STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (WATER AND SEWERAGE DEPT),
Public Employer-Respondent,

-and-

UTILITY WORKERS UNION OF AMERICA, LOCAL 531,
Labor Organization-Charging Party in MERC Case No. C15 C-033/Hearing Docket No. 15-021093,

-and-

UTILITY WORKERS UNION OF AMERICA, LOCAL 488,
Labor Organization-Charging Party in MERC Case No. C15 C-034/Hearing Docket No. 15-021094.

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APPEARANCES:

Steven H. Schwartz and Catherine Ann Heitchue Reed, for Respondent

James C. Harrison, Sr., National Representative, Utility Workers Union of America, for Charging Parties

DECISION AND ORDER

On August 24, 2016, Administrative Law Judge Julia C. Stern issued her 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: October 20, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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_____/

APPEARANCES:

Steven H. Schwartz and Catherine Heitchue Reed, for Respondent

James C. Harrison, Sr., National Representative, Utility Workers Union of America, for the Charging Parties

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

On March 2, 2015, the Utility Workers Union of America, Local 531 (UWUA Local 531), filed the above unfair labor practice charge in Case No. C15 C-033/Docket No. 15-021093-MERC with the Michigan Employment Relations Commission against the City of Detroit (Water and Sewerage Department.[1] The Utility Workers Union of America, Local 488 (UWUA Local 488), filed the charge in Case No. C15 C-034/Docket No. 15-021094-MERC against the City of Detroit (Water and Sewerage Dept) on the same date. Both charges were filed pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. The two charges were consolidated and, pursuant to Section 16 of PERA, were assigned to Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System (MAHS).

1 The Detroit Water and Sewerage Department is a department of the City of Detroit and not a separate legal entity. However, in this decision the City and the Water and Sewerage Department are referred to collectively as the Respondent, while the Water and Sewerage Department, where appropriate, is referred to individually as the "DWSD."

On September 10, 2015, Respondent filed a motion for summary dismissal of the charges. Charging Parties filed a response in opposition on October 19, 2015. On February 16, 2016, Respondent filed a supplemental motion and Charging Parties filed a response to that motion on March 14, 2016.

I find that there are no material issues of fact requiring an evidentiary hearing in this case. Based on undisputed facts set out in the charge, pleadings and, as discussed below, in the record of a previous case, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charges and Facts:

Until the actions which are the subject of the charges, UWUA Local 531 represented a supervisory unit of DWSD employees which consisted of five employees in a single classification, Assistant Supervisor of Water Systems Maintenance and Construction. UWUA Local 488 represented a unit of DWSD employees that consisted of thirty-five employees in the following ten classifications: Senior Water Systems Maintenance Dispatcher, Senior Storekeeper, Field Operations Supervisor, Park Maintenance Foreman, Senior Public Service Attendant- Elevator Operations, Water Systems Foreman, Supervising Building Attendant- Grade 1, Senior Service Guard-Water, Mechanical Maintenance Foreman, and Water Meter Foreman.

Sometime in 2013, Respondent and the Charging Parties negotiated a collective bargaining agreement that covered both UWUA Local 581's and UWUA Local 488's units. The agreement was to expire at 11:59 pm on June 30, 2016.This agreement contained a clause recognizing the Charging Parties as the bargaining agents for the classifications listed in the paragraph above. The parties' previous contract, covering the period November 30, 2012 through June 30, 2013, contained a similar clause. The management's rights provisions of both collective bargaining agreements also included this paragraph, at Article 3(H):

> The Director of DWSD shall cause a review of the current employee classification [sic] to be completed and shall reduce the number of DWSD employee classification [sic] to increase workforce flexibility. Nothing in this agreement shall be construed to interfere with the Director's ability to reduce the number of employee classifications.

