STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF GRAND RAPIDS,
Public Employer - Respondent,

Case No. C05 K-283

-and-

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

APPEARANCES:

Nantz, Litowich, Smith, Girard & Hamilton, by John H. Gretzinger, Esq., for Respondent

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

DECISION AND ORDER

On April 9, 2008, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above case finding that Respondent, City of Grand Rapids (the City), did not violate Sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a), and (e), by allowing volunteers to perform work that had previously been performed by members of the bargaining unit represented by Charging Party, Grand Rapids Employees Independent Union (GREIU or the Union). The ALJ also held that Respondent did not violate PERA with respect to its handling of the Union's requests for information concerning the volunteer Adopt-A-Park program. The ALJ also concluded that the City had no duty to bargain over the transfer of work to volunteers. He further found that the Union had not made an adequate bargaining demand to trigger the City's duty to bargain over the decision to merge two divisions of clerical employees or the impact of that decision on the bargaining unit.

The ALJ's Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. After receiving an extension of time in which to file its exceptions, Charging Party filed exceptions to the ALJ's Decision and Recommended Order on June 2, 2008. Respondent was granted an extension of time in which to file its response to the exceptions and, on July 28, 2008, filed its cross-exceptions.

In its exceptions, Charging Party alleges that the ALJ erred in concluding that Respondent did not violate its duty to bargain when it decided to transfer work previously performed by bargaining unit members to volunteers without first bargaining over its decision and without bargaining over the impact of that decision on bargaining unit members. Charging Party asserts error in the ALJ's determination that in order to prevail on a charge alleging unlawful removal of bargaining unit work it must first establish that the work was exclusively performed by bargaining unit members. The Union also cites as error the ALJ's finding that Respondent's decision to utilize volunteers could have been affected by bargaining over the matter and it excepts to the ALJ's conclusion that bargaining unit members did not suffer any significant adverse impact as a result of Respondent's decision to use volunteers. Charging Party excepts to the ALJ's finding that Respondent did not have a duty to bargain over these matters because the work at issue was not exclusively performed by bargaining unit members and because this was a bona fide reorganization or restructuring. Additionally, Charging Party excepts to the ALJ's finding that Respondent did not violate PERA by failing to provide Charging Party with certain information regarding the Adopt-A-Park program. Finally, they allege error in the ALJ's finding that the Union had not made an adequate demand that would trigger a duty to bargain by the employer over its merger decision or the effects of that decision.

In its cross-exceptions, Respondent alleges that the ALJ erred by failing to find that the disputed work had not been performed exclusively by bargaining unit members and by failing to dismiss the charge on that basis. The City asks that the Commission conclude that the duties were not exclusive to the bargaining unit and that it had no obligation to bargain with the GREIU before allowing volunteers to perform these duties.

We have reviewed Charging Party's exceptions and the Respondent's cross-exceptions and we find them to be without merit.

Factual Summary:

I. Adopt-A-Park Program

We adopt the factual findings of the ALJ and repeat them here only as necessary. Charging Party is the exclusive bargaining representative for approximately 750 non-supervisory employees of the City of Grand Rapids. The 2003-2006 collective bargaining agreement contained a Management Rights provision that gave the City the authority "to hire, discipline, and discharge for proper cause, decide job qualifications, lay off for lack of work or funds, abolish positions, make rules and regulations governing conduct and safety and determining schedules, together with the right to 'determine the methods, processes, and manner of performing work.'" The contract also contained a zipper clause, which stipulated that the agreement was exhaustive and complete and that for its duration, neither party would require the other to engage in further collective bargaining over matters included in the contract or otherwise.

Respondent owns and maintains various city parks and recreation areas within the City of Grand Rapids. It employs groundskeepers and building maintenance mechanics to operate

and maintain those facilities, each of whom is a member of the GREIU. In addition to the full-time employees the City uses to maintain these parks and recreational facilities, it also hires seasonal workers, mainly during the summer months, to help in maintaining the ball fields, parks, etc. These seasonal employees are not represented by the GREIU or any other bargaining unit. For the most part, the seasonal workers are unskilled laborers performing minor tasks and maintaining the facilities.

The City's budget for parks and recreation facilities was cut during the 2002-2003 and 2003-2004 fiscal years by approximately $1,000,000. During the 2004-2005 fiscal period, another $1,000,000 was cut from the department budget. The City sought and received minimal financial support from the public to fund various programs. During the 2005-2006 fiscal period, the Parks and Recreation Department again faced a severe loss in funding that necessitated the closing of certain facilities. The City attempted to rectify the situation but still had a shortfall during the 2005-2006 fiscal period. As a result, seven groundskeepers and four building maintenance mechanics positions were eliminated. There was also a decrease in funding for seasonal workers. Layoff notices were sent out and the layoffs went into effect on July 1, 2005.

When the 2005-2006 budget cuts were announced, the City was approached by private individuals and organizations that offered assistance in restoring services and programs; this led to the establishment of the Adopt-A-Park Partnership and Sponsorship program. On July 29, 2005, the Union's president wrote to the City requesting that the parties bargain over the Adopt-A-Park program because the program involved the outsourcing of bargaining unit work and jobs that had been traditionally performed by GREIU members to non-unit personnel. The Union president also requested that the City refrain from entering into any agreements under the Adopt-A-Park program until the parties completed the pending bargaining process. In its August 1, 2005 response, the City inquired as to whether Charging Party sought to bargain over the implementation of the Adopt-A-Park plan or whether the Union sought to negotiate the impact of the City's 2005-2006 fiscal period budgetary decisions on bargaining unit members. The Union responded on August 12, 2005, reiterating its position that the City had an obligation to bargain with GREIU before entering into any agreements with non-unit entities.

