

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

In the Matter of:

PUTNAM TOWNSHIP,
Public Employer-Respondent,

MERC Case No. C18 A-008

-and-

SEAN SPENCE,
An Individual Charging Party.

_____ /

APPEARANCES:

Foster, Swift, Collins and Smith, P.C., by Karl W. Butterer, for Respondent

Sean Spence, appearing on his own behalf

DECISION AND ORDER

On September 28, 2018, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order¹ in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 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 either 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: November 27, 2018

¹ MAHS Hearing Docket No. 18-002346

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

PUTNAM TOWNSHIP,
Respondent-Public Employer,

Case No. C18 A-008
Docket No: 18-002346-MERC

-and-

SEAN SPENCE,
An Individual Charging Party.

APPEARANCES:

Foster, Swift, Collins and Smith, P.C., by Karl W. Butterer, for the Respondent

Sean Spence, appearing on his own behalf

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

On January 30, 2018, Sean Spence (Charging Party) filed the above captioned charge against Putnam Township (Respondent or Employer). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Administrative Law Judge Travis Calderwood of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission). Based upon the entire record, including the transcript of hearing held on March 23, 2018, the exhibits admitted into the record and post hearing brief filed by the Respondent, I make the following findings of fact, conclusions of law and recommended order.

Unfair Labor Practice Charge:

Charging Party, a Lieutenant with Respondent's Fire Department (Department), alleges in his charge that the Department's recent adoption of a rule preventing its firefighters from joining four individual fire departments in close proximity to its own, violated Section 15a of PERA. Section 15a of PERA, as adopted by our legislature as Public Act 323 of 2014, provides in its entirety the following:

An employee of a public fire department may volunteer for or seek and accept part-time or paid on-call employment with another fire department if that employment does not conflict with his or her performance of the original employment as determined by the original employer. This section does not create a right for a full-

time employee of a public fire department to accept full-time employment with another fire department. A local unit of government shall not adopt or apply an ordinance, rule, or policy in conflict with the right granted an employee under this section. Collective bargaining between a public employer and a bargaining representative of its employees shall not include the subject of a prohibition on an employee volunteering for or obtaining paid on-call employment with another fire department.

Findings of Fact:

Charging Party is employed by the Respondent as a part-time on-call fire fighter at the rank of Lieutenant.

Respondent, a small township located in Livingston County is bordered by four other townships or municipalities with their own fire departments: Howell to the north, Dexter to the south, Hamburg Township to the East, and Unadilla to the West.

Respondent's Fire Department consists of 25 fire fighters total, 23 of which are part-time on-call fire fighters. Both the Chief and the Fire Marshal are full-time positions and work an 8:00 am to 4:00 pm shift. For the majority of the time in a given week, the Department's part-time on-call firefighters are expected to respond to fire calls if they are available. Respondent's part-time on-call firefighters are paid by the hour for the calls they respond to.

To more ensure the best possible coverage during those times that there is not a full-time fire fighter on duty, the Department implements what it calls "platoon coverage" or "shift night" wherein, according to a pre-set schedule, four to six fire fighters are assigned a specific block of time, usually overnight, where those individuals are required to respond to fire calls. When describing this policy's purpose, Chief Greg Amburgey, stated:

What it is[,] is we try to alleviate so the fire fighters can take their wives and kids and go out to dinner on nights and not worry about coming to the smaller ones, the medical calls, and having 8, 10, 12 guys show up for something that 3 people can handle. So therefore we put this system into place so the other ones can hopefully sleep through the night; when the pager goes off and it's just a medical call, there's three, there's four people covering that night, the others don't have to respond to the station.

Respondent is a signatory to an agreement entitled the Fire Service Mutual Aid Agreement, dated December 14, 2003, along with many other municipalities also located in Livingston County, including, but not limited to, Howell, Hamburg Township, and Unadilla. This agreement obligates its participating fire departments to send help to other departments upon request if help is available. Respondent is also party to Automatic Mutual Aid Agreements (AMA) with its four direct geographic neighbors identified above. In these agreements, Respondent's Fire Department is automatically dispatched to assist one of the other fire departments upon the report of a structure fighter within that department's territory and vice versa. Under the AMAs, Respondent and the four other departments are minimally required to provide a pumper/tanker truck, a company officer,

driver, and at least one firefighter.

Amburgey testified that if a situation arose where he had to respond to an AMA call from a neighboring department, and his obligation to do so left his township without adequate fire coverage, that he would then have to call in another department to cover his area. According to Amburgey, this coverage would entail another department's fire engine and crew to come and stay at Respondent's fire station to cover any calls until Respondent's resources could come back from responding to the AMA. Amburgey also recounted a situation that occurred several years ago in which Respondent's Fire Department was dispatched, pursuant to the AMA, to assist Dexter. According to Amburgey, at that time one of his part-time on-call firefighters also had an obligation to Dexter as a part-time on-call firefighter. During this particular call, the fire fighter that had obligations to both Dexter and Respondent showed up to the call as a Dexter fire fighter as opposed to one on behalf of Respondent. Amburgey recounted that because that particular fire fighter, who was outfitted in Respondent's gear, showed up on behalf of Dexter, Respondent was initially unable to meet its minimum assistance requirement. According to Amburgey, while additional fire fighters did eventually respond on behalf of Respondent, he was still concerned with his Department's inability to meet its requirement initially under the AMA, as well as potential liability issues if the fire fighter that showed up on behalf of Dexter, but in Respondent's gear, had been injured. Afterwards, Amburgey approached that fire fighter, and another one who was also obligated to both Respondent and Dexter, and asked them to make a choice; both fire fighters resigned from Dexter and stayed on with Respondent.

