STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:
CITY OF DETROIT,
Public Employer-Respondent,

Case No. C04 K-310

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 25 AND ITS LOCAL 836,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Kathryn Niemer, Esq., City of Detroit Law Department, for the Respondent

Robert E. Donald, Jr., Esq., for the Charging Party

DECISION AND ORDER

On December 9, 2005, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C04 K-310

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 AND ITS LOCAL 836,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Kathryn Niemer, Esq., City of Detroit Law Department, for the Respondent

Robert E. Donald, Jr., 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, this case was heard at Detroit, Michigan on June 7, 2005, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by the Charging Party on July 28, 2005, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The American Federation of State, County and Municipal Employees (AFSCME), Council 25 and its Local 836 filed this charge against the City of Detroit on November 23, 2004. Charging Party Local 836 represents a bargaining unit that includes employees in Respondent's recreation department. The charge alleges that Respondent violated its duty to bargain in good faith under Section 10(1)(c) of PERA by removing a position from Charging Party's unit without its agreement, by unilaterally changing the wages of the position and refusing to bargain with Charging Party over the change, and by bargaining directly with individuals holding this position over their terms and conditions of employment.

Facts:

Until late 2004, Local 836's bargaining unit included a position titled "recreation instructor/special events" assigned to the City's downtown outdoor Hart Plaza facility. When the recreation department operated the Hart Plaza facility, the recreation instructor/special events position was part of that department. The recreation instructor/special events employees scheduled, planned and supervised festivals and events held at Hart Plaza. During the winter, when only a few events were held, they managed the ice rink there. These employees also worked on events sponsored by the recreation department at other city locations, as assigned. Employees with the title "play leader" served as assistants to the recreation instructor/special events employees. Another AFSCME local represented the play leaders.

In July 2003, the civic center department, which manages the Cobo Hall convention center, took over management of the Hart Plaza facility. At the time of the departmental transfer, two recreation instructor/special events employees worked at Hart Plaza. From the time of the transfer until the fall of 2004, the recreation instructor/special events employees continued to perform their old job duties under the same supervisor, had the same job title, and were recognized by Respondent as part of Local 836's bargaining unit.

Sometime in early 2004, Respondent decided to permanently close the ice rink at Hart Plaza. In about March 2004, Respondent met with the recreation instructor/special events employees and informed them that it was considering changing their job description and title. It told them that it had not yet decided what their new title would be. Between March and June, Local 836 president Robert Donald and Respondent held several special conferences to discuss issues affecting the recreations instructor/special events employees. Respondent told Donald that Respondent's classification and compensation unit was reviewing the position to determine whether its classification should be changed. It was not clear from the record whether Respondent told Donald at this time that the position might be removed form Local 836's bargaining unit. On June 9, 2004, after their last special conference, Donald sent Respondent a letter demanding to bargain over the "wages hours and conditions of employment for the bargaining unit members that were involuntarily transferred from (the) recreation to (the) civic center (department)."

In the fall of 2004, the classification and compensation unit made a recommendation that the recreation instructor/special event position and a position at Cobo Hall titled civic center account representative be consolidated under a new title, civic center event coordinator. At that time there were several civic center account representatives doing event planning at Cobo. This position was not represented by a union. In November 2004, Respondent met with the recreation instructor/special events employees to discuss their reclassification. They were told that at some point their titles would automatically change. The employees were not given a job description. However, they understood that they would continue to schedule events at Hart Plaza during its normal season and would be assigned event-planning duties at Cobo Hall in the winter. The employees were told that they would get a pay raise, but that they would be required to work irregular hours all year long. Respondent explained that they would not be covered by a union contract in their new position, but that their benefits would not change.

After the November meeting, Donald questioned representatives from Respondent's labor relations department about the proposed reclassification. They confirmed that Respondent intended to move the recreation instructor/special events employees into a new classification, that this classification would be unrepresented, and that the recreation instructor/special events employees would be paid at a higher rate in their new classification. They also confirmed that the recreation instructor/special events employees would continue to handle events at Hart Plaza. On December 21, 2004, Donald wrote to Respondent demanding that it recognize Local 836 as the bargaining representative for the two recreation instructor/special events employees after their reclassification. Donald did not receive a response to his letter. In January or February 2005, the parties held another special conference. The parties discussed the job specifications for the civic center event coordinator position, but failed to agree on the unit status of the former recreation instructor/special events employees.

