STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Respondent

MERC Case No. CU18 C-005

-and-

TODD E. HATFIELD,
An Individual Charging Party.
_____/

APPEARANCES:

Christopher Tomasi, Assistant General Counsel, for the Labor Organization

Manda L. Danieleski, PLLC, for Charging Party

DECISION AND ORDER

On August 11, 2020, the Commission issued its Decision and Order in Case Nos. C18 C-022 and CU18 C-005, *City of Grayling and Police Officers Association of Michigan*, 34 MPER 6 (2020). With respect to Case No. C18 C-022, the Commission affirmed the ALJ's Recommended Decision and Order and ordered dismissal of the charge. With respect to Case No. CU18 C-005, the Commission reversed the ALJ and held that Respondent Police Officers Association of Michigan (POAM) breached its duty of fair representation when it would not file a grievance over Charging Party Todd Hatfield's November 6, 2017 loss of seniority, reclassification as a probationary employee and December 14, 2017 discharge. Consequently, we remanded the case to the ALJ for issuance of an appropriate order.

On August 20, 2020, Administrative Law Judge Travis Calderwood (ALJ) issued his Decision and Recommended Order on Remand[1] in the above matter in accordance with our instructions. The Decision and Recommended Order of the Administrative Law Judge on Remand was served on the parties in accord with Section 16 of PERA.

On August 26, 2020, the POAM appealed the Commission's August 11, 2020 Decision and Order to the Michigan Court of Appeals (Docket No. 354627).

On October 14, 2020, the POAM filed exceptions to the ALJ's Decision and Recommended Order on Remand. In its exceptions, the POAM does not contend that the ALJ's

[1] MOAHR Hearing Docket No. 18-005697

Decision and Recommended Order on Remand failed to comply with the Commission's August 11, 2020 Decision and Order. In its exceptions, the POAM objects to the Commission's finding that it breached its duty of fair representation and further objects to the relief ordered by the Commission. On this basis, the POAM requests the Commission to re-evaluate its Order.

We have reviewed POAM's exceptions and find them to be without merit. Consequently, we affirm the ALJ's Decision and Recommended Order on Remand.

Discussion:

The re-evaluation or reconsideration of a Commission Decision is governed by Rule 167 of the Commission's General Rules, 2002 AACS, R 423.167, which states in pertinent part:

> A motion for reconsideration shall state with particularity the material error claimed. . . . Generally, and without restricting the discretion of the commission, a motion for reconsideration which merely presents the same issues ruled on by the commission, either expressly or by reasonable implication, will not be granted.

In its exceptions, the POAM essentially presents issues already addressed by the Commission in our August 11, 2020 Decision and Order. Consequently, we do not believe that the POAM has provided sufficient grounds for reconsideration or re-evaluation. See *Garden City Education Association*, 34 MPER 34 (2021); *AFSCME Council 25, Local 2394*, 28 MPER 41 (2014) and *City of Detroit Water & Sewerage Dep't*, 1997 MERC Lab Op 453.

ORDER

The ALJ's Decision and Recommended Order on Remand is affirmed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Robert S. LaBrant, Commission Member

Tinamarie Pappas, Commission Member

Issued: April 1, 2021

Tinamarie Pappas, Commission Member, Concurring

I concur in the opinion of my colleague that Respondent POAM's exceptions should be denied. However, my decision is based solely on the procedural posture of this matter and the limited scope on which exceptions could have properly been taken. I write separately to express my disagreement with the remedial relief ordered in the Commission's August 11, 2020 decision, *City of Grayling et al.*, 34 MPER 6 (2020), which was an issue specifically raised in the POAM's current exceptions to the ALJ's Decision and Recommended Order.

