STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent

Case No. C06 E-104

-and-

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

APPEARANCES:

City of Detroit Law Department, by Andrew Jarvis, Esq., for Respondent

Vinod Sharma, President, Association of Municipal Engineers, for Charging Party

DECISION AND ORDER

On March 29, 2007, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 176, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on April 23, 2007. On April 19, 2007, Charging Party requested an extension until May 11, 2007 to file exceptions. We granted the request and issued an order extending the time for filing exceptions to the Administrative Law Judge's decision to May 11, 2007.

No exceptions were filed on or before the specified date. Rather, we received Charging Party's exceptions on May 14, 2007. Although the Charging Party dated the exceptions on May 10, 2007, it is well established that the date of filing of exceptions is the date the document is received at the Commission's office. See e.g. *Amalgamated Transit Local* 26, 20 MPER 1 (2007); *Police Officers Association of Michigan*, 18 MPER 14 (2005); *Wayne Co Cmty College Dist*, 18 MPER 54 (2005). Moreover, our order granting the extension explicitly stated that the exceptions must be *received* at a Commission office by the

close of business on the specified date. Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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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APPEARANCES:

Andrew Jarvis, Esq., Assistant Corporation Counsel, City of Detroit Law Department, for Respondent

Vinod Sharma, President, Association of Municipal Engineers, 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, this case was heard at Detroit, Michigan on September 15, 2006, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on October 27, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Association of Municipal Engineers filed this charge against the City of Detroit on May 8, 2006. Charging Party represents a bargaining unit that includes supervisory engineers in Respondent's water and sewerage department (the department). Nonsupervisory engineers in the department are represented by another labor organization, the Association of Detroit Engineers (ADE). The charge alleges that Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA by failing to provide Charging Party with adequate notice of the layoff and demotion of its members effective on or about May 6, 2006, and by giving false reasons for these layoffs/demotions.

Findings of Fact:

Article 2(D) of the collective bargaining agreement between Charging Party and Respondent reads as follows:

> The City reserves the right to layoff [sic] for lack of work or funds; or the occurrence of conditions beyond the control of the City; or where continuation of work would be wasteful and unproductive; provided such actions do not conflict with the terms of this agreement.

Article 15 of the contract describes how employees are to be selected for removal from their positions when it is necessary to reduce the number of employees in a classification. It also sets out in detail the bumping and recall rights of employees. Article 6 is a grievance procedure culminating in binding arbitration.

In late 2005, there was discussion in the press and elsewhere of possible layoffs of City of Detroit employees because of the City's budget problems. Unlike most City departments, the water and sewerage department is not supported by general tax revenues but is, instead, funded by the department's sale of water and sewage treatment services to customers both inside and outside of the City. The City cannot legally use funds generated by the department to fund other City services. In December 2005, department director Victor Mercado met with representatives of all the unions representing department employees, including Charging Party. Mercado told the unions that the department was financially healthy. He said that there would probably be a hiring freeze, but that there would not be layoffs.

In early 2006, the department made a request to the Detroit City Council to raise water rates. The Council approved the rate increases for suburban customers but balked at raising rates for City residents. In a public statement, Mercado said that if the rate increases were not approved there would have to be layoffs in the department. In a department meeting in late February or early March 2006, Charging Party asked Mercado whether the department was considering layoffs. Mercado said that there might be some layoffs; the department did not know yet. During this meeting, Charging Party president Vinod Sharma and Mercado argued after Sharma asked Mercado why Mercado was receiving a raise if the department was in financial difficulty. Shortly after this meeting, the City Council approved the rest of the department's rate increase request.

On March 13, 2006, Sharma received the following letter from Charlotte Bush, the department's human resources manager.

> In an effort to keep you apprised of reductions to your labor union, please be advised that the Detroit Water and Sewerage Department anticipates issuing layoff notices beginning the week of April 10, 2006.

The following list of titles is not intended to be exhaustive, as additional titles contained in your bargaining unit may be affected based on reduction in force rules and on-going budget adjustments.

Sr. Associate Civil Engineer; Sr. Associate Chemical Engineer; Sr. Associate Electrical Engineer; Sr. Associate Mechanical Engineer; Associate Mechanical Engineer; Associate Civil Engineer.[1]

The City reserves the right to modify this list as necessary to effectuate the reduction in force.

A similar letter was sent to all or most of the labor organizations representing City employees. After Sharma received this letter, he telephoned Bush. When his call was not returned, he approached Mercado to inquire about the letter. Mercado told him that the department was in the process of determining how many layoffs there would be and who would be laid off. No layoffs took place on April 10.

On April 20, 2006, Bush sent Sharma another letter:

In an effort to keep you apprised of reductions to your labor union, we are providing you with updates relative to DWSD's reduction in force.

The effective date of the reduction in force has been changed to May 6, 2006.

The following list of titles is not intended to be exhaustive as additional titles contained in your bargaining unit may be affected based on reduction in force rules and on-going budget adjustments.

Classification	Number to be Laid Off	Number to be Demoted
Sr. Assoc Civil Engineer-Design	1	2
Sr. Assoc. Mechanical Engineer-Design	0	1
Sr. Assoc. Electrical Engineer	0	1
Sr.Assoc. Chem Engineer-IC	0	2

[1] The last two positions are not in Charging Party's unit.