After the November 2004 meeting, Earlander Taylor, one of the recreation instructor/special events employees, applied for a transfer to another recreation department position. About a month later, Respondent asked the two recreation instructor/special events employees to sign a document acknowledging their reclassification. Taylor refused to sign. Shortly thereafter, she took a two-month sick leave. When she returned, the ice rink had temporarily reopened, and she was assigned there. Taylor did not participate in planning Hart Plaza events in the spring of 2005. At some point, Taylor may have received a layoff notice, but she was never laid off. In the early summer of 2005, she transferred to another position in the recreation department. Taylor never received a title or pay rate change, and never performed any work at Cobo Hall.

The other former recreation instructor/special events employee, Lynn Shaw, was reclassified as a civic center event coordinator in December 2004. Thereafter, Shaw was considered by Respondent to be an unrepresented employee. During the winter of 2004-2005, she worked at Cobo Hall. Beginning in about April 2005, Shaw returned to scheduling and supervising events at Hart Plaza full-time. She was assisted by the former play leaders, who had been given another job title. The other civic center event coordinators remained at Cobo. At the time of the hearing on June 7, 2005, these employees had received training in event planning at Hart Plaza, but had not actually worked there. According to Respondent, it planned to assign each Cobo Hall coordinator one Hart Plaza event during the 2005 season, but not yet done so.

Shaw did not testify at the hearing. Her current supervisor, Rajiv Chopra, supervised the civic center account representatives before their reclassification. He testified that after an event is booked at Cobo, the assigned event coordinator is responsible for coordinating the entire event with the client. This includes drawing floor plans using a computer assisted drawing (CAD) program. It also entails conducting pre and post-event meetings involving multiple contractors, representatives of various trade and stage unions, and representatives from the police, fire and People Mover departments. Chopra testified that he considered the duties of the civic center event coordinator to be more complex than those performed by the recreation instructor/special event employees at Hart Plaza because Cobo has larger events and because at Hart Plaza the client usually brought in its own contractors after the event was scheduled. Chopra noted that event coordinators at Cobo have to dress more professionally than event planners at Hart Plaza because their clients and the people with whom they interact are different. Chopra, who did not supervise the Hart

Plaza employees until they were reclassified, also testified that it was his understanding that the recreation instructors/special events employees had merely assisted in planning events there. This testimony was contrary to Taylor's description of her former job.

Discussion and Conclusions of Law:

An employer has a duty under PERA to bargain over the reassignment or transfer of work from unit employees to positions outside a union's bargaining unit only under certain conditions. First, the work must have been performed exclusively by members of the union's unit. Second, the reassignment must have a significant adverse impact on employees, e.g., because of the reassignment, laid off employees are not recalled. The Commission has held that the loss of unit positions is not sufficient to give rise to a duty to bargain. Finally, the transfer decision must be based, at least in part, on either labor costs or general enterprise costs, making the dispute amenable to resolution through collective bargaining. *City of Detroit (Water and Sewerage Dep't)*, 1990 MERC Lab Op 34, 40-41; *Kent Co and Kent Co Sheriff*, 1996 MERC Lab Op 294, 303. See also, *City of Detroit (Recreation Dep't)*, 1992 MERC Lab Op 474.

The reclassification and removal of positions from a bargaining unit without a change in their job duties, however, is not within the scope of a public employer's management prerogative. *Ingham Co*, 1993 MERC Lab Op 808, 812. Issues of bargaining unit placement are permissive subjects of bargaining, and, when the parties do not agree, are to be decided by the Commission under Section 13 of PERA. *Detroit Fire Fighter's Ass'n, Local 344 v Detroit*, 96 Mich App 543, 546 (1980); *Wayne Co*, 2001 MERC Lab Op 339, 344. The Commission is reluctant to disturb existing bargaining relationships, even when the duties of a position have changed. *City Of Dearborn (Ordinance Enforcement*, 1990 MERC Lab Op 449; *Muskegon Co*, 1993 MERC Lab Op 723. When a job has changed, the question becomes whether the changes have destroyed the position's community of interest with its original unit so that placement in that unit is no longer appropriate. *Northern Michigan Univ*, 1989 MERC Lab Op 139, 150.

