STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF OAK PARK,
Respondent-Public Employer,

Case No. C97 H-179

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN (POAM),
Charging Party-Labor Organization.
_____/

APPEARANCES:

Shifman & Carlson, by Burton Shifman, Esq., for the Public Employer

Peter Cravens, Esq., for the Labor Organization

DECISION AND ORDER

On August 12, 1998, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

_____
Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Date: _____

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APPEARANCES:

Burton Shifman, Esq., Shifman & Carlson, for the Public Employer

Peter Cravens, Esq., for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Detroit, Michigan, on December 12, 1997, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on August 25, 1997, by the Police Officers Association of Michigan, alleging that the City of Oak Park had violated Section 10 of PERA. Based upon the record and briefs filed on or before February 10, 1998, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

The charge alleges that:

> On or about August 4, 1997, Charging Party became aware that Respondent is utilizing non-bargaining unit individuals to perform historic and exclusive bargaining unit work, to wit: issuance of traffic tickets for violation of ordinances pertaining to handicapped parking and fire lane parking. . . .

> Respondent, by its unilateral transfer of bargaining unit work without prior notice and bargaining with Charging Party, is in violation of section 10(1)(e) of the Public Employment Relations Act.

Facts:

The Oak Park Public Safety Officers Association, POAM, represents a bargaining unit consisting of all nonsupervisory public safety officers employed by the City of Oak Park Public Safety Department. The Public Safety Department is headed by Director G. Robert Siefert.

On June 3, 1997, Assistant City Manager James D. Hock sent the following memo to Don Gundy, President of the Association:

> Attached is a copy of an amendment to the City Code of Ordinances that would allow the City to utilize persons other than police officers to volunteer to issue citations for violations of the State Motor Vehicle Code.
>
> Any program that is implemented as part of this state law will not reduce the amount of parking enforcement assignments the City assigns to bargaining unit members.
>
> The City is offering to meet with the union to discuss the impact of the proposed future program on the bargaining unit.

The City planned to utilize volunteers, primarily senior citizens, to write up violations of handicapped parking restrictions, as well as violations for vehicles blocking fire lanes and sidewalks. The volunteers were to patrol private parking lots throughout the City, including those of apartment buildings and shopping centers.

After receiving the June 3 memo, Gundy and Union Vice President Loftis met with Hock and voiced the Union's objection to the project. According to Hock, in response to their questions, he indicated that he was unfamiliar with the details of the program and directed them to Director Siefert or Officer Luxton, a Union member who was going to be implementing the program. Hock testified that he also offered to set up a meeting to discuss the issue. Loftis recalled the meeting differently. Loftis testified that Hock told them that there were no actual plans for implementation and Siefert had no information about it. According to Loftis, Hock did not offer to set up a meeting or refer them to anyone else.

Nothing further occurred until July 28, 1997, when a memo authored by PSO II J.

Luxton was sent to all supervisors, indicating that the Volunteer Parking Program would start on Monday, August 4, 1997. The memo set forth operational details, including the following:

> The volunteers call sign will be Dist 587. The volunteers will be assigned a marked patrol vehicle by the on duty commander. If a marked unit is not available a DB car will be assigned. One portable radio will be assigned to each detail. Tickets, logs and camera are located in Luxton's office in black cloth gear-bar underneath the posted schedule. All tickets and paperwork will be handed in to PSO Luxton at the end of each shift.

After the program was implemented, Hock testified that he heard nothing from the Union until he received the unfair labor practice charge. At that point Hock talked to a POAM business representative, indicating that the Employer remained willing to meet. The representative stated that the Union would only meet if the program was discontinued.

