

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,  
Public Employer - Respondent,

Case No. C05 K-276

-and-

ASSOCIATION OF CITY OF DETROIT SUPERVISORS,  
Labor Organization - Charging Party.

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APPEARANCES:

Andrew R. Jarvis, Esq., City of Detroit Law Department, for Respondent

Webb, Engelhardt & Fernandes, PC, by L. Rodger Webb, Esq., for Charging Party

**DECISION AND ORDER**

On June 24, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that the City of Detroit (Respondent) did not violate its duty to bargain in good faith when it unilaterally transferred the supervision of street sweeping and snow removal work from members of the bargaining unit represented by the Association of City of Detroit Supervisors (Charging Party or ACODS) to classifications in another bargaining unit. She held that the snow detail and street sweeping assignments together did not constitute a position that was transferred from Charging Party to another bargaining unit and that this, therefore, was not a unit placement dispute. The ALJ also found no violation when Respondent unilaterally altered existing work rules by forbidding Charging Party's members from using checkpoints to perform their supervisory duties. Concluding that Respondent 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), the ALJ recommended that the charges be dismissed.

The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. Charging Party requested and was granted two extensions of time to file exceptions. On August 24, 2009, Charging Party filed exceptions and a supporting brief. Respondent did not file a response.

In its exceptions, Charging Party alleges that the ALJ erred in her factual and legal conclusions. Charging Party alleges that the ALJ erred in determining that ACOADS had not made a demand to bargain over the decision regarding the use of checkpoints. Charging Party further asserts error in the ALJ's conclusion that Respondent had a duty to bargain over only the effects and not the implementation of the new work rule that eliminated checkpoints and instituted discipline for their continued use. They assert that the ALJ erred in her findings that this case did not concern the removal of exclusive unit work and that the removal of unit work was merely of assignments and not positions. Charging Party also alleges error in the ALJ's conclusions that the removal of work was made pursuant to a legitimate reorganization and was not motivated by labor costs or other factors under its control.

We have thoroughly reviewed the exceptions and find that they have merit, in part.

#### Factual Summary:

Respondent's department of public works has several divisions, including a street maintenance and a solid waste division. The street maintenance division repairs and constructs roads, sidewalks, and curbs. The solid waste division is responsible for refuse collection and disposal. Snow removal is performed by employees of both divisions working in different areas of the City of Detroit.

Non-supervisory employees of both divisions are members of a single bargaining unit that is represented by Teamsters Local 214. Teamster members of the street maintenance division work under the supervision of street maintenance foremen and sub-foremen who are represented by the Paving Foremen Association (PFA). Teamster members of the solid waste division, referred to as refuse collection packer operators [RCPOs], are supervised by RCPO foremen who are represented by Charging Party. Respondent transferred certain work from the solid waste division that had been performed under the supervision of the RCPO foremen to the street maintenance division. After the transfer, the work was performed by the street maintenance division, working under the supervision of street maintenance foremen and sub-foremen represented by PFA.

Also, in response to complaints from the public that refuse collection trucks were standing idle, Respondent prohibited RCPO foremen supervising one-man collection routes from continuing a practice of using checkpoints to monitor the work of their subordinates. Respondent also threatened discipline for non-compliance. RCPO foremen were instructed to make contact with subordinates on their assigned routes rather than at checkpoints.

#### Discussion and Conclusions:

The transfer of duties from the solid waste division to the street maintenance division was a transfer that occurred within the bargaining unit represented by Teamsters Local 214. As such, it implicated the bargaining rights of that unit. Charging Party argues that its bargaining rights were violated because work performed by its subordinates was placed under the supervision of members of a different labor organization. We disagree. While the transfer of work within a bargaining unit may give rise to an obligation to bargain with the representative of that unit [See

e.g., *Ingham Co*, 1994 MERC Lab Op 50; 7 MPER 25020 (1994)], we decline to hold that it gives rise to an obligation to bargain with the representative of another unit.

Following the transfer of work of the solid waste division to the street maintenance division, Charging Party's members continued to supervise employees in Respondent's solid waste division. Their work of supervising solid waste division employees was diminished, not transferred. We hold that the Respondent had no duty to bargain with Charging Party regarding the reassignment of work within the bargaining unit represented by Teamsters Local 214. See, e.g., *Oak Park Public Safety Officers Ass'n*, 19 MPER 50, at p. 148 (2006), where we held that a proposal that directly impacts employees in other bargaining units is a non-mandatory subject of bargaining.

