STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C10 E-119

-and-

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES (AFSCME), LOCAL 207,
Labor Organization-Charging Party.
_____/

APPEARANCES:

June Adams, City of Detroit Law Department, for the Respondent

Scheff, Washington & Driver, P.C., by George B. Washington, for the Charging Party

DECISION AND ORDER

On May 25, 2011, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent, City of Detroit (Employer), violated § 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e). The ALJ found that Respondent breached its duty to bargain when it unilaterally decided to lay off employees in the street lighting maintenance worker (SLMW) classification, which was represented by Charging Party, American Federation of State, County and Municipal Employees, Local 207 (AFSCME or Union), and to replace them with employees in the line worker classification represented by the International Brotherhood of Electrical Workers (IBEW). The ALJ determined that the work performed by the SLMWs was exclusive to that classification and had not previously been performed by the IBEW line workers. The ALJ also found that Respondent breached its duty to bargain when it laid off the sole employee in the AFSCME represented public lighting department repair mechanic classification and transferred the repair mechanic's work to a private contractor. The ALJ's Decision and Recommended Order was served on the interested parties in accordance with §16 of PERA. After requesting and receiving an extension of time, Respondent filed its exceptions on July 15, 2011. Charging Party filed its brief in support of the ALJ's decision on August 1, 2011.

In its exceptions, Respondent argues that the ALJ exceeded the scope of the charge when he made a decision regarding the repair mechanic classification.

Respondent contends that the repair mechanic does not perform the work addressed in the charge. Respondent also argues that the ALJ erred by finding that the unit represented by Charging Party exclusively performed the street lighting repair work.

In its brief in support of the ALJ's decision, Charging Party asserts that Respondent waived its claim that the ALJ exceeded the scope of the charge because evidence was introduced at hearing regarding the duties of the repair mechanic and Charging Party raised the issue of the subcontracting of the repair mechanic's duties in its opening statement, in its proofs, and in its closing brief, but Respondent failed to object. Charging Party also argues that the ALJ correctly found that the street light maintenance work was exclusively performed by the bargaining unit represented by AFSCME.

After a careful and thorough review of the record, we find the exceptions to be without merit. We adopt the ALJ's findings of fact and repeat them here only as necessary.

Inclusion of the Repair Mechanic Classification within the Charge

We find no merit to Respondent's argument that the ALJ erred by addressing the Employer's decision to subcontract the work formerly performed by the repair mechanic. Respondent contends that the issue was not specifically raised by the charge. The charge states that the City of Detroit announced, on or about May 15, 2010, that it was "unilaterally removing work from the bargaining unit of AFSCME Local 207 by assigning members of IBEW Local 17 to perform overhead line work, including repair and replacement of fixtures, in the Public Lighting Department. Members of Local 207 have performed this work for many years. By these acts, the City has violated PERA."

Although the charge did not identify the job classifications of the affected employees, evidence in the record reveals that there are two classifications at issue, the SLMW, including apprentice SLMWs, and the repair mechanic. Both classifications were in the Public Lighting Department and both worked on the repair and replacement of fixtures. The SLMW classification worked on street lighting and the repair mechanic worked on traffic lights. It was the work of the SLMW classification that was transferred to employees in the bargaining unit represented by IBEW Local 17. The work of the repair mechanic, on the other hand, was subcontracted to a private company.

Although the charge did not specifically mention subcontracting, it is clear from the charge and the remainder of the record that the dispute was over the transfer of bargaining unit work to persons outside the unit and included the work of the repair mechanic. It is evident that the ALJ considered the charge broad enough to cover the bargaining unit work performed by the SLMWs, apprentice SLMWs, and the repair mechanic. As this Commission held in *Detroit Downtown Travelodge*, 1967 MERC Lab Op 443, 445-446, "omission of a charge or defense from a pleading in an administrative proceeding is not prejudicial if the agency hears the evidence and decides the issue." See also *St Clair Co Intermediate Sch Dist*, 2001 MERC Lab Op 218, 223-224 n.1; 14 MPER 32055; *Wexford Co Bd of Pub Works (Landfill Div)*, 1998 MERC Lab Op 160; 11 MPER

29055.