Pursuant to the Adopt-a-Park program, the City hereafter entered into various agreements with a number of outside entities that agreed to maintain and operate parks, softball fields, and other public recreational facilities. On September 6, 2005, the City responded to the Union's August 12 letter, indicating that it was unaware of any impact that the program would have on current GREIU members and requesting that the Union identify in writing the impact issues which would trigger negotiations under PERA. In response, the Union reasserted its demand that the City negotiate over any effort to unilaterally outsource bargaining unit work to non-unit personnel. Nevertheless, Respondent continued to enter into contracts with outside entities for the maintenance and operation of pubic recreational facilities.

In an October 28, 2005 letter to Respondent, Charging Party requested information regarding the implementation of the Adopt-A-Park program and made specific documentary requests for copies of any agreements between the City and outside entities relating to the maintenance of a local ice rink. The letter also indicated that the City's failure to respond to

the requests in one week would be taken as a refusal to reply. During a November 1, 2005 meeting between the parties, the issue of Charging Party's information request was raised. The City assured the Union that all requested information would be provided within five days of the meeting, but as of November 14, the Union still had not received it. In numerous letters ranging from December 2005 to January 2006, the Union continued to renew its request for information as well as its demand to bargain over the outsourcing issue. The City maintains that in late August or September 2005, it had provided the Union with a copy of the Adopt-A-Park policy as well as draft and signed copies of any agreements with non-unit entities as they became available. The Union counters that it did not receive this information until between December 2005 and January 2006.

II. Neighborhood Improvement Department

Before July 2005, the City's Neighborhood Improvement Department was divided into the Housing Inspection and Building Inspection divisions, for which the Union represented the clerical employees. In July 2005, the City eliminated the housing inspector classification from the department and created three new positions which were to assume the responsibilities of the housing inspectors. Further reorganization was implemented, and the City notified the Union of its plan to consolidate clerical positions and reorganize effective September 12, 2005.

On September 2, 2005, Charging Party sent a letter to Respondent demanding to bargain over the impending reorganization and the impact of this proposal on members of the bargaining unit. The City responded that according to the parties' contract, it was not obligated to await concurrence from the GREIU to make reorganization decisions, notwithstanding that certain impacts on employees as a result of these decisions may have given rise to an obligation to bargain under PERA. The City also indicated that if the Union could identify any impact issues related to the proposed reorganization that were not already provided for in their contract, it would consider negotiations over those matters.

Instead of responding directly to the City's letter by making a proposal concerning the impact of the reorganization on GREIU members or identifying specific impact issues about which it wished to negotiate, the Union responded by filing the charge in this matter as well as a grievance challenging Respondent's authority to reorganize the Neighborhood Improvement Department. Although the merger of the clerical functions went into effect in September 2005, the record does not indicate that any members of the GREIU unit were laid off, forced to work outside of their assigned classification, or denied their ability to use vacation time as a result of the reorganization.

Discussion and Conclusions of Law:

I. Adopt-A-Park Program

The Union argues that the City's unilateral implementation of the Adopt-A-Park program is a violation of its statutory duty to bargain. 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); *Mundy Twp*, 22 MPER 31 (2009). Once a subject has been classified as a mandatory subject of bargaining, the parties are required to bargain concerning the subject and neither party may take unilateral action on the subject absent an impasse in negotiations. *Central Michigan Univ Faculty Ass'n v Central Michigan Univ*, 404 Mich 268, 277 (1978).

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An employer has a duty under PERA to bargain over the reassignment or transfer of work from unit employees to positions outside a union's bargaining unit only under certain conditions. First, the work must have been performed exclusively by members of the union's unit. Second, the reassignment must have a significant adverse impact on employees, e.g., because of the reassignment, laid off employees are not recalled. The Commission has held that the loss of unit positions is not sufficient to give rise to a duty to bargain. Finally, the transfer decision must be based, at least in part, on either labor costs or general enterprise costs, making the dispute amenable to resolution through collective bargaining. *Seventeenth Dist Court (Redford Twp)*, 19 MPER 88 (2006).

The Union argues that the ALJ erred in failing to find that the work performed by volunteers under the Adopt-A-Park program was exclusively performed by GREIU members. However, as we have noted above, the exclusivity requirement is only one element of the three-part conjunctive test for finding a violation of PERA for the reassignment of work from bargaining unit members to non-unit entities. We agree with the ALJ that even assuming that the work at issue here was exclusively performed by GREIU members, the Union has failed to satisfy the second and third prongs of the test. The record does not establish that the City's reassignment had a significant adverse impact on the bargaining unit members in that the termination of certain positions was the direct result of the 2005-2006 budget, not the implementation of the Adopt-A-Park program. Furthermore, each of the employees whose positions were eliminated were transferred to positions in other City departments, and they all retained their benefits and overtime. [1]

We also agree with the ALJ's conclusion that the dispute regarding Respondent's use of volunteers was not amenable to resolution through the collective bargaining process. The record establishes that the City's transfer decision was not based on either labor costs or general enterprise costs, but instead was based on restoring public services that had been eliminated due to the 2005-2006 budget cuts. Furthermore, because the work being performed as part of the Adopt-A-Park program is being done free of charge, we agree with the ALJ that any bargaining between the parties over this work would have been futile since the Union could not have proposed that its members perform the labor at no cost. Therefore, we affirm the ALJ's conclusion that Charging Party failed to establish that Respondent violated PERA by outsourcing to volunteers work which had previously been performed by members of the bargaining unit.

