STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF GRAND RAPIDS,
Public Employer - Respondent,

Case No. C05 G-151

-and-

GRAND RAPIDS EMPLOYEES INDEPENDENT UNION,
Labor Organization - Charging Party.
_____/

APPEARANCES:

George Childers, Jr., Labor Relations Manager, for Respondent

Kalniz, Iorio & Feldstein Co., L.P.A., by Fillipe S. Iorio, Esq., for Charging Party

DECISION AND ORDER

On July 23, 2007, 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

_____
Christine A. Derdarian, Commission Chair

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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 January 11, 2006, before David M. Peltz, Administrative Law Judge 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 20, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On July 25, 2005, the Grand Rapids Employees Independent Union (GREIU) filed an unfair labor practice charge alleging that the City of Grand Rapids violated Sections 10(1)(a) and 10(1)(e) of PERA by eliminating approximately twenty inspector positions in the housing department, including two property inspectors, twelve housing inspector I's and six housing inspector II's. The charge contends that the City bargained in bad faith by eliminating the inspector positions shortly after agreeing during bargaining on a new contract to review the housing inspector I position for a possible classification upgrade. The City filed an answer denying the allegations on August 29, 2005.

Findings of Fact:

I. BACKGROUND

Charging Party is the exclusive bargaining representative for a broad unit of non-supervisory employees of the City of Grand Rapids, excluding sworn officers in the police and fire departments and individuals employed in the city manager's office. In March of 2005, the GREIU and the City reached a tentative agreement on a collective bargaining agreement covering the period January 1, 2003 to December 31, 2006. At the time that agreement was reached, there were approximately 175 different classifications within the bargaining unit, including the following classifications in the Respondent's neighborhood improvement department: housing inspector I and II, property inspector, zoning inspector I and II and office assistant. At that time, housing inspectors were solely responsible for ensuring compliance with the housing code, while property inspectors were responsible for enforcing the City's property ordinances.

II. ARBITRATION PROCEEDING REGARDING HOUSING INSPECTOR I CLASSIFICATION

In 2000, the GREIU filed a grievance claiming that the City had violated the terms of the parties' collective bargaining agreement by unilaterally adding duties and responsibilities to the housing inspector I classification. The GREIU asserted that various responsibilities formerly assigned to employees of the fire department had been transferred to the housing inspector I position without a corresponding raise in pay. The Union sought a pay raise for the housing inspector I position to Range 18 or, in the alternative, that the added duties be returned to the fire department.

In an Opinion and Award issued on May 18, 2001, arbitrator Elliot Beitner granted the grievance, in part. The arbitrator concluded that although the City had the right to unilaterally assign new work to the housing inspector I classification, the Employer was required under the terms of the parties' collective bargaining agreement to attempt to negotiate an agreeable wage rate with the Union. As a remedy, the arbitrator directed the parties to attempt to negotiate a wage rate and, if they could not agree, to refer the matter to the Civil Service Board for a final and binding determination.

In so holding, the arbitrator relied upon Articles IV and XVII of the parties' collective bargaining agreement, both of which were carried over into the 2003-2006 agreement without substantive modification. Those provisions state:

> ARTICLE IV. MANAGEMENT RIGHTS
>
> Except as otherwise specifically provided in this Agreement, the Management of the City of Grand Rapids and the direction of the work force, including but not limited to the right to hire, the right to discipline or discharge for proper cause, the right to decide job qualifications for hiring, the right to lay off for lack of work or funds, the right to abolish positions, the right to make rules and regulations

governing conduct and safety, the right to determine schedules of work, together with the right to determine the methods, processes, and manner of performing work, are vested exclusively in Management. Management, in exercising these functions, will not discriminate against any employee because of his or her membership in the Union.

ARTICLE XVII. NEW OR CHANGED JOBS

Existing classifications and job descriptions shall not be changed without a negotiated agreement between the parties. The parties will negotiate as to the salary range for all new jobs established in the bargaining unit. If an agreement cannot be negotiated as to changes in classifications or job descriptions or as to the salary range for a new job, the matter shall be subject to an appeal filed directly with the Civil Service Board in Step 3.A. of the grievance procedure. Disputes as to whether a new or changed job should be in or out of the bargaining unit shall be resolved by the Michigan Employment Relations Commission.

