

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

In the Matter of:

ST. CLAIR COUNTY ROAD COMMISSION,
Respondent-Public Employer,

Case No. COO I-167

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 516M,
Charging Party-Labor Organization.

APPEARANCES:

Michael R. Kluck & Assoc., by Michael R. Kluck, Esq., for Respondent

Mark H. Cousens, Esq., for Charging Party

DECISION AND ORDER

On August 21, 2001, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. On September 4, 2001, the Commission received a letter from Charging Party indicating that the dispute underlying the charge had been settled and requesting that the charge be withdrawn. Charging Party's request is hereby approved.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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Labor Organization-Charging Party

APPEARANCES:

Michael R. Kluck & Assoc., Michael R. Kluck, Esq., for the Respondent

Mark H. Cousens, Esq, for the Charging Party

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 & 423.216; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on December 11, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before February 7, 2001, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Service Employees International Union, Local 516M, filed this charge on September 29, 2000 against the St. Clair County Road Commission. Charging Party represents a bargaining unit of production employees of the Respondent. This unit includes a position titled semi-skilled laborer - warehouseman. The charge alleges that on or about July 31, 2000, Respondent substantially changed the job duties of this position without giving Charging Party notice and an opportunity to demand bargaining. The charge also alleges that Respondent unlawfully refused Charging Party's demand to bargain over the impact of these changes on the bargaining unit. Charging Party asserts that by these

actions Respondent violated its duty to bargain under Section 10(1)(e) of PERA.

Facts:

Respondent's road maintenance employees work out of four warehouses, each located in a different area of St. Clair County. One warehouseman is assigned to each warehouse. The duties of the warehousemen include keeping records, relaying orders by radio to work crews, cleaning and maintaining the warehouses, ordering supplies, and checking that all vehicles and equipment are in working order.

In addition to their regular duties, warehousemen may sign up to perform snow removal work on an overtime basis. Most warehousemen sign up for this overtime, but they are not required to do so. When clearing snow, warehousemen operate any type of vehicle that they are personally qualified to drive, including heavy equipment such as front-loaders.

Prior to 1995 the job description for the warehousemen position listed ten "typical duties." These "typical duties" were of the nature of the work described above. All of the "typical duties" were performed in or in the vicinity of the warehouse. The job description stated, "Typical duties are intended to describe the general nature and level of work being performed by people assigned to this classification. They are not to be an exhaustive list of all duties and responsibilities of personnel so classified." Under job requirements, the job description listed the following: (1) high school education, GED, or equivalent education preparation; (2) one year clerking experience; (3) must have attended classes or hold a certificate in computer training; (4) ability to operate two-way radio, adding machine, calculator, data processing equipment and other office machines; (5) skills in record keeping and report analysis; (6) ability to communicate tactfully and effectively; (7) ability to operate typewriter and teletype desirable. In 1990, Respondent began requiring warehousemen to have a commercial driver's license (CDL) with a Group A designation, and to pass a road test in a vehicle with air brakes, although this requirement was not added to the job description at that time.¹

In 1995 Respondent undertook a review of its job descriptions for compliance with the federal Americans with Disabilities Act. A new job description for the warehouseman position was drafted, approved by Respondent's Board, and became effective on November 15, 1995. Respondent did not give Charging Party a copy of this new job description. There is no evidence to contradict Charging Party's claim that it did not see this job description until July 31, 2000, when a warehouseman vacancy was posted for bid with the new job description attached. As of the date of the hearing, warehousemen had not been assigned to perform any duties that they did not perform prior to 1995.

The November 15, 1995 warehouseman job description has a section titled "essential duties," and another titled "non-essential duties." All the tasks listed as "typical duties" in the previous job description are included under the heading "essential duties." Under the heading "non-essential"

¹ A Group A designation is required to operate any vehicle when towing another vehicle or trailer with a gross vehicle weight rating over 10,000 pounds. Operating a single vehicle weighing over 26,000 pounds, or a vehicle and trailer with a combined weight above this level, requires a Group B designation.

duties, the job description includes the following, “Performs some or all of the duties of other maintenance workers, as required or assigned. Operates other equipment as assigned.”

The 1995 job description includes a new heading, “Necessary Knowledge, Training, Ability, Skill and Efficiency”:

Considerable knowledge of equipment operating principles: working knowledge of the hazards and safety precautions common to heavy equipment operations; working knowledge of the methods, materials and tools used in road and bridge maintenance work. Skill in operation of listed tools and equipment.²

Ability to understand and follow oral or written instructions; ability to communicate effectively verbally and in writing; ability to observe proper safety precautions; ability to establish effective working relationships with other employees, supervisors and the public; ability to perform various record keeping and report analysis; ability to drive and operate a variety of equipment under varying conditions.

Valid State operator’s and Group A, CDL license

Good driving record.

On August 3, 2000, Charging Party wrote to Respondent demanding to bargain “over the effected changes for the job posting dated July 31, 2000.” Respondent replied on August 15. It stated that since no bids on the position had been received, and the contract allowed it to assign an employee to perform the work on a temporary basis, the “issue was moot.” On September 26, 2000, Charging Party wrote again demanding to bargain over “the effects of the new job bid of warehouseman.” Charging Party did not receive a response to this letter. As of the date of the hearing the warehouseman vacancy had not been filled. Respondent was assigning other employees on a daily basis to perform the warehouseman’s duties.

