STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TOWNSHIP OF WEST BLOOMFIELD,
Public Employer - Respondent,

Case No. C06 F-142

-and-

TECHNICAL, PROFESSIONAL AND
OFFICEWORKERS ASSOCIATION OF MICHIGAN,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Keller Thoma P.C., by Richard W. Fanning, Esq., and Mark S. Wilkinson, Esq., for Respondent

Martha M. Champine, Esq., Assistant General Counsel, for Charging Party

DECISION AND ORDER

On August 20, 2008, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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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:_____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

Case No. C06 F-142

TOWNSHIP OF WEST BLOOMFIELD,
Respondent-Public Employer,

-and-

TECHNICAL, PROFESSIONAL AND
OFFICEWORKERS ASSOCIATION OF MICHIGAN,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Martha M. Champine, Assistant General Counsel, for Charging Party

Keller Thoma P.C., by Richard W. Fanning and Mark S. Wilkinson, for Respondent

DECISION AND RECOMMENDED ORDER

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 January 30, 2007 before David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules, on behalf of the Michigan Employment Relations Commission. Based upon the entire record, including the transcript, exhibits and post-hearing briefs filed by the parties on or before April 2, 2007, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Background Matters:

The Technical, Professional and Officeworkers Association of Michigan (TPOAM), an affiliate of the Police Officers Association of Michigan (POAM), represents a bargaining unit consisting of approximately 100 nonsupervisory office employees of the Township of West Bloomfield, including the position of parking enforcement officer, a civilian position in the Township's police department. The Union and the Township are parties to a collective bargaining agreement covering the period January 1, 2005 to December 31, 2008. The contract contains a management rights clause, Article 4, which gives the Township Board the right to determine the quantity and quality of services rendered to the public and the size of the work force and the authority to assign and layoff employees. On June 15, 2006, the Union filed this unfair labor practice charge alleging that the Township violated Section 10(1)(e) of PERA by

laying off all the parking enforcement officers and unilaterally transferring their work out of the bargaining unit.

Findings of Fact:

I. Parking Enforcement Officers

Prior to late 2005, Scott Smart and Union steward Paul Molin were employed by Respondent in the parking enforcement division of the police department's traffic safety bureau. As parking enforcement officers (PEOs), Molin and Smart were responsible for patrolling the Township and looking for vehicles parked in violation of Respondent's parking violations ordinance. Upon discovering a violation, the PEOs would draft a citation known as a "parking violation notice" and attach it to the windshield of the offending car or truck. On occasion, the PEOs would also take a photograph of the vehicle and attach it directly to the parking violation notice or file it digitally within the Township's computer system.

Upon returning to the office of the traffic safety bureau, Molin and Smart would file one copy of the parking violation notice with the police department and transmit a second copy to the Township Treasurer, to whom the fine was supposed to be paid. If the fine was not paid within a prescribed period of time, the PEOs were responsible for running the license plate in the State of Michigan's "L.E.I.N." computer system to ascertain the identity of the vehicle's registered owner. The PEOs would then send a copy of the parking violation notice directly to that individual.

If the fine remained unpaid after an additional two weeks, or if the registered owner of the vehicle contacted the police department to contest the ticket, Molin and Smart would issue a "civil infraction" on the state's Uniform Law Citation (ULC) form, which was then transmitted to both the vehicle's owner and to the 48th District Court, which serves a number of communities, including West Bloomfield Township. The 48th District Court would then hold an informal hearing, which the PEO who wrote the parking violation notice was required to attend. Money from fines paid to the Treasurer's Office on a parking violations notice went directly into Respondent's coffers. However, if a civil infraction was issued, the money collected on the ticket went to the 48th District Court, with West Bloomfield Township receiving only a portion of the fine amount.

Although "parking violation notices" have always been written exclusively by the parking enforcement officers, the West Bloomfield Charter Township Code provides that such notices may be written by either a police officer or by any other duly authorized Township employee.

II. Parking Enforcement Duties of Police Officers

The primary function of police officers employed in Respondent's traffic safety bureau is to patrol the Township and write traffic tickets. However, police officers have historically played a role in enforcing the Township's parking violations ordinance as well. Prior to December of 2005, a police officer who came upon a vehicle parked in violation of the

ordinance had the option of either calling one of the PEOs to the scene to issue a parking violation notice, or instead handling the matter himself by issuing a "civil infraction" citation. If the officer decided to write the ticket himself, he would utilize the same ULC form used by the PEOs when there had been no response to a parking violation notice. The officer would run the vehicle information through the LEIN system, fill out the citation form, leave a copy on the windshield of the vehicle and then, upon returning to the police station, deliver a copy to the officer in charge of the shift. The money collected on civil infractions issued by police officers was paid to the 48th District Court, with only a portion of the fine returned to the Township.