[1] In its cross-exceptions, the City argues that it was error for the ALJ to fail to address the issue of whether the disputed work had previously been performed exclusively by bargaining unit employees. We disagree and find that for the above-mentioned reasons, it was unnecessary for the ALJ, as well as for us, to reach any conclusion on the exclusivity issue.

II. Information Requests

We agree with the ALJ that the City did not violate PERA with respect to the Union's information requests. The Commission has long held that in order to satisfy its bargaining obligation under Section 10(l)(e) of PERA, an employer must timely supply requested information to permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Pub Sch*, 1995 MERC Lab Op 384, 387; *Detroit Pub Sch*, 17 MPER 14 (2004). The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Mundy Twp*, 22 MPER 31 (2009). Where the information sought relates to discipline or to the wages, hours, or working conditions of bargaining unit employees, the information is presumptively relevant and will be ordered disclosed unless the employer rebuts the presumption. *Detroit Ass'n of Ed Office Employees*, 22 MPER 19 (2009).

Information about employees outside the bargaining unit is not presumptively relevant. Where the information concerns matters outside the bargaining unit, the burden is on the union to demonstrate relevance. *Mundy Twp*, 22 MPER 31 (2009). The information requested by the Union does not directly pertain to bargaining unit employees and, therefore, is not presumptively relevant. We agree with the ALJ that, because Respondent had no duty to bargain with Charging Party over its decision to use volunteers in the Adopt-A-Park program, the City did not violate PERA with respect to its response to the Union's information requests. *See e.g.*, *Challenge-Cook Bros of Ohio*, 282 NLRB 21 (1986), *enf'd* 843 F2d 230 (CA 6, 1988), *cf, Pickney Cmty Sch*, 1996 MERC Lab Op 381, 385-386.

III. Neighborhood Improvement Department

Finally, the Union alleges the City violated PERA when it refused to bargain over its decision to merge two divisions of the clerical employees of the Neighborhood Improvement Department. Section 10(1)(e) of PERA prohibits a public employer from refusing to bargain collectively with the representatives of its public employees, subject to the provisions of Section 11. 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." *Grand Rapids Pub Museum*, 17 MPER 58 (2004). If a public employer's actions are taken pursuant to a legitimate departmental reorganization, it is a matter of management prerogative beyond the scope of bargaining. *City of Detroit Water & Sewerage*, 1990 MERC Lab Ops 34; 3 MPER 21035 (1990).

We agree with the ALJ that Respondent's restructuring of the Neighborhood Improvement Department was a legitimate departmental reorganization over which it had no duty to bargain. Furthermore, although the City had a duty to bargain over the impact of its reorganization decision, this duty is conditioned on an appropriate request to bargain by the Union. *City of Dearborn*, 20 MPER 110 (2007). In this case, the City invited the Union to articulate any specific impact issues that may have been negotiable, but the record does not indicate that the Union ever responded with the appropriate information. Given Charging

Party's failure to specify the particular impact issues over which it wished to negotiate prior to the initial hearing, as well as the charge's absence of any specific statement or theory as to how the reorganization impacted GREIU members, we agree with the ALJ that Charging Party did not make a demand adequate to trigger Respondent's duty to bargain over the impact of its reorganization decision.

We have considered all other arguments submitted by both parties and conclude that they will not change the result in this case.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Nantz, Litowich, Smith, Girard & Hamilton, by John H. Gretzinger, for Respondent

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

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard at Landing, Michigan on June 21, 2006 and September 13, 2006, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Sections 13 and 14 of PERA, and based upon the entire record, including the transcript of the hearing, exhibits and post-hearing briefs filed by the parties on or before December 28, 2006, I find as follows:

The Unfair Labor Practice Charge:

On November 29, 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. The charge states in pertinent part:

> Since on or about September 2, 2005 and continuing to date, the City has refused to meet and negotiate the City's unilateral decision, made without bargaining, to "reorganize" the Housing Inspection and Building Inspection departments. Furthermore, the City has refused to negotiate the effects of such "reorganization."

> Since on or about September 13, 2005, and continuing to date, the City has refused to provide information requested by the Union as referenced in the City's letter to the GREIU of September 6, 2005. Said information is necessary to determine whether the terms of the collective bargaining agreement have been breached by the City.
>
> Since July 29, 2005 and continuing to date, the City has refused to meet and/or negotiate over the City's plan to permit nonbargaining unit third party employees to perform bargaining unit work.
>
> Since on or about November 1, 2005 and continuing to date, the City has refused to provide information requested regarding Belknap Park, Veterans Park, Sullivan Park and Rosa Parks Circle and the City's intended use of nonbargaining unit employees supplied by a third party to perform bargaining unit work. Furthermore, the City has refused requests made by the Union to negotiate over the use of third party employees performing bargaining unit work.
>
> * * *
>
> By this and other conduct, the City has engaged in bad faith bargaining.
>
> The GREIU respectfully request this Commission enjoin the City from entering into any contracts with third parties and all necessary relief to remedy the City's unfair labor practices.

Findings of Fact:

I. Background

Charging Party is the exclusive bargaining representative for a broad unit of approximately 750 nonsupervisory employees of the City of Grand Rapids. The most recent collective bargaining agreement between the parties covers the period January 1, 2003 to December 31, 2006. The agreement contains a Management Rights provision, Article IV, giving the City the authority to hire, discipline, and discharge for proper cause, decide job qualifications, lay off for lack of work or funds, abolish positions, make rules and regulations governing conduct and safety and determine schedules, together with the right to "determine the methods, processes, and manner of performing work." The contract also contains a zipper clause, Article XL, which states:

> During negotiations, each party had the right to make proposals with respect to all bargainable matters. This sets forth the basic and full agreement between the parties. During its life, neither will require the other to engage in further collective bargaining as to any matter whether mentioned herein or not, except as such bargaining is provided for herein.

