STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

OAKLAND COMMUNITY COLLEGE,
Public Employer-Respondent,

Case No. C09 L-264

-and-

OAKLAND COMMUNITY COLLEGE
FACULTY ASSOCIATION
Labor Organization-Charging Party.
____/

APPEARANCES:

Butzel Long, by Craig S. Schwartz, Esq., for Respondent

Law Offices of Lee & Correll, P.C., by Michael K. Lee, Esq., for Charging Party

DECISION AND ORDER

On June 30, 2010, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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:

Case No. C09 L-264

OAKLAND COMMUNITY COLLEGE,
Respondent-Labor Organization,

-and-

OAKLAND COMMUNITY COLLEGE
FACULTY ASSOCIATION,
Charging Party-Labor Organization.
____/

APPEARANCES:

Butzel Long, by Craig S. Schwartz, for Respondent

Law Offices of Lee & Correll, P.C., by Michael K. Lee, for Charging Party

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On December 29, 2009, the Oakland Community College Faculty Association filed an unfair labor practice charge against Oakland Community College. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the pleadings and the transcript of the oral argument held on May 4, 2010, I make the following findings of fact and conclusions of law.

The charge arises from Respondent's decision to reorganize and centralize responsibility for supervision of library faculty. The Union contends that the College violated Sections 10(1)(a) and (e) of PERA by refusing to bargain over the "impact of its decision to unilaterally alter the supervision and reporting structure." On January 25, 2010, Respondent filed a motion for summary disposition in which it asserted that the charge should be dismissed on the ground that the alleged change has not yet been implemented, and because the only impact on the library faculty resulting from the reorganization is that bargaining unit members "will simply be reporting to and supervised by a different Dean." According to the College, the decision as to who will supervise bargaining unit employees is a matter of managerial prerogative under PERA.

Charging Party filed a brief in opposition to the motion for summary disposition on March 5, 2010.

Oral argument on the motion for summary disposition was held on May 4, 2010. After considering the arguments made by counsel on the record, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition was appropriate pursuant to Commission Rule R 423.165 (1). See also *Detroit Public Schools,* 22 MPER 19 (2009) and *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a bench decision, finding that Charging Party had failed to state a valid claim under PERA. The substantive portion of my findings of fact and conclusions of law are set forth below:

> JUDGE PELTZ: I'll begin by noting once again that this case was instituted by a charge filed by the union on December 29th, 2009, and as previously set forth on the record there was a motion to dismiss filed by the employer. The parties have now had a full opportunity to brief these issues, and a full opportunity to argue these issues orally now. And I believe we fully met the requirements at this point of *Smith v Lansing School District*, 428 Mich 248 (1987). Given my findings as will be explained momentarily that there are no disputes of material fact in this case and that, accepting all of the charging party's allegations as true for purposes of resolving the motion, that the respondent is entitled to judgment as a matter of law in this case.
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> [In] March of 2009 the college decided and announced its intent to re-organize and determine[d] that library faculty would report to the dean of libraries as their immediate supervisor. The union immediately sent a demand to bargain over that decision. There was no reference to impact issues in that demand to bargain. The parties then proceeded to have at least two, if not more, discussions concerning the re-organization or the change to the supervisory structure for the bargaining unit members. And the union, again taking all the facts as plead by the charging party, the union asked a number of questions regarding potential impact issues arising from the re-organization. And the college responded each time by indicating either that it didn't think there would be a change or that it didn't know what would occur at that point.
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> As of the date the charge was filed and in fact as of today, the change itself has not been implemented and there have been, therefore, no specific -- there's been no specific actual discernable impact on the charging party's members at this time and at the time the charge was filed.
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> Turning to the discussion [and] conclusions of law here, Section 10(1)(e) of PERA prohibits a public employer from refusing to bargain collectively with representatives of its employees. [I]n 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 the employer is actively engaged in the bargaining process with an open mind and sincere desire to reach an agreement.