III. Elimination of Parking Enforcement Officer Position

The idea of doing away with the PEO position was first raised at a meeting of the West Bloomfield Township Board of Trustees on October 31, 2005. As set forth in the minutes of that meeting, the Board discussed the elimination of the parking violations division in order to help the Township achieve a positive fund balance. In place of the PEOs, the board considered utilizing either volunteers or police officers to enforce the Township's parking violations ordinance. A representative of the police department, Lieutenant John Himmelspach, told the Board that replacing the PEOs with police officers would not result in a "labor relations problem" for Respondent, since the enforcement of the Township's parking violations ordinance was already part of the police officers' job description.

Elimination of the PEO position was once again discussed at the board's next meeting on November 14, 2005. On that date, Lt. Himmelspach expressed to the board that the police department preferred to keep the parking enforcement division intact, and he opined that the transfer of parking enforcement duties to police officers would result in an overall reduction in revenue for the Township. After some debate on the issue, the board voted to approve the elimination of the parking enforcement division and to have existing police officers issue citations for parking violations.[1]

At the next meeting on December 1, 2005, Paul Molin argued to the board that the elimination of the parking enforcement division would negatively impact the Township's budget. Molin explained to the trustees the difference between the parking violation notices issued by PEOs and the civil infractions typically written by police officers. Since the money from civil infractions went to the 48th District Court, as opposed to the Township, Molin argued that eliminating the PEOs would cost Respondent approximately $85,000 in revenue. In response to Molin's argument, the Township's supervisor noted that police officers were also able to write parking violation notices.

The next meeting of the Township board was on December 12, 2005. At that meeting, the board adopted Respondent's budget for 2006 fiscal year, which excluded funding for the parking enforcement division. Molin attended the meeting along with Charging Party's vice president. Molin once again addressed the board concerning the elimination of the PEO

[1] Molin initially testified that he attended the November 14, 2005 meeting of the board of trustees. On cross-examination, however, he indicated that he was not present on November 14th, and his name is not included on the attendance sheet for that meeting.

position. Molin opined that the Board would need to hire a new clerk to handle the extra clerical duties which would arise from the use of police officers to write parking violation notices. Molin was advised by the Township Supervisor that the budget did not have an allowance for any new clerks.

On December 13, 2005, the Union filed a grievance challenging the proposed layoff of Molin. The grievance asserted that the Township had no valid economic justification for the layoff, and that the elimination of Molin's position constituted a violation of PERA. Molin was formally notified by the Township that his position was being eliminated in a letter dated December 19, 2005. Molin and Smart were laid off effective January 1, 2006.

On March 7, 2006, the supervisor of the traffic safety bureau, Sergeant David Zolna, issued a memorandum to his staff indicating that "we are [now] back in the parking violation business." The memo outlined in detail the procedure that his police officers were to follow in issuing parking violation notices and civil infraction citations. Two days later, Sgt. Zolna issued a memo to the department's front desk personnel in which he explained, "We are reinstating the use of the parking violations on a very limited basis."

Around this time, Molin contacted POAM business agent Wayne Beerbower and informed him that Township police officers were issuing parking violation notices. On April 12, 2006, Beerbower sent a letter to Respondent's human resources director, Kent Herbert, asserting that police officers were performing work which was exclusive to the TPOAM. Beerbower requested that Herbert provide the Union with "dates to begin negotiations regarding the impact of this transfer and the layoff of parking enforcement officers." On May 8, 2005, the Union filed a grievance alleging that the layoffs of Molin and Smart and the transfer of parking enforcement work to police officers violated the parties' contract and that it constituted an unfair labor practice.

Herbert responded to Beerbower in a letter dated May 12, 2006, in which he wrote, "Please contact me with some dates to meet about Parking Enforcement." Thereafter, Beerbower and Herbert had several discussions during which the Union business agent asked that Molin and Smart be returned to work as PEOs. Herbert explained to Beerbower that before he could go to the board and seek to have Molin and Smart reinstated, he would need to have statistics in his possession showing that the new parking enforcement procedure was not cost effective.

The Union filed the instant charge on June 15, 2006. Thereafter, Herbert sent a letter to Beerbower asserting that the filing of the charge was in contravention of a prior agreement to delay the discussion of the effects of the layoffs until August "to see the result of the first six months of the parking ticket writing program as it is now being administered." According to the letter, the "purpose of that delay was to wait and see whether or not the Board of Trustees would reconsider its decision of December, 2005 to lay off Parking Enforcers and assign all parking ticket writing to Police Officers based on the cost effectiveness of the program."