The POAM's Exceptions

This case comes to us on exception from the Decision and Recommended Order of the ALJ following remand. In our August 11, 2020 Decision ("Decision"), we reversed the ALJ's dismissal of the charge against the Union (Case No. CU18 C-005), finding the POAM had violated its duty of fair representation to Mr. Hatfield. We then directed the ALJ to order a remedy recommending that the parties arbitrate Hatfield's grievance, with cost sharing of the arbitration, but with the POAM paying the costs for Hatfield's arbitration representative. In the event the Employer refused to consent to arbitration, we directed the ALJ to order that "the Union . . .pay Charging Party for all damages (back pay minus mitigation)."

Respondent POAM did not seek reconsideration of our Decision. On August 26, 2020, it appealed our Decision to the Court of Appeals. Consequently, the merits of our Decision, including the appropriateness of the remedy imposed, were already before the Court when the current exceptions to the ALJ decision were filed.

Our remand to the ALJ was limited to a directive that he issue an order consistent with our Decision. On remand, the ALJ imposed the remedial order we had directed, without deviation or modification. As my colleague correctly points out, the POAM does not argue in its exceptions that the ALJ failed to follow the Commission's instructions. Rather, the POAM takes exception to the substance of the Commission's original Decision, both on the finding of a violation of the duty of fair representation as well as the remedial relief directed. However, because those issues were not before the ALJ on remand, we are unable at this juncture to reconsider our prior ruling. The only appropriate issue that could have been raised on exception is whether the ALJ failed to follow our directive on remand. The POAM does not make that claim. As such, I am constrained to adopt the ALJ's Recommended Order and deny the POAM's exceptions.

The Remedial Relief Ordered in the Commission's August 11, 2020 Decision

The foregoing notwithstanding, I disagree with the remedial relief imposed by our Decision. It neither advances the purposes and policies underlying the Public Employment Relations Act, nor finds support in either PERA or any existing body of case law.

The ALJ determined that the City of Grayling had not violated either PERA or the terms of the collective bargaining agreement when it terminated Hatfield's employment. Accordingly, he recommended dismissal of the charge against the Employer. The Commission adopted the ALJ's recommended decision concerning the alleged violation of PERA and upheld the dismissal of the charge against the Employer.

Section 16(b) of PERA provides that when a violation of PERA has been found, MERC "shall issue and cause to be served on the person [who has committed the violation] an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees without or without back pay, as will effectuate the policies of this act." MCL 423.216(b). Section 16(b) further provides that MERC cannot "require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause."

I agree with my colleague's assertion that, contrary to the ALJ, the Commission found that the Employer had violated certain provisions of the CBA. Those violations included stripping Hatfield of his seniority, removing him from the bargaining unit, and reclassifying him as a probationary employee. However, those contract violations were not the basis for the Commission's order of make whole back pay relief. The Commission's make whole remedy was imposed solely to compensate Hatfield for damages he suffered due to his discharge from employment. On that issue, the operative question was whether the Employer had violated the "just cause" provision of the CBA.

My colleague asserts that he and Commissioner Callaghan determined that Hatfield "was not guilty of any offense that would constitute just-cause for discipline under the CBA." I disagree. A review of the Commission's Decision reveals that no determination was made concerning the alleged "just cause" violation. Rather, the majority stated only that "[g]iven Charging Party's years of service, we think it likely an arbitrator would agree that his discharge was not for cause". 34 MPER 6. Opining on how an arbitrator might rule is not the same as making a determination that the contract had been violated. The majority never ruled that the Employer had violated the CBA's just cause provision. Chairman Bagenstos' observations concerning the just cause issue were even more ambivalent. ("Second, we simply do not know whether there was "just cause" to discharge Hatfield. . .that matter is very much in doubt. . .").

In the absence of a ruling that the Employer had violated the just cause provisions of the CBA when it discharged Hatfield, MERC's make whole back pay remedy against POAM directly conflicts with a substantial body of case law deriving from the federal courts of appeals, the courts of Michigan, the National Labor Relations Board, and MERC itself.