We also agree with the ALJ that Respondent had no obligation to bargain concerning the elimination of checkpoints. The RCPO foremen check on their subordinates and assist them with problems. How they perform these duties is to be determined by their employer. However, to substitute route checks for checkpoints under threat of discipline for failure to comply with that substitution represents a material change in working conditions. The ALJ found that Respondent had a duty to bargain over the impact of the decision to eliminate checkpoints, but that Charging Party failed to allege that it demanded bargaining. We disagree, noting that both the original and the amended charge assert that the elimination of checkpoints was "in derogation of [Charging Party's] subsequent bargaining demand." Moreover, at hearing, the unchallenged testimony of Charging Party's president was that he had demanded bargaining and maintenance of the status quo.

In summary, we find that Respondent did not violate its duty to bargain in good faith when it transferred work performed by non-supervisory Teamsters 214 employees from its solid waste division to its street maintenance division. Nor was there a duty to bargain over the elimination of checkpoints. We find, however, that Respondent violated its duty to bargain over the impact of its decision to eliminate checkpoints. Therefore, after considering all other arguments submitted by the parties and concluding that they would not change the result in this case, we issue the following order:

### **ORDER**

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

1. Cease and desist from:
  - a. Materially changing working conditions during the term of a collective bargaining agreement made with Charging Party by substituting route checks for checkpoints under threat of discipline for failure to comply with that directive.
2. Take the following affirmative action:

- a. Upon demand, bargain with Charging Party concerning the impact of the decision to eliminate checkpoints.
- b. Continue to honor the existing working condition that allows Charging Party's members to use checkpoints to perform their supervisory duties until and unless that working condition is 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

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Christine A. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

**NOTICE TO EMPLOYEES**

After a public hearing before the Michigan Employment Relations Commission, the City of Detroit 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** materially change working conditions during the term of a collective bargaining agreement made with the Association of City of Detroit Supervisors (ACODS) by substituting route checks for checkpoints under threat of discipline for failure to comply with that directive.

**WE WILL** upon demand, bargain with ACODS concerning the impact of the decision to eliminate checkpoints.

**WE WILL** continue to honor the existing working condition that allows ACODS's members to use checkpoints to perform their supervisory duties until and unless that working condition is changed through collective bargaining.

**CITY OF DETROIT**

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 DETROIT,  
Public Employer-Respondent,

Case No. C05 K-276

-and-

ASSOCIATION OF CITY OF DETROIT SUPERVISORS,  
Labor Organization-Charging Party.

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**APPEARANCES:**

Andrew R. Jarvis, Esq., City of Detroit Law Department, for Respondent

Webb, Engelhardt & Fernandes, PLLC, by L. Rodger Webb, Esq., for Charging Party

**DECISION AND RECOMMENDED ORDER**  
**OF**  
**ADMINISTRATIVE LAW JUDGE**

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard at Detroit, Michigan on September 18, 2008, before Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before December 29, 2008, I make the following findings of fact, conclusions of law, and recommended order.

**The Unfair Labor Practice Charge:**

The Association of City of Detroit Supervisors filed this charge against the City of Detroit on November 22, 2005. The charge was amended on May 8, 2007. Charging Party represents a bargaining unit of supervisory employees of Respondent, including refuse collection foremen, also known as refuse collection packer operator (RCPO) foremen. The charge, as amended, alleges that in about October 2005, Respondent violated its duty to bargain in good faith by unilaterally transferring the supervision of street sweeping and snow removal work, formerly performed exclusively by RCPO foremen in Charging Party's bargaining unit, to classifications represented by another labor organization. Charging Party also asserts that Respondent unlawfully removed RCPO foremen positions from Charging Party's unit and placed them in the other labor organization's bargaining unit. Finally, the charge alleges that around this same time, Respondent unilaterally altered existing work rules by forbidding RCPO foremen,

under threat of discipline, from using checkpoints to keep track of and communicate with their subordinates.

