STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF ROSEVILLE,
Public Employer-Respondent,

Case No. C08 I-196

-and-

AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 520,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Keller Thoma, by Dennis B. DuBay, Esq., for Respondent

Cassandra D. Harmon Higgins, Esq., Staff Attorney, AFSCME Council 25, for Charging Party

DECISION AND ORDER

On March 31, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Motion for Summary Disposition in the above matter finding that Respondent, City of Roseville (Employer), did not violate its duty to bargain under Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by repudiating and/or modifying a contract provision concerning a permissive subject of bargaining. The ALJ found that the relevant provision contained in Respondent's letter of agreement with Charging Party, AFSCME Council 25, and its affiliated Local 520 (Union), restricted the Employer from reducing the size of the bargaining unit below a certain number and, therefore, was a permissive subject of bargaining. The ALJ recommended that the Commission follow federal precedent and conclude that a party does not violate its duty to bargain in good faith when it repudiates and/or modifies a contract provision on a permissive subject. Finding no genuine issue of material fact and that the charge fails to state a claim upon which relief could be granted under PERA, the ALJ recommended summary dismissal pursuant to Rules 165(1), 2(d), and 2(f) of the Commission's General Rules, 2002 AACS, R 423.165(1), 2(d), and 2(f). The Decision and Recommended Order on Motion for Summary Disposition was served on the interested parties in accordance with Section 16 of PERA.

Charging Party filed its exceptions to the ALJ's Decision on April 23, 2009. After receiving an extension of time to June 5, 2009 to file a response to Charging Party's exceptions, Respondent filed an untimely cross-exception on June 11, 2009, with a brief in support of the cross-exception and otherwise in support of the Decision and Recommended Order of the ALJ. Given Respondent's noncompliance with the rules governing the filing of cross exceptions and briefs in support of an ALJ's decision and recommended order, the Commission will not consider Respondent's untimely filings in accordance with Rule 176(5) of the Commission's General Rules. *See, generally*, Commission Rule 176 regarding exceptions to an administrative law judge's decision and recommended orders, cross exceptions, and briefs in support.

In its exceptions, Charging Party argues that the ALJ erred in concluding that the issue of whether a party's repudiation of a contractual provision on a permissive subject of bargaining constitutes a violation of its duty to bargain is an issue of first impression. Charging Party asserts that there is Commission precedent and sufficient evidence in the record to support its position that Respondent's conduct amounted to a repudiation of the letter of understanding and therefore, constituted a violation of its duty to bargain under PERA. Charging Party also argues that the ALJ erred in failing to find that Respondent violated its duty to bargain by refusing to discuss subcontracting or the impact of reduced staffing levels on bargaining unit members. We have reviewed Charging Party's exceptions and find that they have merit to the extent discussed below.

Factual Summary:

We adopt the factual findings of the ALJ and repeat them only as necessary here.

In 1992, the parties entered into a letter of understanding to settle a number of grievances, including grievances protesting the subcontracting of bargaining unit work. That letter of understanding stated in pertinent part:

> A. No current bargaining unit member will be laid off as a direct result of the subcontracting of refuse collection.
>
> B. Reductions, if any, shall be by attrition, but shall not reduce the members of the bargaining unit to less than fifty-five (55) members.
>
> This Letter of Agreement will stand on its own merit as long as the City is subcontracting refuse collection.

In 1995, the parties amended the letter of understanding to provide that Charging Party's bargaining unit would not be reduced below fifty-four members and Charging Party withdrew a pending unfair labor practice charge concerning subcontracting.

The letter of understanding was never incorporated into the parties' collective bargaining agreements, the most recent of which expired on June 30, 2008. Article 5(c) of the latter agreement contained the following clause:

> The City Administration will not subcontract out any work normally performed by its work force as long as Employees are available and the necessary equipment is owned by and available to the City. Employees are not considered available who refuse overtime requests.