II. Adopt-A-Park Program

Charging Party represents employees in the operations and maintenance division of the City's Parks and Recreation Department, including individuals working as groundskeepers and building maintenance mechanics. GREIU members working in these classifications have traditionally been responsible for operating and maintaining over 100 parks and public spaces throughout the City, including Belknap Park, Sullivan Field and Veterans Park. Their duties include cutting grass, plowing snow, trash collection, cleaning and repairing restrooms and maintaining irrigation systems and athletic fields. GREIU members have also been assigned to work at Rosa Parks Circle, a park located in downtown Grand Rapids which includes a band shell and an outdoor ice rink. During the winter months, unit members assigned to Rosa Parks Circle have maintained the ice rink and public restrooms, repaired and operated the Zamboni machine, picked up trash and sharpened ice skates.

Each year, Respondent employs a number of maintenance laborer supplemental employees to assist GREIU members in maintaining City parks from April to October. These individuals, who are often referred to by the parties as "seasonal" employees, are not represented for purposes of collective bargaining by the GREIU or any other bargaining unit. Seasonal employees work as unskilled laborers, performing tasks which include trash collection, grass cutting, cleaning restrooms, and lining and marking soccer fields. They are not responsible for performing more complex maintenance tasks assigned to Charging Party's members, such as working on irrigation systems, repairing restrooms or applying pesticides. Seasonals work under the direction of GREIU groundskeepers, who function as lead workers in this respect.

The budget for the Parks and Recreation Department was cut by approximately $1,000,000 during each of the 2002-2003 and 2003-2004 fiscal years. Another $1,000,000 was scheduled to be cut from the department's budget in 2004-2005. In response to the loss of funding, the department's director, Jay Steffen, presented to the City Commission a plan to seek financial support from the public to fund various programs, facilities and services. The plan, which was announced by the City on May 25, 2004, resulted in about $3,000 in donations which were used to maintain the swimming program, along with a number of other smaller donations used for miscellaneous purposes.

The following year, the Parks and Recreation Department was again facing a severe loss in funding. In preparing its budget for the 2005-2006 fiscal year, the department drafted a "Basic Park Maintenance" plan which called for a significant reduction in services and programs effective July 1, 2005. Under this plan, restrooms were to be closed at 38 park locations, irrigation was to be halted at 36 sites, athletic fields would no longer be maintained and the mowing of grass on City property was to be to be performed less often. In addition, the plan called for the closure of swimming pools, water playgrounds, fountains and the ice skating rink at Rosa Parks Circle.

Ultimately, the Parks Department decided upon an alternative plan as part of its 2005-2006 fiscal year budget which it referred to as the "Basic-Plus Maintenance" plan. The new

proposal partially restored some services and facilities which were to have been eliminated under the Basic plan, including some restrooms, irrigation services and fountains. However, the Basic-Plus plan did not provide for the reinstitution of any of the City's swimming pools, athletic field maintenance services or the ice skating rink at Rosa Parks Circle.

The Basic-Plus plan was incorporated into the department's budget for the 2005-2006 fiscal year. In conjunction with the reduction in services and programs, the City's 2005-2006 budget resulted in the elimination of numerous positions within the Department of Parks and Recreation, including 7 groundskeeper IIs and 4 building maintenance mechanics. The budget also provided for a decrease in funding for seasonal workers. Employees were informed of the budget cuts at a staff meeting on May 19, 2005 and layoff notices were issued to individual employees affected by the cuts the following month. The layoffs went into effect on July 1, 2005.[2]

When word of the 2005-2006 budget cuts became public, the Parks Department was approached by a number of private individuals and organizations offering assistance in restoring the services and programs which had been eliminated. On July 18, 2005, Steffen issued a memo and draft proposal calling for the creation of a City Commission Policy on an "Adopt-A-Park, Partnership and Sponsorship" program. According to the memo, the policy would "establish a procedure and basic criteria for organizations, donors and volunteers seeking to provide or partner with the Parks and Recreation Department in the provision of funds, programs, services or facilities uses." The City Commission approved the Adopt-A-Park proposal at a meeting on July 26, 2005.

On July 29, 2005, Charging Party's president Philip Pakiela wrote to the City's labor relations manager, George Childers, requesting that the parties bargain over the Adopt-A-Park plan. In the letter, Pakiela asserted the plan would "involve bargaining unit work being performed by non-bargaining unit personnel," and he expressed concern about the "loss of bargaining unit work and jobs that have been in the GREIU unit for many years." He requested that the City refrain from entering into any agreements consistent with the Adopt-A-Park program pending the completion of the bargaining process.

Childers responded to Pakiela by letter dated August 1, 2005. In the letter, Childers sought clarification from Charging Party regarding whether it was seeking to bargain over Respondent's decision to implement the Adopt-A-Park plan or whether the Union desired to negotiate the impact of the City's "budgetary decisions for FY06" on bargaining unit members. On August 12, 2005, Pakiela responded to Childers, reasserting Charging Party's position that the City had an obligation to bargain with the GREIU "before any agreements are reached by outside entities."

[2] Three GREIU members working in positions which were eliminated as part of the 2005-2006 budget remained working at the Parks Department through the fall of 2005 as part of a phased layoff plan.

