STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C09 L-241

-and-

AFSCME COUNCIL 25 AND LOCAL 542,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Andrew Jarvis, City of Detroit Law Department, for Respondent

Miller Cohen, P.L.C., by Richard G. Mack, for Charging Party

DECISION AND ORDER

On March 11, 2011, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order finding that Respondent, City of Detroit, did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, MCL 423.210, and recommending that the Commission dismiss the charge filed by AFSCME Council 25 and Local 542. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

Exceptions to the ALJ's Decision and Recommended Order were originally due on April 4, 2011. On March 29, 2011, Charging Party filed a request for an extension of time in which to file its exceptions. Pursuant to Rule 176(8) of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.176(8), we issued an order on April 1, 2011, giving Charging Party until May 4, 2011, to file exceptions. Respondent did not file a timely request for an extension of time in which to file its exceptions.

On May 2, 2011, Charging Party filed a second request for an extension of time to file its exceptions. Charging Party requested an extension until May 11, 2011, but failed to state a reason for needing the additional time. On May 4, 2011, the Commission issued an order granting Charging Party an extension until May 6, 2011.

Respondent filed its exceptions to the ALJ's Decision and Recommended Order on May 4, 2011. Bureau of Employment Relations staff informed Respondent that its

exceptions were untimely as Respondent had not requested an extension of time to file its exceptions. Respondent was also advised that its exceptions would not be considered by the Commission unless Respondent sought, and the Commission granted, a retroactive extension of time to file exceptions.

On Friday, May 6, 2011, Charging Party submitted a request for a third extension of time, until 5:00 p.m. on Monday, May 9, 2011. In this request, Charging Party asserted that it needed copies of some of the exhibits in this case to prepare its exceptions, and claimed that its copies had been misplaced by a former employee. Charging Party's extension request was accompanied by a request, under the Freedom of Information Act (FOIA), MCL 15.231 - 15.246, for copies of the exhibits. On the afternoon of May 6, 2011, the Commission provided Charging Party with the documents requested under FOIA, and extended Charging Party's time to file exceptions until noon on May 9. Charging Party filed exceptions with the Commission on the morning of May 9, 2011.

On May 11, 2011, Respondent filed a Motion Requesting Acceptance of Its Exceptions to the Recommended Order of the Administrative Law Judge, as well as a brief in support. On June 3, 2011, Respondent filed motions to quash the Commission's orders granting the second and third extensions of time to Charging Party. Charging Party filed its responses to Respondent's motions to quash on June 13, 2011.

Respondent's Motion Seeking Consideration of Its Exceptions

In its Motion Requesting Acceptance of Its Exceptions to the Recommended Order of the Administrative Law Judge, Respondent argues that the language of the second paragraph of our April 1, 2011 order extends the time period for filing exceptions for all parties, not just Charging Party. Respondent is mistaken in its reading of the extension order. The extension order specifies the party to whom the extension is granted. Respondent's argument that the extension applies to all parties is based on its reading of only the second paragraph of the order while disregarding the first paragraph.

In its brief in support of its motion requesting that its exceptions be considered, Respondent relies on *Brewer v Schulz*, unpublished opinion per curiam of the Court of Appeals, issued March 22, 2011 (Docket No. 294220), as support for its contention that if an order is inconsistent with the pertinent rules, the language of the order controls. In *Brewer*, the Court rejected the plaintiff's argument that the Court's prior order granted plaintiff the full relief allowable under the applicable court rule, explaining that its prior order limited the scope of the relief awarded to something less than what the rule would have allowed. Respondent's reliance on *Brewer* is inapposite to the matter before us. Here Respondent seeks to persuade us that our April 1, 2011 order granted it an extension of time beyond that which we could lawfully grant under the applicable rule. Had our order done as Respondent asserts the order would be void. See e.g., *Mfr Nat'l Bank of Detroit v Director Dep't of Natural Resources*, 420 Mich 128, 146 (1984).

Our order must be read in conjunction with the rule governing the granting of extensions of time. See *Norman v Norman*, 201 Mich App 182, 184 (1993). Rule 176(8)

provides that we may only grant an extension of time "to the moving party upon the filing of the request." Thus, it is clear that the April 1, 2011 order granted an extension of time only to Charging Party to allow it until May 4, 2011 to file exceptions. Accordingly, we deny Respondent's motion and decline to consider its untimely exceptions.