In April 2008, during negotiations for a successor contract, Respondent presented a proposal that replaced Article 5(c) with language that included the following:

> A Letter of Understanding between the parties dated 10-07-92 and amended 12-29-95 is no longer recognized by the City. Staffing is hereby recognized as a management right.

In a June 19, 2008 letter, Respondent re-asserted its position that the size of the unit was a permissive subject of bargaining and that the letter of understanding would no longer be recognized. Charging Party responded, stating that Respondent could not refuse to recognize the letter of understanding and, also, by filing the instant unfair labor practice charge accusing the Respondent of violating Section 10(1)(e) of PERA and alleging repudiation. Charging Party also made several attempts to meet with Respondent to discuss staffing levels, to which they did not respond. Instead, Respondent moved for summary disposition requesting dismissal of the charge, citing federal law for the proposition that the mid-term revocation of a contract provision on a permissive subject of bargaining does not constitute an unfair labor practice. On October 7, 2008, the ALJ ordered Charging Party to show cause why the unfair labor practice charge should not be dismissed for failure to state a claim under PERA.

On October 22, 2008, the Charging Party filed an amended charge adding a claim that the Respondent unlawfully refused to meet with Charging Party to bargain the impact of its decision to withdraw from the letter of understanding. The amended charge stated: "The Respondent's refusal to meet with and or respond to the Charging Party's request to discuss the impact is a breach of its statutory duty to bargain." At that time, Respondent had contracts with private entities to provide refuse collection services and there were fifty-two employees in Charging Party's bargaining unit.

During oral argument before the ALJ, the issue of bargaining over the impact of Respondent's staffing decision was discussed. When asked by the ALJ if that was no longer a part of the charge, Charging Party responded: "Correct." A footnote to the ALJ's Decision and Recommended Order contains the observation that "there is no indication that Respondent has refused to discuss either subcontracting or the impact of subcontracting on employees."

Discussion and Conclusions of Law:

Charging Party takes exception to the ALJ's failure to find that Respondent violated PERA by failing to bargain over its subcontracting decision and the impact of its decision. In its exception, Charging Party reasserts its previously abandoned claim that its "requests to negotiate the issue of subcontracting and the impact of the decision to reduce staffing levels

have gone unanswered." Because, as noted above, Charging Party withdrew this aspect of the charge at oral argument, we will not consider it here; instead, we accept Charging Party's concession and, find no merit in this exception.

In recommending dismissal of the remaining aspects of the charge alleging repudiation, the ALJ relied upon *Chemical & Alkali Workers of America, Local Union No 1 v Pittsburgh Plate Glass Co, Chemical Division*, 404 US 157, 172, (1971), where the United States Supreme Court held that the mid-term modification of a collective bargaining agreement violates Section 8(d) of the National Labor Relations Act, (NLRA), 29 USC 151 et seq, only when it involves a mandatory subject of bargaining. There, the Court reviewed the mid-term modification of a contract provision for an insurance benefit for retirees. Finding that retirees are not employees for whom there is a duty to bargain, the Court concluded: "Accordingly, just as [Section] 8(d) defines the obligation to bargain to be with respect to mandatory terms alone, so it prescribes the duty to maintain only mandatory terms without unilateral modification for the duration of the collective-bargaining agreement." *Chemical & Alkali Workers* at 185-86.

Although we give federal precedent great weight in interpreting PERA, this Commission is not bound to follow its "every turn and twist**,**" *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530; *Marquette Co Health Dep't*, 1993 MERC Lab Op 901. The issue here is whether an agreement on the permissive subject of staffing can be unilaterally withdrawn when it was given in exchange for agreement on a mandatory subject of bargaining, namely subcontracting. We find the issue in this case to be significantly different from the issue before the federal court in *Chemical and Alkali Workers.*

Indeed, this is not an issue of first impression for this Commission. Recently, in *Kalamazoo Co & Kalamazoo Co Sheriff*, 22 MPER 94, at 327, decided October 12, 2009, after the ALJ issued her Decision and Recommended Order in this case, we wrote:

> A party may take unilateral action on a permissive subject without first entering into the bargaining process. . . . However, a party may not take unilateral action on a permissive subject that is embodied in a bargained agreement. To find otherwise would leave little distinction between a permissive subject of bargaining and a prohibited subject of bargaining upon which an agreement would be unenforceable. In *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n*, 458 Mich 540, 563-569; 581 NW2d 707 (1998), the unilateral modification of a contract was held to be an unfair labor practice. While the modification in that case involved a mandatory subject of bargaining, we disagree with the ALJ's reasoning that the holding in *St Clair Intermediate Sch Dist* applies only to mandatory subjects of bargaining. Although a dispute may involve a permissive subject of bargaining, once an agreement is reached, neither party has a right to unilaterally repudiate the bargain. Moreover, as here, where a permissive subject of bargaining is intertwined with mandatory subjects of bargaining, a repudiation of the permissively bargained part of the agreement is a repudiation of the entire package.

> In any negotiation for a collective bargaining agreement the parties have conflicting interests. To reach agreements, each party must give up something to gain something else. The compromises that result in agreement provide stability to the parties' relationship and a degree of reliability as to future interactions. To allow one party to renege on a lawful agreement would negate the stability and reliability that is the goal of good faith bargaining. If settlements can be unilaterally revoked, both stability and the possibility of productive future discussions are undermined. * * * If we were to ignore the damaging effect that Respondents' repudiation . . . would have on the parties' collective bargaining relationship and their future negotiations, we would fail to exercise what the appellate courts have properly recognized as "MERC's expertise and judgment in the area of labor relations." (*citations omitted*)

We have found that repudiation exists when 1) the contract breach is substantial, and has a significant impact on the bargaining unit and 2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Cmty Sch*, 1984 MERC Lab Op 894, 897. In *Kalamazoo Co*, the *quid pro quo* was an agreement to provide a lower wage rate for part of the work force in exchange for an agreement that future wage rates and other mandatory bargaining subjects for that particular group would be submitted to binding interest arbitration. Here, the *quid pro quo* was a promise to maintain a certain staffing level in exchange for an agreement on subcontracting. As we stated in *Kalamazoo Co*, where a permissive subject of bargaining is intertwined with mandatory subjects, repudiation of the permissively bargained portion constitutes repudiation of the entire agreement. Similarly, in this case, breach of the agreement to allow subcontracting so long as the number of bargaining unit employees does not fall below fifty-four has a substantial and significant impact on the unit, and, there is no dispute over contract interpretation.

We have considered all other arguments that were timely presented by the parties and conclude that they would not change the result in this case. We find that that the charge states a claim upon which relief can be granted under PERA, and there are no genuine issues of material fact. Consequently, we issue the following order.

ORDER

Respondent, City of Roseville, its officers and agents, are hereby ordered to:

1. Cease and desist from:

    a. Repudiating provisions of the Letter of Agreement made with Charging Party regarding bargaining unit staffing levels and the subcontracting of bargaining unit work.

2. Take the following affirmative action:

a. Immediately post and subsequently fill the two additional positions as required by the Letter of Agreement;

b. Continue to honor the terms of the Letter of Agreement unless and until its terms are changed through collective bargaining.

c. Post for a period of thirty (30) consecutive days the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees in Charging Party's bargaining unit are normally posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the **CITY OF ROSEVILLE** has been found to have committed unfair labor practices in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT Repudiate provisions of the Letter of Agreement made with Charging Party, AFSCME Council 25 and Its Affiliated Local 520, regarding bargaining unit staffing levels and the subcontracting of bargaining unit work.

WE WILL immediately post and subsequently fill the two additional positions as required by the Letter of Agreement;

WE WILL continue to honor the terms of the Letter of Agreement unless and until its terms are changed through collective bargaining.