III. NEGOTIATIONS OVER 2003-2006 CONTRACT

Negotiations on the 2003-2006 collective bargaining agreement commenced in February of 2003. At that time, the chief spokesperson for the City was its labor relations manager, Mari-Beth Jelks, while the Union's chief spokesperson was Philip Pakiela, president of the GREIU. Prior to the first bargaining session, the parties agreed to a written set of ground rules governing the negotiations, including a requirement that all proposals be made in writing. The ground rules further provided that any contract proposal signed by both chief spokespersons would be considered a tentative agreement.

On February 25, 2003, Charging Party presented to the City its list of non-economic issues. Among the items identified by the Union in the list was a proposal to raise the pay rate of approximately 31 bargaining unit positions which were set forth on a document originally prepared by the Union for use during negotiations on a prior contract. As part of that proposal, the Union sought a one-range increase for all housing inspector I's from 17A to 18A. The Union also presented a separate proposal to Respondent in the form of a Letter of Understanding (LOU #17) which called for the City's human resources department to conduct job classification reviews for the same 31 positions. Classifications specifically identified on the list submitted by the GREIU included housing inspector I, as well as office assistant I -- housing inspections, a position held by Kim Takus-Vanderwood. The list made no reference to the housing inspector II position or the property inspectors.

As part of the classification review proposal, the GREIU sought to have incumbents "protected" should the review process result in an upgrade for one or more of the specified classifications. Absent such an agreement, it is undisputed that any employee holding a position upgraded as a result of the classification review process would be required to test for the reclassified position and would then be placed on probation. If that employee was unable to successfully complete the probation, he would be returned to his former position or, if that

position no longer existed, subject to layoff. The parties negotiated a similar "protection" agreement in 1992 when Respondent conducted a city-wide classification and wage review.

In November and December of 2004, the parties engaged in fact finding. While that process was ongoing, the City and the Union reached what they referred to as "tentative-tentative" agreements on a number of non-economic issues, including the GREIU's proposed classification review of specified positions. The language of that "tentative-tentative" agreement provided:

> **7. Classification Upgrades**
>
> After discussing the issue the Union clarified that its proposal was not intended to skip the review process but was intended to request specific job positions to be considered based on changes to the work the particular individuals were doing. The Union also clarified that its intended purpose of the proposal during bargaining was to protect the incumbents in the jobs if the jobs were determined to require a different classification.
>
> Upon the clarification, the parties reached consensus that the jobs being proposed should be subjected to a classification review process by HRD as the normal process would require. However, the parties wanted to further follow up on two issues:
>
> 1) To verify the Union had done screening on the requests submitted – To be checked by the Union.
>
> 2) To see if any of the job positions identified by the Union for review have already been submitted to HRD for a classification review. If so, which ones and if completed what results? -- To be checked by the City.
>
> (Upon receipt of that information, the parties have reached an understanding about classification reviews for those positions contained in the proposal and on the vesting status of the incumbents??. [sic])

The parties agree that the phrase "job positions identified by the Union for review" referred to the 31 positions set forth on the list originally submitted by Charging Party on February 28, 2003.

In January of 2005, George Childers, Jr. replaced Jelks as the City's labor relations manager and chief spokesperson at the bargaining table. On February 11, 2005, the fact finder issued his Opinion and Award which did not include any recommendations pertaining to a classification review. Following the issuance of that report, the parties engaged in six additional bargaining sessions before reaching an agreement on a successor contract.

At a bargaining session on March 1, 2005, GREIU representatives asked the City's negotiating team whether there was anything more to report on the reclassification issue. After

conferring briefly with Childers, Respondent's assistant city manager, Victor Vasquez, Jr., explained that due to anticipated budget cuts, he had been working with the City's planning director and its neighborhood improvement director on a budget proposal to be submitted to the City Commission which would render the reclassification issue "moot" as to the housing inspector position. Vasquez testified that he told the Union that the plan under consideration would combine the duties of the housing inspectors, property inspectors and zoning inspectors into a new classification which would be responsible for enforcing the building, housing and property codes. Vasquez did not specifically inform Charging Party when this plan would be implemented, but he did indicate that the changes were "part of the budget process" which he understood to mean July 1st. The City specifically requested that the Union's bargaining team keep their discussion regarding the proposed changes confidential.