It is not clear from the pleadings whether the 2013-2016 collective bargaining agreement was negotiated prior to or after the appointment of Kevyn Orr as emergency financial manager for the City of Detroit on March 13, 2013. However, Orr did not terminate or modify the agreement, and, on August 13, 2013, the DWSD sent the unions representing its employees a letter stating that it was the DWSD's intent to honor the provisions of all current unexpired collective bargaining agreements with DWSD unions.

On or about August 29, 2014, Charging Parties were notified by the DWSD that Respondent was eliminating all the classifications in their bargaining units and transferring Charging Parties' members in those classifications, and their work, to newly-created classifications. The work performed by the Assistant Supervisors of Water Systems Maintenance and Construction, and the work performed by some of the classifications represented by UWUA Local 488, was to be transferred to the new classification of Team Leader. This classification would not be represented by any labor organization. The work performed by the remaining classifications within the UWUA Local 488 unit was to be

transferred to either the new Field Service Technician classification or the new Material Management Specialist classification, both of which were to be included in bargaining units represented by other labor organizations. Neither the charges nor the pleadings indicate what labor organizations were to represent these two new classifications.

The transfers of work and employees that are the subject of these charges were part of a general DWSD reorganization that began in 2012 and was still continuing at the end of 2015. That reorganization, the transfer of work and employees represented by AFSCME to the new classifications of Plant Technician and Office Support Specialist, and Respondent's decision to assign those classifications to be represented by the International Union of Operating Engineers, Local 324, resulted in the filing of a unit clarification petition by AFSCME in December 2015. On March 3, 2016, the Commission issued its decision on the petition, *City of Detroit (Detroit Water & Sewerage Dept)*, 29 MPER 62 (2016). During the lengthy hearing on this petition, Respondent explained what led to this reorganization, and how it was carried out. According to the record developed at that hearing, beginning in early 2012, after the federal court order discussed below was issued, the DWSD put in motion a process to reorganize and retrain its workforce that included consolidating existing classifications. With the assistance of an outside consultant and the input of employee teams, recommendations were made with respect to which classifications should be consolidated with which other classifications. In the course of this process, the DWSD made the decision to abolish all existing DWSD classifications, which at that time numbered 257, and consolidate them into fifty-seven new classifications. New job descriptions were prepared for the new classifications. Sometime between December 2013 and February 2014, the DWSD decided – without input from the labor organizations directly impacted – what new classifications would be represented by which of the unions currently representing its employees, if any.

Sometime in early 2014, DWSD employees were informed that they needed to apply for a new position. At that time, the DWSD provided its employees with a list of the new classifications along with the existing classifications to be "mapped," i.e., consolidated into, each new classification. According to this list, at that time, the DWSD planned to map the following existing classifications to the new Field Service Technician classification: Bricklayer; Construction Equipment Foreman (some duties/employees); Construction Equipment Operator; Construction Equipment Operator -50 Ton Crane; Field Services Representative; General Blacksmith (some duties/employees); General Welder (some duties/employees); Plumber (some duties/employees); Senior Water Systems Mechanic; Water Meter Foreman (some duties/employees); Water Meter Worker; Water Systems Helper; Water Systems Mechanic; Water Systems Repair Worker; Water Systems Foreman (some duties/employees). The following classifications were to be mapped to the new Material Management Specialist title: Assistant Storekeeper; Delivery Driver; Head Storekeeper; Storekeeper; Senior Storekeeper; and Stores Operations Supervisor. Classifications mapped in whole or in part to the new Team Leader title were: Assistant Sewage Plant Laboratory Supervisor; Auto Repair Foreman; Carpenter Foreman; Machinist Sub-Foreman; Plant Maintenance Sub-Foreman; Senior Supervisor of Mechanical Maintenance; Sewerage Plant Laboratory Supervisor; Sewage Plant Operation Superintendent; and Water Meter Foreman. Respondent had not yet decided at this time to which new classifications certain existing classifications would be mapped. These classifications included the Field Operations Supervisor and Supervising Building Attendant classifications in UWUA Local 488's bargaining unit. The Senior Service Guard Water classification in this bargaining unit was to be mapped to a new Security Guard title, and the Senior Water Systems Maintenance Dispatcher and Water Systems Maintenance Dispatcher titles were scheduled to be mapped to the new title Field Services Coordination Specialist.

