

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

In the Matter of:

CITY OF KALAMAZOO,
Respondent-Public Employer,

Case No. C98 I-202

-and-

KALAMAZOO MUNICIPAL EMPLOYEES ASSOCIATION,
Charging Party-Labor Organization.

APPEARANCES:

Miller, Canfield, Paddock and Stone, P.L.C., by Kurt N. Sherwood, Esq., for Respondent

Dennis S. McCune, Esq., for Charging Party

DECISION AND ORDER

On August 26, 1999, Administrative Law Judge Roy L. Roulhac issued his 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:

For Respondent:

Miller, Canfield, Paddock and Stone, P.L.C.
By Kurt N. Sherwood, Esq.

For Charging Party:

Dennis S. McCune, Esq.

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, MSA 17.455(10) and 17.455(16), this case was heard in Detroit, Michigan on February 4, 1999, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC). The proceedings were based upon a September 30, 1998, unfair labor practice charge filed by the Kalamazoo Municipal Employees Association (KMEA) against Respondent City of Kalamazoo. Based upon the record, including Respondent's March 22, 1999, post-hearing brief, I make the following findings of fact and conclusions of law, and issue a recommended order pursuant to Section 16(b) of the PERA:¹

The Unfair Labor Practice Charge:

Charging Party's September 30, 1998, unfair labor practice charge alleges that Respondent has purposely and systematically interfered with the administration of KMEA by reclassifying its positions and assigning historical KMEA work to non-bargaining unit personnel and/or by refusing to place position that are technical and clerical under KMEA's jurisdiction. Specifically it claims that: (1) In June 1998, Respondent created four positions which should have been come under the certification of KMEA; (2) In August 1998, the senior program specialist was reclassified, and traditional KMEA work was assigned to non-KMEA personnel; and (3) As of September 1998, non-KMEA employees were

¹ Charging Party did not file a post-hearing brief.

performing work traditionally performed by the archives record coordinator, the records clerk in the assessors office, and the senior accountant.

Findings of Fact and Conclusions of Law:

I. Alleged failure to place four newly created positions into its bargaining unit

In mid-1998, Respondent reorganized its community development division, eliminated five non-KMEA exempt positions, and reallocated their duties and responsibilities among three newly created exempt positions - building official, community development project coordinator, and community development office supervisor.² Generally, claims involving the unit placement of newly created positions are resolved by filing a unit clarification petition. However, there is precedent for resolving such claims as a refusal to bargain under Section 10(1)(e) of PERA as a refusal to bargain case. *City of Saginaw (Inspection Division)*, 1995 MERC Lab Op 538. In such cases, Charging Party has the burden of proof. Here, Charging Party, apparently unfamiliar with the elements necessary to establish that the disputed positions should have been more appropriately placed in its bargaining unit, offered no evidence of the duties and responsibilities of these positions which would permit a determination to be made regarding whether they share a community of interest with positions in its bargaining unit.

II. Alleged reclassification of senior program specialist position and assignment of duties to non-KMEA personnel

In August 1998, Respondent revised the senior program specialist's job description to reflect that the incumbent "assisted" in preparing grant applications rather than "prepared" grant applications. Grant application preparation has never been the exclusive work of the senior program specialist and the incumbent has always assisted in grant application preparation. Charging Party failed to demonstrate how Respondent's revision of the senior program specialist's job description violated PERA.

III. Non-KMEA employees performing bargaining unit work: archives record coordinator, records clerk, and senior accountant's work

In early 1998, the records management supervisor, a non-KMEA position, unexpectedly resigned. The archives record coordinator, Linda Hartwell, a member of Charging Party's bargaining unit, accepted additional compensation to temporarily assume some of the records management supervisor's duties along with her own duties as archives record coordinator. During the time that Hartwell performed some of the records management supervisor's duties, she continued to pay KMEA dues. These facts do not establish that Respondent violated of PERA. Charging Party offered no evidence regarding its claim the non-KMEA employees were performing the work of the records clerk

²In its charge, Charging Party claimed that the Employer created four new positions. However, the records shows that the fourth position, the grants program officer, was established in 1996.

and the senior accountant. I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____