The City entered into its first agreement pursuant to the Adopt-A-Park program on August 28, 2005. The agreement gave the Grand Rapids Community College (GRCC) or its subcontractor a license to maintain the baseball and softball fields at Belknap Park, including, but not limited to, mowing grass, fertilization and weed control and litter pickup for the period August 28, 2005 through June 15, 2006. The College was obligated to secure liability insurance for the term of the agreement. The services provided by the GRCC or its subcontractor were to be performed at no cost to the City. On September 1, 2005, the City entered into a similar agreement with GRCC to provide park maintenance services at Sullivan Field for the period August 28, 2005 to October 30, 2005.

Childers responded to Pakiela's August 12, 2005 letter concerning the Adopt-A-Park program on September 6, 2005. In the letter, Childers indicated that he was not aware of any impact that the program would have on members of the GREIU unit "beyond the existing contractual provisions and prior arbitration opinion and awards covering these topics." Childers requested that Pakiela identify in writing any impact issues which would trigger negotiations under the parties' current collective bargaining agreement. Pakiela responded to Childers by letter the following week, once again demanding that the City negotiate over "any attempt . . . to unilaterally have bargaining unit work performed by non-bargaining unit personnel."

On October 1, 2005, the City entered into an agreement giving Second Story Properties or its subcontractor permission to maintain Veterans Park for the period October 1, 2005 to November 15, 2006, including mowing grass, removing papers and debris, edging along curbs and walkways and planting flowers of a type "approved in advance by a designee of the Parks and Recreation Department." Second Story Properties was required by the City to provide and maintain insurance for the term of the agreement. The agreement specified that the City would publically recognize Second Story Properties for its efforts at Veterans Park. As with the earlier agreements, the services were to be provided at no cost to the City.

On October 20, 2005, the City entered into an agreement giving the Grand Rapids Area Softball Association (GRASA) the right to operate and administer an Adult Slow Pitch Softball Program, as well as other softball and junior baseball programs, at Huff Park, Belknap Park, Cambridge Park, McKay/Jaycee Park and Sullivan Field. As part of its obligations under the agreement, GRASA was required to maintain the ball fields and repair or replace City equipment utilized in conjunction with the program. The agreement covered the 2006 season, with the City having a renewal option in 2007 and 2008. GRASA was responsible for all costs associated with the operation and administration of the program. GREIU steward David Karcis testified that he first saw a copy of the GRASA agreement in March of 2006.

On October 28, 2005, Pakiela wrote to Childers with a list of questions concerning Respondent's implementation of the Adopt-A-Park program. For example, Pakiela inquired as to whether the City planned to reopen the Rosa Parks Circle ice rink and, if so, how much it would be paying employees to maintain the facility. Pakiela also requested from Respondent copies of any agreements between the City and outside entities relating to maintenance of the Rosa Parks Circle ice rink and Belknap Park. The letter indicated that if the City did not respond within one week, the Union would assume that it did not intend to reply.

Representatives of the City and the GREIU met on November 1, 2005 for the purpose of discussing contract issues. At the conclusion of the meeting, the issue of the Union's request for information concerning Adopt-A-Park was raised. The Union reiterated its request for information relating to Rosa Parks Circle and Belknap Park and, in addition, requested information pertaining to the maintenance of Sullivan Park and Veterans Park. According to Pakiela, the Union indicated that it was seeking "agreements if there were agreements, if not, we were looking for drafts of the agreements." The assistant city manager, Victor Vasquez, stated that the information would likely be provided to the Union via the Park Superintendent, Tom Zelinski, within five days.

On November 14, 2005, Pakiela wrote to Childers complaining that Charging Party had not yet received the information that Respondent had promised to provide at the meeting two weeks earlier. Pakiela renewed the Union's request for information in a letter to Childers dated December 15, 2005. In the December 15th letter, Pakiela asserted that no information had been provided and that the Union was assuming that the City did not intend to respond to its inquiry. The Union subsequently renewed its request for a copy of the Belknap Park agreement in a letter to Childers dated December 19, 2005.

Although a contract regarding the Rosa Parks Circle ice rink was still not completed at the time of hearing in this matter, DP Fox, a private corporation, took over the maintenance and operation of that facility beginning with the winter 2005 season, including staffing the rink and operating the Zamboni machine. DP Fox received funding from the Downtown Development Authority (DDA) and other private entities to manage and operate the ice rink, with the stipulation that no public funds were to be used for labor costs. Under the terms of a draft agreement between Respondent and DP Fox, the City was obligated to start the refrigeration equipment at the beginning of the ice skating season, set up railings and crowd control barriers and prepare the warming shelter. The draft agreement also required the City to perform work at the facility at the end of the skating season. In addition, the City was required to maintain the Zamboni and provide initial training to DP Fox staff. Charging Party was not provided with a copy of the draft agreement until the first day of hearing in this matter.

On December 27, 2005, Pakiela wrote to Childers again asserting that no information regarding the Adopt-A-Park program had been provided to the Union. Pakiela renewed his request for documents, including copies of agreements and Requests For Proposals (RFPs) relating to the operation of the softball program, Belknap Park and "any other Adopt A Park agreements that the City contemplates entering into."

In letter to Childers dated January 26, 2006, Pakiela reiterated its request to bargain over the "the use of volunteers, seasonals and other non-union employees in lieu of bargaining unit members." Pakiela also requested a special meeting with the City to discuss issues relating to the Adopt-A-Park program.