At this time, the Assistant Superintendent Water Systems Maintenance and Construction position was scheduled to be mapped, along with other supervisory classifications, to the new title Manager.

After employees submitted their applications for the new titles, Respondent's Human Resources staff, based on skill assessments completed by the employees and their supervisors, decided who would fill the new positions. Not all employees who applied were given new positions and some employees who were not assigned a new classification were laid off or retired.

Respondent explained in *City of Detroit (Detroit Water & Sewerage Dept)* that in reducing the number of its job classifications, its expectation was that eventually all the employees in the new classifications would be able, if necessary, to perform all the duties listed in the job descriptions for their classifications. It explained, however, that this was a goal for the future, and would have to be achieved through an extensive training program which it also planned to implement.

According to the charge and pleadings in the instant cases, at different times between September 2014 and September 2015, Respondent reassigned all forty employees formerly represented by the Charging Parties to the new Team Leader, Field Technician, or Material Management Specialist classifications. Charging Parties assert, and Respondent does not dispute, that these employees performed virtually the same job duties before and after they were reclassified. Upon their reclassifications, the employees became part of the bargaining units assigned to represent their new classifications or, in the case of the employees who became Team Leaders, were unrepresented. After all the reassignments were completed, the DWSD no longer recognized Charging Parties as the bargaining agent for any of its employees.

Charging Parties allege that Respondent violated its duty to bargain in good faith by refusing to recognize Charging Parties as the bargaining agents for the employees in its units after merely changing their titles. It also alleges that the transfers of employees and their work, consisting of the complete removal of all classifications represented by the Charging Parties, constituted an unlawful repudiation of the 2013-2016 collective bargaining agreement.

On January 1, 2016, a new regional water authority, the Great Lakes Water Authority (GLWA) came into existence. Many of the functions performed by the DWSD were transferred to the GLWA, and the GLWA became the employer of former DWSD employees performing these functions. Pursuant to its agreement with the DWSD, the GLWA also assumed the DWSD's obligation to bargain with the unions representing the classifications now employed by the GLWA. The DWSD, however, continues to employ some employees. It is not clear from the charge or pleadings whether the forty employees formerly represented by Charging Parties became GLWA employees after January 1, 2016, or remained employees of the DWSD.

Procedural History and Motions for Summary Disposition:

When these unfair labor practice charges were filed in March 2015, a proceeding in the U.S. Bankruptcy Court involving the City of Detroit had recently concluded. However, because of uncertainty over whether the stay issued by the Bankruptcy Court on pending claims against the City had been lifted, the parties were notified on April 8, 2015, that the charges would be held in abeyance. A complaint and notice of hearing without date was issued.

On August 13, 2015, I sent the parties a letter stating that if they had any objection to placing the case back on the active docket, they were to notify me by September 10, 2015. On September 10, Respondent filed an objection to reactivation of the cases and motion for summary disposition. The motion asserted that the elimination of classifications in Charging Parties' bargaining units and the transfer of work previously performed by these classifications to other labor organization was made pursuant to a court order issued by Federal District Judge Sean F. Cox on November 4, 2011. Respondent argued that because this same order enjoined the Commission from exercising jurisdiction over charges filed regarding the actions taken by Respondent to comply with the November 4, 2011 court order, the charges should be dismissed for lack of jurisdiction.