In its opening statement, Charging Party discussed the work formerly performed by the repair mechanic on the traffic lights and the subcontracting of that work to a private party. At that point, the ALJ inquired about the date the subcontracting occurred. The ALJ also questioned Charging Party about the number of bargaining unit members who have been laid off from the AFSCME bargaining unit and whether that number included both the SLMW and the repair mechanic classifications. Respondent made no objection to the discussion of this issue during Charging Party's opening statement and, in its own opening statement, Respondent acknowledged Charging Party's remarks about the subcontracting of the repair mechanic's work. Further, witness testimony elicited by both Charging Party on direct examination and by Respondent on cross examination offered evidence regarding the repair mechanic classification's duties, lay off, and removal from the AFSCME bargaining unit. Charging Party argued in its post hearing brief, filed September 20, 2010, and contemporaneously served on Respondent, that Respondent violated its duty to bargain by subcontracting the repair mechanic's work without first giving the Union notice and an opportunity to bargain. Respondent's post-hearing brief, filed almost a month later on October 18, 2010, did not address the issue of the transfer of the repair mechanic's work outside the bargaining unit. At no point in the record of this case, prior to the filing of its exceptions, did Respondent object to Charging Party raising, or the ALJ considering, the issue of the subcontracting of the work performed by the repair mechanic. At least from the time of Charging Party's opening statement, Respondent was on notice that the charge included the repair mechanic classification. As the issue of the subcontracting of the work of the repair mechanic classification was fully litigated by the parties, we will consider the charge to have clearly included that issue. *City of Detroit (Fire Dep't)*, 1979 MERC Lab Op 342, 348. Accordingly, we find the ALJ properly included the issue of the subcontracting of the repair mechanic's work in his Decision and Recommended Order.

Rule 153 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.153 provides in relevant part:

> (1) The charging party may file an amended charge before, during, or after the conclusion of the hearing. . . . Amendments made at hearing shall be made in writing to the administrative law judge or stated orally on the record.
> (2) Where an amendment is made in writing, each respondent may file with the commission a signed original and 4 copies of an objection to the amended charge within 10 days after receipt thereof, and at the same time shall serve a copy of the objection on each party.
> (3) If objection to the amended charge is not filed or stated orally on the record, then the commission or administrative law judge designated by the commission may permit the amendment upon such terms as are just and consistent with due process.

The hearing in this matter was held on August 10, 2010. Under Rule 153, if

Respondent had objected to Charging Party raising the issue of the subcontracting of the repair mechanic's work in its opening statement, or when Charging Party elicited testimony on the issue at hearing, Charging Party could have orally moved to amend the charge to include the allegations regarding the subcontracting of the repair mechanic's work, and the issue would have been resolved at hearing. If Respondent had objected in its post-hearing brief, Charging Party could have filed a timely written motion to amend, and the ALJ could have ruled in his Decision and Recommended Order on the issue of whether the charge could be amended under Rule 153. Respondent failed to make an objection at any point in this proceeding at which the ALJ could have ruled. Instead, Respondent waited until it filed its exceptions to the ALJ's Decision and Recommended Order to raise the issue. It is now too late to raise an objection that should have been made at hearing. Respondent's failure to timely object at hearing constitutes a waiver of its objection and bars the filing of an exception on that issue. *Teamsters State, Co & Mun Workers, Local 214*, 16 MPER 8 (2003). See also *Police Officers Ass'n of Michigan*, 16 MPER 46 (2003); *Detroit Bd of Ed*, 16 MPER 29 (2003); *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 540; 11 MPER 29002.

It is evident from the record that the work of rebuilding and repairing traffic signal lights was exclusively performed by the repair mechanic for at least the past twenty-five years. Respondent decided to layoff the repair mechanic and subcontracted his work without giving the Union notice and an opportunity to bargain and announced its decision as a *fait accompli*. In light of the long line of MERC opinions holding a public employer's unilateral decision to transfer exclusive bargaining unit work outside the unit to be an unfair labor practice under PERA, we affirm the ALJ's conclusion that Respondent violated its duty to bargain under§ 10(1)(e) when it decided to subcontract the work of the repair mechanic. See *Detroit Police Officers Ass'n v Detroit*, 428 Mich. 79, 92-93, (1987) and the cases cited therein. See also *Van Buren Pub Sch Dist v Wayne Circuit Judge*, 61 Mich App 6, 27-32, (1975).