Findings of Fact:

Transfer of Street Sweeping and Snow Removal Work/Positions

Respondent's department of public works (DPW) has five divisions, including solid waste and street maintenance. The solid waste division, the DPW's largest, is responsible for refuse collection and disposal. Several classifications of refuse collection packer operators (RCPOs) are employed in the solid waste division, including RCPO/vehicle operators (VOs) who drive one-man collection trucks and RCPOs who do bulk collection, i.e. picking up items too large to be handled by the one-man trucks. The RCPOs are part of a bargaining unit represented by Teamsters Local 214. RCPO foremen represented by Charging Party are the immediate supervisors of the RCPOs. The RCPO foremen are also employees of the solid waste division.

The street maintenance division repairs and constructs roads, sidewalks and curbs. Nonsupervisory employees in the street maintenance division, including VOs, are part of the same bargaining unit as the RCPOs in the solid waste division. Street maintenance division employees are directly supervised by employees classified as street maintenance (SM) foremen and sub-foremen. The SM foremen and sub-foremen are represented by the Paving Foremen Association (PFA).

Before 2006, a certain number of RCPO/VOs, and five RCPO foremen, were assigned to work full time doing street sweeping, including removing debris from streets and alleys, between the months of April and November each year. The RCPO foremen assigned to this work were selected by seniority, or, usually, by reverse seniority because street sweeping was not considered a desirable assignment. The RCPO crews were the only City employees doing street sweeping. The street sweeping operation was supervised by managers in the solid waste division and run from two solid waste division facilities, Russell-Ferry on the east side of the City and Southfield on the west side.

Street sweeping stops in November, or earlier if it begins to snow. Until about November 2005, the solid waste division was responsible for removing snow and ice from major City streets in most of the City, and the street maintenance division was responsible for snow and ice removal in the downtown area and in southwest Detroit neighborhoods.<sup>1</sup> RCPO/VOs were dispatched from Russell-Ferry to remove snow and ice from streets on the east side and from Southfield on the west. The RCPOs used the same City vehicles to plow and salt that they used for refuse collection and were supervised by RCPO foremen when performing both snow removal work and refuse collection. Crews of street maintenance VOs, who at other times did paving or other street maintenance work, were dispatched from the street maintenance division yard to remove snow and ice from roads downtown and in southwest Detroit on the day and afternoon shifts. Because the street maintenance division did not have a third shift, plowing and

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<sup>1</sup> Until 1999, the City did not remove snow or ice from side streets. Since that time, Respondent has used private contractors to plow side streets if a snowfall exceeds a certain number of inches.

salting downtown and in southwest Detroit after midnight was handled by RCPOs. In addition to plowing and salting streets in part of the City, street maintenance crews removed snow and ice from freeway overpasses, under railroad viaducts, and other specified locations throughout the City. They also removed snow from sidewalks, crosswalks and gutters downtown and around City-owned properties. The street maintenance VOs were supervised by SM sub-foremen and SM foremen when they removed snow and ice as they were when they performed their other duties. Crews in both divisions could also be ordered by a DPW superintendent to assist in clearing roads in areas normally cleared by the other division.

In addition to the RCPO foremen who supervised the RCPOs, between three and four RCPO foremen were assigned to snow control operations (the “snow detail”) at the Russell-Ferry and Southfield yards between November and April. On days when there was no snow or ice to remove, the RCPO foremen assigned to the snow detail had a list of responsibilities that included maintaining snow and ice removal equipment, receiving deliveries of salt and other supplies, maintaining the yards, and dispatching crews to clean up oil spills or salt streets near water main breaks. It appears from the record, although the testimony was not clear, that when it snowed these same foremen dispatched (ran the “snow desk”) the RCPOs who plowed and salted.<sup>2</sup> Although the DPW’s snow and ice control policy stated that foremen assigned to the snow detail were to perform these duties when not needed for refuse collection work, Charging Party president Dennis Wheeler testified that the snow detail – manning the snow desk and performing the other snow-related duties - was a full-time assignment between November and April. Like the street sweeping operation, the snow detail was a “seniority pick” assignment for RCPO foremen. Like the street sweeping operation, it usually fell to low seniority RCPO foremen because it was not considered a desirable assignment.

The above describes how snow and ice removal work was distributed on a day to day basis until the winter of 2005-2006. During snow “emergencies” involving heavier snowfalls, all DPW employees are mobilized to assist in clearing streets. Over a period of twenty years, Respondent declared about seven snow emergencies.