On October 19, 2015, Charging Parties filed an answer in opposition to the motion. They noted, citing *Michigan State Univ*, 1992 MERC Lab Op 120 and 1993 MERC Lab Op 345, 350, that the Commission has held that where the parties do not agree, bargaining unit placement is a matter reserved to the Commission by Section 13 of PERA, and that an employer may not alter bargaining unit placement unilaterally but must either obtain the union's agreement to changes in bargaining unit composition or obtain an order from the Commission authorizing the change by filing a unit clarification petition. Charging Parties asserted that Judge Cox's order giving Respondent the authority to "reduce the number of DWSD classifications to increase flexibility," did not give it the authority or right to alter unit placement without Charging Parties' agreement or a Commission order. They argued that Judge's Cox's order did not shield Respondent from its legal responsibilities with respect to changes in unit placement. Charging Parties also pointed out that in his order Judge Cox explicitly stated that he was not terminating existing collective bargaining agreements between Respondent and its unions, but merely striking and enjoining enforcement of certain current collective bargaining provisions or work rules. Charging Parties argued that the DWSD's action of unilaterally transferring virtually all employees covered under Charging Parties' collective bargaining agreement to units represented by other unions constituted an unlawful repudiation of the recognition provisions of the parties' existing collective bargaining agreement.

On October 28, 2015, Respondent notified me that there were active settlement discussions being conducted through the Federal Bankruptcy Court, and asked me to hold the charges in abeyance. On November 4, 2015, Charging Parties responded that they were not involved in any settlement negotiations, had no direct knowledge of such negotiations and had never been invited to participate. It asked, therefore, that I proceed to rule on the motion. Despite Charging Party's objection, I held the charges in abeyance pending the outcome of what I was informed was federal court mediation involving the bargaining unit placement of DWSD employees.

On December 14 and December 15, 2015, after the federal court mediation had concluded, Judge Cox issued additional orders addressing Respondent's pending disputes with its labor organizations. These orders are discussed below. On December 30, 2015, I sent the parties in this case a letter stating that, as I interpreted it, Judge Cox's December 15, 2015 order directed the Commission to decide, as a threshold issue, whether Respondent's actions in Case No. C15 C-033 and C15 C-034 were "ordered or specifically permitted to be taken" by Judge Cox's November 2, 2011 order. I offered Respondent the opportunity, if it wished, to file a supplement to its motion for summary disposition.

On February 16, 2016, Respondent filed a supplement to its motion for summary disposition. In the supplement, Respondent asserts that it consolidated job classifications across its entire organization in "direct compliance with Judge Cox's November 4, 2011 order." It argued again that the charges in

this case were challenges to actions that were ordered or specifically permitted by the Judge Cox's November 4, 2011 order. Therefore, according to Respondent, the Commission should find that the charges were permanently enjoined by Judge's Cox's December 15, 2015, order because they were ordered or specifically permitted by his November 4, 2011, order.

On March 14, 2016, Charging Parties filed a reply in opposition to the supplemental motion. Charging Parties argued that Judge Cox did not permanently enjoin these charges. They also argued that his November 4, 2011, order did not direct the elimination of any union or any bargaining unit, which is exactly what Respondent did when it gave new names to jobs performed by their members and assigned these jobs to other unions or designated them as unrepresented.

Judge Cox's November 2, 2011 and December 2015 Orders:

In 1977, the Federal Environmental Protection Agency sued the City of Detroit and its Water and Sewerage Department for violations of the Clean Water Act, 33 USC 1251 et seq, related to discharge of treated water into the Detroit River from the City's wastewater treatment operations. The suit remained pending for decades because the City and the DWSD repeatedly agreed to remedial plans to which they were not able to adhere. After the retirement of Federal District Judge John Feikens, to which the case had been assigned, the case was reassigned to Federal District Judge Sean Cox. In explaining its repeated failures at compliance to Judge Cox, the City cited various City charter provisions and ordinances, and existing collective bargaining provisions and/or past practices, which it asserted were preventing it from making fundamental changes in identified problem areas and leading to its inability to meet the federal standards. At Judge Cox's direction, a "Root Cause Committee" was formed and charged with identifying the causes of the City's repeated compliance failures and with identifying solutions.