In *City of Detroit v. Goolsby*, 211 Mich. App. 214 (1995), the Court of Appeals addressed the significance of a breach of contract determination in the context of a duty of fair representation

case, and the limitations on monetary damages should no contract violation be established. It stated:

> To prevail on a claim of unfair representation, a charging party must establish a breach of the union's duty of fair representation and also a breach of the collective bargaining agreement. Here it was established by the Supreme Court's decision in *Goolsby* that the union had breached its duty of fair representation. However, as previously discussed, the charging parties have not established a breach of the collective bargaining agreement. Accordingly, the MERC did not err in determining that no damages were due the charging parties.

Citing, *Knoke v. East Jackson Public School Dist.*, 201 Mich App. 480, 488 (1993)(to prevail on a claim of unfair representation, a party must establish both a breach of the duty of fair representation and a breach of the collective bargaining agreement; *Martin v. East Lansing School Dist.*, 193 Mich. App. 166, 181 (1992)(same).

The NLRB has likewise adhered to this standard. In *Glass Bottle Blowers* (Local 106)(Owens Illinois, Inc.), 240 NLRB 324 (1979), the Board reversed the ALJ's backpay award in a breach of DFR case, reasoning:

> . . .[O]rdering [the Union] to pay the Charging Party and his brother the wages they lost from the period beginning with the abrogation of their operator status until there is a fair resolution of their grievance would involve speculation into the merits of their grievance and might well be punitive. Accordingly, we shall modify the [ALJ]'s remedy to delete the backpay award. . .

Subsequently, in *Ironworkers Local 377, International Assoc. of Bridge, Structural and Ornamental Ironworkers (Alamillo Steel)*, 326 NLRB 375 (1988), the Board modified the burden of proof and remedial relief to be imposed in breach of DFR cases, stating:

> . . .[W]e will modify the Order so that it will be clear that, if the grievance cannot be resolved through the usual contractual channels and the question of how the grievant would have fared must be resolved in compliance, a make-whole remedy may be imposed only if the General Counsel shows that [the employee] would have won on the merits if the grievance has been properly pursued by the Union.

During the intervening period between *Glass Bottle Blowers* and *Ironworkers Local 377*, the Board, on occasion, inexplicably changed its position and imposed remedies similar to those imposed by the Commission here, even where no breach of contract had been established. When those decisions were appealed however, the federal Courts of Appeals reversed virtually all of them. See, e.g. *United Steelworkers of America v. NLRB*, 692 F.2d 1052 (7th Cir. 1982)(denying enforcement of Board order awarding backpay against union for breach of DFR because grievance not shown to have merit); *NLRB v. Eldorado Manufacturing Corp.*, 660 F.2d 1207, 1215 (7th Cir.

1981)(Backpay liability by the Board should be imposed against employer and union only if the discharges were contrary to the contract and if the Union breached the duty of fair representation); *NLRB v. Local 485, International Union of Electrical, Radio and Machine Workers*, 454 F.2d 17, 23 (2d Cir. 1972)(denying enforcement of Board order awarding backpay against union for breach of the duty of fair representation because grievance not shown to have merit). See also, *San Francisco Pressman (San Francisco Newspaper)*, 267 NLRB 451 (1983), enf. denied in part 794 F.2d 420 (9th Cir. 1986); *Steelworkers Local 15167 (Memphis Folding Stairs)*, 258 NLRB 484, enf. denied 692 F.2d 1052 (7th Cir. 1982). The Board continues to adhere to its *Ironworkers (Alamillo)* decision.

Here, MERC rationalized its abandonment of Board precedent under *Alamillo* by asserting that "MERC is not bound to follow every 'turn and twist' of NLRB case law. . .". However, the Michigan Supreme Court has found otherwise. In *Goolsby*, 419 Mich. at 660, fn. 5, it stated:

> . . .[I]n construing our state labor statutes we look for guidance to "the construction placed on the analogous provisions of the NLRA by the [National Labor Relations Board] and the Federal courts". *Rockwell v Crestwood School Dist Bd of Ed, 393 Mich 616, 636; 227 NW2d 736 (1975), reh den 394 Mich 944 (1975), app dis sub nom Crestwood Ed Ass'n v Bd of Ed of School Dist of Crestwood, 427 U.S. 901; 96 S Ct 3184; 49 L Ed 2d 1195 (1976)*. Also *Michigan Employment Relations Comm v Reeths-Puffer School Dist, 391 Mich 253, 259-260; 215 NW2d 672 (1974)*; *Detroit Police Officers Ass'n v Detroit, 391 Mich 44, 53; 214 NW2d 803 (1974)*.

