STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

PONTIAC SCHOOL DISTRICT,
Respondent-Public Employer,

Case No. C98 K-236

-and-

SUPERVISORS' ASSOCIATION OF
ENGINEERS,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Pollard & Albertson, PC, by Douglass A. Witters, Esq., for Respondent

Amberg, McNenly, Firestone and Lee, PC, by Michael K. Lee, Esq., for Charging Party

DECISION AND ORDER

On May 14, 2001, Administrative Law Judge (hereafter "ALJ") Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent Pontiac School District did not unilaterally change a mandatory subject of bargaining in violation of Section 10(1)(e) of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.210. The ALJ also found, in the alternative, that the issue involved in this case is a contract matter subject solely to the parties' negotiated grievance procedure. The ALJ recommended that the Commission dismiss the unfair labor practice charges and complaint. On June 6, 2001, Charging Party, Supervisors' Association of Engineers, filed timely exceptions to the Decision and Recommended Order of the ALJ.

The facts of this case were accurately set forth in the ALJ's Decision and Recommended Order and need not be repeated in detail here. Briefly, Charging Party represents a bargaining unit consisting of all building, assistant, and relief engineers employed by Respondent. The dispute at issue arose when, in the fall of 1998, Respondent implemented a plan to clean the school district's classrooms on a daily basis, as opposed to every other day. This required the engineers to perform more custodial duties than previously, and left them less time to complete their other mechanical duties. Charging Party filed a grievance on October 15, 1998, objecting to the assignment of custodial work. The grievance was denied by the District and not pursued beyond the second step.

On November 19, 1998, Charging Party filed an unfair labor practice charge alleging that Respondent violated PERA by refusing to bargain over the new plan.

In recommending dismissal of the charge, the ALJ concluded that the adjustment in daily work assignments does not amount to a change in the nature of the job, and is, therefore, a management prerogative to which no bargaining duty attaches. The ALJ also found that Respondent may have had a duty to bargain over the impact of the assignment changes had Charging Party so requested, but found no evidence in the record to suggest that Charging Party made such a request. Finally, the ALJ held in the alternative that the proper forum for this matter is the grievance procedure since it involves the management rights clause of the parties' contract.

On exception, Charging Party argues that the ALJ erred in finding that Respondent had no obligation to bargain prior to expanding the cleaning duties of the engineers. In *Houghton Lake Educ Ass'n* v *Houghton Lake Community Schs*, 109 Mich App 1, 6 (1981), the Court of Appeals affirmed our well established rule that management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly on employment security are not mandatory subjects of bargaining. *West Ottawa Educ Ass'n* v *West Ottawa Pub Schs*, 126 Mich App 306 (1983). See also *Westwood Community Schs*, 1972 MERC Lab Op 313, 321 (duty to bargain not imposed where the subjects are demonstrably within the core of entrepreneurial control). The record shows that in the instant case, the plan to clean classrooms on a daily basis had no effect on the amount of engineers' hours, wages, or benefits. There was no change in the method of wage payment, and any impact on the engineers' schedules was de minimis. Further, the engineers were never disciplined for failing to complete all of their job duties, nor were they ever told that lunches and/or breaks were no longer permitted. Thus, we find that the new plan did not impinge on the engineers' employment security in any direct way.

It is also clear from the record that the management decision at issue here is fundamental to the basic direction of a corporate enterprise, or demonstrably within the core of entrepreneurial control. Notwithstanding the factors stated above, it is also relevant to note that cleaning was previously a part of the engineers' normal job assignments during the normal workday, however slight. Upon implementation of the new classroom cleaning plan, their custodial duties simply became more numerous than their mechanical duties. We, therefore, find that the new plan was merely an extension of duties within the engineers' job classification, and not a mandatory subject of bargaining. See *City of Kalamazoo Fire Dep't*, 1983 MERC Lab Op 777 (no exceptions)(assignment of job duties during the normal workday within the range of normal job assignments is an extension of additional duties within the classification and does not require prior notice on bargaining). Consequently, we hold that the ALJ did not err when she found that Respondent had no duty to bargain over the decision prior to its implementation.[1]

Charging Party also contends on exception that the ALJ erred when she found in the alternative that the proper forum for this matter is the parties' grievance procedure. It is well settled that when a matter is covered by the collective bargaining agreement, the union has already exercised its right to bargain and the employer has fulfilled its obligation to bargain. See *Port*

1 Although Charging Party did not except, we adopt the ALJ's conclusion that there were no demands or requests to bargain made in this case.