Discussion and Conclusions of Law:

Section 16(a) of PERA prohibits the Commission from finding an unfair labor practice based on conduct occurring more than six months prior to the date of the filing of the charge and the service of a copy on the Respondent. Respondent asserts that the charge is untimely under this section because the alleged unilateral change occurred in November 1995, almost five years before the charge was filed. However, the record indicates that Charging Party was not given a copy of the new job description in 1995 and did not see it until July 2000. The limitation period under PERA commences when the party knows, or should have known, of the act which caused his injury and has

² Under “Tools and Equipment Used,” the new job description lists: calculator, data processing equipment and other office machines. Motorized vehicles and equipment, including sewer jet truck, street roller, tar wagon, front end loader, back-hoe, dump truck, pickup truck, utility truck, mechanical broom, grader, excavator, tamper, plate, compactor, saws, pumps, compressors, generators, common hand and power tools, shovels, wrenches and mobile radio and other related equipment.

good reason to believe that the act was improper. *Huntington Woods v Wines*, 97 Mich App 86 (1980), and 122 Mich App 650, 652 (1983). See also *Leary v Rupp*, 89 Mich App 145 (1979). I conclude that the charge is not untimely because the statute of limitations did not begin to run until Charging Party saw the revised job description containing the new duties in July 2000.

A substantial change in job duties, which modifies the nature of an employee's job, constitutes a mandatory subject of bargaining. *Oakland Univ*, 1994 MERC Lab Op 540; *Twp of Meridian*, 1986 MERC Lab Op 915, 920. Charging Party contends that prior to the 1995 job description, the warehousemen's duties all involved clerical work or upkeep of the warehouse. According to Charging Party, the new job description expands the duties of the position to include all the duties of maintenance workers, including the operation of road machines and heavy equipment. Respondent denies that it has changed the job duties of the warehousemen. It points out that there is no indication that any warehouseman has been assigned a job that warehousemen did not perform before the new job description was issued. Respondent also argues that warehousemen have always been required, in emergency circumstances, to operate heavy equipment. According to Respondent, this is the reason that warehousemen were required to have a CDL. Respondent also points out that prior to 1995 the warehouseman's job description expressly stated that the duties listed were not a complete list of all the duties and responsibilities of the position. Finally, Respondent argues that since the posted position hasn't been filled, its duties have "obviously" not been changed.

I find that the duties which are listed in the warehousemen's pre-1995 job description, and which the warehousemen continue to perform, are duties which typically would be performed by a plant clerical or plant maintenance person. I find no evidence to support Respondent's claim that the warehousemen have ever been required, as part of the duties of their position, to do road repair or road maintenance or to operate heavy equipment. In 1990, Respondent began requiring warehousemen to have a CDL with a Group A designation. Although Respondent argues in its brief that this requirement was imposed so that warehousemen could operate heavy equipment, it offered no evidence to support this claim. Although the pre-1995 job description states that the responsibilities of a warehousemen are not limited to the "typical duties," it also states that these "typical duties" describe the "general nature" of the job. As stated above, I find the typical duties of the warehousemen to be those of a plant clerical or plant maintenance person.

I find, further, that when Respondent rewrote the warehouseman's job description in 1995, it broadened the position's duties to include road repair and maintenance. Respondent presumably did not intend the warehousemen to do road repair or maintenance on a regular basis, since the warehousemen have not been required to do any of this work to date. Nevertheless, according to the current job description, road maintenance work is now a part of the warehouseman job and warehousemen may be assigned these duties, including operating various types of heavy equipment, whenever Respondent chooses. I find that by adding road maintenance and repair to the warehouseman position, Respondent substantially changed the duties and nature of the job.

Respondent argues that since the position posted in July 2000 has not been filled, the "duties have not been changed." I find this argument puzzling. Respondent's argument may be that the dispute is moot because Respondent does not intend to fill the vacancy. Since Respondent continues to employ warehousemen, however, I do not understand this argument. If Respondent's argument is

that the duties of the warehousemen will not change until a warehouseman is actually ordered to do road maintenance, I disagree. I find that the 1995 job description is sufficient evidence that Respondent has expanded the warehousemen's job duties to include road repair and maintenance.

In accord with the findings of fact and conclusions of law, I find that Respondent has an obligation to bargain with Charging Party over both the changes made to the job responsibilities of the warehouseman position and their impact on the bargaining unit. I conclude that Respondent violated its duty to bargain when it unilaterally instituted these changes and by rejecting Charging Party's demands to bargain. I therefore recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondent St. Clair County Road Commission, its officer and agents, is hereby ordered to:

A. Cease and desist from:

1. Substantially changing the job duties of the semi-skilled laborer- warehouseman, thereby altering the nature of the job, without giving the bargaining representative, Service Employees International Union, Local 516M, proper notice and an opportunity to demand bargaining over these changes.
2. Refusing to bargain with the above named union over changes in the job duties of the semi-skilled laborer – warehouseman position and the impact of these changes on the bargaining unit.

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

1. Upon demand, meet and bargain in good faith with the Service Employees International Union, Local 516M over the changes in the job duties of the semi-skilled laborer-warehouseman position.
2. Refrain from directing any semi-skilled laborer-warehouseman to perform road maintenance or repair duties pending satisfaction of the Respondent's obligation to bargain over this issue
3. Post copies of the attached Notice to Employees in conspicuous places on the Respondent's premises, including all places where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____