CITY OF ROSEVILLE

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510

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

In the Matter of:

CITY OF ROSEVILLE,
Public Employer-Respondent,

Case No. C08 I-196

-and-

AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 520,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Keller Thoma, by Dennis B. DuBay, Esq., for Respondent

Cassandra D. Harmon-Higgins, Esq., Staff Attorney, AFSCME Council 25, for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

On September 24, 2008, AFSCME Council 25 and its affiliated Local 520 filed the above charge against the City of Roseville with the Michigan Employment Relations Commission. The charge alleged that on or about April 9, 2008, Respondent violated Section 10(1) (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 by repudiating a letter of agreement (LOA) between the parties. The charge was amended on October 22, 2008. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearing and Rules.

On October 7, 2008, I issued an order to Charging Party to show cause why the charge should not be dismissed for failure to state a claim on which relief could be granted under PERA under Rule 165(2) (d) the Commission's General Rules, 2002 AACS, R 423.165(2) (d). Charging Party filed a response to the order on November 12, 2008. On November 14, Respondent filed a motion for summary disposition citing this same rule. On December 8, 2008, Charging Party filed a response to the motion and a request for oral argument. Oral argument took place on January 29, 2009. Based on the facts as set forth in Charging Parties' pleadings, and the arguments set forth in the pleadings and at oral argument, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and the Motion for Summary Disposition:

The charge, as amended, alleges that Respondent violated its duty to bargain in good faith when it informed Charging Party on April 9, 2008 that it would no longer honor a LOA entered into by the parties on October 7, 1992 and amended on December 29, 1995. In its motion for summary disposition, Respondent argues that the LOA addresses a nonmandatory subject of bargaining, staffing levels, and that it did not violate PERA by terminating the LOA with respect to this subject. It also argues that it had the right to terminate the LOA because it was a contract of indefinite duration terminable at the will of either party.

Facts:

Charging Party represents a bargaining unit of Respondent's employees that includes laborers and laborer-drivers in Respondent's water, highway, recreation, and building maintenance departments.

On October 13, 1992, the parties entered into a LOA which settled a number of grievances then pending, including grievances over Respondent's subcontracting of refuse collection work. The parties agreed in the LOA to several modifications of their existing collective bargaining agreement, including changes in the vacation provision and the addition of another paid holiday. The LOA also included the following paragraphs:

> A. No current bargaining unit member will be laid off as a direct result of the subcontracting of refuse collection.
>
> B. Reductions, if any, shall be by attrition, but shall not reduce the members of the bargaining unit to less than fifty-five (55) members.
>
> This Letter of Agreement will stand on its own merit as long as the City is subcontracting refuse collection.

In accord with the terms of the 1992 LOA, Charging Party withdrew its pending grievances over subcontracting.

On December 29, 1995, the parties amended the LOA to provide that the bargaining unit would not be reduced below fifty-four members. In accord with the terms of this LOA, Charging Party withdrew a pending unfair labor practice charge addressing subcontracting.

The LOA was never incorporated into the parties' collective bargaining agreements. The parties' most recent contract expired on June 30, 2008. Article 5(c) of this agreement contained the following clause:

> The City Administration will not subcontract out any work normally performed by its work force as long as Employees are available and the necessary equipment

> is owned by and available to the City. Employees are not considered available who refuse overtime requests.

In April 2008, the parties were engaged in negotiations for a successor contract. On April 9, 2008, Respondent gave Charging Party a contract proposal that eliminated Article 5(c). Respondent proposed to put in its place language that included the following paragraph:

> A Letter of Understanding between the parties dated 10-07-92 and amended 12-29-95 is no longer recognized by the City. Staffing is hereby recognized as a management right.

On June 19, Respondent sent Charging Party a letter reaffirming its position that the size of the unit was a permissive subject of bargaining. The letter also stated, "It is the position of the City that the size of the unit pursuant to this Letter of Understanding will be null and void [sic], and this correspondence is merely to clarify that notice was given on April 9, 2008 that the Letter of Understanding would no longer be recognized." On June 26, Charging Party responded with a letter arguing that Respondent could not simply refuse to recognize a negotiated agreement. It also noted that Charging Party had made numerous attempts to meet with Respondent representatives to discuss staffing levels, but that its requests to meet had gone unanswered.