In or around July of 2017, Amburgey testified that he had been presented with a situation where a full-time fire fighter from Ann Arbor wanted to become a part-time on-call fire fighter with Respondent. According to Amburgey, this situation and his desire to allow the fire fighter to join his Department caused him to think about his own fire fighters and their ability to join other departments. Amburgey was concerned about his ability to provide coverage both in his community as well as meet his obligation under Respondent's AMAs. As such, he authored and implemented Standard Operating Guideline 05-236 (SOG) which provided in part:

Any Member wanting to join another Fire Department within or outside of Putnam Township, or Livingston County, may do so. With the exception of the (AMA) Automatic [M]utual Aid Departments.

SOG 05-236, went on to list Hamburg Township, Unadilla Township, Howell and Dexter, as the prohibited departments.

Amburgey went on to testify that he considers responding to the neighboring communities under the AMAs to be a duty of Respondent's fire fighters. Moreover, for all practical consideration, Respondent treats calls within its own township boundary and those made pursuant to its AMAs the same; there is no distinction between either for purposes of pay.

Discussion and Conclusions of Law:

The present dispute, while simple in its scope – whether SOG 05-236 violates Section 15a of the Act – represents complex issues regarding Commission jurisdiction. Moreover, any decision or

recommended order issued by the undersigned regarding the applicability, interpretation, and enforceability of the statute in question would be a matter of first impression.

Addressing the role and scope of the undersigned's jurisdiction in order to consider this dispute, I note that at no time has any actionable claim under Section 10 of PERA been articulated or alleged. Section 10 of PERA outlines the conduct that a public employer is prohibited from engaging in as it relates to public employees and/or the labor organizations representing such employees. Section 16 of the Act deems violations of Section 10 to be unfair labor practices and provides the mechanism by which the Commission is to hear, consider, and determine whether an unfair labor practice has been committed and remedy such. I note that hearings before the Commission are not limited to alleged violations of Section 10 of the Act, but also can occur pursuant to Section 2a and 12 of the Act; allegations that a strike or lockout occurred and representation proceedings respectively. With respect to Section 15a, there does not appear to be any statutory enforcement mechanism by which this Commission is charged with determining whether a public employer had implemented a policy in violation thereof.

Ignoring the jurisdictional issues identified above, it is the opinion of the undersigned that, were it appropriate to address the merits of the present claim, Respondent's prohibition on allowing its fire fighters from seeking part-time employment with the fire departments that immediately about it does not violate the Act.

It is axiomatic that the primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438 (2006). As such, the interpretation of a statute begins with the actual words used by the Legislature. When interpreting a statute, a court presumes that the Legislature understood the meaning of the language it enacted. *Robinson v City of Detroit*, 462 Mich 429, 459 (2000). If the expressed language is clear, the statute must be enforced as written. Words in a statute should not be ignored or treated as surplus language. Unless defined in the statute, every word or phrase of a statute should be ascribed its plain and ordinary meaning. *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748, 641 (2002). Here the relevant language set forth in Section 15a is clear:

An employee of a public fire department may volunteer for or seek and accept part-time or paid on-call employment with another fire department if that employment does not conflict with his or her performance of the original employment *as determined* by the original employer. [Emphasis added].

The Legislature clearly intended that fire fighters could not be prevented from seeking part-time or paid on-call employment from other fire departments unless that employment somehow conflicted with the employment duties owed to their original department. As I understand the argument Charging Party attempted to assert at the hearing, he argues that the Legislature's use of the word "performance" was limited in scope, and should be read to only include their ability to perform the task of fire fighting in the actual moment, i.e., that a fire fighter is obligated to fight fires for both Respondent and Dexter would not affect his performance while actually fighting a fire. I find this argument unpersuasive as the language of the statute clearly states "performance of the original employment" and a fire fighter who is obligated to two departments and shows up to a run on behalf of his secondary employer is not able to perform his "original employment." Moreover, the

Legislature granted to the fire fighter's original employing department the broad authority and discretion to determine whether outside employment would interfere with the duty owed to it. Here, the Chief clearly articulated reasonable justification for the promulgation of SOG 02-236. As such there is no basis upon which the undersigned could find that SOG 05-236 violates Section 15a of the Act.

I have considered all other arguments as set forth by the parties and conclude such does not change the outcome. As such, and for the reasons set forth above, I recommend that the Commission issued the following order:

RECOMMENDED ORDER

The unfair labor practice charge filed by Sean Spence against Putnam Township is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 28, 2018