Charging Party's witnesses gave a fairly similar account of what occurred at the March 1, 2005 meeting. Pakiela testified that Vasquez told the Union that "the City was considering making some changes" which would involve inspector positions. According to Pakiela, Vasquez indicated that the changes which were being contemplated by the City would involve the creation of "new positions that would combine the duties of the housing inspectors and the zoning inspectors." The Union's vice president, Megan White, characterized the discussion which took place that day as merely pertaining to a possible name change for certain positions within the neighborhood improvement department. However, White admitted that in response to Vasquez's announcement, she immediately demanded that incumbents be "protected" if the proposed changes occurred. Both Pakiela and White testified that they interpreted the discussion regarding the reorganization as a "concept" which was still in the planning stage. According to Pakiela, the Union's bargaining team believed that the reorganization "was something that the City was informing us would be coming down the road at some time" and that "when there was something more concrete to deal with, it would be dealt with." White testified, "My sense of it was that this was something that was going to, you know, probably resolve that proposal [to raise the pay of the housing inspectors from range 17 to 18.]." Both Pakiela and White acknowledged that Vasquez referred to the term "code enforcement officer" as a possible name for the new position.

The City did not make any formal proposal concerning the impact of the changes on incumbents at the March 1, 2005, bargaining session, nor did the Employer specifically refer to the possibility that layoffs would result from the proposed reorganization. However, Respondent's witnesses testified credibly that Childers told the Union that the newly created positions would be filled in a manner consistent with the parties' collective bargaining agreement.

The next bargaining session occurred on March 8, 2005. On that date, Charging Party once again sought to discuss its proposal to increase the pay of the housing inspector I position. In response, Childers told the Union's bargaining team that Respondent could not agree to the Union's proposal because, pursuant to the 2001 arbitration decision referenced above, the issue of a pay increase for the housing inspectors was to be resolved by the Civil Service Board. Thereafter, the issue of a pay raise for the housing inspectors was not brought up again by either party and both Childers and Vasquez testified that they believed the matter had been resolved. Following a brief caucus, the Union returned with a verbal proposal to increase the number of

chief stewards. Childers told the Union that he would agree to that proposal in order to settle the contract. At that point, the parties understood that they had reached a tentative agreement on a successor contract covering the period 2003-2006.

On March 10, 2005, the members of the bargaining teams met to review and sign the tentative agreement which had been reached two days earlier. The tentative agreement presented to the parties for signature that day included the following language pertaining to reclassification reviews:

> THE CITY AGREES TO HAVE THE HUMAN RESOURCES DEPARTMENT PROVIDE A CLASSIFICATION REVIEW OF THE ATTACHED JOB CLASSIFICATIONS.
>
> PRIOR TO THESE REVIEWS BEING INITIATED THE UNION WILL FOLLOW UP TO ENSURE THAT THE REQUESTS HAVE BEEN PROPERLY SCREENED AND TO VERIFY THAT THE JOBS SUBMITTED HAVE NOT ALREADY BEEN SUBMITTED TO THE HUMAN RESOURCES DEPARTMENT FOR A CLASSIFICATION REVIEW.
>
> THE PARTIES FURTHER AGREE TO PROTECT THE INCUMBENTS OF THE ATTACHED JOBS SHOULD THE REVIEWS DETERMINE TO REQUIRE A DIFFERENT CLASSIFICATION.

At the March 10th meeting, Childers examined the list of positions which were to be reviewed pursuant to the above agreement. Childers testified that he was surprised to discover that the housing inspector I classification was still identified as being one of the positions subject to review. Childers testified that he believed the dispute involving that classification had already been resolved and that, consistent with the 2001 arbitration award, the Union would be submitting the issue of a pay raise for the housing inspector I's to the Civil Service Board. Although Childers signed the tentative agreement that day, he testified that he did so with the understanding that the housing inspector I classification would not be included on the final "properly screened" list to be submitted by the Union at some future date.

At the hearing, Pakiela denied that Childers raised any issue with respect to the inclusion of the housing inspector I classification. Rather, Pakiela testified that the only classification about which Childers expressed concern was the office assistant I -- housing inspections position held by Takus-Vanderwood. With respect to that classification, Pakiela testified that the parties negotiated a separate agreement at the March 10th meeting which he understood would result in the removal of the office assistant I -- housing inspections position from the final "properly screened" version of the list. That agreement stated:

> 1. The Position Classification Questionnaire filled out by Kimberly Takus-Vanderwood and submitted on September 26, 2003, shall be returned to Ms. Takus-Vanderwood for her review and update if necessary.