Beginning in April of 2006, the West Michigan Spanish Soccer League (WMSSL) took over maintenance of the athletic fields at Clemente Park and Kensington Park pursuant to the terms of a draft agreement between the City and the WMSSL covering the period May 1, 2006 to

October 31, 2006. As of the start of the hearing in this matter, a formal agreement between the City and the WMSSL had been not yet been signed due to unresolved insurance issues.

Sometime in March of 2006, Respondent announced that it planned to reopen three of the City's six swimming pools. The decision to reopen the pools was made by the City Commission in response to concerns expressed by the public over the closures and against the recommendation of the City Manager.

Following the 2005 budget cuts, all of the former groundskeepers and building maintenance mechanics whose jobs were eliminated took positions in other City departments.[3] For example, Tim Keasy, a Groundskeeper II who was formerly responsible for maintaining Belknap Park took a position within the City's Sewer Department. GREIU members who remained employed in the Parks Department after July of 2005 have continued to maintain specific areas within City parks covered by Adopt-A-Park agreements. For example, bargaining unit members still maintain all of Belknap Park except for the ball fields and the restrooms and all of Kensington Park except for the soccer fields. Charging Party's members have also continued to maintain Rosa Parks Circle during the spring and summer months, including cutting grass and tree trimming.

At the hearing in this matter, Zelinski testified that he provided Karcis with a copy of the City's Adopt-A-Park policy and draft copies of agreements relating to Belknap Park, Veterans Park and Sullivan Field in late August or September of 2005, and that he subsequently forwarded signed copies of those agreements to Karcis as they became executed. In contrast, Karcis testified that he had not received any information from the City regarding Adopt-A-Park as of November 1, 2005. He indicated that he first saw signed copies of the Belknap Park and Veterans Park agreements in early December of 2005 and January of 2006 respectively. Karcis asserted that rather than forwarding the documents he received from Zelinski directly to Pakiela, he left them at the Union Hall. For his part, Pakiela admitted to having received a signed copy of the Belknap Park agreement by no later than December 19, 2005.

III. Neighborhood Improvement Department

Prior to July of 2005, the City's Neighborhood Improvement Department had two divisions: Housing Inspection and Building Inspection. Charging Party represented clerical employees assigned to each of these divisions. Within the Housing Inspection division, Charging Party represented office assistants I, II and III. GREIU classifications included within the Building Inspection division were office assistant III and IV. Each division had its own separate seniority roster of clerical employees which was utilized for purposes of shift bids, vacations and layoffs. In addition, overtime was assigned to the clerical employees by division.

On July 15, 2005, the City eliminated the housing inspector classification and created three new positions, code compliance officer I, II and III, to take over the duties previously

[3] A number of other GREIU positions within the Department of Parks and Recreation were also eliminated as part of the 2005 budget cuts, including 2 equipment mechanics. However, Charging Party did not focus on these other positions at hearing or in its post-hearing brief, and the record does not indicate what happened to those individuals after July of 2005.

performed by the housing inspectors. Around this same time, Respondent decided that it would be more efficient to have the clerical employees represented by Charging Party provide support for all inspection functions rather than assigning support staff to perform work for one only division. Childers notified the Union of the City's plan to consolidate the clerical positions into a combined support unit in a letter dated September 2, 2005. The letter specified that the "reorganization" would be effective September 12, 2005.

On September 2, 2005, Pakiela wrote to Childers and demanded that the City bargain with the GREIU over the "proposed reorganization" and the "impact of the reorganization" on Charging Party's members. Childers responded by letter dated September 6, 2005. With respect to the City's decision to merge divisions of the Neighborhood Improvement Department, the letter provided, in pertinent part:

> There are no provisions in the Agreement that require concurrence from the GREIU to make this type of decision, even though certain impacts of an employer exercising retained management rights to make such decisions may give rise to an obligation to bargain under PERA.
>
> * * *
>
> If you can identify any impact issues of the current reorganization which will take place next Monday that are not already provided for within the current contract I will be happy to consider negotiations over those issues. However, at this time I must point to the language of Article XL-Entire Agreement and request that you abide by those mutually agreed to provisions.

Charging Party did not respond directly to the Childers letter by making a proposal regarding the impact of the merger on GEUI members, nor did the Union contact the City and identify specific impact issues regarding which it wished to negotiate. Rather, the Union's only response was to file the instant charge, as well as a grievance challenging the City's authority to reorganize the department. That grievance was on hold at the request of the Union at the time of the hearing in this matter.

The merger of clerical functions in the Neighborhood Improvement Department went into effect on or about September 12, 2005. No members of Charging Party's unit were laid off or forced to work outside of their assigned classifications as a result of the merger, nor is there any indication in the record that any member of the bargaining unit has been denied a request to use vacation time following the effective date of the consolidation of clerical support functions.

Discussion and Conclusions of Law:

I. Adopt-A-Park Program

Charging Party argues that the City's unilateral decision to implement the Adopt-A-Park program and utilize volunteers to perform park maintenance work and other duties which had previously been assigned to members of the GREIU bargaining unit constitutes a violation of PERA. Under Section 15 of the Act, public employers and labor organizations have a duty 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. Unilateral changes in a mandatory subject of bargaining or a refusal to bargain over a mandatory subject constitute an unfair labor practice under Section 10(1)(e) of the Act.

An employer's decision to remove work previously performed by bargaining unit members and transfer the work to employees outside the unit may constitute a mandatory subject of bargaining for purposes of PERA. *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 an employer has a duty to bargain over the transfer of work performed by a bargaining unit position or positions only when certain conditions are met. In order to prevail on a charge alleging the unlawful removal of bargaining 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.