Here, Respondent transferred recreation department employees working at the Hart Plaza facility to the civic center department when that department took over management of Hart Plaza in 2003. Respondent continued to recognize Local 836 as the bargaining representative for the recreation instructor/special events position after the transfer. A little over a year after the position was transferred to the civic center department, Respondent merged the recreation instructor/special event position and a position at Cobo Hall, civic center account representative, into a new, unrepresented classification, civic center event coordinator. Local 836 did not agree to the removal of the recreation instructor/special events position from its unit and continued to demand that Respondent recognize it as its bargaining representative even after the position had been reclassified.

Only one recreation instructor/special events employee, Shaw, was actually reclassified. The second, Taylor, who did not want to work at Cobo, retained her old job title and duties until she transferred to a different position in the recreation department. The record reflects that Shaw worked at Cobo Hall as an event planner during the winter of 2004-2005 under the title civic center event coordinator, and that she returned to Hart Plaza to plan and supervise events in the spring of 2005. Shaw's duties as a recreation instructor/special events employee did not include working at Cobo Hall. I find that the record does not

establish that the underlying nature of Shaw's job changed after her reclassification, or that changes in her job duties or other terms and conditions of employment destroyed her community of interest with Local 836's bargaining unit. I conclude, therefore, that Respondent could not lawfully remove Shaw's position from Local 836's unit without its agreement. I also find that Respondent violated its duty to bargain in good faith by unilaterally changing Shaw's wages and by refusing to bargain with Local 836 over the wages and other terms and conditions of employment of the position.

I find no merit, however, to Local 836's claim that Respondent engaged in unlawful direct dealing with the individual recreation instructor/special events employees. After it decided to reclassify Shaw and Taylor and remove their position from Local 836's unit, Respondent unilaterally determined what it would pay them and what their hours and benefits would be. When it met with the recreation instructor/special events employees in November 2004, Respondent simply told them what their responsibilities and wages and benefits would be after they were reclassified.

Charging Party, of course, seeks a remedy for the alleged unfair labor practices in this case, but it has not specified what it believes the remedy should be. Normally the Commission's remedy for an unlawful unilateral change consists of an order requiring Respondent to return to the status quo pending satisfaction of its obligation to bargain. Respondent's unfair labor practice did not consist of changing Shaw's job title to civic center event coordinator or giving her new job duties, but in removing her position from Local 836's unit without its agreement and unilaterally altering her terms and conditions of employment. It would be inappropriate, therefore, to order Respondent to reinstate the abolished title recreation instructor/special events or restore the position's former duties, and it would be unfair to Shaw to require Respondent to return her to her former pay level. Local 836 does not claim to represent the other civic center event coordinators, and it would not be appropriate to order Respondent to bargain with Local 836 over their terms and conditions of employment. I shall, therefore, recommend that the Commission simply order Respondent to recognize Local 836 as the legal bargaining representative for Shaw's position, and to bargain upon demand with Local 836 over her wages, hours and terms and conditions of employment until such time as the parties reach agreement on the position's reclassification or agree to allow Respondent to remove it from the unit.

RECOMMENDED ORDER

Respondent City of Detroit, its officers and agents, are hereby ordered to:

1. Cease and desist from removing positions from their existing bargaining units without the agreement of their recognized bargaining agent or an order of this Commission.

2. Recognize AFSCME Local 836 as the legal bargaining representative for the position of civic center event coordinator occupied in June 2005 by Lynn Shaw.

3. Upon demand, bargain with Local 836 over the terms and conditions of employment of this position until such time as the parties reach agreement on the position's reclassification or agree to its removal from Local 836's bargaining unit.

4. Post 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 thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the City of City has been found to have committed an unfair labor practice in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT remove positions from their existing bargaining units without the agreement of their recognized bargaining agent or an order of this Commission.

WE WILL recognize AFSCME Local 836 as the legal bargaining representative for the position of civic center event coordinator occupied in June 2005 by Lynn Shaw.

WE WILL, upon demand, bargain with Local 836 over the terms and conditions of employment of the above position until such time as the parties reach agreement on the position's reclassification or the removal of the position from Local 836's bargaining unit.

CITY OF DETROIT

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.