In the fall of 2005, Respondent was experiencing budget problems. Sometime before late November, Respondent decided to eliminate all bulk refuse collection. Around this same time, in about October, Charging Party president Dennis Wheeler was called to a meeting with then-DPW director James Jackson and Alfred Jordan, the superintendent of the solid waste division. Jackson told Wheeler that he was going to transfer both snow removal work and street sweeping from the solid waste division to the street maintenance division. Jackson did not explain to Wheeler why this transfer was being made. Insofar as the record discloses, Wheeler and Jackson also did not discuss the practical effects of this transfer, i.e. what classifications would be doing what work. Since Charging Party did not represent any supervisors in the street maintenance division, Wheeler apparently understood Jackson to be telling him that Charging Party’s members would no longer be supervising the employees sweeping streets and plowing snow. Wheeler told Jackson that Respondent could not do this without reopening the parties’ collective bargaining agreement because this work was Charging Party’s exclusive work. Jackson replied that he was the director and had already decided to do it.

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<sup>2</sup> Charging Party states in its brief that these RCPO foremen issued orders to street maintenance crews, but I can find no evidence of this in the record.



At the hearing in this case, the DPW's deputy director testified that the DPW's decision to transfer street sweeping and ice and snow removal to the street maintenance division was a budgetary device. He explained that Respondent receives gasoline and vehicle weight tax money from the State of Michigan based on the usage of fuel and the amount of vehicle taxes collected by the State within the City. According to the deputy director, the DPW is allowed to budget a portion of that money up front for personnel or equipment to be used for work on the street "right-of-way," and that money is paid directly into the City's street fund. According to the deputy director, in order to use money from the street fund to pay employees, the City must be able to show that all the work they do is related to the right-of-way. As the deputy director described it, when right-of-way work is done by City employees outside of the street maintenance division, Respondent has to request reimbursement from the State of Michigan and use general fund money to pay their salaries until the City receives the money from the State. In the fall of 2005, the City's general fund balance was too low to support all the operations normally paid for from this fund. The DPW, therefore, decided to shift street sweeping and snow removal from the solid waste division to the street maintenance division so that these functions could be paid for directly from the street fund.

On or around November 18, 2005, Jordan told Wheeler that the DPW was "going to move some of [Wheeler's] people, and they were no longer going to be responsible for snow and ice." Wheeler protested, but was told again that Jackson had made up his mind. On about November 23, the DPW told the five RCPO foremen at the top of Charging Party's seniority list to report to the street maintenance facility. The RCPO foremen were not given a change in title, and their pay rate remained the same. The five men complained that they should not have been selected for transfer because they were the high seniority foremen. It did not snow for several weeks after their reassignment, and the RCPO foremen complained that they were not being given anything to do at the street maintenance yard. Over the next few weeks, each of the five returned to work at a solid waste facility.

On about December 9, Respondent sent letters to six other RCPO foremen. The letters notified them that they were being transferred to the street maintenance division to "monitor snow and ice removal, street sweeping and related tasks." Although the transferred foremen were now formally street maintenance employees, they continued to work at Russell-Ferry or Southfield. They ran the "snow details" at these locations and also supervised RCPOs doing refuse collection in the Eastern Market area of Detroit and performing other special assignments. The foremen themselves were supervised by a street maintenance supervisor reassigned to the Russell-Ferry yard for that purpose. The transferred foremen did not receive title or pay rate changes, and continued to be included in Charging Party's bargaining unit.

The DPW also transferred some nonsupervisory RCPOs to positions in the street maintenance division at about this time. However, the record indicates that RCPOs who also did refuse collection continued to plow and salt in the same areas of the City as they had in past years, and that these RCPOs continued to be supervised by RCPO foremen.

On February 6, 2006, five other RCPO foremen were notified that they were being transferred to the street maintenance division to do "street related tasks, such as removing litter

from berms, street sweeping and snow & ice removal.” Like the foremen transferred in December, these foremen continued to work at the Russell-Ferry or Southfield yards. It was not clear from the record what work these individuals did during the period they were assigned to the street maintenance division. Like the six transferred earlier, the RCPO foreman transferred in February 2006 did not immediately receive a change in title or pay and continued to be included in Charging Party’s bargaining unit.