2. Before resubmitting the Position Classification Questionnaire to the Human resources Department, the completed questionnaire shall be reviewed by Ms. Takus-Vanderwood's immediate supervisor and any exceptions or additions to the information provided shall be included on the questionnaire. The supervisor shall sign the document prior to submission to Human Resources.

3. Mr. Vic Vasquez and/or Mr. George Childers shall speak with Ms. Diane Cope to insure she understands that she does have an opportunity to submit a questionnaire for review as well as Ms. Takus-Vanderwood.

The tentative agreement was ratified by the members of the GREIU bargaining unit on March 18, 2005, and by the City Commission on a date not specified in the record. On or about March 25th, the Respondent's housing inspection director held a meeting with employees at which he announced that all housing and property inspector positions were being eliminated and that the individuals employed in those positions would be laid off. Employees were informed that three new positions, code compliance officer I, II and III, would be created to take over the duties previously performed by the housing and property inspectors, and that employees who formerly held such positions would be given the opportunity to test to become code compliance officers. In addition, the director announced that employees who passed the test for the new code compliance officer positions would be subject to a six-month probationary period.

In May of 2005, Charging Party submitted to the City its "properly screened" list of positions for reclassification review. On this new list were the 31 positions originally set forth on the February 25, 2003 list, including housing inspector I and the office assistant I -- housing inspections position held by Takus-Vanderwood. In addition, the document identified approximately eight other classifications which had not been set forth on the prior list submitted by the Union, including electrician I – facilities management, office assistant I – police department, office assistant II – parks and recs and office assistant II – clerks. The City did not immediately review the list submitted by the Union.

In August of 2005, Childers met with the Union and objected to the inclusion of the housing inspector I and office assistant – housing inspections positions, as well as the eight additional classifications which the Union had not previously proposed for review. In response, the Union decided to drop its demand that the City review the office assistant I position held by Takus-Vanderwood and the eight newly-included positions. With respect to the latter, Pakiela testified, "[I]f we made a mistake on them by not submitting them originally, we would have to take our lumps for that with our members." However, Charging Party continued to insist that the housing inspector I classification had been properly included on the list and that the position should be reviewed by the City's human resources department. The parties participated in several meetings in an unsuccessful attempt to resolve the issue.

The elimination of the housing inspector and property inspector positions occurred as scheduled in July of 2005. Six housing inspector II's, 13 housing inspector I's and 2 property inspectors were laid off. Approximately 17 of those 21 employees continued working for the City as code compliance officers. Three former inspectors bumped into other positions within the City and one accepted a supervisory position outside of the GREIU bargaining unit. None of

the former inspectors had yet completed their six-month probationary periods in their new positions at the time of hearing. The GREIU has filed a grievance over the reorganization of the housing department and has requested that the Civil Service Board review the pay rates applicable to the new code compliance officer positions.

At the time of the hearing, the 2003 to 2006 contract had not been formally signed by the parties due to the dispute over the reorganization of the housing department and the issue of whether the housing inspector I position should be included on the list of positions subject to review. However, the City has implemented wage and benefit increases and other terms and conditions of employment agreed to by the parties during negotiations.

Positions of the Parties:

Charging Party argues that the City violated its duty to bargain in good faith by eliminating the housing inspector I and II and property inspector classifications shortly after reaching a tentative agreement with the Union which called for the City to conduct a classification review of a number of positions, including housing inspector I, and to protect incumbents. Charging Party argues that it never agreed to remove the housing inspector I position from the list of positions subject to review and protection. According to Charging Party, the City's actions in reneging on the express terms of the tentative agreement establish that Respondent did not approach the bargaining process with an open mind and a sincere desire to reach an agreement. Furthermore, Charging Party asserts that Respondent deceived the Union's bargaining team into believing that its plan for the neighborhood improvement department was merely "a concept" which involved nothing more than a name change for certain positions. As a remedy in this matter, Charging Party requests that the Commission issue a cease and desist order, an order requiring Respondent to make the Union and its members whole, and an order directing the City to refrain from implementing any unilateral changes and/or to rescind any changes already implemented.