Respondent's Motions to Quash

Both motions to quash argue the same point. Respondent asserts that Charging Party's second and third extension requests did not show good cause as required under Rule 176(8) for extensions subsequent to the first one. Therefore, Respondent requests that both the second and third extension orders be quashed and that Charging Party's exceptions be stricken from the record.

Since Charging Party was granted an extension until noon on May 9, 2011, the order granting Charging Party's second extension of time, to May 6, is moot. Therefore, Respondent's motion to quash that order is dismissed. However, we agree with Respondent that Charging Party did not assert good cause in its request for the third extension of time. An extension subsequent to the first one may only be granted upon a showing of good cause. Our order granting Charging Party the extension to noon on May 9, 2011, was imprudently granted and is hereby quashed. Thus, Charging Party's exceptions are untimely and we will not consider them.

Inasmuch as neither party has filed timely exceptions to the ALJ's Decision and Recommended Order said Order is adopted by the Commission.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION[1]

_____
Edward D. Callaghan, Commission Chair

_____
Nino E. Green, Commission Member

Dated: _____

[1] Commissioner Christine A. Derdarian did not participate in the decision in this matter.

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

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

-and- Case No. C09 L-241

AFSCME Council 25 and Local 542,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Richard G. Mack, Miller Cohen, PLC, for the Charging Party

Andrew Jarvis, City Law Department, for the Respondent

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). The following findings of fact, conclusions of law, and recommended order are based on the entire record, including post-hearing briefs by the parties[2].

The Unfair Labor Practice Charge:

On December 9, 2009, a Charge was filed in this matter against the City of Detroit (Employer or City) by AFSCME Council 25 and its affiliated Local Union 542 (the Union or if separately, Council 25 and Local 542). The Charge asserted that on October 12, 2009, the City unilaterally instituted changes in working conditions which had an impact on building cleaning attendants represented by AFSCME Local 542. It was alleged that the City changed the work shifts and locations of stewards, changed the names and boundaries of work

[2] Neither party properly filed timely briefs. The City filed a brief, via fax, with a sworn proof of service indicating service by mail on the opposing party; however, the City's fax was also accompanied by a cover sheet which contradicted its proof of service, indicating that the City was refusing to serve the opposing side. The City had engaged in the same maneuver in Case No. C07 B-030, resulting in the ALJ in that case striking the City's brief. AFSCME sought an untimely extension of time in which to file its brief. Given the mutual failure to properly file, both briefs were accepted.

districts utilized by the City, and changed the overtime allocation for building attendants.

Findings of Fact:

The City restructured some of its building and ground maintenance work into a new division it calls the general services department. Previously certain building maintenance employees were assigned to work for specific departments, such as the police department, health department, recreation department, etc. In the context of the creation of that new general services department, the City raised the prospect of shifting from a system of building cleaning crews assigned in a stationary fashion to particular buildings or departments to a system where building crews would rove or travel from site to site. A "special conference" was held on October 6, 2009, to discuss the proposed change in work process and a looming budget cut.

Such "special conferences" are a creature of the master agreement between AFSCME Council 25, its various Local Unions, and the City. The special conference was held on October 7, 2009, at AFSCME Council 25's Detroit headquarters. The participants in the meeting included AFSCME Council 25 Staff Representative DeAngelo Malcolm, who had arranged the meeting, and served in it as the representative of the regional or parent labor organization, which is the entity with authority to negotiate over the terms of the "master agreement" with the City covering the multiple AFSCME bargaining units represented by its several Local Unions. Brad Dick, deputy director of the general services department, attended, with Marcus Holmes of the human resources department and Barrett Irving, building operations supervisor, also present for the Employer. Also in attendance were several representatives of AFSCME Locals 1023, 457 and Melvin Brabson, who at the time was the president of AFSCME Local 542, and who was accompanied by several other officers of Local 542. There was apparently no representative at that meeting from Local 229, which also represents some of the building attendants.[3]

The events and accommodations reached at the meeting of October 6, 2009, are recounted in detail in the letter of October 7, 2009, from Brad Dick to DeAngelo Malcolm, who was the highest ranking AFSCME official at the meeting. To the extent that there were differences between Dick's version of the meeting of October 6, as detailed in his contemporaneous letter and his testimony, and that of the testimony of the Union representatives present at the meeting, I credit Dick's testimony as it was straightforward, seemingly honest, and free of embellishment or selective recall. Of most significance is the fact that Dick's conduct, and that of the Union, immediately following the meeting was consistent with Dick's version of events.