Discussion and Conclusions of Law:

Charging Party alleges that the Township violated PERA by laying off its two parking enforcement officers, Molin and Smart, and transferring their work to non-bargaining unit employees without first giving the Union prior notice and an opportunity to bargain. Respondent asserts that it had no obligation to bargain over the elimination of the PEO position and the transfer of the work to its officers because enforcement of the Township's parking ordinance was never exclusively performed by members of Charging Party's unit. In addition, the Township asserts that the charge is time barred under Section 16(a) of the Act because TPOAM officials were in attendance at board meetings in December of 2005 at which Respondent made the decision to eliminate the PEO position and transfer all parking enforcement duties to police officers. Thus, the Township contends that the Union knew or should have known of the alleged PERA violation more than six months prior to the filing of the charge. Finally, the Township argues that the charge should be dismissed because the Union only requested to bargain the impact of the layoffs and never sought to negotiate over the layoff decision itself or the transfer of work previously performed by the PEOs.

Under Section 16(a) of PERA, no complaint may issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. The limitations period under the Act commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). In cases involving an alleged unilateral change, the statute of limitations runs from the date of the announcement of the decision rather than the implementation of the change. *Tuscola Intermediate Sch Dist*, 1985 MERC Lab Op 123.

Ordinarily, the dissemination of information to the general public is insufficient to put the union itself on notice of a possible PERA violation. See e.g. *University of Michigan*, 18 MPER 5 (2004) (no exceptions). In the instant case, however, the elimination of the PEOs and the transfer of their work to police officers was discussed in detail during several open meetings of the Township's board of trustees in early December of 2005, including at least two meetings at which Molin, the Union's steward, was in attendance. In fact, Molin spoke to the board about the difference between parking violation notices and civil infractions, and he advised the board that using police officers to issue the former would result in the need for additional clerical support for the department. During the December 12th meeting, at which Charging Party's vice president was also in attendance, the board voted to adopt Respondent's budget for the 2006 fiscal year, which excluded funding for the parking enforcement division. Based upon these facts, I conclude that the Union had actual notice by no later than December 12, 2005, that Respondent intended to eliminate the PEO position and assign all duties relating to enforcement of the Township's parking violations ordinance, including the issuance of parking violation notices, to its police officers. Since the charge was filed on June 15, 2006, more than six months after that date, I find the charge to be untimely under Section 16(a) of the Act.

Even assuming arguendo that the charge was timely filed, dismissal would nonetheless be warranted on the ground that the Union failed to establish that the Township had a duty to bargain over the transfer of work. Under Section 15 of the Act, public employers and labor

organizations have an obligation to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974); *St Clair Intermediate Sch Dist*, 2001 MERC Lab Op 218. An employer's decision to remove work previously performed by bargaining members and to assign those duties to employees outside the unit may constitute a mandatory subject of bargaining. *Ishpeming Supervisory Employees, v City of Ishpeming*, 155 Mich App 501 (1986); *Lansing Fire Fighters, Local 421 v Lansing*, 133 Mich App 56 (1984). The Commission has held, however, that a bargaining obligation exists only when certain conditions are met. In order to prevail on a charge alleging the unlawful removal of unit work, the 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), aff'g 1985 MERC Lab Op 1025; *Kent County Sheriff*, 1996 MERC Lab Op 294. An employer has no duty to bargain where the work has previously been shared with employees in another unit or with non-unit employees, because such work is not the "bargaining unit work" of the first unit. The "exclusivity" rule ensures that an employer will not have to bargain "except where the work reassignment departed significantly from past practice." *City of Lansing*, 1989 MERC Lab Op 1055.

I find that no bargaining duty existed on the part of Respondent, as the record does not support the Union's contention that the transferred job duties belonged exclusively to the PEO position. Police officers performed duties relating to the enforcement of the Township's parking violations ordinance for many years preceding the filing of the instant charge. While the police officers spent less time on parking enforcement than did the PEOs, the work itself was essentially the same. Upon encountering a vehicle parked in violation of the ordinance, both the PEOs and the police officers would fill out a parking ticket, leave a copy on the vehicle and perform the appropriate follow-up work. Although different forms were used depending on whether the ticket was initially written by a police officer or a PEO, the underlying parking violations were identical. If a parking violation notice remained unpaid after a specified period of time, the PEO would fill out and issue a "civil infraction" using the same form utilized by police officers at the scene of the violation. The fact that the Township's share of the money collected from the tickets differed depending on which form was used is, in the opinion of the undersigned, of no significance to the question of whether the work itself was the same or substantially similar. A showing of exclusivity is essential to establish that an employer has a duty to bargain over the transfer of work outside the unit, and the Union carries the burden of proof as to that issue. See *Kent County Sheriff, supra*. I find that it has not met that burden in the instant case. Accordingly, I conclude that the Township did not violate PERA by assigning to police offices the task of issuing parking violation notices.

All other arguments advanced by the parties have been carefully considered and do not warrant a change in the result. Based upon the above findings of fact and conclusions of law, I find that Respondent did not violate PERA and recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____