STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C02 A-011

-and-

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Gordon J. Anderson, Esq., Assistant Director, Office of Labor Affairs, for Respondent

David L. Porter, Grand Lodge Representative, for Charging Party

DECISION AND ORDER

On February 27, 2003, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent, Detroit Public Schools, did not violate its duty to bargain with Charging Party, International Association of Machinists and Aerospace Workers, when it laid off the entire bargaining unit of machinists without first bargaining with Charging Party. The ALJ found that Respondent had not violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e), and recommended that the charges be dismissed. On March 7, 2003, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order. After filing a timely request, Respondent was granted an extension until March 28, 2003, to file a response to the exceptions. On March 28, 2003, Respondent filed a timely brief in support of the ALJ's Decision and Recommended Order.

Charging Party's exceptions do not fully comply with Rule 176 of the Commission's General Rules as they do not specifically set forth the question of procedure, fact, law, or policy to which exceptions are taken. However, Charging Party essentially alleges that the ALJ erred in failing to find that Respondent refused to bargain in violation of PERA. We find no merit to Charging Party's exceptions. Under the particular circumstances of this case, the ALJ correctly concluded that Respondent did not fail to meet its bargaining obligation.

A public employer has an inherent right to determine the size of it work force. Thus, a public employer's decision to lay off employees is not a mandatory subject of bargaining. *Local 1277, Metropolitan Council No 23, American Federation of State, Co, and Municipal Employees [AFSCME], AFLCIO* v *City of Center Line*, 414 Mich 642, 660. Although the initial decision to layoff is a management prerogative, the impact of that decision is subject to bargaining, particularly with respect to the working conditions of remaining unit members.

In this case the entire nine-member bargaining unit of machinists was laid off as part of the School District's drastic reduction of its work force due to ongoing financial problems. In approaching the Employer regarding the layoffs, the Union focused entirely on attempting to persuade the Employer to reverse its decision and put bargaining unit members back to work. As far as the record reveals, the Union made no specific proposals regarding the impact or effects of the layoffs. We agree with the ALJ that such a bargaining demand must be made before a bargaining obligation on the part of the Employer can be found. See *Kalamazoo County Sheriff*, 1992 MERC Lab Op 63; *SEIU Local 586* v *Village of Union City*, 135 Mich App 553 (1984).

The School District consistently maintained that its layoff decision was irreversible. Its plan was that bargaining unit work, which was not currently being performed, would be subcontracted in the future, possibly with Aramark ServiceMaster. While ordinarily the subcontracting of bargaining unit work constitutes a mandatory subject of bargaining, public school employers are subject to the restrictions of Section 15(f) of PERA. Under that section, a public school employer is prohibited from bargaining over its decision to contract with a third party for non-instructional support services, as well as the impact of the contract on individual employees or the bargaining unit. Under these circumstances, the Respondent's future arrangements with ServiceMaster did not create a bargaining obligation.

For the reasons set forth above, we adopt the Administrative Law Judge's findings of fact and conclusions of law. Accordingly, we find that Respondent did not violate Section 10(1)(e) of PERA.

ORDER

The charges in this case are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

_____
Harry Bishop, Commission Member

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Maris Stella Swift, Commission Member

Dated: _____

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APPEARANCES:

Gordon J. Anderson, Esq., for Respondent

David L. Porter for 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 and 423.216, this case was heard at Detroit, Michigan on April 3, 2002, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings and the post-hearing briefs filed by the parties on or before May 30, 2002, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On January 14, 2002, the International Association of Machinists and Aerospace Workers filed an unfair labor practice charge with the Commission alleging that the Detroit Public Schools violated Section 10(1)(e) of PERA by "refusing to meet and bargain over conditions of employment." In addition, the charge alleged that the Employer "is refusing to provide requested information regarding the Layoff of the Bargaining Unit, and subcontracting the work."

Findings of Fact:

The International Association of Machinists and Aerospace Workers is the exclusive bargaining representative for a unit of nine machinists employed by the Detroit Public Schools. Members of the bargaining unit are responsible for facility maintenance, including upkeep and repair of equipment such as bleachers, backboards, and washing machines and driers throughout the school district. Bargaining unit members also manufacture parts at a machine shop operated by Respondent.