At the time this dispute arose, Dick had been with the City approximately four years as deputy director of the general services department. The areas within his jurisdiction included building cleaning services provided by City employees, as well as by outside

[3] The Union presented proofs regarding the impact on members of other City of Detroit employee bargaining units represented by AFSCME Locals 1023, 457 and 229, and in its post-hearing brief sought relief as to employees in those units. Those claims will not be further addressed in this decision as no claims as to those units were raised in the Charge, which was filed only on behalf of Local 542 and Council 25.

contractors. When Dick started with the City, there were approximately ninety City employed building cleaning attendants. At that time, approximately half of the building cleaning services were performed by outside companies contracted by the City. Over a period of four years there were budget cuts of approximately twenty million dollars in the building cleaning budget. By the time of the hearing, the City was down to approximately thirty-nine City employed building attendants.

In the fall of 2009, Dick was ordered by the City budget office to cut approximately five million dollars from his cleaning budget. Dick and his management team reviewed several options to absorb such a significant cut. The first possible option was to lay off 17 of the remaining 39 City employed building attendants. This option would have resulted in the lay off, since 2006, of a total of approximately 70 out of 90 building attendants. Dick reviewed the seniority lists and noted that all but one of those 17 attendants slated for layoff lived in the City and Dick thought "great, seventeen more homes foreclosed on if I lay them off". A second alternative was sought.

Barrett Irving, building operations supervisor, had previously owned his own cleaning company and believed that the work of the entire City workforce, as well as that of the outside contractors, could be performed by the City employees if they were shifted from stationary assignments to working in roving crews, as was the norm in the private sector. Management concluded that if they could shift to roving crews, they could terminate their arrangements with outside contractors and avoid laying off any further City employees. Additionally, the plan to end subcontracting would allow the department to increase the amount of money available for overtime for City employed building attendants to do special projects like stripping floor wax that they could not get to ordinarily. Significantly, Dick understood that he had to end the outside contracts in a matter of weeks to avoid their renewal for another year.

Based on these internal management discussions, Dick went into the October 6th meeting with AFSCME, as he put it, "90% certain" that he would cut out the contractors, turn all work over to AFSCME members, and increase his budget for overtime, assuming AFSCME acquiesced. Given the seemingly objective attractiveness of getting rid of the contractors and not laying off AFSCME members, Dick was sure his plan would be well received. The meeting lasted an hour or so. After Dick's presentation, the Union representatives indicated they wanted to bargain over issues. Dick asked over what issues and the Union caucused. When they returned, the Union asked for the creation of a new second shift to accommodate some employees who had part-time second jobs. This accommodation was necessary only in the context of the proposed change to the roving crew structure, which included a later starting time.

Management discussed the Union proposal and then agreed to create the requested 2nd shift. The Union made no further demands at that meeting. Dick reasonably thought that the Union was satisfied by that accommodation. The parties then discussed the details of the seniority based bid process to be held on October 12 for placement on the several roving crews. That was also the same date that the contractors were to be effectively eliminated. No objections were expressed to the bid process as described by management at the meeting,

with the added accommodation that if any particular employee couldn't make the bid meeting, their respective Local Union president could submit a bid for them.

Dick walked out of the October 6th meeting with Council 25 and its three or four Local Unions with the reasonable impression that he had worked out an acceptable arrangement with AFSCME in that he had: avoided significant impending layoffs; eliminated outside contractors who were doing janitorial work for many years which could otherwise have been assigned to AFSCME unit employees and which had been ongoing point of contention between the City and AFSCME; accomplished a reorganization of the work undertaken in good faith based on budget pressure and the direct demand from the City finance department to eliminate $5 million from his cleaning budget; agreed to add a 2nd shift to accommodate the Union's request made after the Union caucus, expressly to assist employees who had 2nd jobs, and where the City had not otherwise planned to have a 2nd shift; and no other specific demands or objections were made by the Union at that meeting. Dick readily acknowledged that he was not sophisticated regarding labor relations niceties and took his lead from Union pressure. While Dick did not ask the Union to sign a written agreement memorializing the new arrangement, he did send a detailed confirming letter to DeAngelo Malcolm, the AFSCME representative on October 7th and confirmed that Malcolm had received it. In keeping with his understanding of the agreement to transfer all of the work to AFSCME members, Dick simultaneously sent, via overnight courier, notices to each of the subcontractors terminating their contracts with the City.