On November 2, 2011, the committee presented Judge Cox with a "Plan of Action." On November 4, 2011, Judge Cox issued an order adopting the Plan of Action. However, as stated in that order, Judge Cox concluded that the Plan of Action did not adequately address issues with the City's collective bargaining agreements and union work rules. Judge Cox concluded, based on the committee's report, that certain collective bargaining provisions and work rules were impeding the DWSD from achieving and maintaining short-term and long-term compliance. He noted that the committee was unable to agree on a proposed solution to remedy these impediments, and therefore decided to order his own remedy. The Root Cause committee had identified the following options: (1) terminating all collective bargaining agreements; (2) suspending the duty to bargain; (3) establishing a regional authority as a new employer for Department employees; (4) outsourcing plant operations so corporate representations or warranties of compliance could be enforced; or (5) ordering that negotiations take place to address the various identified problems.

Judge Cox rejected all these options. He concluded that "the least intrusive means" of effectively remedying the impediments to compliance was to: (1) keep all current CBAs that cover DWSD employees in force, but strike and enjoin those current CBA provisions or work rules that threatened short-term compliance; (2) order that, in the future, the DWSD was to negotiate and sign its own CBAs that covered only DWSD employees, and (3) prohibit future DWSD CBAs from containing the provisions that threatened long-term compliance. In thirteen numbered paragraphs, later referred to as his "Labor Orders," Judge Cox set out what the DWSD was to do, and what types of collective bargaining provisions and past practices were to be struck, enjoined, and prohibited from being included

in future collective bargaining agreements. For purposes of this proceeding, the relevant paragraphs of the "Labor Orders" are paragraphs eight and thirteen, which read as follows:

> 8. The Director of the DWSD shall perform a review of the current employee classifications at the DWSD and reduce the number of employee classifications to increase workforce flexibility. Future DWSD CBAs shall include those revised employee classifications.
>
> * * *
>
> 13. The Court enjoins the Wayne County Circuit Court and the Michigan Employment Relations Commission from exercising jurisdiction over disputes arising from the changes ordered by this Court. The Court also enjoins the union from filing any grievances, unfair labor practices, or arbitration demands over disputes arising from the changes ordered by this Court.[2]

At the time Judge Cox issued his November 2, 2011, order, the DWSD had approximately 257 different job classifications and its unionized employees were divided among twenty separate bargaining units. Many of these units also contained employees employed in other City departments.

After Judge Cox issued his November 4, 2011, order, several unions, including AFSCME but not including the Charging Parties, filed motions to intervene in the federal court action. The City of Detroit and the DWSD also filed a series of motions with Judge Cox requesting clarification of his November 4, 2011, order. Respondent did not ask Judge Cox to clarify the scope of its authority under paragraph 8.

On December 14, 2015, Cox issued a "Stipulated Order Regarding Labor Matters" signed by the City, DWSD and AFSCME. The order included a list of thirteen "2015 Labor Mandates," including the following:

> Paragraph 8. DWSD retains the ability to reduce employee classifications in order to increase workforce flexibility, based on operational needs.
>
> * * *
>
> Paragraph 13.
>
> *(a) Except as provided in this Order, labor claims filed or later filed that challenge actions of DWSD which were ordered or specifically permitted by the Labor Orders are permanently enjoined unless dismissed with prejudice by the parties.*
>
> (b) Upon execution of this Order, the injunction previously issued is modified to return jurisdiction to Wayne County Circuit Court, MERC and grievance

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2 As noted above, Charging Parties do not agree that the unfair labor practice charges in this case are "over disputes arising from the changes ordered by this Court."

arbitrators for those claims challenging DWSD actions which were neither ordered nor specifically permitted by Labor Orders. These labor claims may proceed whether filed before or after this Order's date.