Street maintenance sub-foreman and RCPO foreman are both considered entry-level supervisory positions. However, under their respective union contracts, SM sub-foremen earned about \$1500 per year more than RCPO foremen in 2005 and SM foremen earned even more. When the RCPO foremen were transferred to the street maintenance division, Teamsters Local 214 argued that the RCPO foremen should not be reclassified as SM foremen or sub-foremen because they lacked the qualifications for these positions and because this action would deprive Teamster members of promotional opportunities. For at least six months after their transfers, all the RCPO foremen were simply shown on the payroll as RCPO foremen on loan to the street maintenance division.

One of the approximately eleven RCPO foremen on loan to the street maintenance division eventually became an SM foreman. Sometime after February 2006, the DPW reinstated bulk refuse collection and Respondent transferred all the other “loaned” RCPO foremen back to the solid waste division. Four of the ten returned to positions as RCPO foremen. The other six were demoted to nonsupervisory RCPOs. By the time of the hearing in this case in September 2008, three of these six had been repromoted to RCPO foreman, one had resigned, and two were still working as RCPOs.

At the time of the hearing, there were three or four SM foremen or sub-foremen, represented by the PVA, assigned full-time to supervise street sweeping operations between April and November. This work was being done by crews of VOs from the street maintenance division, and the street sweeping operation was run from a street maintenance division facility. Between November and April, there were five SM foremen and sub-foremen assigned to the snow detail at Russell-Ferry and/or Southfield. These were not necessarily the same four SM foremen and sub-foremen assigned to the sweeping operation. Rather, the assignment was a seniority pick for members of the PVA unit, as it had been for Charging Party’s members, and the SM foremen and sub-foremen who were assigned to the snow detail in the winter had a choice of street maintenance assignments in the summer. Street maintenance crews were still being dispatched from the street maintenance facility at 19<sup>th</sup> and Michigan to plow and salt in the downtown and Southwest Detroit areas, and crews were still being dispatched from Russell-Ferry and Southfield to plow and salt in the rest of the City. The record indicated that, at least at Russell-Ferry, crews dispatched from that facility to plow and salt were being supervised by RCPO foremen in Charging Party’s unit. It was not clear from the record whether the crews dispatched from Southfield and Russell-Ferry to remove snow and ice were considered employees of the solid waste division or the street maintenance division.<sup>3</sup>

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<sup>3</sup> The deputy director testified that street maintenance had five supervisors and thirty-five other employees assigned full-time to snow removal at Russell-Ferry during the winter, but did not elaborate on their duties or classifications.

## Elimination of Checkpoints

RCPO foremen supervise crews of RCPOs, including RCPOs who operate one-man refuse collection trucks and those who do bulk collections. RCPO foremen have traditionally communicated with their crews by radio, from truck to truck. If his radio is not working, a foreman or driver can go to a pay phone or use his cell phone to call dispatch and have the dispatcher relay a message over the radio. At one time, the DPW reimbursed employees for pay phone calls. For some time, however, there has been an 800 number to call dispatch.

This system does not work, however, if neither the RC foreman nor the RCPO has a functioning radio. Before October 2005, RCPO foremen were also permitted, even encouraged, to establish checkpoints in their areas. The RCPO foreman would station himself at his checkpoint and his RCPOs would come to the checkpoint to report on their progress. If an RCPO finished his route early, and another truck had broken down, the RCPO foreman could assign the RCPO to finish the other driver's route. If multiple trucks malfunctioned, the RCPO foreman could have a mechanic come to the checkpoint. If a RCPO did not appear at the checkpoint, the RCPO foreman would go looking for him. Charging Party president Wheeler testified that the checkpoint also provided a safe place for the RCPO to go if he felt threatened while doing his route.

In October 2005, DPW assistant superintendent Charles Harmon disciplined an RCPO foreman as a result of a complaint about trash containers not being picked up. Harmon concluded that the RCPO foreman had not done a thorough inspection of the routes under his supervision because he had been at a checkpoint. Harmon scheduled a meeting with Charging Party president Wheeler and told him that he had decided that it would be more efficient for the RCPO foremen to ride around and check their routes instead of having RCPOs drive to and wait at a checkpoint. He explained to Wheeler that the DPW was also getting too many complaints from the public that refuse collection trucks were standing around and not doing anything. Harmon said that he was going to prohibit all the RCPO foremen supervising one-man collection routes from using checkpoints, and that they would be subject to discipline if they did not comply. The foremen supervising bulk pickup could continue to use checkpoints. Wheeler told Harmon that the use of checkpoints was a work rule that had to be bargained with Charging Party. Harmon disagreed. When Harmon sent a letter to the foremen announcing the new policy, Charging Party filed the instant charge.

