STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

HARRISON TOWNSHIP,
Public Employer - Respondent,

Case No. C07 C-044

-and-

AFSCME COUNCIL 25,
Labor Organization - Charging Party.
_____/

APPEARANCES:

The Fishman Group, by Steven J. Fishman, Esq. and Aaron D. Graves, Esq. for Respondent

Cassandra D. Harmon-Higgins, Esq. for Charging Party

DECISION AND ORDER

On February 11, 2008, 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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The Fishman Group, by Steven J. Fishman and Aaron D. Graves, for Respondent

Ben K. Frimpong for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

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 assigned to David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law and recommended order.

The American Federation of State, County and Municipal Employees (AFSCME) Council 25, Local 1103, is the collective bargaining representative for a unit of employees of the Charter Township of Harrison, including employees of the Township's water department and treasury office. On March 1, 2007, AFSCME filed an unfair labor practice charge alleging that the Employer violated Section 10(1)(e) of PERA by unilaterally outsourcing or subcontracting unit work.

On August 10, 2007, Respondent filed a motion for summary disposition, arguing that the charge should be dismissed because the dispute involves a matter of contract interpretation that is subject to final and binding arbitration under Article 12 of the parties' collective bargaining agreement. According to the Township, the subcontracting of bargaining unit work is specifically permitted under the contract's management rights clause, Article 4, which authorizes the Employer to "continue to use outside contractors to perform bargaining unit work" as long as

no layoffs result from the outsourcing, and provided that the work to be contracted out (1) has been performed by outside firms as a matter of past practice, or (2) is required because of emergency conditions or due to a shortage of qualified employees or equipment. In support of the motion, Respondent submitted an affidavit from its deputy supervisor which asserts that no unit employees have been laid off due to the outsourcing.

Charging Party filed a response to the order to show cause on August 24, 2007. In its response, Charging Party did not specifically dispute the Township's assertion that no employees were laid off as a result of the outsourcing, nor did the Union respond to the Employer's argument that the dispute is governed by Article 4 of the parties' collective bargaining agreement. In fact, the Union's brief is devoid of reference to Article 4 or any other provision of the contract. Rather, AFSCME essentially devoted its entire response to the issue of whether subcontracting is a mandatory subject of bargaining under PERA.

Based upon the charge and the briefs filed by the parties, I find that summary disposition is appropriate in this matter. Under Section 15 of PERA, a public employer has a duty to bargain in good faith with respect to mandatory subjects of bargaining, i.e. wages, hours and other terms and conditions of employment. The subcontracting of bargaining unit work generally constitutes a mandatory subject of bargaining. See e.g. *Van Buren School Dist v Wayne Circuit Judge*, 61 Mich App 6 (1975); *Davison Bd of Ed*, 1973 MERC Lab Op 824. However, an employer satisfies its obligation to bargain when it negotiates with the union over a mandatory subject of bargaining and memorializes the parties' agreement in a contract. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 317-318 (1996). If the term or condition in dispute is "covered" by a provision in the contract and the parties have agreed to a grievance resolution procedure culminating in final and binding arbitration, the details and enforceability of the provision are left to the arbitrator to resolve. *Port Huron*, at 321. In such instances, the Commission will find a violation of a party's duty to bargain in good faith only when the party's actions amount to a "repudiation" of the agreement.

The Commission has defined repudiation as a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960. In order to find a repudiation, the contract breach must be substantial and have a significant impact on the bargaining unit, and there must be no bona fide dispute over interpretation of the contract. *Gibraltar Sch Dist*, 16 MPER 36 (2003); *Plymouth-Canton Cmty Sch*, 1984 MERC Lab Op 894, 897.

In the instant case, the Employer contends that the issue of subcontracting is covered by the contract's management rights clause, Article 4. A broadly worded managements rights clause is typically insufficient to establish a waiver of the union's right to bargain. See e.g. *Interurban Transit Partnership*, 17 MPER 40 (2004). In the instant case, however, the management rights clause specifically fixes the rights of the parties with respect to the outsourcing of bargaining unit work. As noted, Article 4 authorizes the Township to outsource bargaining unit work except in certain circumstances, including where any employee is laid off as a result of the use of outside contractors. Although Charging Party's response to the Employer's motion for summary disposition contains a passing reference to the concept of "repudiation", the Union has not set forth any factually supported allegation which would

suggest that this case involves anything other than a bona fide dispute over the interpretation of Article 4 of the contract. Accordingly, I find that no PERA issue is raised by the charge and that the dispute should be resolved by way of the grievance procedure contained within the parties' contract.

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____