The Commission further asserted that *Alamillo* "conflicts with the *Goolsby* decisions [419 Mich. 671 (1984), and 211 Mich. App. 214 (1995)] . . . as well as with other Board precedent such as *Rubber Workers Local 250 (Mack-Wayne II)*, 290 NLRB 817 (1988), and with our decision in *Police Officers Labor Council*, 12 MPER 30039 (1999)." I must respectfully disagree and, frankly, can discern no reasonable basis upon which the Commission determined that these cases support the remedy it imposed against the POAM.

Specifically, in *Mack Wayne II*, the Board reconsidered its earlier decision in *Mack Wayne I*, 267 NLRB 899 (1984) based on the 9th Circuit's rejection of the provisional "make whole" remedy the Board had imposed. The Board then modified its earlier remedy by assigning the burden to the General Counsel in a DFR case to establish that a grievance was not "clearly frivolous", and then affording the union the opportunity to litigate the merits of the underlying grievance, either at the unfair labor practice hearing or the compliance stage of the case. If the merits of the grievance were fully litigated, and the Board found the grievance to have merit, then monetary relief could be awarded. However, the Board never suggested that a make whole remedy, or any monetary remedy whatsoever, was appropriate absent a ruling that the grievance had merit.

In the *Goolsby* decision, 419 Mich. 671, the Supreme Court reversed the decisions of both MERC and the Court of Appeals and found that the union had breached its duty of fair representation. It then remanded the case to MERC to determine whether the employer's actions also violated the contract and based on that decision, to determine what, if any, relief was due to the plaintiffs. The Court neither expressly nor impliedly endorsed the remedial relief awarded by the Commission here absent a ruling that the contract had been violated.

On remand of *Goolsby*, MERC found no violation of the contract by the employer. On appeal of that decision, the Court of Appeals again confirmed that a party cannot prevail on a DFR claim unless a related breach of contract has been established. *Goolsby*, 211 Mich. App. at 223. It accordingly concluded that since MERC found no contract violation by the employer, it had properly ruled that no damages were due the charging parties.

The Commission here also relied upon a June 26, 2020 NLRB General Counsel memo (GC 20-09) in which then General Counsel Peter Robb had instructed the Agency's Regional Directors to urge the Board to reverse and abandon *Alamillo Steel* on the grounds that current precedent "prevented wronged employees from achieving not only make whole relief, but often, any relief at all, thereby permitting. . .illegality with impunity." I find this argument unpersuasive. First, a GC memo does not constitute legal precedent upon which any MERC decision should be based, especially if it conflicts with existing case law. Second, Peter Robb is no longer the GC for the NLRB, and the new GC has recently rescinded that memo in GC Memo 21-02. Finally, and contrary to the assertions of both GC Robb and the Commission, there is no "illegality with impunity" absent a ruling that the contract had been violated because, in such cases, the employee may or may not have been disciplined for just cause, so an award of remedial relief is wholly speculative.

The one and only MERC case cited by the Commission to support its award of back pay to Hatfield, was *Police Officers Labor Council*, *Police Officers Labor Council,* 12 MPER 30039 (1999), 1999 MERC Lab Op 196. However, that case stands for the opposite premise. There, MERC rejected the charging party's claim for back pay and benefits, ruling that an award of back wages and benefits to remedy a union's breach of DFR were not proper. ("Under the circumstances of this case and existing precedent, this is not a permissible remedy. . .a remedial order of wages to victims of a failure to represent is improper unless a breach of the contract by the employer is found. . .No breach of the contract has been found here." (citations omitted)). Likewise, here, no breach of contract by the City of Grayling was found by the Commission.