Exclusivity of the Street Lighting Repair Work

Respondent also argues that the ALJ erred by finding that the unit represented by Charging Party exclusively performed the street lighting repair work. As found by the ALJ, evidence in the record establishes that the SLMW classification has been solely responsible for inspecting, repairing, and replacing the light fixtures on street light poles for several decades. Their work was limited to repairs that involved less than 480 volts and included replacing bulbs and repairing lamps and low-voltage wiring problems on standing street light poles. The essential functions of the SLMWs were assigned exclusively to that classification without substantial change throughout the classification's history. Electrical repairs that involved higher voltages, work on overhead lines, and 500 pound off-pole transformers were handled by the line workers in IBEW Local 17. The line workers did not replace street lamp fixtures unless they were replacing a light pole that had been completely knocked down.

In 2004, Charging Party's members began noticing occasional instances in which the work of the SLMW classification was performed by IBEW line workers. Charging

Party grieved these assignments of the SLMWs' work to employees in a different bargaining unit and complained that the assignments of AFSCME work to IBEW line workers affected its bargaining unit members' overtime work. Such minor infractions could not have served as the basis for the filing of an unfair labor practice charge because the Commission will not exercise jurisdiction over minor contract disputes. We will find an unfair labor practice only when the alleged breach of the collective bargaining agreement rises to the level of contract repudiation. *City of Detroit*, 22 MPER 11 (2009). The Commission will not find repudiation on the basis of an insubstantial or isolated breach. *Crawford Co Bd of Comm'rs,* 1998 MERC Lab Op 17, 21; *Plymouth-Canton Cmty Sch*, 1984 MERC Lab Op 894, 897. The few instances in which Respondent had IBEW line workers perform SLMW street lighting repair work were de minimis and were not sufficient to be considered a repudiation of the parties' collective bargaining agreement. Accordingly, Charging Party could not have filed a viable charge against Respondent regarding these minor infractions.

However, in 2010, Respondent's transfer of work from the AFSCME bargaining unit was substantial. Respondent laid off all employees in the SLMW classification and transferred their work to IBEW line workers. Respondent's prior de minimis and contested assignment of AFSCME bargaining unit work to IBEW bargaining unit employees did not destroy the exclusivity of the essential functions of the SLMW's work. *Southfield v Police Officers Ass'n*, 433 Mich 168, 188, (1989). We agree with the ALJ that Respondent violated § 10(1)(e) of PERA by assigning work exclusively performed by members of the AFSCME bargaining unit to employees in the IBEW bargaining unit.

We have carefully examined all other issues raised by the parties and find they would not change the result. The ALJ's decision is affirmed.

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

_____
Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Robert LaBrant, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent, Case No. C10 E-119

-and-

LOCAL 207, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME),
Labor Organization-Charging Party.
_____/

APPEARANCES:

Scheff, Washington & Driver, by George B. Washington, for the Charging Party

June Adams, 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 Michigan Administrative Hearing System 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.[1]

The Unfair Labor Practice Charge:

On May 20, 2010, a Charge was filed in this matter by Local 207 of the American Federation of State County & Municipal Employees (AFSCME) (the Union or Charging Party) against the City of Detroit (the Employer or the City). The charge alleged that the Employer had improperly assigned work traditionally performed by AFSCME members to employees in another classification represented by the International Brotherhood of Electrical Workers (IBEW).[2] The charge also alleged that the work of another AFSCME

[1] The Union filed a timely post-hearing brief on September 20, 2010. Upon receipt of the Union's brief, I notified the City that its brief was late but that an extension of time would be granted, if requested, with the brief to be filed no later than October 12, 2010. The City did not request an extension and filed its untimely brief on October 20, 2010.

[2] Because of their potential interest in the matter, the IBEW was given notice of the matter and an opportunity to intervene, which they declined.

classification was subcontracted to a private vendor. The City did not file an answer or other response to the charge.[3] The matter was tried on August 10, 2010.

Findings of Fact:

The dispute involves the City's elimination of two classifications in its public lighting department (PLD). On May 18, 2010, the City announced that the work of the AFSCME represented 'Street Lighting Maintenance Workers' (SLMWs) was being transferred to City employees in the 'Line Worker' classification, which is in a separate bargaining unit represented by the IBEW. All of the SLMWs were laid off as a result of the transfers of work. In the same announcement, the City laid off the sole Repair Mechanic and turned that work over to an outside contractor.