The City reserves the right to modify this list as necessary to effectuate the reduction in force.

Along with the letter, Sharma received a fax stating that he could pick up copies of the layoff and demotion notices on the afternoon of April 21. The fax stated that notices not picked up by 3 pm that day would be mailed to him. Between April 20 and April 28, five engineers in Charging Party's unit were called to the human resources department and told they must accept demotions to the nonsupervisory unit or be laid off. A sixth member of Charging Party's bargaining unit received a layoff notice. Many nonsupervisory engineers in the ADE unit were laid off, and several were demoted to lower paid positions within that unit. There were also layoffs among clerical employees in the department.

All the layoff notices stated that the reason for the layoff was "lack of funding." The demotion notices stated that the demotions were pursuant to a reduction in force. There is no dispute that the layoffs and demotions were not related to a lack of work. Several members of Charging Party's unit who were demoted testified that their jobs did not change substantially after their demotions.

On May 1, Sharma wrote a letter to the Detroit City Council asking it to take action to stop the layoffs and demotions in the department. Sharma took issue with Mercado's public statement that layoffs in the department were necessary because of increases in the costs of natural gas and chemicals used at the wastewater plant and because of the City Council's delay in approving the rate increases. Sharma pointed out that the department had filled only about eighty percent of its budgeted positions in the 2005-2006 fiscal year. He argued that this money should be available to cover any shortfall in other areas of the budget. In his letter to the Council, Sharma attacked Respondent's decision to give Mercado a salary increase and the department's process for approving outside contracts. Sharma also asserted that any money saved by laying off staff had to be returned to the ratepayers, and that it would be illegal for the City to divert money from the department's budget to the City's general fund.

The layoffs were effective May 6, 2006. Most of the demotions were effective May 8. Charging Party filed several grievances over the layoff and demotions, including a grievance asserting that Respondent had violated Article 2(D) of the contract because the layoffs were not caused by either a lack of work or a lack of funds. The department eliminated additional unit positions by attrition after May 8.

Discussion and Conclusions of Law:

It is well established that a public employer's inherent managerial rights under PERA include the right to make decisions regarding the size and scope of the services it will provide to the public. For this reason, a public employer has no duty to bargain over its decision to eliminate positions and lay off employees, although it does have a duty to bargain over the impact of the layoffs and their effects, including the effect of the layoffs on the workload and safety of the remaining employees and the method of selecting employees for layoff. *Metropolitan Council No 23 and Local 1277 of American Federation of State, County and*

Mun Employees (AFSCME) AFL-CIO v. City of Center Line. 414 Mich 642, 660 (1982); *Kalamazoo Co and Sheriff*, 1992 MERC Lab Op 63; *City of Pontiac*, 1989 MERC Lab Op 1032. An employer's duty to bargain over the impact of layoffs requires it to provide the union with sufficient notice so that meaningful bargaining over the impact can occur. However, an employer is not required to bargain to impasse over the impact or effect of the layoffs before implementing them. *Kalamazoo Co; Ecorse Bd of Ed*, 1984 MERC Lab Op 615.

Since an employer's decision to reduce positions and lay off employees is a permissive subject of bargaining, and not an illegal one, an employer may enter into an enforceable agreement restricting its right to lay off. *Center Line*, at 652 and 661; S*wartz Creek Cmty Schs*, 1994 MERC Lab Op 223. Article 2(D) of the parties' contract arguably sets limits on Respondent's right to lay off employees in Charging Party's bargaining unit. However, as the Commission has repeatedly stated, an unfair labor practice proceeding is not the proper forum for the adjudication of a contract dispute. *City of Detroit (Dept of Transp)*, 19 MPER 34 (2006); *Wayne Co*, 19 MPER 61 (2006); *Wayne Co Cmty College Dist*, 2002 MERC Lab Op 26 Charging Party's assertion that Respondent gave a false justification for the layoffs, i.e., it claimed lack of funds when there was, in fact, money in the department's budget, does not state a claim under PERA.

Charging Party also alleges that Respondent failed to give it adequate notice of the layoffs/demotions. As noted above, an employer is required to give a union sufficient notice of its decision to lay off so that meaningful bargaining can take place over the effects or impact of the layoffs. On March 13, 2006, Respondent notified Charging Party that employees in its unit would be laid off. When Charging Party president Sharma inquired, he was told that the department had not yet determined how many employees would be laid off or whose positions would be eliminated. Charging Party did not receive copies of the layoff/demotion notices until sometime after April 21. Between April 21 and the effective date of the layoffs/demotions, Charging Party made a plea to the City Council to rescind them. However, it did not make a demand to bargain over the effect of the layoffs/demotions. Charging Party subsequently filed several grievances under the contract in addition to this unfair labor practice charge. Insofar as the record discloses, however, Charging Party has not yet sought to bargain over the effect of the layoffs/demotions on those laid off or demoted (by, for example, seeking severance pay for the laid off employee) or on those employees remaining in the unit (by, for example, asking to bargain over their increased workload.) I conclude that Respondent's notice of the May 2006 layoffs/demotions was not inadequate to allow for meaningful bargaining over the effect of these actions and that Respondent did not violate its duty to bargain over the impact of these layoffs and demotions.

I find that Respondent did not violate its duty to bargain in good faith over the layoff and demotion of employees in Charging Party's bargaining unit in May 2006. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____