On about October 12, 2006, Harmon sent an e-mail to RCPO foremen reminding them that any foreman using checkpoints for other than the reasons he allowed would be disciplined. In August 2008, an RCPO foreman was issued a written reprimand for using a checkpoint after several high-level City officials observed trucks from his crew gathered at an intersection. At the time of the hearing, this was the only employee who had been disciplined as a result of the change in policy regarding use of checkpoints.

Between the filing of the charge and the date of the hearing, the parties met several times to discuss Charging Party's objections to the elimination of checkpoints. At the hearing, Charging Party argued that without checkpoints, the RCPO foremen lack a reliable method of keeping in contact with their subordinates. It presented testimony that, beginning in 2005, the

DPW began removing radios from refuse collection trucks to replace them with newer equipment. It asserted that in many cases, the radios in the trucks had been removed but not replaced. At one point in 2008, Charging Party did an informal survey and concluded that only about twenty percent of trucks had a functioning radio. Charging Party's witnesses testified that in the absence of radios and checkpoints, RCPO foremen are forced to use their personal cell phones, for which they are not reimbursed, to keep in touch with their crew members. They also testified that some crew members keep their phones turned off so that they do not have to accept calls from their foremen. Respondent disputed Charging Party's claim that there were a substantial number of trucks without functioning radios.

#### Discussion and Conclusions of Law:

##### Transfer of Work/Positions

Bargaining unit placement is neither a mandatory subject of bargaining nor a decision to be made unilaterally by the employer. When parties disagree over the unit placement of a position, the matter is to be resolved by the Commission under the authority granted it by Section 13 of PERA. *City of Warren*, 1994 MERC Lab Op 1019; *Michigan State Univ*, 1992 MERC Lab Op 120, 123. See also *Detroit Fire Fighters Assn v City of Detroit*, 96 Mich App 543, 544 (1980). It follows that an employer cannot lawfully alter the bargaining unit placement of an existing position without either an order from the Commission or the agreement of the position's bargaining agent. *Michigan State Univ*, 1994 MERC Lab Op 345, 350. An employer violates its duty to bargain under Section 10(1) (e) when it unilaterally moves a position from one unit to another unless the duties of the position have changed so that the position no longer shares a community of interest with its original unit. *City of Grand Rapids*, 19 MPER 69 (2006); *Northern Michigan Univ*, 1989 MERC Lab Op 139, 150; *Livonia Pub Schs*, 1996 MERC Lab Op 479, 483.

However, the reassignment of individual *duties* from positions in one unit to positions in another unit may be either a mandatory subject of bargaining or a matter reserved to the employer as part of its inherent managerial prerogative. In *Local 128, AFSCME v City of Ishpeming*, 155 Mich 501 (1986) and *United Teachers of Flint v Flint School District*, 158 Mich App 138 (1986), the Court of Appeals held that the employer had no duty to bargain over a transfer of work made pursuant to a "legitimate reorganization." Thereafter, in *City of Detroit (Water & Sewerage Dept)*, 1990 MERC Lab Op 34, the Commission concluded that the legislature had not intended that a public employer have no duty to bargain over a decision to remove work from a unit and assign it to a position in another unit for reasons of efficiency or cost. However, it held that several elements were essential before a duty to bargain could be imposed over such a transfer. First, it held, as the Supreme Court had in *Southfield POA v Southfield*, 433 Mich 168 (1989), that the transferred work must have previously been performed exclusively by members of the charging party's unit. It also held that in order for there to be a duty to bargain, the record must show a significant adverse impact on unit employees from the transfer. It said that the evidence must show that unit employees would be laid off or terminated, not recalled, demoted, or suffer a significant drop in overtime as a result of the transfer of work. It emphasized that the mere loss of positions in the unit would not give rise to a duty to bargain. Finally, the Commission held that the transfer dispute must be of a type

amenable to resolution through the collective bargaining process. It said that the employer's decision must be based, at least in part, on either labor costs or general enterprise costs which could be affected by the bargaining process.