The transfer of SLMW work

The SLMW classification is one of singularly long standing. Since 1944, the classification was solely responsible for inspecting, repairing or replacing the light fixtures on the City's street light poles and repairing the wiring and small transformers incorporated in those poles. If a problem was detected in the high power overhead lines, the high power underground cable, or in the large off-pole transformers, that work was exclusively performed by Line Workers in the IBEW. The essential difference in the work was that SLMWs worked on low-voltage equipment, e.g., 120 volts, and the Line Workers exclusively handled the more dangerous and technically more challenging work at 480 volts and higher. The SLMWs never worked on circuits carrying more than 480 volts.

The SLMWs operated light Freightliner straight-arm bucket trucks that were small enough that a state issued commercial drivers (CDL) license was unnecessary. A two person SLMW crew worked with a journeyman at the top of the pole and an apprentice on the ground. If a light bulb was broken or burned out, the SLMWs replaced it; if the fixture itself was broken, or there was a problem with the wiring in the pole, they fixed it or replaced it. However, if the problem was in the high-power lines leading to the pole, they reported it to be addressed by the Line Workers. The distinction is akin to a home handyman who can readily fix a desk lamp or a ceiling light fixture, but who must call in an Edison lineman to fix the overhead lines that actually bring the power to the house. The distinction was clear enough to all involved that the City's own safety personnel acknowledged that it was unsafe to have SLMWs assigned to work along side the high-power Line Workers, as occurred on one occasion when there was an assignment of joint work as a result of a shortage of available trucks.

The City job description for the high-voltage Line Worker classification, which is a position dating back to 1939, requires prior completion of a four year formal apprenticeship as a minimum qualification, which is not required of the SLMW class.

[3] The City Labor Relations Division, on August 6, requested an adjournment of the scheduled August 10, 2010, hearing, on the assertion that neither side was available. The Union opposed the adjournment request, which was denied.

Similarly, the Line Workers, but not the SLMWs, are obliged to supply certain of their own specialized equipment and tools, as well as to maintain a CDL license with specialized certifications. The Line Workers use heavier and more complex equipment than was used by the SLMWs. The heavy trucks used by Line Workers had large buckets on articulated arms, air brakes, and outriggers which could be set to balance the truck when the buckets were raised. The larger buckets were needed to carry more elaborate, and heavier, tools, parts, and equipment. The use of the larger trucks required specialized safety training and a CDL; it would have been unlawful for an SLMW to operate one of those rigs.

For at least twenty years, the SLMWs have been assigned four different styles of performing related work: sector work, construction work, maintenance work, or patrol work. In sector work, the SLMW crews repaired or replaced all lights needing work in a particular assigned geographic area of the City. In construction work, the supervisor sent the SLMW crew to check and repair a particular non-functioning light pole, or to report the source of the problem if it was of a type they could not fix and needed to refer to the specialized Line Workers. Maintenance work was where a supervisor sent an SLMW crew to fix an already diagnosed problem on a particular light pole. Finally, patrol work, done at night, simply had an SLMW crew cruising a particular sector of the City to locate and note any non-functioning lights, for later inspection and repair.

The nature of the work and the methods used had essentially remained unchanged for decades. In 2004, the City began purchasing power from DTE for light poles in many parts of the City, rather than from the City's own Miskursky Power Plant. The DTE poles did not draw power from underground cables, did not have the small transformers, and used mercury vapor light bulbs instead of standard incandescent bulbs, although the mercury bulbs were later themselves phased out due to the toxic mercury they contained. The work of SLMWs was nonetheless essentially the same—they replaced bulbs and repaired lamps and low-voltage wiring problems.

For poles powered by DTE, the Line Workers still handled all repairs to overhead lines and replaced the five-hundred pound off-pole transformers. The Line Workers did not normally replace lamp fixtures, unless they were replacing the entire pole, such as due to a vehicle collision knocking one over. Deviations did occur, following 2004, when AFSCME officers complained of occasional intrusions on their work by Line Workers on overtime on the weekends. Grievances were filed over these occasional incursions and remained unresolved at the time of the hearing.