If the exclusivity test is met, two other elements must be present before a duty to bargain over the transfer of unit work can be found. First, the transfer must have a significant adverse impact on unit employees. The record must show for example that unit employees were laid off, terminated, demoted, not recalled or lost a significant amount of overtime as a result of the transfer of work. The mere loss of unit positions or speculation regarding the loss of promotional opportunities within the unit does not constitute a significant adverse impact. Secondly, the transfer dispute must be amenable to resolution through the collective bargaining process. To satisfy this element, the decision to transfer work must be based at least in part on labor costs or general enterprise costs which could be affected by the bargaining process. *City of Detroit (Water & Sewerage Dep't)*, 1990 MERC Lab Op 34. The test for determining whether a duty to bargain exits over the removal of unit work has been applied to the transfer of work to volunteers. See *City of Oak Park*, 1998 MERC Lab Op 519 (no exceptions) (city had no duty to bargain over its decision to utilize volunteers, primarily senior citizens, to write up violations of handicapped parking restrictions because the decision was not based on labor costs).[4]

Assuming *arguendo* that the duties in question were exclusive to the GREIU bargaining unit, I nevertheless conclude that the City had no duty to bargain over the transfer of work to volunteers. First, Charging Party has failed to demonstrate that the City's implementation of the Adopt-A-Park program adversely impacted its members. Although the Union contends that an adverse impact is established by the fact that it lost 7 groundskeeper and 4 building maintenance

[4] In support of its assertion that the City's implementation of the Adopt-A-Park program was unlawful, the GREIU relies upon numerous decisions involving the subcontracting of bargaining unit work by public employers. See e.g. *City of Detroit*, 18 MPER 67 (2005); *City of Highland Park*, 17 MPER 86 (2004). While recognizing that this case does not involve "subcontracting" per se, the Union nonetheless asserts that the principles set forth in these decisions apply with equal force here. Despite their similarities, however, the transfer of bargaining unit work and the subcontracting of work are treated differently under PERA.

mechanic positions, the record indicates that the elimination of those positions was attributable to Respondent's adoption of the 2005-2006 budget, which eliminated the work in question, as opposed to its subsequent decision to allow community groups to maintain City parks.

Employees were informed of the plan to eliminate bargaining unit positions and reduce City services at a meeting on May 19, 2005, and the plan became effective on July 1, 2005. At that time, the creation of an Adopt-A-Park plan had not yet even been proposed to the City Commission. Rather, Steffen presented the plan to the Commission at a public meeting on July 18, 2005, after Respondent had received offers of assistance from various individuals and organizations. The Commission voted to approve the Adopt-A-Park plan on July 26, 2005, and the first agreements between Respondent and outside entities were not entered into until August of 2005. There is nothing in the record to suggest that the City had any intention on July 1, 2005 of restoring the park maintenance services which had just been eliminated, nor is there any indication that the subsequent creation of the Adopt-A-Park program was mere subterfuge to facilitate the transfer of work from the unit. To the contrary, it appears that but for the involvement of community groups and other outside entities, regular maintenance of the ball fields and other City facilities in question would simply not have been performed.

Even assuming that the elimination of bargaining unit positions in July of 2005 was somehow directly attributable to Respondent's implementation of the Adopt-A-Park program, the record does not establish that Charging Party's members suffered any significant adverse impact which would give rise to a bargaining duty on the part of the City. Despite the position eliminations, there is no evidence that any groundskeepers or building maintenance mechanics became unemployed due to the adoption of the 2005-2006 budget and the subsequent implementation of the Adopt-A-Park program, nor did the Union present any proof that GREIU members lost benefits or overtime due to the transfer of work to outside entities. Rather, the record indicates that all of the groundskeepers and building maintenance mechanics whose jobs were eliminated in July of 2005 took positions in other City departments. Moreover, there is no evidence that any employees who remained working within unit positions in the Parks Department had their hours reduced as a result of the Adopt-A-Park agreements.

It is also unlikely that Respondent's utilization of volunteers could have been resolved through the collective bargaining process. The record overwhelmingly establishes that the City's decision to implement the Adopt-A-Park program was not based on a desire to reduce labor costs, but rather was for the purpose of restoring services which previously had been eliminated as part of the 2005-2006 budget. Moreover, the work in dispute is now being performed by outside entities and individuals at no cost to the City. Bargaining with Charging Party over the assignment of this work would likely have been fruitless, since the GREIU could not have offered to have its members perform such duties *gratis*. See 29 CFR 553.101, which prohibits public employees from performing volunteer services which are "the same type of services which the individual is employed to perform for the public agency." The Union has offered no explanation as to how this dispute would have been amenable to collective bargaining under such circumstances. For all of the above reasons, I find that Charging Party has failed to establish that the City violated PERA by allowing volunteers to perform work which had previously been removed from the bargaining unit.

II. Information Requests

Charging Party asserts that the City violated its duty to bargain under PERA by failing to provide or timely supply certain information requested by the Union pertaining to the Adopt-A-Park program. According to the GREIU, this failure on the part of the City deprived it of the opportunity to bargain over the Adopt-A-Park program. In order to satisfy its bargaining obligation under Section 10(1)(e) of the Act, an employer must timely supply to the union relevant information that is reasonably necessary to permit the union to engage in collective bargaining and to police the administration of the collective bargaining agreement. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Pub Sch*, 1995 MERC Lab Op 384, 387. The standard applied is a liberal discovery-type standard. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Suburban Mobility Auth for Regional Transp (SMART)*, 1993 MERC Lab Op 355. Where the information sought concerns the wages, hours or working conditions of bargaining unit employees, the information is presumptively relevant and will be ordered disclosed unless the employer rebuts the presumption. *City of Detroit, Dept of Transp*, 1998 MERC Lab Op 205; *Wayne County*.