Dick's letter of October 7, 2009, expressly recounted his understanding of the outcome of the meeting, including that the outside contractors had been terminated, to be effective October 12th and that as a result of the savings from cutting the outside contractors, layoffs of City employees were avoided. The letter recounted the new arrangement for roving crews, their locations and new shift times, indicated that a consistent posting would go up the following Monday, as well as the fact that a job bidding meeting would occur on October 12th at which the Union stewards would have first pick of jobs, locations, and shifts. The letter also noted that there was a concern expressed with maintaining Union steward coverage, given the change in locations and shifts, and Dick asked the Union to provide management with an updated list of stewards. The letter indicated that compliance with the existing supplemental agreements on overtime allocation would be difficult, as those agreements presumed stationary rather than roving workers, but that the City was willing to undertake that laborious process. Consistent with that offer regarding overtime allocation, Dick in the letter asserted his belief that none of the terms memorialized therein violated the terms of the then existing, if long expired, supplemental agreements.

In his letter, Dick asserted his belief that, based on the mutual accommodations reached at the meeting of the prior day, "We believe this can be one of the good, success stories of how labor and management can work together . . . and I truly hope you see this as a joint success, as we realize yet another way in which change, though constant, can strengthen our partnership". Dick received no written, or other, response from AFSCME Council 25 representative Malcolm, and understandably presumed that all was well.

The October 12th bid meeting was held as scheduled and the Union stewards were

allowed first pick of locations and shifts. At the bid meeting, all of the AFSCME Locals had officers present. Only Brabson of Local 542 rose to object during the bidding process and did so in a theatrical manner, demanding bargaining over unspecified issues, which left Dick confused as to AFSCME's intent. All of the employees bid on shifts and locations based on their respective seniority and were then assigned based on the bidding outcome. Ultimately, the parties settled into a process of allocating overtime within each of the roving crews based on seniority, rather than based on the availability of an overtime project at a particular location. [4] As a result of these changes, the amount allocated for overtime pay for AFSCME building attendants went from approximately $35,000 to approximately $125,000 annually.

It was not until after the City had acted consistent with the October 6th meeting and Dick's confirming letter of October 7th, and had actually terminated all the subcontractors, and after the City employees had all bid on the newly structured roving crews, that Brabson sent his letter of Oct 14, 2009. That letter was sent on Local 542 letterhead and seemingly only on behalf of that one Local. It demanded the end of the use of roving crews and demanded bargaining over unspecified issues. The letter closed with advising Dick that a 4th step grievance with the City labor relations department had been filed over the issue and that an unfair labor practice charge would also be filed. Dick concluded that the dispute had thereby "gone over his paygrade" and took no further action on the matter, nor was he ever asked to take any further action by the Union. AFSCME Council 25 took no further steps to pursue Brabson's October 14th nominal bargaining demand, either with Dick or with the City labor relations department.

Discussion and Conclusions of Law:

It is axiomatic that, where employees have selected an exclusive representative, there is a duty to bargain over proposed changes to wages, hours and other terms and conditions of employment, such that unilateral action by either party may be unlawful under PERA. *DPOA v Detroit*, 391 Mich 44 (1974). Under the facts of the present dispute, and given the issues involved, the relevant question is not whether there was a duty to bargain, but whether it was fulfilled.

