STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of :

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C08 E-081

-and-

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

APPEARANCES:

Dwight Thomas, Labor Relations Specialist, City of Detroit, for Respondent

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

DECISION AND ORDER

On December 30, 2008, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the charge filed by Charging Party, the Association of Municipal Engineers (AME or Union) against Respondent, the City of Detroit (Employer), should be summarily dismissed for failure to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201-423.217. The ALJ held that Charging Party's assertions amounted to a breach of contract claim related to the filling of positions and the distribution of overtime work among bargaining unit members. The ALJ concluded that even assuming the truth of the allegations, there was no basis for finding a PERA violation.

The Decision was served on the interested parties in accordance with Section 16 of PERA. Charging Party filed exceptions to the ALJ's Decision and Recommended Order on January 23, 2009, to which Respondent did not file a response. In its exceptions, Charging Party reiterates its contentions that Respondent refused to bargain over mandatory subjects and refused to provide the information concerning employees' jobs that was requested by the Union. They assert that a key issue not addressed by the ALJ was the hiring of non-engineers to fill engineering positions and that the City should not have made engineering supervisors from the ranks of non-engineers. Charging Party also complains that issues not addressed by the ALJ include staffing, job classifications, and working conditions. We have reviewed the exceptions and find them to be without merit.

Factual Summary:

The facts in this case were set forth fully in the ALJ's Decision and Recommended Order and will be repeated only as necessary here. Charging Party filed its charge on May 2, 2008, asserting that Respondent had violated PERA by abolishing one of its internal divisions, Plant Engineering, and by refusing to bargain with Charging Party over its decision. Respondent countered that no change in conditions of employment affecting bargaining unit members had occurred as a result of the reorganization, and it was within its management rights to make such decisions.

When the parties met with the ALJ for a settlement conference, the ALJ was not persuaded that Charging Party was able to articulate a basis for finding a PERA violation. It was agreed at that time that Charging Party would prepare in writing a list of the topics on which it was requesting to bargain, along with a proposed letter of understanding specifically setting forth the relief sought. This list was to be submitted to the ALJ and the Respondent by September 10, 2008. Charging Party filed a document on the latter date that reiterated its bargaining demand, but did not include specific allegations. In October of 2008, the parties met again pursuant to the ALJ's direction. Their discussions focused on the decision-making authority of the Employer to fill non-bargaining unit positions; each party acknowledges that nothing else was discussed at that meeting. On October 27, 2008, Charging Party filed a proposed amended charge that once again contained a general statement of its outstanding complaints that the City was unilaterally creating new job classifications and violating job assignments and promotional opportunities for Union members.

In November of 2008, Respondent filed a motion to dismiss the original charge and the proposed amendment for failure to state a claim under PERA. In its response, Charging Party asserted that the dispute is over the qualifications that Respondent used to select individuals for managerial non-bargaining unit positions and, further, that its complaints related to a possible reduction of overtime opportunities for its members.

Discussion and Conclusions of Law:

It is well settled that reorganization decisions that eliminate positions and reassign job functions to existing or newly created positions are within the scope of management prerogative and are not a mandatory subject of bargaining. See *United Teachers of Flint v Flint Sch Dist*, 158 Mich App 138, 143; 404 NW2d 637, 639 (Mich App 1986); *City of Detroit Water & Sewerage*, 1990 MERC Lab Ops 34; 3 MPER 21035 (1990). The Commission agrees with the ALJ's conclusion that Respondent's conduct in this case amounted to reorganization and was not subject to the duty to bargain under PERA.

The Commission also agrees with the ALJ's finding that the possible reduction in overtime about which Charging Party complains is not a mandatory subject of bargaining. As the ALJ explained, it has long been held that overtime may be reduced by an employer as a part of its right to regulate and control its operations. See *Organization of School Adm'rs and Sup'rs*

AFSA, AFL-CIO v Detroit Bd of Ed, 229 Mich App 54, 70, n. 5, 580 NW2d 905, 913 (1998); *St Clair Co Rd Comm*, 1992 MERC Lab Op 316, 321(no exceptions); *City of Battle Creek (Fire Dep't)*, 1989 MERC Lab Op 726, 735 (no exceptions). See e.g., *Troy Police Dep't*, 1982 MERC Lab Op 667, 669-671.

In its exceptions, Charging Party continues to present a generalized assertion that Respondent's reorganization violates PERA because it has some tangential effect on job classifications that determine layoffs and promotional opportunities for its members. For the reasons set forth above and as contained in the ALJ's decision, the charge fails to state a PERA claim. *City of Detroit*, 19 MPER 34 (2006). To the extent that Respondent is required to bargain over the effects of its reorganization decision (see, *Ishpeming Supervisory Employees, Local 128, AFSCME v Ishpeming*, 155 Mich App 501, 512 (1986)), we believe that Respondent has done so at the settlement conference before the ALJ in August 2008, and at the meeting between the parties that occurred two months later at the ALJ's direction.