Huron Educ Ass'n v *Port Huron Area Sch Dist*, 452 Mich 309 (1996). Here, the parties' contract contains a "Board Rights" provision which expressly reserves to the Board the sole and exclusive right to manage and direct its work forces, including assignments. The agreement also contains a grievance procedure provision. We find that the unambiguous contract language covers the disputed issue, and that the enforceability of the relevant provision should be left to the grievance procedure, as negotiated by the parties. Thus, we hold that the ALJ was correct in concluding, in the alternative, that the issue involved in this case is subject solely to the contract, and is not an unfair labor practice under PERA.

ORDER

Pursuant to Section 16 of PERA, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Chair

Harry W. Bishop, Member

C. Barry Ott, Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

PONTIAC SCHOOL DISTRICT,
Respondent-Public Employer

- and - Case No. C98 K-236

SUPERVISORS ASSOCIATION OF
ENGINEERS,
Charging Party-Labor Organization
_____/

APPEARANCES:

Douglass A. Witters, Esq., Pollard & Albertson, P.C., for the Public Employer

Michael K. Lee, Esq., Amberg, McNenly, Firestone and Lee, P.C., for the Charging Party

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 January 20, 2000,[2] before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on November 19, 1998, by the Supervisors Association of Engineers, alleging that the Pontiac School District had violated Section 10 of PERA. Based upon the record, including briefs filed by the parties on or before September 8, 2000, 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 the Employer has refused to bargain with the Union and has wrongfully and unilaterally increased the hours of bargaining unit members by requiring them to perform a variety of new duties which could not be performed in a single work day,

[2]The hearing was adjourned numerous times by agreement of the parties.

without bargaining this change to impasse.

Facts:

The Supervisors Association of Engineers represents a bargaining unit consisting of all building engineers, assistant engineers, and relief engineers employed in the Pontiac School District. The Association and the Employer are parties to a collective bargaining agreement which contains a grievance procedure. Engineers are responsible for maintaining the school buildings and property, troubleshooting mechanical problems, cleaning, and other related duties. In performing their duties, they direct and work with custodians, who are in a different bargaining unit represented by the American Federation of State, County, and Municipal Employees (AFSCME), Local 719.

In the fall of 1998, the interim superintendent and his management team discussed that fact that classrooms were not cleaned on a daily basis and decided to implement a 30-day trial period to attempt to achieve daily cleaning. It was determined that the operations staff in each building, which included the engineers and custodians, were to develop a daily work schedule with the principal to accomplish this. Subsequently Robert Wolven, supervisor of plant operations, held meetings with several groups, including the building principals, representatives of Local 719, and the executive board of the Association, to discuss how they could rearrange cleaning assignments in order to achieve the goal of daily classroom cleaning. The meeting with the Association took place on October 14, 1998. Wolven testified that the meeting lasted approximately two hours, during which time the details of the Employer's plan were discusssed and the engineers asked questions about the schedule.

Shortly after these discussions, the cleaning duties of engineers were expanded. For example, building engineer Charles Zamora testified that he was expected to clean areas he had never been responsible for in the past, such as the library and the main office. He also had total responsibility for cleaning up after the breakfast program, which he had previously shared with a custodian. According to Zamora, as a result of doing more cleaning, he has been unable to spend as much time with carpentry, plumbing work and general troubleshooting. Other engineers also testified that the additional cleaning duties took time away from their other responsibilities. Engineers continued to work the same number of hours as before. They were not required to forego breaks or lunches. The substance of their job descriptions, which included cleaning duties, did not change. They were not required to perform work outside of their job descriptions, nor were they disciplined if they failed to complete mechanical work in their buildings as a result of spending more time cleaning.

