external statute or ordinance. No, the instant [c]harge involves a contractual interpretation dispute regarding the grievance hearing authority of the Police Commission under Articles [sic] 25 and its limited authority under Article 31 of the CBA. This contractual issue is for the arbitrator alone to determine.

Subsection 1 of Article 25 provides the definition of a grievance and is explicit that a grievance is "a violation, misapplication or misinterpretation of any of the provisions of this agreement." There is no limiting language that would exclude from a grievance the issues identified by the Township in its June 10, 2017, memorandums. Rather the express terms of the contract provide that a grievance can apply to "any of the provisions..." Equally clear is the grievance step process as set forth in Subsections 3, 4, and 5, wherein the process begins with a Lieutenant, proceeds next to the Chief of Police before ending with the Police Commission. Nowhere within this process does the contract allow or contemplate that the Township Supervisor may be substituted for, or replace, the Chief of Police and/or the Police Commission. Accordingly, it is clear to the undersigned that Article 25 is unambiguous and that there can be no dispute over the interpretation of what it provides and requires. Nothing within Article 25's express terms, which create the grievance and arbitration procedure, can be reasonably relied upon to support the Township's decision to remove both the Police Chief and the Police Commission in the manner that it did. Moreover, it is axiomatic to conclude that any change to the agreed upon process to exclude review of such vital aspects of a contract, i.e., wages, benefits, etc., from the individual or body that had been agreed upon is a substantial breach that has a significant impact on the bargaining unit. As such, considering the July 10, 2018, memorandums relative to Article 25, it is clear to the undersigned that the changes made by the Township amount to repudiation under PERA.<sup>3</sup>

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<sup>3</sup> Additionally, Subsection 8 of Section 25 is explicit in so far as once no further action has been taken with respect to a grievance, the parties are deemed to have accepted the disposition of the grievance. As such, were the issue properly before me, timeliness issues aside, it would also be my finding that the Township's failure to abide by the Police

The Township argues that a review and reliance on Article 25 alone cannot provide proper disposition of the issue herein and directs the undersigned to consider Article 25 relative to other contractual provisions along with the Township's Ordinances as incorporated therefrom. The Township's argument ignores the fact that both Article 30 and Article 31, the two contractual provisions that bring the Township's Ordinances into the contract, explicitly state that the ordinances do not apply if they conflict with the terms of the agreement.<sup>4</sup> As stated above, Article 25 does not limit the authority of the Chief of Police or the Police Commission but instead grants them the authority to consider any grievance. As such, it is clear that, to the extent that Ordinances §67-1 and/or §67-8 may in some way conflict with the agreed upon grievance procedure, the contract's explicit language would limit or exclude their applicability.

The aforementioned interpretation is supported by authority recognizing PERA's dominance over the Township's local ordinances. Both the Commission and the Courts have held that collective bargaining agreements, lawful under PERA, prevail over city ordinances or charters. See *City of Detroit*, 391 Mich 44 (1974); *Pontiac Police Officers Ass'n v City of Pontiac*, 397 Mich 674 (1976). This principle originates from the Commission's decisions involving an employer's obligation to bargain in the face of a conflict between a City Charter and a collective bargaining agreement. See *City of Riverview*, 1979 MERC Lab Op 853; *City of Westland*, 1977 MERC Lab Op 230; *City of Detroit*, 1971 MERC Lab Op 237; *City of Flint (Hurley Hospital)*, 1968 MERC Lab Op 348. Furthermore, and more to the point, the Court in *City of Pontiac*, supra at 677, stated:

We hold that grievance and other disciplinary procedures are 'other terms and conditions of employment' within the meaning of the PERA and that the duty to bargain collectively on such issues and to perform in accordance with the terms of a collective bargaining agreement prevails over conflicting provisions of the charter of a home-rule city.

Accordingly, there is no bona fide dispute with respect to incorporation of the Ordinances – they cannot be incorporated into an agreement executed under and pursuant to PERA if they conflict with the terms therein.<sup>5</sup> For these reasons, I conclude that the Township's July 10, 2018, memorandums repudiated the parties' agreement by unilaterally altering the grievance procedure.

As stated at the inception of this discussion, the sole matter before the undersigned is

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Commission's decision in Grievance No. 17-37, in light of Article 25 alone, would be a violation of the Employer's duty to bargain in good faith under the Act.