When the union is seeking information regarding non-unit employees or the information sought pertains to matters occurring outside the unit, the information is not presumptively relevant. Rather, the union must demonstrate its relevance to bargaining or representation issues in order to establish the right to such information. *SMART*; *City of Pontiac*, 1981 MERC Lab Op 57. For example, an employer does not have a duty to provide a union with information about the subcontracting of work that could allegedly be performed by bargaining unit members unless and until the union demonstrates the relevance of the information, or the facts surrounding the request are such as to make the relevance of the information plain. See *City of Detroit (Finance Dept)*, 2007 MPER 56 (no exceptions), citing *Island Creek Coal Co*, 292 NLRB 480, 290 (1989), enf'd 899 F2d 1222 (CA 6 1990) and *Ohio Power Co*, 216 NLRB 987 (1975). An employer's failure to respond to a union's request for information that is not presumptively relevant does not shift the burden to the employer, nor does an employer have an independent statutory duty to respond to an inappropriate request. *State Judicial Council*, 1991 MERC Lab Op 510, 512.

In the instant case, the Union sought copies of agreements between Respondent and outside entities concerning the maintenance of various City parks and the Rosa Parks Circle ice rink. This information does not directly pertain to bargaining unit employees and, therefore, is not presumptively relevant. The Union has not identified any provision in the parties' contract to which the requested information would be applicable or otherwise demonstrated the relevance of the information to its bargaining responsibilities. As noted above, the City had no duty to bargain with Charging Party over its decision to transfer work to volunteers pursuant to the implementation of the Adopt-A-Park program. Accordingly, I conclude that Respondent did not violate PERA with respect to its handling of the Union's requests for information.

III. Neighborhood Improvement Department

Charging Party asserts that the City violated PERA by refusing to bargain over its decision to merge two divisions of clerical employees of the Neighborhood Improvement Department, as well as the impact of that decision. As noted above, Section 10(1)(e) of the Act prohibits a public employer from refusing to bargain collectively with the representatives of its 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). Policy decisions related to the overall structure and operation of a public employer are reserved to management and not subject to bargaining. *Local 1277, AFSCME v Center Line*, 414 Mich 642 (1982). It is well established that a public employer does not have a duty to bargain regarding a legitimate departmental reorganization or restructuring of its operations. *Ishpeming Supervisory Employees, v City of Ishpeming*, 155 Mich App 501 (1986); *Detroit Bd of Ed*, 1994 MERC Lab Op 462.

There is no allegation in the instant case that any bargaining unit work was transferred as a result of the merger, nor does Charging Party contend that the City's decision to combine clerical employees into a single division of the Neighborhood Improvement Department was discriminatorily motivated. No bargaining unit members were laid off due to the merger and there is no evidence that any GREIU classifications were unilaterally modified as a result of the change. The record establishes that what occurred in the instant case was a bona fide reorganization or restructuring of the Neighborhood Improvement Department over which the City had no duty to bargain.

While the initial decision to merge the two divisions of clerical employees of the Neighborhood Improvement Department was not a mandatory subject of bargaining, Respondent clearly had a duty to bargain over the impact of that decision. *City of Ishpeming*; *Ecorse Bd of Ed*, 1984 MERC Lab Op 615. However, there is no duty to bargain the impact of a management decision prior to its implementation. *City of Detroit*, 1994 MERC Lab Op 476 (no exceptions); *Kalamazoo County Sheriff*. Moreover, an employer's duty to bargain is conditioned upon its receipt of an appropriate request. *Local 586, Service Employees Int'l Union v Union City*, 135 Mich App 553 (1995); *Kalamazoo County Sheriff*, 1992 MERC Lab Op 63. Although a bargaining demand need take no particular form in order to be effective, the employer must know that a request is being made. *Michigan State University*, 1993 MERC Lab Op 52, 63, citing *Clarkwood Corp*, 233 NLRB 1172 (1977). A statement that an issue is negotiable, or even a protest of an employer's action, does not constitute a proper demand to bargain. *Id.* See also *NLRB v Rural Electric Co*, 296 F2d 523 (1961); *NLRB v Barney's Supercenter, Inc*, 296 F2d 91 (1961).

In the instant case, the City notified Charging Party of its decision to merge the divisions of clerical employees of the Neighborhood Improvement Department on or about September 1, 2005. On September 2, 2005, the Union submitted to the Employer a written demand to bargain over the proposed merger and the "impact of the reorganization." In a letter sent to the Union's

president approximately 4 days later, the City acknowledged that it might have a duty to bargain over impact issues and explicitly invited Charging Party to identify any impact issues "not already provided for in the contract." There is no evidence in the record establishing that Charging Party, prior to the hearing in this matter, ever identified any specific impact issues that it wished to negotiate with the Employer. In fact, even the charge itself is devoid of any specific statement or theory as to how the merger impacted GREIU members. The charge merely states in conclusory fashion that the City "has refused to negotiate the effects of [the] "reorganization." Under such circumstances, I conclude that the Union did not make an adequate demand to trigger the Employer's duty to bargain over the effects of the merger. See e.g. *Detroit Public Schools*, 2004 MPER 14.

For the above reasons, I recommend that the Commission adopt the following order dismissing the unfair labor practice charge in its entirety.

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____