The first question presented by this case is whether the dispute is essentially a dispute over unit placement. That is, did Respondent remove a position from Charging Party's unit and place it in the PVA? As noted above, if it did, Respondent must show that the duties of the position changed so that it no longer shared a community of interest with Charging Party's unit. There is no dispute that prior to 2005, foremen represented by Charging Party supervised street sweeping crews between April and November and manned the snow detail at the Russell-Ferry and Southfield yards between November and April, and that foremen represented by the PVA now do this work. However, street sweeping and the snow detail were only two of several assignments from which RCPO foremen with sufficient seniority could pick at different times of the year. An RCPO foreman might select – or be assigned, if he had low seniority – to these jobs. However, an RCPO foreman with enough seniority might chose to supervise street sweeping in the summer and bulk refuse collection in the winter. I find that the snow detail and street sweeping assignments together did not constitute a “position” that was transferred from Charging Party's unit to the PVA, and that the dispute here is not a unit placement dispute.

As indicated above, a public employer has an inherent managerial right to transfer duties from a position in one unit to a position in another unit under some circumstances. As discussed above, in order for an employer to have a duty to bargain over the transfer of exclusive unit work, there must be significant adverse impact on unit employees from the transfer and the dispute must be of a type amenable to resolution through the collective bargaining process. During the period in which these changes in work assignments were made, Charging Party lost positions and several RCPO foremen were demoted. There is no evidence, however, that the changes were motivated by labor costs or any other factor under Charging Party's control. As described by Respondent, the change in work assignments was a consequence of Respondent's desire to use funds from its street fund, rather than its general fund, to pay for street sweeping and snow removal. In order to do this, according to the record, Respondent had to shift the work to individuals who, unlike Charging Party's members, performed only work in the “right-of-way.” Although Charging Party argues that it had a right to bargain over the change in work assignments, it does not explain how, given these circumstances, bargaining could have affected Respondent's decision. According to the record, Respondent told Charging Party what it planned to do in this case but not why. Had Respondent provided an explanation for its actions when Charging Party president Wheeler objected and demanded to bargain, this dispute might have been resolved. However, I conclude that, based on the facts in this record, Respondent had no duty to bargain over its decision to reassign the supervision of street sweeping and snow removal work from Charging Party's members to members of the PVA.

#### Elimination of Checkpoints

Charging Party argues that by instructing its members, under pain of discipline, not to use checkpoints, Respondent changed their job descriptions and/or existing work rules and disciplinary policies. Disciplinary rules and policies are mandatory subjects of bargaining. *Pontiac Police Officers Assn v City of Pontiac*, 397 Mich 674, 682 (1974). A substantial change

in job duties that changes the nature of the job also constitutes a mandatory subject of bargaining. *Oakland Univ*, 1994 MERC Lab Op 540; *Twp of Meridian*, 1986 MERC Lab Op 915, 920. An employer does not, however, have a duty to bargain over changes in day to day work assignments or how the work is to be performed, although it is required to bargain over the impact of these changes on employees. *Charlotte Sch Dist*, 1996 MERC Lab Op 193, 201-203 (no exceptions); *City of Grand Rapids (Fire Dept)*, 1997 MERC Lab Op 69, 69 (no exceptions).

I find that Respondent does not have a duty to bargain over whether RCPO foremen use checkpoints and that it did not unilaterally change terms and condition of employment by instructing them not to do so. The job duties of the RCPO foremen include checking on their subordinates and assisting them with problems. How they perform their duties, including how and when they communicate with their subordinates, is a matter to be determined by their employer. Respondent did, and does, have a duty to bargain over the impact of its decision not to allow RCPO foremen to use checkpoints, including whether they are required to use their personal cell phones to contact their crew members and the effect of the no-checkpoints rule on the RCPO foremen's job performance. Charging Party has not alleged, however, that it made a demand to bargain over these issues or that Respondent refused to discuss them. I conclude that Respondent did not violate its duty to bargain by forbidding Charging Party's members from using checkpoints to perform their supervisory duties without giving Charging Party notice and an opportunity to bargain over this directive.

In accord with the findings of fact and conclusions of law above, I find that Respondent did not violate its duty to bargain in good faith as alleged in this charge. I recommend, therefore, that the Commission issue the following order.

**RECOMMENDED ORDER**

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

Dated: \_\_\_\_\_