<sup>4</sup> Article 30 includes the language "providing they are not in conflict with the terms of the agreement", while Article 31 includes the phrase "not in conflict with the express provisions of this Collective Bargaining agreement."

<sup>5</sup> Applying the Township's argument to other Township Ordinances provides absurd results negating the purpose of PERA. Ordinance §67-1(D)(1) provides the Township's authority to establish the conditions of employment for those employees hired by its various commissions. That ordinance also states that the Township will collectively bargain through representatives appointed by the Township. The Police Commission, through Ordinance §67-10(D), hires employees of the Police Department. If the Township's arguments herein were accepted, it could then claim its Ordinances create an ambiguity within the contract as to whether it should be bound to the deal struck by its representatives with respect to the wages it pays to its employees or to the standard of discipline it is required to recognize.

whether the Township repudiated the parties' agreement as set forth above. Additionally, it is clear to the undersigned that, but for the Act's timeliness requirements, my finding of repudiation, would serve as justification to order the entirety of the relief requested by the Association, including that the Township be made to adhere to the Police Commission's decisions in Grievance No. 17-37 and Grievance No. 17-280. Unfortunately, because of timing, those violations of the Act cannot be properly considered under PERA's six-month statute of limitations. Moreover, it appears that my findings conflict directly with that of the Circuit Court. However, because the Court granted the Township's motion without a written opinion, it is not known on what basis the decision was made, and/or whether the Court simply failed to consider PERA's dominance. Nonetheless, this matter has been appealed to the Court of Appeals.

I have considered all other arguments of the parties and I conclude such does not warrant any change in the result. As such, and in accordance with reasons and conclusions stated above, I recommend that the Commission issue the following order:

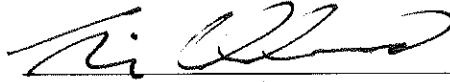
#### Recommended Order

Respondent, Grosse Ile Township, its officers and agents, are hereby ordered to:

1. Cease and desist from repudiating and/or unilaterally altering the grievance procedure as set forth in the parties' 2016-2022 collective bargaining agreement by limiting the authority of the Police Chief and the Police Commission to hear grievances filed thereunder.
2. Take the following affirmative action necessary to effectuate the purposes of the Act:
  - a. Rescind the July 10, 2018, memorandums which substituted the Township Supervisor in place of the Chief of Police and Police Commission in grievances filed under the parties' 2016-2022 collective bargaining agreement.
  - b. Make employees within the Association's bargaining unit whole for any loss incurred as a result of the Township's repudiation and/or unilateral alteration of the grievance procedure set forth in the parties' 2016-2022 collective bargaining agreement.

3. Post the attached notice on Respondents' premises in all places where notices to employees in Charging Parties' bargaining unit are customarily posted for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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Travis Calderwood  
Administrative Law Judge  
Michigan Office of Administrative Hearings and Rules

Date: June 26, 2019

**NOTICE TO EMPLOYEES**

AFTER A PUBLIC HEARING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION (COMMISSION) ON AN UNFAIR LABOR PRACTICE CHARGE FILED BY THE **POLICE OFFICERS ASSOCIATION OF MICHIGAN**, THE COMMISSION HAS FOUND **GROSSE ILE TOWNSHIP** TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

**WE HEREBY NOTIFY OUR EMPLOYEES THAT:**

**WE WILL NOT** repudiate and/or unilaterally alter the grievance procedure as set forth in the parties' 2016-2022 collective bargaining agreement by limiting the authority of the Police Chief and the Police Commission to hear grievances filed thereunder.

**WE WILL** rescind the July 10, 2018, memorandums which substituted the Township Supervisor in place of the Chief of Police and Police Commission in grievances filed under the parties' 2016-2022 collective bargaining agreement.

**WE WILL** make employees within the Association's bargaining unit whole for any loss incurred as a result of the Township's repudiation and/or unilateral alteration of the grievance procedure set forth in the parties' 2016-2022 collective bargaining agreement.

**GROSSE ILE TOWNSHIP**

By: \_\_\_\_\_

Title: \_\_\_\_\_

This notice must be posted for a period of thirty (30) consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.

Case No. C18 H-081; Docket No. 18-017731-MERC