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

ORDER

The charges in this case are hereby dismissed in their entirety.

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:

CITY OF DETROIT,
Public Employer-Respondent, Case No. C08 E-081

-and-

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

APPEARANCES:

Vinod Sharma, for Labor Organization-Charging Party

Dwight Thomas, for Public Employer-Respondent

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 Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. This matter is being decided pursuant to a motion to dismiss for failure to state a claim field by Respondent on November 10, 2008.

The Unfair Labor Practice Charge and the Proceedings:

On May 2, 2008, a charge was filed in this matter by the Association of Municipal Engineers (AME) asserting generally that the City of Detroit (Employer) had violated the Act. The stated basis of the charge was that the Employer had abolished one of its internal divisions and had refused to bargain over that decision. Attached to the charge was a copy of the demand letter to the Employer from the Union, which in its entirety asserted that: "The AME desires to bargain with the City of Detroit regarding recent changes made in engineering by abolishing Plant Engineering".

On August 4, 2008, the parties appeared for a settlement conference. The Employer asserted that not only had it agreed to meet with the AME pursuant to its demand to bargain, but that the AME had refused to appear for the proposed January 2008 meeting. The Employer further asserted that no change in conditions of employment affecting bargaining unit members had occurred as a result of the

reorganization. Through the course of the August 4 settlement conference, the AME was not able to articulate a claim under the statute, but the Employer nonetheless remained willing to meet with the AME. At the conclusion of the August 4 conference, the AME agreed, in lieu of being formally ordered to file a more definite statement, that it would, by September 10, 2008, present to the Employer and the assigned ALJ a written list of the topics on which it wanted to bargain, together with a proposed letter of understanding specifically setting forth the relief that the AME sought.

On September 10, the AME filed a document that, in essence, merely repeated a very generalized demand to bargain. The document additionally seemed to confirm the Employer's assertion that the gravamen of the AME's concerns was that the AME objected to what it perceived to be the qualifications of certain individuals hired or promoted into non-bargaining unit managerial positions.

Both parties acknowledged through their pleadings that they did meet in October 2008, and their discussions apparently focused on the Employer's decision-making process in the filling of non-bargaining unit positions. Each side asserts that the other side refused to discuss any other issue at that meeting.

On October 27, 2008 the AME filed a proposed amended charge which, in essence, asserted that the City was acting improperly in filling certain information technology positions with non-engineers, which the AME believed should be filled by individuals with engineering licenses.

On November 10, 2008, the City filed a motion to dismiss the original charge, and the proposed amendment, for failure to state claims under the Act. The November 19, 2008, response by AME makes clear that the dispute is in fact over what qualifications the Employer should rely on when selecting individuals for managerial non-bargaining unit positions. The response additionally raised claims regarding an alleged reduction of overtime opportunities in some work areas.

Discussion and Conclusions of Law:

First, it is apparent that the AME strongly believes that the Employer's decision to eliminate the Plant Engineering division was unwise. However, reorganization plans that eliminate positions and reassign job functions to existing or newly created positions are not a mandatory bargaining subject. *Local 128, AFSCME* v *Ishpeming*, 1985 MERC Lab Op 687, aff'd in part, 155 Mich App 491. Such decision-making is a managerial prerogative.

Next, as to the AME's concern with a reduction in overtime, it is well settled that overtime hours are not part of regular wages and may be reduced by an employer unilaterally as part of its right to regulate and control its operations. *Leelanau County Board of Commissioners*, 1970 MERC Lab Op 1054, 1061- 1062; *City of Roseville*, 1987 MERC Lab Op 182, 186-188; *City of Battle Creek (Fire Department),* 1989 MERC Lab Op 726, 735; *St. Clair County Road Commission*, 1992 MERC Lab Op 316, 321.

Furthermore, PERA does not regulate all aspects of the employment relationship. The allegations in both the present charge and the proposed amended charge, read in the light most favorable to Charging Party, state no more than possible breach of contract claims related to the filling of positions and the distribution of overtime work among bargaining unit members. The Commission has the authority to interpret the terms of a collective bargaining agreement only where necessary to determine whether a party has breached its statutory obligations. *University of Michigan*, 1971 MERC Lab Op 994, 996. However, in the ordinary course, where the terms and conditions of employment are covered by a collective bargaining agreement, the parties are left to pursue contract remedies. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich. 309, 317-321 (1996); *St Clair Co Road Comm*, 1992 MERC Lab Op 533.

Even accepting as true the entirety of the AME response to the motion to dismiss, it does not provide any coherent basis for finding a violation of the Act. Here, the charge asserts, at best, a breach of contract and, therefore, fails to state a claim upon which relief can be granted against the Employer under PERA and, for that reason, the charge is subject to dismissal.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated:_____