STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF KALAMAZOO,
Respondent-Public Employer,

Case No. C04 L-326

-and-

KALAMAZOO MUNICIPAL EMPLOYEES UNION,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Miller, Canfield, Paddock and Stone, P.C., by Kalyn D. Redlowsk, Esq., and Kurt N. Sherwood, Esq., for the Public Employer

Dennis S. McCune, Esq., for the Labor Organization

DECISION AND ORDER

On June 26, 2006, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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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 Lansing, Michigan on March 11, 2005, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings, transcript and post-hearing briefs filed by the parties on or before April 25, 2005, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On December 14, 2004, Charging Party Kalamazoo Municipal Employees Association (KMEA) filed an unfair labor practice charge alleging that Respondent City of Kalamazoo violated Section 10 of PERA by assigning the Union's "historical and contractual job duties" to nonbargaining unit personnel.[1] Specifically, Charging Party alleges that the City unlawfully assigned duties previously performed by the senior buyer, a KMEA position, to approximately twenty unrepresented employees.

[1] The charge also alleged that the City unlawfully eliminated a position held by the Union president and refused to bargain with the Union over the impact of that job elimination. However, Charging Party withdrew these allegations at the start of the hearing in this matter.

Findings of Fact:

Charging Party represents a bargaining unit consisting of nonsupervisory employees of the City of Kalamazoo. KMEA positions in the City's purchasing department include senior buyer, mail and duplication operator, and mail and purchasing records clerk. The purchasing department is supervised by the purchasing director, Nicholas Lam, and the assistant purchasing director, Joel Todd. Neither of the supervisory positions are represented for purposes of collective bargaining.

The purchasing department administers "term contracts" and other bid projects for City departments. A term contract is an agreement with a third-party vendor for services or commodities that are provided to the City more than once, typically over the course of several years. Other bid projects administered by the purchasing department include requests for quotes, requests for bids, requests for proposals and requests for qualifications. Prior to 2005, all contracts and bid projects valued at more than $10,000 were assigned to the purchasing department, while a number of purchases valued at less than $10,000 were handled by employees from other City departments, including nonbargaining unit employees.

Historically, the senior buyers, Gracia Mason and Sylvia Pahl, were responsible for handling much of the work assigned to the purchasing department. At hearing, Mason estimated that she and Pahl typically handled about seventy to eighty-five percent of all term contracts administered by the department. In 2003, Mason and Pahl were responsible for eighty-seven percent of the term contracts and approximately ninety-nine percent of the other bid projects assigned to the department. The remaining purchasing work was handled by Lam and Todd. For 2004, the senior buyers were responsible for handling between eighty-three to eighty-six percent of the term contracts and ninety-one percent of the other bid projects, with Lam and Todd again sharing responsibility for the remaining work.[2]

In November of 2004, Lam informed Mason that her position was being eliminated due to budget cuts. At the same time, Lam proposed to transfer the responsibility for administering term contracts valued at less than $25,000 from the purchasing department to other City departments. Lam's proposal was approved by the City Commission in January of 2005, the same month that the elimination of Mason's position became effective.

On February 18, 2005, Lam issued a series of memos notifying the directors of the other City departments of the change in purchasing procedures. Charging Party was also notified of the change in a document entitled "2005 Personnel Reduction Analysis Purchasing/Risk Management. " That document specified that as a result of the elimination of Mason's position,

[2] A statistical analysis produced by Charging Party indicates that there were a total of 143 term contracts and seventy-nine other bidding projects assigned to the purchasing department in 2003. According to the Union's statistics, Mason and Pahl handled 124 of the term contracts that year, or eighty-seven percent of the total, and seventy-eight of the other bid projects, or 98.7 percent. For 2004, the Union's analysis indicates that Mason and Pahl handled 121 of the 141 term contracts assigned to the department, or eighty-six percent, and sixty-nine of the seventy-five other bid projects, or ninety-one percent of the total. A statistical analysis produced by the City indicated that there were actually 143 term contracts assigned to the purchasing department in 2004, of which Mason and Pahl were responsible for 119, or 83.2 percent of the total.

individual departments "will be responsible for taking bids for 55 more projects less than $25,000" and the "Director [of the purchasing department] will take more bids." In March of 2005, training sessions were held "to refresh City staff regarding effective means and methods for taking quotes."