In July of 2001, Respondent entered into a contract with Aramark ServiceMaster to manage its building operations, custodial services and building trades departments, the latter of which includes the machinists represented by Charging Party. Aramark ServiceMaster employees provide managerial services only and are not responsible for performing bargaining unit work.

On or about January 2, 2002, Respondent notified all nine members of Charging Party's bargaining unit that "due to economic necessity" their employment with the school district would be terminated effective at the end of the workday on January 18, 2002.

On January 4, 2002, Union representative Karl Heim wrote to Charles Wells, executive director for Respondent's office of labor affairs, requesting a meeting "for the purpose of discussing the unilateral action of the employer relative to the indefinite lay-offs of the bargaining unit." In a separate letter to Wells also dated January 4, Heim requested that Respondent provide the Union with information regarding the layoffs, including "all letters, memoranda, agreements, minutes of meetings, and other information which is driving [the layoff decision]. Heim characterized the information as being "critical to this Union's ability to understand the short-and long-term impact on these employees resulting from the employer's unilateral action."

Heim and Wells met to discuss the layoffs on January 17, 2002. Also in attendance were representatives of Aramark ServiceMaster. Heim asked Wells whether anything could be done to save the jobs of the nine machinists. Wells referred to the funding crisis which the school district was facing, and he characterized the decision to layoff the bargaining unit as being irreversible and "a fact of life." Wells also mentioned the possibility that the school district might ultimately decide to outsource the bargaining unit work to Aramark ServiceMaster. Heim asked whether there were any employment opportunities for his members through that organization, and Wells promised to put the Union in touch with an Aramark ServiceMaster representative.

Following the meeting, Heim returned to his office and wrote a letter to Wells requesting copies of all agreements between Aramark ServiceMaster and Respondent. In a separate letter to Wells also dated January 17, Heim requested that "not less than one bargaining unit member be retained in his or her current capacity to validate statements made by the employer as they relate to Service Masters [sic] responsibilities and services provided to the School District of Detroit."

On February 7, 2002, Heim met with a representative from Aramark ServiceMaster to discuss possible ways in which the jobs of Charging Party's members might be saved. Although the discussions were productive, the Aramark ServiceMaster representative reminded Heim that he had no authority to enter into any agreement on behalf of the school district, and that the Union would have to discuss the matter further with Wells.

On February 21, 2002, Heim wrote to Wells complaining that Wells had failed to respond to his phone calls. The letter alleged that Respondent's 'unwillingness to respond" constituted an unfair labor practice, and that the Union was left with "no alternative . . . but to take further action with the appropriate agency."

On April 2, 2002, the day before the hearing in this matter, Respondent faxed approximately 40 to 50 pages of information to the Union, including at least a portion of the school district's contract with Aramark ServiceMaster.

At the time of the hearing, the bargaining unit work was not being performed by anyone. Rather, Respondent was holding all work orders in abeyance pending the completion of a reorganization plan being developed by the school district and Aramark ServiceMaster.

Discussion and Conclusions of Law:

Although Charging Party initially argued that Respondent violated PERA by unlawfully subcontracting bargaining unit work, the testimony in this case conclusively established that the unit work had not been outsourced. Charging Party's representative conceded this point in his closing statement when he asserted, "[T]hrough the evidence today, we found out that they haven't replaced the work force. They just eliminated all of them to the present." Therefore, this case presents the straightforward issue of whether the Detroit Public Schools violated PERA when it laid off the entire bargaining unit without first bargaining the matter with Charging Party.

There is no dispute in this case that Respondent made the decision to layoff nine bargaining unit members for economic reasons. Both the Commission and the Courts have held that a public employer has an inherent right to determine the size of its work force and to reduce its work force. *AFSCME, Local 1277 v City of Center Line*, 414 Mich 642 (1982); *Benzie County*, 1986 MERC Lab Op 55, 59. As the ALJ noted in *Swartz Creek Community Schools*, 1994 MERC Lab Op 223, 231, the decision to reduce the work force for economic reasons goes to the very essence or heart of an employer's ability to operate. It is well-settled that an employer's decision to reduce the size of its work force or reorganize positions within a bargaining unit is within the scope of managerial prerogative and is not a mandatory subject of bargaining. See e.g. *Ishpeming Supervisory Employees, Local 128, AFSCME v City of Ishpeming*, 155 Mich App 501, 508-516 (1986), aff'g in part 1985 MERC Lab Op 687. Accordingly, I find that Respondent was not required to bargain with the Union regarding its decision to layoff the members of Charging Party's unit.