Respondent asserts that the Union's challenge to its abolishment of positions in the neighborhood improvement department and to its creation of the code compliance officer classifications are matters of contract interpretation which should be resolved via the grievance arbitration process. Respondent further contends that the tentative agreement reached on March 8, 2005, was expressly conditioned on the Union submitting a "properly screened" list, and that there was never any meeting of the minds as to the specific positions which were to be subject to such review. Moreover, the City argues that since the "properly screened" list was not submitted by the Union until May of 2005, well after the City had already announced the elimination of the housing inspector I position, there no longer existed any duty on the part of the City to conduct a reclassification review of that position. Respondent rejects the Union's contention that it failed to fully and properly inform the Union of the upcoming changes. According to the City, the Union understood the changes which were being contemplated and their impact on the bargaining unit. Finally, Respondent contends that it had no obligation to present to the GREIU bargaining proposals to reorganize the neighborhood improvement department, as the City has retained authority under the collective bargaining agreement to make such changes without having to negotiate with the Union.

Discussion and Conclusions of Law:

In its charge, the GREIU alleges that Respondent's elimination of the housing inspector I and II and property inspector classifications in its neighborhood improvement department and its failure to conduct a reclassification review of the housing inspector I position was a violation of Sections 10(1)(a) and 10(1)(e) of PERA. Section 10(1)(a) of PERA makes it unlawful for a public employer to interfere with, restrain or coerce public employees in the exercise of rights guaranteed to them under Section 9 of the Act, including the right to "negotiate or bargain collectively with their public employers through representatives of their own free choice." Section 10(1)(e) of PERA prohibits a public employer from refusing to bargain collectively with the representatives of its public employees. In determining whether a party has violated its statutory duty to bargain in good faith, the totality of the party's conduct must be examined to determine whether it has "actively engaged in the bargaining process with an open mind and a sincere desire to reach an agreement." See e.g. *Unionville-Sebewaing Area Schools*, 1988 MERC Lab Op 86, 89, quoting *Detroit Police Officers Association v City of Detroit*, 391 Mich 44, 53-54 (1975).

Charging Party asserts that a violation of PERA is established by the City's failure to comply with the terms of the tentative agreement reached by the parties in March of 2005. As the Commission recognized in *Lakeville Comm Sch*, 1990 MERC Lab Op 56, 61, "[F]inality of contract is a basic principle of collective bargaining. Provisions of a ratified agreement cannot be lightly set aside without jeopardizing this principle and undermining the purpose of collective bargaining." Where a contract provision in dispute is unambiguous and there is no evidence of fraud or bad faith, "a party cannot later repudiate that provision by claiming that it did not intend to agree to the provision or that it failed to read the agreement carefully before ratifying it." *City of Detroit (Dep't of Transp)*, 19 MPER 3 (2006) (no exceptions), citing *Lakeville Comm Sch*, *supra* at 60. However, it is well-established that a party will be excused from executing or implementing a contract where there has been no actual meeting of the minds. *Genesee Co (Seventh Judicial Circuit Ct)*, 1982 MERC Lab Op 84, 87. The Commission has found no meeting of the minds where the parties reach a tentative agreement containing ambiguous language and the evidence establishes that the parties did not specifically agree on the meaning of this language during negotiations. *Buena Vista Sch*, 16 MPER 65 (2004). The standard for determining whether there was a meeting of the minds is an objective one, focusing on the express words of the parties and their acts. *Lakeview*, *supra* at 59.

I find that the evidence in the instant case establishes that there was no meeting of the minds with respect to the specific classifications which were to be subject to review by the City's human resources department. Although the tentative agreement reached by the parties referred to the list of positions originally submitted by the Union at the start of negotiations in February of 2003, the agreement recognized that the list would not be final until Charging Party "properly screened" the classifications to determine whether a review of each of the positions listed therein was necessary. Just prior to reaching that agreement, the City expressed to the Union its position that the dispute over compensation for the housing inspector I classification should be resolved in accordance with the 2001 grievance arbitration award. Given that Charging Party did not raise any objection to that proposition, it was reasonable for the City's bargaining team to

conclude that the housing inspector I position would not be included on the final "properly screened" list.