As a result of the elimination of Mason's position and the implementation of the new purchasing procedures, Pahl was made responsible for between sixty-four and sixty-seven percent of the term contracts and eighty-seven percent of the other bid projects assigned to the purchasing department in 2005. The remaining term contracts and other bid projects assigned to the purchasing department that year were to be handled by Lam and Todd. In addition, responsibility for between forty and fifty term contracts valued at less than $25,000 was transferred to other City departments, where the work was performed, in part, by the same nonbargaining unit employees who previously worked on contracts and bid projects valued at less than $10,000.[3] For example, nonbargaining unit employees Mark Polega, a landscape architect in the parks department, and Denise Segal, a supervisor in the recreation department, performed at least some purchasing work both before and after the elimination of Mason's position in January of 2005.

Discussion and Conclusions of Law:

Charging Party contends that the City violated PERA by transferring exclusive bargaining unit work to non-KMEA unit employees without first offering to bargain in good faith with the Union. A necessary element of a refusal to bargain charge is a request to bargain. *Local 586 SEIU v Village of Union City*, 135 Mich App 553, 558 (1984); *City of Southfield* (Police Dep't), 1990 MERC Lab Op 207. Complaints or comments about an employer's action are not sufficient to constitute a bargaining demand. *Michigan State Univ*, 1993 MERC Lab Op 52, 63-66; *City of Grand Rapids*, 1994 MERC Lab Op 1159, 1162. Here, Respondent notified Charging Party that a specific number of term contracts and other bid projects would be reassigned to Lam and other City departments as a result of the elimination of a senior buyer position. Yet, there is nothing in the record to suggest that Charging Party ever made a request to meet or bargain with the Employer over the elimination of Mason's position or the change in the City's purchasing policy. Under such circumstances, no refusal to bargain can be found.

Even if a proper bargaining request had been made, there is no basis for finding an unfair labor practice in this matter. An employer's decision to remove work previously done by unit members and transfer the work to employees outside the unit may constitute a mandatory subject of bargaining. *Lansing Fire Fighters, Local 421 v Lansing*, 133 Mich App 56 (1984); *Van Buren Pub Schs v Wayne Circuit Judge*, 61 Mich App 6 (1975). The Commission has held, however,

[3] The Union's statistics indicate that there were ninety-three term contracts and fifteen other bidding projects assigned to the purchasing department in 2005. According to the Union, Pahl was responsible for sixty-two of the term contracts, or sixty-seven percent, and thirteen of the other bid projects, or eighty-seven percent. The analysis produced by the City indicated that there were 103 term contracts assigned to the purchasing department in 2005, of which Pahl was assigned sixty-six contracts, or 64.1 percent of the total. With respect to term contracts assigned to other departments, the Union's statistics show that there were fifty contracts reassigned out of the purchasing department in 2005, while the Employer's analysis indicates that forty term contracts were reassigned from the purchasing department to other City departments that year.

that an employer has no duty to bargain over the removal of work from a unit where that work has been shared previously with employees in another unit or with nonunit employees. *City of Lansing*, 1989 MERC Lab Op 1055. In order to prevail on a charge alleging the unlawful removal of bargaining unit work, Charging Party must first establish that the work at issue has been exclusively performed by members of its bargaining unit. *City of Southfield*, 433 Mich 168, 185 (1989); *City of Detroit, Water & Sewerage*, 1990 MERC Lab Op 34. The burden of proving this essential element is carried by Charging Party. *Kent County Sheriff*, 1996 MERC Lab Op 294.

In the instant case, the record overwhelmingly establishes that the senior buyers have historically handled only a portion of the City's purchasing work. The purchasing director, Lam, and his assistant, Todd, have been responsible for handling a considerable number of term contracts and other bid projects assigned to the department, and statistics produced by the parties at hearing confirm the substantial involvement of these nonbargaining unit employees in the purchasing process. Furthermore, at least some purchasing work involving contracts valued at less than $10,000 was handled by nonbargaining unit employees in other City departments prior to the elimination of Mason's position in 2005. Accordingly, it is clear that the purchasing work at issue in this matter is not exclusive to the senior buyer position, or to the Union generally, and that the City was not obligated to bargain with KMEA concerning the assignment of such work to Lam, Todd or any other nonbargaining unit employee.

I have carefully considered all other arguments of the parties and conclude that they do not warrant a change in the outcome of this case. Based upon the above facts and conclusions of law, I find that Charging Party has failed to establish that the City unlawfully transferred exclusive bargaining unit work to non-KMEA employees in violation of Section 10(1)(e) of PERA. I, therefore, recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____