Deputy Director Steven Fairman has been employed by the Oak Park Public Safety Department for more than thirty years, progressing through the ranks. He testified that although the enforcement of parking violations was an important function, it was not a primary activity of public safety officers. Parking enforcement was an ongoing activity of officers while on patrol. Fairman performed a survey of handicapped tickets issued for four years with the following results:

	Sworn Officers	Volunteers
1997	62	105
1996	169	0
1995	132	0
1994	74	0

Director Siefert testified that he had not been contacted by the Union with respect to the plan to use volunteers for parking enforcement. According to Siefert, there are a number of programs in southeastern Michigan and around the country utilizing volunteers to enforce handicapped parking in an effort to enlist the community and use their help to solve neighborhood problems. Siefert testified that the use of senior citizen volunteers is popular because senior citizens are statistically one of the higher user groups in terms of handicapped spaces and they have a heightened awareness of abuses. According to Siefert, after the program was implemented the duties of sworn officers did not change; they continue to enforce handicapped parking spaces, fire lanes, and blocked sidewalks. Siefert also testified that there has been no change in the number of officers

budgeted for operations in the 1997-98 fiscal year and there have been no layoffs. The contract requires that the department maintain no fewer than 45 sworn bargaining unit members assigned to the operations division. The department may be one or two officers short at present due to turnover.

Discussion and Conclusions:

Charging Party alleges that the Employer has unilaterally placed the volunteer program into effect and at no time has it offered to bargain in good faith with the Union. The Union, however, is placing the duty to seek collective bargaining on the wrong party. An employer's bargaining duty is conditioned upon a request for bargaining from the bargaining agent. *Local 586, SEIU v Village of Union City*, 135 Mich App 553, 558 (1984). Complaints or comments about an employer's action do not constitute a bargaining demand. *Michigan State Univ*, 1993 MERC Lab Op 52, 63-66; *City of Grand Rapids*, 1994 MERC Lab Op 1159, 1162. When notified on June 3, 1997 of the Employer's intent to utilize volunteers to issue certain types of tickets, Union representatives objected to the project. However, they made no request to meet or bargain. Instead, two months later, after the project was implemented in August of 1997, the Union filed this unfair labor practice charge. Under these circumstances, no refusal to bargain can be found.

Even had a proper request been made, however, no bargaining violation has been established. In *Detroit Water & Sewerage*, 1990 MERC Lab Op 34, the Commission set forth essential elements of proof with regard to a charge of unilateral removal of bargaining unit work. First, it must be established that the work at issue has been exclusively performed by members of the bargaining unit. Once that has been established, two other elements are essential before a duty to bargain can be found: first, the transfer must have a significant adverse impact on unit employees; and second, the transfer dispute must be amenable to resolution through the collective bargaining process, in other words, based at least in part on either labor costs or general enterprise costs which could be affected by the bargaining process. With respect to the first element, impact, the Commission stated in *Detroit Water & Sewerage, supra* at 41:

> ...unless the impact on unit employees is significant and real, as opposed to *de minimis* and speculative, there is no justification for restricting the employer's freedom to make decisions regarding the assignment of work. To the extent that our previous decisions failed to make this clear, they were in error.

I find that Charging Party has failed to establish that the use of volunteers has other than a *de minimis* impact. *City of Detroit*, 1997 MERC Lab Op 346, 351-352. Parking enforcement is not a major part of a public safety officer's duties. Bargaining unit members continue to perform these duties, they simply share this responsibility in certain areas with the volunteer senior citizens. Although Charging Party asserts that the bargaining unit has been harmed by the Employer's failure to maintain minimum staffing levels, this appears to be the result of turnovers in the department; the

number of budgeted positions in the department remains the same and there have been no layoffs.

Further, there is no indication that this dispute was based in any way on labor costs, and therefore, under *Detroit Water & Sewerage, supra,* it is not amenable to resolution through the collective bargaining process. The use of volunteers for handicapped parking enforcement was not undertaken in order to realize cost savings in the department, but rather to engage the community in resolving local problems.

Based on the above discussion, I find that Charging Party has not established that the Employer has refused to bargain in violation of Section 10(1)(e) of PERA. It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Nora Lynch
Administrative Law Judge

DATED: _____