PERA requires a good faith effort to resolve disputes, not, ultimately, perfection in that effort. In a refusal to bargain case such as this, the Commission looks to the overall conduct of a party to determine if it "has actively engaged in the bargaining process with an open mind and a sincere desire to reach an agreement." See *City of Springfield*, 1999 MERC Lab Op 399. Here, the Employer faced an imminent budget problem, with the apparent option of remedies which either favored its own employees or favored outside contractors. The Employer met with the regional Union body and the four directly affected Local Unions. The Employer made its proposal, which was indisputably more favorable to the bargaining unit employees than the possible alternatives. The Union caucused and asked for a significant modification, the creation of an otherwise unplanned 2nd shift, to which the Employer

[4] There is no indication in the record that AFSCME ever took Dick up on his offer in the October 7th letter to engage in the "laborious process" of attempting to allocate overtime based on the fiction of assigning it by seniority based on the former stationary work locations rather than by seniority within the new roving crew structure.

promptly agreed. Despite the importance of the issues involved, neither party proposed reducing the terms to a mutually signed agreement. The Employer immediately sent, and confirmed receipt of, a letter to Council 25 detailing its understanding of the terms agreed upon. The Union did not timely object to the Employer's characterization of the deal; in fact, Council 25 never objected.

Both parties acted in accordance with the terms of the agreement as described in the October 7th letter. The Employer terminated the contracts with the outside contractors and prepared to turn over all the work to the AFSCME members. On October 12th, the Union officers and all of the relevant members appeared for the bid meeting and selected their preferred shifts based on their seniority. The Employer increased the allocation of funds for AFSCME member overtime by approximately $100,000. The roving crew system was put in place and overtime was allocated by seniority.

To determine whether a party has bargained in good faith, the Commission examines the totality of the circumstances to decide whether a party has approached the bargaining process with an open mind and a sincere desire to reach an agreement. *City of Springfield*, 1999 MERC Lab Op 399, 403; *Unionville-Sebewaing Area Schs*, 1988 MERC Lab Op 86; *Kalamazoo Pub Schs*, 1977 MERC Lab Op 771, 776. There is no indication in the record of anti-union animus on the part of Dick, nor of any effort on his part to evade dealing with the Union, and to the contrary his relationship with his Union counterparts appeared to remain cordial and cooperative despite this dispute. Based on these facts, I find that the Employer satisfied its duty to bargain on October 6th when it in good faith sought and reached an agreement with AFSCME Council 25 and the four involved Local Unions, as memorialized in the letter of October 7th.

Only on October 14th, after the Employer had to its detriment relied on the terms of the deal reached on October 6th, did Local 542 send its letter objecting to the arrangement and purporting to demand bargaining and an end to the roving crews. Council 25 never demanded bargaining with the City over the dispute, nor did the other three affected Locals. Even Local 542 failed to ever specify its bargaining demands or to actually pursue any effort at bargaining with the City labor relations department or with the general services department as a followup to Brabson's nominal verbal demand to bargain of October 12th and his later equally vague letter of October 14th.

An employer's duty to bargain is conditioned on its receipt of an appropriate request. *Local 586, Service Employees International Union v Union City*, 135 Mich App 553, lv den 421 Mich 857 (1995). It is the union's obligation to request bargaining over the impact of the decision. *Kalamazoo County Sheriff*, 1992 MERC Lab Op 63; *Service Employees, Local 586 v Village of Union City*, 135 Mich App 553 (1984). A statement that an issue is negotiable, or even a protest of an employer's action, does not constitute a demand to bargain. See, *NLRB v Rural Electric Co*, 296 F2d 523; 49 LRRM 2097 (CA 10 1961); *NLRB v Barney's Supercenter, Inc*, 296 F2d 91; 49 LRRM 2100 (CA 3 1961). Here, there was no timely demand to bargain where the Union knew on October 7 that the Employer was claiming that an agreement existed based on which the City was going to eliminate the contractors, retain Union members, redesign the crew structure, and have employees bid on new shifts and

locations, all by October 12. Local 542 waited until October 14th, after the deal was fully in place, to assert a vague demand to bargain over unspecified issues—and even then no demand to bargain was ever asserted by Council 25 or the three other affected Locals.