On May 18, 2010, the City upended the long standing assignment of work. A notice was sent to AFSCME laying off all employees in the SLMW classification and in the related apprentice SLMW classification. The form letter notification offered no explanation of the reason for the layoffs. The City acknowledged that after those layoffs, all of the work of the SLMWs remained to be done, including the inspecting of poles, the replacement or repair of bulbs, lamp fixtures and coils, and the diagnosing and reporting of needed line repairs. With the SLMWs all laid-off, that work was transferred to the

higher paid Line Workers. This charge was filed days after the announcement of the layoffs.

The sub-contracting of the repair mechanic work

When it laid off the SLMWs, the City also laid off the one Repair Mechanic in the public lighting department, who had also been in the AFSCME Local 207 bargaining unit. For at least the prior 25 years, the PLD Repair Mechanic classification was responsible for rebuilding and repairing traffic signal lights in a separate shop in the same building used by the SLMWs as their home base. The Repair Mechanics also assisted crews in taking traffic signal lights down and installing them. After the May 18, 2010 layoff notice, there were no City employees performing traffic light repairs, with the City instead contracting with a private firm to perform those tasks.

Discussion and Conclusions of Law:

It is well settled that under PERA, a public employer is obligated to bargain over a decision to replace bargaining unit employees with employees from a different bargaining unit, where the work had been exclusively performed by employees in one unit.[4] Additionally, in *Detroit Water & Sewerage*, 1990 MERC Lab Op 34, the Commission concluded, in a dispute also involving Detroit and AFSCME, that if the exclusivity test is met, two other elements are essential before a duty to bargain can be found. First, a transfer of work must have a significant adverse impact on unit employees. The record must, for example, show that unit employees were laid off or terminated because of the transfer, or demoted to lower paying jobs; laid off employees were not recalled as a direct result of the transfer; or unit employees experienced a significant drop in overtime. A mere showing that some positions were lost or speculation regarding the loss of promotional opportunities is not enough to show a significant adverse impact. Second, the transfer dispute must be amenable to resolution through the collective bargaining process.

A similar duty to bargain arises when employees are replaced by a subcontractor to perform the same work under similar conditions.[5] An employer has a duty to bargain over the decision to subcontract work previously done by bargaining unit employees under similar conditions where: (1) the employer's basic operations were not altered by the subcontracting; (2) there was no capital investment or recoupment; (3) requiring the employer to bargain would not unduly restrict the employer's right to manage.[6] A union has an obvious and legitimate interest in whether and when the work of its members may be assigned outside of the bargaining unit, and employers generally have a duty to

[4] *Southfield Police Officers v Southfield*, 433 Mich 168 (1989), aff'g 1985 MERC Lab Op 1025.
[5] *Van Buren Pub Schs* v *Wayne Circuit Judge*, 61 Mich App 6 (1975); *Detroit Police Officers Association of MI* v *City of Detroit*, 424 Mich 79 (1987).
[6] *Van Buren Pub Schs, supra*; *Highland Park*, 17 MPER 86 (2004), *St Clair Schs*, 2001 MERC Lab Op 218.

bargain the diversion of work to non-unit employees and the subcontracting of work to others.[7]

The record establishes that the work of the SLMWs was exclusive to their classification. The City argues that both the SLMW and the Line Worker classification work on electric lights. The argument is akin to asserting that riding in a truck is pretty much the same as driving the truck, or repairing it for that matter; pursuant to the City's reasoning "it all involves trucks". The comparison above, of a home handyman fixing a lamp as opposed to an Edison lineman bringing power to the house, is apt. The jobs are entirely distinct, in duties, as well as in basic qualifications. The Line Workers handle high-voltage work and as a consequence, must have completed a formal apprenticeship in such work prior to being hired. The SLMWs require only high school completion and some practical experience to be hired to work, as their classification description delineates, merely in proximity to high voltage equipment, while changing light bulbs and fixing lamps.

The City offered no explanation of why the question of the reassignment of the SLMW work would not have been amenable to bargaining, and no impediment to such resolution appears in the facts in the record. The City relied instead on the assertion that the work was not exclusive, which I have found contrary to the proofs.

The record is undisputed that the work of the Repair Mechanics in rebuilding and repairing traffic signal lights was exclusive to that classification. There was no indication in the record that whatever reasons the City might have had, as none were offered, for eliminating the Repair Mechanic position, could not have been reasonably addressed in bargaining.