As an example of that, I would cite *Detroit Police Officers Association v City of Detroit*, 391 Mich 44 (1975). Policy decisions related to the overall structure and operation of a public employer are reserved to management and are not subject to bargaining. *Local 1277 ASFCME v Centerline*, 414 Mich 642 (1982). It is well established that a public employer does not have a duty to bargain regarding the legitimate departmental re-organization or re-structuring of its operations. *Ishpeming Supervisory Employees v City of Ishpeming*, 155 Mich App 501. There is a duty to bargain over the impact of a management decision, and that duty is conditioned upon the employer's receipt of a proper request from the union. And I would I cite *Local 586 Service Employees International Union v Union City*, 135 Mich App 553 (1995).

Now in the present case we have a change to the supervisory structure wherein the decision itself involved a different individual supervising the bargaining unit members, [a] different position supervising bargaining unit members than before. That's what this case involves. I believe standing on its own that decision would fall within the Commission's reference to a legitimate re-organization. And when the Commission uses the term legitimate, they're distinguishing a situation where it's done with an improper motive or there's some type of deceit involved in terms of what's actually occurring. Here we don't have any allegation that that's what's occurring. We have a legitimate decision to change supervisory structure, and I think the Commission's decision on that falling into the overall subject of departmental re-organization or restructuring would apply.

[I]'ll also note that the case law cited by the employer in its motion, *KONO-TV Mission Telecasting Corporation*, 163 NLRB 1005 1967, that case stands for the proposition, more specifically, that the employer's decision with respect to its choice of supervisors is a management right about which the employer has no statutory duty to bargain. That case has been cited for that proposition several times by the Board, including in *Hampton House*, 317 NLRB 144 (1995) and *Bridgeport and Port Jefferson Steamboat Company and Local 333*, [313 NLRB 542 (1993)]. And finally, a case I referenced earlier, *Tesoro Petroleum Corp*, 192 NLRB 56 (1971) [a] decision by the Board.

I think it's without question then that the decision itself in this case to change the supervisory structure was a decision of managerial prerogative about which the college had no duty to bargain, and I think Mr. Lee acknowledged that in his argument.

So we come to the question of whether the college violated its bargaining duty under section 10(1)(e) of PERA by failing or refusing to bargain the impact of that decision prior to its implementation, and that's where I think the case turns on here is the timing of any bargaining duty that may arise.

> The Commission has repeatedly stated that bargaining over the impact of a management decision is not required prior to its implementation. *Kalamazoo County Sheriff*, 1992 MERC Lab Op 63 . . . is the case that is most often cited for that proposition. Also see *City of Detroit*, 1994 MERC Lab Op 476, no exceptions to that decision. And in this case we have a decision that has not in fact, as of the time we sit here today, been implemented. There has been no practical impact on the bargaining unit members at this time. So I . . . conclude that there has been no bargaining violation committed by the employer with respect to its duty to bargain impact. There has been no harm to any of the unit members as of the date the charge was filed or as of today's date. And, therefore, any potential impact issues which may arise as a result of the ultimate implementation must be dealt with at the appropriate time, whether by the filing of a grievance or by the filing of an unfair labor practice charge should that become a necessity.
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> Obviously, the union has a right to demand to bargain once that impact issue has come to its attention. What we really have in this matter, it seems to me, is an information request case. It appears that the union was seeking information as to what plans the employer has with respect to this re-organization and it's not satisfied with the responses that it received. There may have been a viable information request case had that issue been properly plead, but that's not the issue obviously that is before the Commission today. I think . . . that what the union has really objected to at this point is the [reorganization] decision itself and has used that objection in an attempt to impede what otherwise was a clear managerial right. And I don't believe that the Commission's process should be used in that manner when there has been no practical impact as of the date of the filing of the charge on unit members.

Based on the findings of facts and conclusions of law set forth above, I issue the following recommended order:

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: June 30, 2010