In April 2008, Respondent had outstanding contracts with private entities to provide refuse collection services. There were fifty-two employees in Charging Party's bargaining unit at that time.

Discussion and Conclusions of Law:

In *Metropolitan Council No. 23 and Local 1277, of American Federation of State, County and Mun Employees (AFSCME) AFL-CIO v City of Center Line*, 414 Mich. 642, 660 (1982), the Michigan Supreme Court held that a contract clause that restricted a public employer from laying off bargaining unit employees was a permissive, and not a mandatory, subject of bargaining under PERA. The Court concluded that the clause interfered with the employer's ability to make fundamental policy decisions regarding the size and scope of services based on factors such as need, available revenues, and the public interest. In accord with this reasoning, minimum staffing provisions have generally been held to be permissive subjects of bargaining under PERA. See *Sault Ste Marie v Fraternal Order of Police Labor Council*, 163 Mich App 350, 355 (1987); *Leoni Township*, 1986 MERC Lab Op 689. Only when a particular provision is found to have a demonstrable and significant relationship to employee safety does a minimum staffing provision become a mandatory subject. *Oak Park Pub Safety Officers v Oak Park*, 277 Mich App 317, 330 (2007). In this case, the parties' LOA clearly restricts Respondent's ability to make fundamental decisions regarding the services it provides to its citizens. For example, the requirement that Respondent employ at least fifty-four individuals in classifications represented by the Charging Party prevents Respondent from shifting resources from the functions employing Charging Party's members to other functions, such as public safety. Charging Party does not contend that there is any relationship between the staffing provision and employee safety. I find that the provision in the LOA that restricts Respondent from reducing the size of the bargaining unit below fifty-four individuals is a permissive, and not a mandatory subject of bargaining.

In *Chemical and Alkali Workers of America, Local Union No 1 v Pittsburgh Plate Glass Co, Chemical Division,* 404 US 157, 172, 185, 187-188179-182 (1971), the United States Supreme Court held that a mid-term modification of a term of a collective bargaining agreement violates Section 8(d) of the National Labor Relations Act, (NLRA), 29 USC 151 et seq, LRA only when it involves a mandatory subject of bargaining because the modification or repudiation of an agreement concerning a permissive subject of bargaining does not constitute a change in terms and conditions of employment. The Court held in that case that the remedy for a unilateral modification to a permissive contract term lies in an action for breach of contract, not in an unfair labor practice charge. *Chemical Workers,* at 188.

Relying on *Chemical Workers*, the National Labor Relations Board (NLRB) held in *Supervalu, Inc,* 351 NLRB No. 41 (2007), that an employer did not violate the NLRA by refusing to comply with an "after-acquired stores" clause in its contract that required it to recognize the union at newly acquired stores upon conducting a card check to establish the union's majority. The NLRB found that the General Counsel had failed to establish that this clause "vitally affected" terms and conditions of employment and that the clause was not a mandatory subject of bargaining. It held that while the employer's action might be a breach of contract, it was not a violation of the employer's duty to bargain under the NLRA for it to refuse to comply with a contract provision that concerned a permissive subject of bargaining. See also *Tampa Sheet Metal Co,* 288 NLRB 322, 325-325 (1988) and *Hope Electrical Corp,* 333 NLRB 933 (2003), in which the NLRB held that because interest arbitration is not a mandatory subject of bargaining under the NLRA, the repudiation of a collective bargaining agreement imposed through interest arbitration is not an unfair labor practice.