On October 15, 1998, the Association filed a grievance objecting to being assigned custodial work. Personnel Director Dr. Barbara Berry responded to the grievance as follows:

The grievance is denied. The plan to clean buildings on a daily

> basis has been implemented as a pilot project of one month duration. The Board is legally permitted to implement such projects. Further, the engineers' job descriptions include cleaning duties, and many engineers throughout the district were performing such duties without objection before this plan was implemented.
>
> At the end of the pilot period, the project will be evaluated. It will be determined whether or not to continue with daily cleaning shared by engineers and custodians. If it is decided to continue, other issues that have been raised will be addressed.
>
> Consistent with Article III "[t]he Board reserves and retains, solely and exclusively, all rights to manage and direct its work forces, such as, the determination of policies, operations, assignment, schedules, discipline and layoffs for the orderly and efficient operation of the District."

The Union did not pursue this grievance beyond the second step.

After approximately one month, Wolven solicited feedback to determine how the program was working and it was determined that additional custodians were needed. Three custodians were hired and assigned to buildings where it was clear that daily cleaning could not be accomplished without additional custodial support.

Discussion and Conclusions:

Charging Party alleges that the Employer had an obligation to bargain with the Association prior to restructuring the engineers' job duties. According to Charging Party, the Employer's actions resulted in a change in hours and working conditions for the engineers, and no bargaining took place over these changes. The Employer takes the position that this is purely a contract matter subject to the grievance procedure. The Employer asserts that it had no duty to bargain over rearranging the job duties and responsibilities of engineers, and even if it was a bargainable matter, no demand to bargain was ever made by the Association. In addition, the Employer argues that its plan qualified as a "pilot program" under the Act 112 amendments to PERA, MCL 423.215(3)(h).

In *City of St. Joseph,* 1996 MERC Lab Op 274, 275, the Commission reiterated its well established rule that where newly assigned duties are the same or substantially similar to existing duties, and the newly assigned duties do not change the nature of the job, an employer has no duty to bargain over the decision to assign these new duties. *Grand Rapids Fire Dept*, 1997 MERC Lab Op 69, 78-79; *Suttons Bay Schools*, 1979 MERC Lab Op 302, 307. There is no question that cleaning duties have always been a part of the engineers' job assignments. The Employer simply required that the engineers give more attention to these duties and accord them

higher priority than in the past in order to meet the overall goal of daily classroom cleaning. This adjustment in daily work assignments is clearly a management prerogative to which no bargaining duty attaches. *City of Westland*, 1988 MERC Lab Op 853. Upon an appropriate request by the bargaining agent, an employer may be required to bargain over the impact of assignment changes. *City of St Joseph, supra.* However in this case there is no evidence that such a request was made, even though the plan was discussed with the Association prior to implementation. [3]

In the alternative, I agree with Respondent's argument that the proper forum for this matter is the grievance procedure, since it involves the right of the Employer to make assignments under the management rights clause. Under *Houghton Lake Community Schools,* 1997 MERC Lab Op 42, when a matter is covered by the collective bargaining agreement, the union has already exercised its bargaining rights and any dispute over contract terms should be left to the contractual grievance/arbitration procedure.

The above findings and conclusions obviate the need to reach the issue of whether the Employer's plan constituted a "pilot program" under Act 112, MCL 423.215(3)(h). Based on the above discussion, it is 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:

[3]After the close of hearing, Charging Party attempted to submit the affidavit of Lee Longfield, the MEA representative responsible for the bargaining unit, to attest to this issue. The attorney for Respondent had stipulated to the post-hearing submission of affidavits for two other witnesses who had been unable to attend the hearing, but objected to Longfield's affidavit since she had been present at the hearing but did not testify. The undersigned sustained Respondent's objection to the admission of Longfield's affidavit.