The purposes and policies underlying PERA are to restore a party harmed by a violation of the Act to the position he would have enjoyed had the Act not been violated. No provision of PERA authorizes remedial relief which results in a "windfall", and places, or potentially places, a party in a better position than if the Act had not been violated. The Michigan courts have confirmed this remedial limitation. See, *Lansing Fire Fighters Union Local 421 v. City of Lansing,* 133 Mich.

App. 56, 72 (1984) (PERA remedy should "place the parties in the position they were in before the unlawful action occurred").

Absent a ruling by either an arbitrator or MERC that an employer's discharge action violated the collective bargaining agreement, no make whole remedial relief is justified under current law. The Commission made no ruling that the Employer had violated the contract when it discharged Hatfield, but nevertheless proceeded to award back pay, thus arguably placing Hatfield in a better position than he would been even if the union had arbitrated his grievance.

The Commission's August 11, 2020 remedial back pay award fails to advance the purposes and policies underlying PERA and finds no support in either our statute or the case law. Should a DFR case presenting this same issue come before the Commission again, I urge the abandonment of this extraordinary and unsupported "make whole" remedial relief, and the return to the appropriate and legally sound remedy articulated in *Alamillo Steel* and reiterated in the respective Supreme Court and Court of Appeals' decisions in *City of Detroit v. Goolsby*.

Commissioner LaBrant, responding to Commissioner Pappas' "concurring opinion"

A concurring opinion is generally defined as an opinion that agrees with the majority opinion on the case, but bases the conclusion on different reasons. In this case, although I am pleased that my colleague on the Michigan Employment Relations Commission (MERC) joins me in denying POAM's exceptions, she offers no different reasons for doing so.

To the contrary, my colleague chooses to take this opportunity to disagree with the Commission's August 11, 2020 decision in *City of Grayling and Police Officers Association of Michigan,* 34 MPER 6, a decision that has been appealed to the Michigan Court of Appeals (COA). That decision is no longer before the Commission. I believe it inappropriate to file a "concurrence" addressing a case decided before her assuming office. My colleague's four page "concurrence" in this case now before Commission is purely *dicta*. Since my colleague feels compelled to address the remedy in *City of Grayling and Police Officers Association of Michigan,* I am compelled to reply.

In *City of Detroit v Goolsby*, 211 Mich App 214 (1995), the Court held:

> To prevail in a claim of unfair representation, a charging party must establish a breach of the union's duty of fair representation and also a breach of the collective bargaining agreement.

In *City of Grayling and Police Officers Association of Michigan,* all three Commissioners agreed that the Police Officers Association of Michigan (POAM), breached its duty of fair representation. Chairman Bagenstos wrote that "although the bar is exceedingly high, Hatfield has cleared it here. The Union's failure to file a grievance when Hatfield was stripped of his seniority, assigned a new probationary period, and terminated without the benefit of just-cause provisions in the collective bargaining agreement (CBA) seems to me to be exactly the sort of 'arbitrary' and 'inexplicable' conduct that violates the duty of fair representation under the precedents we must follow." Commissioner Callaghan and I agreed that the POAM's treatment of Charging Party Todd Hatfield was hostile and outrageous.

Additionally, all the Commissioners agreed that that there were several violations of the (CBA) between the POAM, and the City of Grayling and that Hatfield established breaches of the collective bargaining agreement requirement under *Goolsby*.

The majority specifically found that the CBA was breached when Hatfield's position was removed from the bargaining unit, when all of his seniority was taken from him, when he was reclassified as a probationary employee and when he was discharged without just-cause. Chairman Bagenstos wrote that after Hatfield's transfer to the police side, the City placed Hatfield at the bottom of the seniority ladder, which was a violation of the CBA. Commissioner Callaghan and I agreed. Chairman Bagenstos also wrote that treating Hatfield, after his transfer, as a probationary

employee also violated the CBA. Commissioner Callaghan and I agreed. Additionally, Chairman Bagenstos wrote that treatment of Hatfield as a probationary employee, stripped of his just-cause protections was another violation of the CBA. Commissioner Callaghan and I agreed.