An examination of the final list which was ultimately submitted by the Union in May of 2005 also supports a finding that there was never a meeting of the minds on this issue. That document included reference to eight classifications which the Union had not previously proposed for review and which did not appear on the list as it existed at the time the tentative agreement was reached. Charging Party also included Takus-Vanderwood's office assistant I position on the final document, despite the fact that the parties had previously reached a side agreement which, according to Pakiela, called for that position to be removed from the list.

Even assuming arguendo that there was a meeting of the minds with respect to the inclusion of the housing inspector I classification on the final "properly screened" list, the record does not establish that the City repudiated the tentative agreement or otherwise acted in bad faith in connection with this matter.[1] The tentative agreement called for the City to conduct a classification review of the specified positions and to protect incumbents only if such a review resulted in an upgrade to one or more of the classifications. However, after the tentative agreement was reached, Respondent announced that all housing inspector positions were being eliminated and that employees who formerly held those positions would be given the opportunity to test for placement in the new code compliance officer classifications. Thus, by the time the Union submitted its final list to Respondent, it knew or should have known that there would no longer be a housing inspector I position in existence which could be included as part of the reclassification review process.

I also find it significant that following the City's announcement of the changes on or about March 25, 2005, Charging Party proceeded in a manner which suggests that it did not initially perceive the reorganization to be fundamentally in conflict with the recently ratified collective bargaining agreement. There is no evidence in the record establishing that the Union immediately protested the City's stated intention to eliminate the housing inspector position in March of 2005, or that it alleged or perceived at that time that the City had bargained in bad faith by withholding critical information regarding the status of the negotiations. In fact, Charging Party waited for several months to submit its "properly screened" list to the City, and the issue of a reclassification review of the housing inspector I position was apparently not even discussed by the parties until August of 2005, when Childers raised an issue as to the inclusion of several positions on the Union's list, including housing inspector I.

Finally, I find no merit to Charging Party's assertion that the City was somehow dishonest with Charging Party during bargaining or that it withheld information from the Union about the reorganization plans. The record indicates that Vasquez informed the GREIU's bargaining team at the March 1, 2005, negotiation session that the City was considering a plan to combine the duties of various positions in the neighborhood improvement department, including the housing inspector I position, into a new classification, perhaps entitled "code enforcement officer."

[1] It should be noted that there was never any agreement by Respondent to conduct a review of the housing inspector II or property inspector positions, despite Charging Party's suggestion that the City repudiated the tentative agreement and/or acted in bad faith with respect to the elimination of those positions.

In its post-hearing brief, the Union characterizes the March 1, 2005, discussion as an attempt by the City to deceive the Union into believing that its plans for the neighborhood improvement department were "a concept that involved nothing more than a name change." However, it is clear even from the testimony of the Union's own witnesses that Vasquez presented the City's proposal as something more than some vague concept which might or might not ever come to fruition. Pakiela testified that he understood from the discussion that the plan "would be coming down the road at some time" while White admitted that it was her sense that "this was something that was going to . . . probably resolve" the dispute over the compensation of the housing inspector I position. The fact that White immediately responded to Vasquez's announcement by demanding protection for incumbents strongly suggests that the Union was in fact aware of the plan's potential impact on unit members. Furthermore, the Union should have understood from Respondent's request for confidentiality that the plan was something beyond merely a "concept."

Although Vasquez did not specifically refer to any implementation date for the reorganization proposal, he testified credibly and without contradiction that he conveyed to the Union that he had developed the proposal along with the City's planning director and its neighborhood improvement director in response to anticipated cutbacks, and that it was "part of the budget process" which he understood to mean July 1st. Accordingly, I find no merit to Charging Party's assertion that the City failed to properly inform the Union about the changes which ultimately occurred.

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 Sch*, 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. While a public employer does have a duty to bargain over the impact of that decision, see e.g. *Ishpeming Supervisory Employees, supra*; *Ecorse Bd of Ed*, 1984 MERC Lab Op 615, there is no allegation that Charging Party ever made a timely demand to bargain the impact of the changes which occurred in the instant case, nor is that theory specifically advanced in the Union's charge.

For the foregoing reasons, I conclude that Charging Party has failed to establish that the City of Grand Rapids violated Sections 10(1)(a) and 10(1)(e) of PERA by eliminating positions in its neighborhood improvement department. Accordingly, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated: _____