Moreover, I find that there was, in fact, no demand to bargain at all. The October 14th letter was treated by all parties, including the Union leadership, as a mere rhetorical flourish. Neither Local 542 nor Council 25 made any effort to follow up on the letter of October 14th by seeking to schedule a meeting with the general services department or, more properly, with the City labor relations department. The failure of the City to enthusiastically approach the possibility of further bargaining, particularly with the mixed messages sent by Council 25 and its several Local Unions, was not a refusal to bargain. There was no testimony that the Union ever actively sought bargaining with the City over this dispute, rather Local 542 tossed down a formalistic demand and then it and Council 25 paid no more attention to the Brabson letter than did the City.[5]

The specific changes implemented in October 2009, in the absence of an agreement with the Union, may have violated the terms of the supplemental agreements, but on these facts, even if I had not found an enforceable settlement between the parties, I would not have found an intentional repudiation of the supplemental agreements or of the duty to bargain. Dick acted in good faith and articulated to the Union, without timely rebuttal, his reasonable belief that the steps taken were consistent with the parties' obligations under the supplemental agreements.

The Union asserts that the reorganization of the work resulted in a unilateral change in how overtime was allocated. Before the October 2009 changes, overtime was allocated based on seniority at a given stationary location. After the change to roving crews, overtime came to be allocated based on seniority within each of the several roving crews. Dick's letter of October 7th indicated to the Union that the Employer was willing to allocate overtime pursuant to the former location based method even though to do so would be "laborious". That offer was not followed up on by the Union, or by the Employer, both of whom were content in the continuing, and objectively more sensible, method of allocating overtime by seniority within each roving crew.

I likewise find no violation based on the Union's assertion that the reorganization of the work disrupted its Union steward structure. While the change to roving crews necessarily resulted in the relocation of individual stewards from their former work locations, that fact alone did not preclude the Union from having or selecting stewards in each agreed upon location, or from having stewards available to the membership. The Employer did not interfere in that ultimately internal Union question and, rather, asked in the October 7 letter that the Union to provide the City with an updated list of stewards.

In its post-hearing brief, the Union makes a claim for restoration of what is described by the Union as the "once abundant" overtime exclusively available for Union stewards

[5] The City had, and continues to have, a duty to bargain over supplemental agreements, notwithstanding the suggestion in Dick's letter that such bargaining was dependent on the outcome of a unit clarification petition filed, and later abandoned, by the City. See, *City of Detroit*, 23 MPER 102 (2010).

based on their holding Union office. The argument ignores the fact that the total overtime available to all members of the unit has greatly increased with the elimination of the use of outside contractors. Moreover, the argument blithely ignores the sole statutorily appropriate purpose of super-seniority for stewards,which is to protect the right of the *members* of the bargaining unit to representation, and which is not authorized for the purpose of having employer resources used to financially reward stewards for holding Union office. To provide otherwise unlawfully discriminates among employees based on the extent of their Union activity. See, *AFSCME Local 1346*, 19 MPER 37 (2006); *Grand Rapids Bd of Educ*, 1985 MERC Lab Op 802; *Gulton Electro-Voice*, 226 NLRB 406; 112 LRRM 1361 (1983); *cf, UAW Local 1331 (Chrysler Corp.)*, 228 NLRB 1446, 1447 (1977) (union's object of having both steward on the job when employees were working justified superseniority for overtime). As the ALJ in *AFSCME Local 1346* noted, the NLRB has held that steward superseniority provisions limited to layoff and recall situations were presumptively valid, while superseniority provisions as to other job benefits were presumptively, but not *per se*, unlawful. See, *AFSCME Local 1346*, citing, *Dairylea Cooperative Inc*, 232 NLRB 690 (1977), *enf'd sub nom NLRB v Teamsters Local 338*, 531 F2d 1162 (CA 2, 1976). It is particularly notable that in *AFSCME Local 1346*, the charge arose when this same Union caused the layoff of a bargaining unit member by unlawfully insisting on special privileges for Union officials which were unrelated to securing representation on the job. The focus on the arguably reduced financial payoff for stewards is particularly inappropriate where the accommodation reached at the October 6th meeting was to cut off all of the subcontractors, clearly a long term Union goal, and to thereby avoid the otherwise imminent layoff of approximately 17 Union members, also a seemingly important institutional goal. [6]

I have carefully considered all other arguments asserted by the parties in this matter and have determined that they do not warrant a change in the result. For the reasons set forth above, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The Charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

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

Dated:_____

[6] There is a similar ill-advised focus on protecting the claimed entitlement of stewards to preferential treatment for overtime in Case No. C10 G-179, *City of Detroit & AFSCME Local 542*, which is before me and is pending decision.