With respect to Hatfield's discharge, Commissioner Callaghan and I believed that Hatfield was not guilty of any offense that would constitute just-cause for discipline under the CBA. We specifically noted that "there is no dispute that Charging Party was first employed by the City in 1997, that he was first employed in a bargaining unit position in 2013, that he had no discipline on his record prior to his discharge and that Director Baum referred to him as an excellent employee" and that "we think it is likely an arbitrator would agree that his discharge was not for just-cause."

The two-prong requirement in *Goolsby* had been met.

The only disagreement on the Commission was over the remedy. We all recognized that the Commission may only impose a remedy on the person who violated PERA, but not on a person who did not and that a contract violation, in and of itself, is not a violation of PERA. Consequently, the Commission could not order Hatfield reinstated by the City. That matter should have been decided by an arbitrator, if only the Union had pursued Hatfield's grievance as it should have.

Chairman Bagenstos dissented in this case because he believed the majority's remedy was inconsistent with the NLRB's decision in *Alamillo Steel*. He conceded that, "I do not believe that we can offer him a remedy against his former employer."

Commissioner Callaghan recommended that the City and the Union agree to arbitrate Hatfield's discharge by October 31, 2020.

I agreed to support Commissioner Callaghan's remedy by proposing as a backup, should the City not consent to arbitration, that the Commission was empowered under Sec. 16 of PERA to require POAM, in accord with *Goolsby*, to pay Todd Hatfield's damages (back pay minus mitigation).

Commissioner Callaghan and I rejected the *Alamillo Steel* remedy because we believed it conflicted with the *Goolsby* decisions as well as with other precedent. See Page 12 of our Decision. Additionally, we believed it set a bar that was unduly high, that too often results, in cases like Todd Hatfield's, in a Charging Party being prevented from achieving "make whole relief." Consequently, Commissioner Callaghan and I declined to follow the *Alamillo Steel* standard that has been referred to as a standard that "permits illegality with impunity."

Although Commissioner Pappas appears to believe that our dismissal of the Section 10(1)(c) charge against the City of Grayling involved in Case No. C18 C-022 establishes that the Commission found that there was no breach of contract, nothing could be further from the truth.

As illustrated above, at least four CBA violations were identified in *City of Grayling and Police Officers Association of Michigan*.

The Michigan Court of Appeals now must decide if Todd Hatfield has a remedy or no remedy at all, in his claim against POAM for breach of its duty of fair representation.

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

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Respondent in Case No. CU18 C-005
Docket No. 18-005697-MERC

-and-

TODD E. HATFIELD,
An Individual Charging Party.
_____/

Appearances:

Christopher Tomasi, Police Officers Association of Michigan Assistant General Counsel, for the Labor Organization

Manda L. Danieleski, PLLC, by Manda L. Danieleski, for the Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON REMAND

On August 11, 2020, Todd Hatfield (Charging Party), filed the above captioned unfair labor practice charge, Case No. CU18 C-005, against his bargaining representative, the Police Officers Association of Michigan (POAM or Union). Also that same day, Charging Party filed Case No. C18 C-022, against his former employer, the City of Grayling (City 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, both cases were 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). The charges were consolidated pursuant to Rule 164 of the Commission's General Rules, R 423.164, 2002 AACS; 2014 AACS.

The parties appeared before the undersigned on November 7, 8 and 9, 2019. Based upon the entire record, including the transcript of hearings, the exhibits admitted into the record, and the parties' post-hearing briefs, I found that the Charging Party had not established that the Employer violated either section 10(1)(a) or Section 10(1)(c) as alleged in Case No. C18 C-022, or that the Union had violated its duty under PERA to fairly represent him as alleged in Case No. CU18 C-005.