PERA does not contain a provision parallel to Section 8(d), but the duty to bargain under Section 15 of PERA includes a prohibition against mid-term modifications of contract provisions addressing mandatory subjects of bargaining. *St Clair Intermediate School Dist v Intermediate Educ Association/Michigan Educ Ass'n, 4*58 Mich 540, 563-569, (1998). As the Court noted in that case, the prohibition is founded on the well established principle that once the parties have reached agreement on a mandatory subject and incorporated it into their contract, they have satisfied their obligation to bargain over that subject for the term of the contract. The parties, of course, have no obligation to bargain or reach agreement on a permissive topic.

The Commission has also held that an employer's repudiation of a provision or provision of its collective bargaining agreement may be tantamount to a rejection of its obligation to bargain. *Jonesville Bd of Ed,* 1980 MERC Lab Op 891; *City of Detroit, (Dept of Transportation),* 1984 MERC Lab Op 937, *aff'd,* 150 Mich App 605 (1985). The Commission has not explicitly addressed the issue of whether a party's repudiation of a contractual agreement on a permissive topic could constitute a violation of its duty to bargain in good faith. However, because Section 10(1) (e) of PERA is patterned on Section 8(a) (5) of the NLRA, Michigan Courts and the Commission have consistently looked to decisions interpreting the NLRA in defining the nature and extent of the obligation to bargain under PERA. *Detroit Police Officers Ass'n v Detroit,* 391 Mich 44, 53 64 (1974) ("we deem that the Legislature intended the courts to view the Federal labor case law as persuasive precedent); *Local 1467, IAFF v City of Portage*, 134 Mich App 466, 470 fn 3 (1984) ("precedent under the NLRA is persuasive in construing PERA's requirements

because of the parallel language in the two statutes.) As noted above, the theory underlying a finding of unlawful repudiation is that a party's refusal to honor a contract provision constitutes a rejection of its obligation to bargain. However, a party has no obligation under PERA to bargain over a permissive topic. Therefore, in my view, its refusal to comply with a contract provision on a permissive topic does not violate does not violate any statutory duty. I recommend that the Commission follow federal precedent and find that a party does not violate its duty to bargain under PERA by repudiating and/or modifying a contract provision concerning a permissive subject of bargaining.

Charging Party argues that the true subject of the LOA in this case is not staffing levels, but the subcontracting of bargaining unit work. It points out that both original and amended LOAs resolved grievance and unfair labor practice disputes over this issue. It argues that since the subcontracting of bargaining unit work is a mandatory subject of bargaining, Respondent's repudiation of the LOA constituted a repudiation of an agreement on a mandatory subject. I find that despite some awkwardness in the wording in Respondent's June 19, 2008 letter, there is no indication that Respondent refused to comply with any part of the LOA other than the minimum staffing provision. That is, there is no evidence that Respondent repudiated or modified the portion of the LOA dealing with subcontracting. I agree with Charging Party that the minimum staffing provision in the LOA seems to have been intended by the parties as a *quid pro quo* for the provision allowing the subcontracting of unit work. Unless Respondent properly terminated it, the LOA constitutes an agreement on all topics covered therein, both mandatory and permissive, which can be enforced by an action for breach of contract. However, for reasons discussed above, I conclude that Respondent's repudiation of the portion of the LOA dealing with a permissive topic should not be found to constitute a violation of its duty to bargain in good faith. [1]

Based on the discussion and conclusions of law set forth above, I find that the there is no genuine issues of material fact in this case, that the charge does not state a claim upon which relief could be granted under PERA, and that summary dismissal of the charge is therefore appropriate under Rules 165(1), 2(d), and 2(f) of the Commission's General Rules. I recommend, therefore, that the Commission issue the following order.

[1] In its brief, Charging Party alleges that Respondent has refused to bargain over subcontracting and/or the impact of subcontracting on unit employees. As set forth above, Respondent is refusing to comply with the portion of the LOA that requires it to employ at least fifty-four individuals in classifications within Charging Party's bargaining unit. However, there is no indication that Respondent has refused to discuss either subcontracting or the impact of subcontracting on employees.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____