While there is no bargaining obligation with respect to the decision to layoff employees, a public employer does have a duty to bargain over the impact of that decision. See e.g.

Ishpeming Supervisory Employees, *supra*; *Ecorse Board of Education*, 1984 MERC Lab Op 615. However, an employer is not required to bargain to impasse the impact of a layoff prior to the implementation of that decision. *City of Detroit*, 1994 MERC Lab Op 476, 483 (no exceptions); *Kalamazoo County Sheriff*, 1992 MERC Lab Op 63. Moreover, it is the union's obligation to request bargaining over the impact of the decision. *Kalamazoo, supra*; *Service Employees, Local 586 v Village of Union City*, 135 Mich App 553 (1984). Although a bargaining demand need take no particular form in order to be effective, the employer must know that a request is being made. *Michigan State University*, 1993 MERC Lab Op 52, 63, citing *Clarkwood Corp*, 233 NLRB 1172; 97 LRRM 1034 (1977). A statement that an issue is negotiable, or even a protest of an employer's action, does not constitute a demand to bargain. *Id.* See also *NLRB v Rural Electric Co*, 296 F2d 523; 49 LRRM 2097 (CA 10 1961); *NLRB v Barney's Supercenter, Inc*, 296 F2d 91; 49 LRRM 2100 (CA 3 1961).

In the instant case, the record does not establish that there was a clear and unequivocal demand to bargain over the impact of the layoffs by Charging Party and a refusal to do so on the part of Respondent. The initial communication between Charging Party and Respondent concerning this matter occurred on January 4, 2002, when representative Heim wrote to Charles Wells and requested a meeting to discuss the impending layoffs. The letter did not specify any intended subjects of bargaining and, therefore, I find did not constitute an adequate demand to trigger the Employer's duty to bargain over the effects of the layoffs. Moreover, the Employer did respond to the letter. On January 17, 2002, various representatives from the Detroit Public Schools, including Wells, met with Heim. There is no indication that Heim made a demand to bargain over the effects of the layoffs at that meeting, nor is there any evidence suggesting that the Union made any specific proposals to the Employer with respect to the impact of the layoffs on its members.

The remaining correspondence between Charging Party and Respondent consisted of the Union's requests for information concerning the layoffs, and its demand that at least one bargaining unit member be retained in order to monitor whether unit work was being performed by a subcontractor. In none of these letters did the Union identify any effects on the bargaining unit about which it desired to negotiate. In fact, Heim testified at the hearing that the purpose of this correspondence was to find a way to "put our people back [to work]." Although Heim later met with a representative of Aramark ServiceMaster, there is no evidence that he communicated any specific bargaining demands concerning the impact of the layoffs. Rather, the meeting concerned possible ways to reverse the underlying decision and return the laid off employees to work. Even if the Union had demanded bargaining over impact issues at that meeting, the Aramark ServiceMaster representative was not authorized to negotiate on behalf of the Employer, and the record is devoid of any evidence suggesting that Charging Party followed up the meeting by submitting specific proposals to the school district itself concerning the impact of the layoffs on its members. Thus, I conclude that Charging Party, by its failure to make a timely demand to bargain, waived its right to bargain over the impact or effects of the layoffs.

Based on the above discussion, I also find that Respondent did not violate its duty to provide information to Charging Party in this case. The Commission has long held that in order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must timely supply requested information to permit the union to engage in collective bargaining and to police

the administrative of the contract. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Public Schools*, 1995 MERC Lab Op 384, 387. However, the specific documents requested by the Union in this case pertained to Respondent's decision to layoff the bargaining unit and the possible involvement of Aramark ServiceMaster in performing unit work. As discussed above, the decision to layoff the unit was a matter of managerial prerogative. Since Respondent had no duty to bargain about that decision, information about the decision need not be produced. See e.g. *Challenge-Cook Bros of Ohio*, 282 NLRB 21 (1986), enf'd 843 F2d 230 (CA 6, 1988). Cf. *Pickney Community Schools*, 1996 MERC Lab Op 381. Similarly, Respondent had no duty to provide the Union with information concerning ServiceMaster, as Section 15(f) of PERA prohibits bargaining on the decision of whether to contract with a third party for one or more noninstructional support services.

For the forgoing reasons, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated: _____