On August 11, 2020, the Commission, issued its Decision and Order in these consolidated proceedings. With respect to the charge against the Employer, Case No. C18 C-022, the Commission affirmed my findings and ordered dismissal. Addressing the allegations

against the Union, Case No. CU18 C-005, the Commission disagreed with my findings and reversed my Decision, stating:

> After reviewing the record, we believe, contrary to the ALJ, that, subsequent to its certification, the Union treated Charging Party with hostility and, at the very least, engaged in behavior that constituted inept conduct undertaken with little care or with indifference to the interests of Charging Party. The ALJ's Decision with respect to Case No. CU18 C-005 is therefore reversed in its entirety and the case is remanded to the ALJ for issuance of an appropriate cease and desist order.

The order went on to discuss the appropriate remedy available to the Charging Party as a result of the Union's actions and instructed the undersigned to include the same with the cease and desist order.[1] Accordingly, and in compliance with the Commission's directive, I recommend that the Commission issue the following order:

Recommended Order

The Police Officers Association of Michigan its officers and agents, are hereby ordered to:

1. Cease and desist from violating its duty of fair representation to all members of its bargaining unit with respect to the filing of grievances.

2. Take the following affirmative action to effectuate the purposes of the Act:

    a. Represent all members of its bargaining unit without hostility or discrimination.

    b. Exercise its discretion in representation matters involving bargaining unit members in complete good faith and honesty

    c. Avoid arbitrary conduct when making decisions regarding representation of bargaining unit members.

    d. Seek the City of Grayling's agreement to arbitrate the merits of Todd E. Hatfield's December 14, 2017, termination, subject to the following conditions:

        i. The City of Grayling and the Union will share the costs of arbitration equally.

[1] Should the Commission adopt this Decision and Recommended Order thereby making it effective on the Union and the Charging Party, any question regarding enforcement and/or compliance with the same would be addressed pursuant to Section 16(d) of PERA.

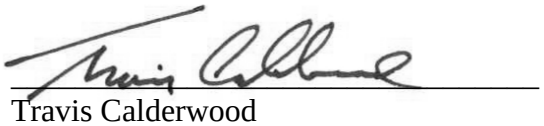
ii. The selected Grievance Arbitrator will commence the arbitration hearing no later than September 30, 2020, with an award issued no later than October 31, 2020.

iii. Any costs associated with MCOLES re-certification shall be paid by the City.

iv. Should the City refuse to consent to arbitration, the Union, in accordance with the *Goolsby* decision, must pay to Charging Party all damages (back pay minus mitigation) suffered as a result of his termination.

e. Mail the attached notice to bargaining unit members, or post the attached notice, with the City's permission in a conspicuous place on the Employer's premises where notices to employees are customarily posted, for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 20, 2020

AFTER A PUBLIC HEARING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION (COMMISSION) ON AN UNFAIR LABOR PRACTICE CHARGE FILED BY **TODD E. HATFIELD**, THE COMMISSION HAS FOUND THE **POLICE OFFICERS ASSOCIATION OF MICHIGAN** 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 Cease and desist from violating our duty of fair representation to all members of its bargaining unit with respect to the filing of grievances.

3. **WE WILL,** take the following affirmative action to effectuate the purposes of the Act:

    a. Represent all members of its bargaining unit without hostility or discrimination.

    b. Exercise its discretion in representation matters involving bargaining unit members in complete good faith and honesty

    c. Avoid arbitrary conduct when making decisions regarding representation of bargaining unit members.

    d. Seek the City of Grayling's agreement to arbitrate the merits of Todd E. Hatfield's December 14, 2017, termination, subject to the following conditions:

        i. We will share the cost of arbitration equally with the City.

        ii. The selected Grievance Arbitrator will commence the arbitration hearing no later than September 30, 2020, with an award issued no later than October 31, 2020.

        iii. In the event the City refuses to consent to arbitration, we will pay Charging Party for all damages (back pay minus mitigation) suffered as a result of his termination.

POLICE OFFICERS ASSOCIATION OF MICHIGAN

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.