With both the transfer of SLMW work and the sub-contracting of the Repair Mechanic work, there is no dispute about impact. All of the workers in those two classifications were permanently laid-off.

The City's unilateral decision to eliminate the entirety of the two classifications, with no effort at resolving through bargaining whatever concerns the City may have had, was an unlawful refusal to bargain in violation of PERA section 10 (1)(e)[8].

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 City of Detroit, its officers, agents, and representatives shall:

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[7] *Plymouth Fire Fighters Ass'n, Local 1811 v Plymouth*, 156 Mich App 220; 401 NW2d 281 (1986); *Lansing Fire Fighters Union, Local 421 v Lansing*, 133 Mich App 56; 349 NW 2d 253 (1984).

[8] There is of course no duty to demand bargaining where, as here, the action is presented as a *fait accompli. Allendale Schls*, 1997 MERC Lab Op 183; *City of Westland*, 1987 MERC Lab Op 793.

1. Cease and desist from:

a. Unilaterally altering terms and conditions of employment for the Street Lighting Maintenance Worker (SLMW) and for the Repair Mechanic classifications in the Public Lighting Department by re-assigning the traditional duties of those classifications either to classifications in other bargaining units or to employees of private contractors, and

b. Refusing to bargain in good faith with the exclusive bargaining agent of its employees.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

a. Offer immediate reinstatement, with a reasonable time to respond, to each employee in the Street Lighting Maintenance Worker (SLMW) and Repair Mechanic classifications laid off as a result of the May 18, 2010 notice, with reinstatement to be to each individual's proper classification, seniority status, and duties, as assigned prior to the layoff, and under the collective bargaining agreement between AFSCME and Detroit.

b. Make each such employee whole for any loss of pay or other financial or fringe benefits that he/she may have suffered, including seniority or pension or leave credits which would have, but did not, accrue during the period when they were removed from the workplace, and including reimbursement for or payment of incurred expenses which would have been covered by group insurance, with statutory interest on all sums calculated from the date of lay off.

c. Allow any employee who elected to take retirement following the improper layoff to revoke that election and return to work under the terms ordered herein, or to accept the make-whole remedy and decline reinstatement.

d. Assign all work traditionally performed by the Street Lighting Maintenance Worker (SLMW) and the Repair Mechanic classifications in the Public Lighting Department, as found in this decision, to individuals properly placed in those classifications.

e. Provide to AFSCME Local 207 both the method used to calculate, and the actual individualized calculations, of all make-whole payments, including interest, necessitated by this order.

3. Post the attached notice to employees in a conspicuous place at each relevant Detroit Public Lighting Department worksite and post it prominently on any website maintained by Detroit for employee access for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated: May 24, 2011

NOTICE TO ALL EMPLOYEES

After a public hearing by the Michigan Employment Relations Commission (MERC), the CITY OF DETROIT has been found to have committed unfair labor practices in violation of PERA. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

WE WILL NOT

1. Unilaterally alter terms and conditions of employment for the Street Lighting Maintenance Worker (SLMW) and for the Repair Mechanic classifications in the Public Lighting Department by re-assigning the traditional duties of those classifications, either to classifications in other bargaining units or to employees of private contractors.
2. Refuse to bargain in good faith with AFSCME Local 207 where it is the exclusive bargaining agent of our employees.

WE WILL

1. Offer immediate reinstatement, with a reasonable time to respond, to each employee laid off as a result of the May 18, 2010 notice.
2. Make each employee whole for any loss of pay or other financial or fringe benefits that he/she may have suffered with interest on all sums calculated from the date of lay off.
3. Allow any employee who elected to take retirement following the improper layoff to revoke that election and return to work under the terms ordered herein, or to accept the make-whole remedy and decline reinstatement.
4. Assign all work traditionally performed by the Street Lighting Maintenance Worker (SLMW) and the Repair Mechanic classifications in the Public Lighting Department, as found in MERC's decision, to individuals properly placed in those classifications.
5. Provide to AFSCME Local 207 both the method used to calculate, and the actual individualized calculations, of all make whole payments necessitated by this order.

ALL of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

CITY OF DETROIT

By:_____

Title:_____ Date:_____

This notice must be posted for thirty (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 Building, 3026 W. Grand Blvd, Suite 2-750, Detroit, MI 48202-2988. Telephone: (313) 456-3510.