(c) *There are also certain pending claims where the parties disagree as to whether or not DWSD's actions, which were challenged with such claims, were ordered or specifically permitted to be taken by the Labor Orders. For such claims, the tribunal where the matter is pending will decide whether DWSD's actions were ordered by Labor Orders.* This shall occur also for claims yet to be filed. [Emphasis added]

The December 14, 2015, order then went on to list particular "labor claims," including Commission charges by case number, that were enjoined or dismissed or for which the tribunal where the matter was pending was to decide whether the DWSD's action were ordered by the Labor Orders. The instant charges were not listed as "labor claims" in this order.

On December 15, 2015, Judge Cox issued a second order. This order made the thirteen "Labor Mandates" in the stipulated order of the previous day applicable prospectively to the City/DWSD and any labor unions that were not party to the December 14, 2015, stipulated order. The December 15, 2015, order included language identical to paragraph 13 in the December 14, 2015 order; it also stated that the Labor Mandates and rulings contained in that order replaced and Court's November 4, 2011, order and "are the entire sum and substance of all labor or union employment rulings which will govern DWSD henceforth, as orders from this Court."

Discussion and Conclusions of Law:

I conclude that the charges in the instant case clearly fall within the category of "pending claims where the parties disagree as to whether or not DWSD's actions, which were challenged with such claims, were ordered or specifically permitted to be taken by the Labor Orders." As I informed the parties in my December 30, 2015, letter, I interpret Judge Cox's December 15, 2015 order as a directive to the Commission to decide, as a threshold issue, whether the actions taken by Respondent which are the subject of this charge were "ordered or specifically permitted to be taken" by his November 4, 2011, Labor Orders.

Under PERA, the redefinition or constitution of a bargaining unit is a permissive, not a mandatory, subject of bargaining. However, as the Court held in *Detroit Fire Fighters Ass'n, Local 344, IAFF v City of Detroit*, 96 Mich App 543, 546 (1980), an employer cannot alter an existing bargaining unit or remove a position from an existing unit unilaterally. The reclassification and removal of positions from a bargaining unit without a substantial change in their job duties does not involve the employer's managerial authority to assign work, and, therefore, is not within the scope of a public employer's management prerogative. Rather, it is a question of unit placement that, absent agreement by the parties, should be decided by the Commission in exercise of its authority under Section 13 of PERA to decide the unit appropriate for collective bargaining. *Michigan State Univ*, at 123; *City of Ann Arbor*, 16 MPER 17 (2003) (no exceptions). Also see *Ishpeming Supervisory Employees' Chapter of Local 128, Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO v City of Ishpeming*, 155 Mich App 501, 515 (1986); *Michigan Educational Support Personnel Ass'n v Southfield Public Schools*, 148 Mich App 714, 716 (1985). The proper

course of action for an employer, if it seeks to remove a position from its existing unit and the union does not agree, is to file a petition for unit clarification with the Commission. *Michigan State Univ,* at 124-125.

However, the Commission, in exercising its authority to determine the scope of the appropriate unit, normally defers to the parties' past agreements concerning unit placement. As discussed in *City of Detroit (Detroit Water & Sewerage Dept),* 29 MPER 62 (2016), the Commission clarifies bargaining units only when there are disputes over "newly established classifications or existing classifications which have undergone recent, substantial changes in the duties and responsibilities of the employees so as to create a real doubt as to whether the individuals in such classification continue to fall within the category – excluded or included – that they occupied in the past," citing *Univ of Michigan,* 29 MPER 23 (2015). A position is not "newly established" if it has the same job duties as an abolished position and has merely been given a new title. *City of St Clair Shores,* 1988 MERC Lab Op 485. Moreover, as it reiterated in *City of Detroit (Detroit Water & Sewerage Dept),* the Commission generally considers only changes in job duties that have already been implemented, and does not base its unit placement decisions on an employer's testimony that it plans to change the job's duties in the future. *Branch Co Sheriff,* 1989 MERC Lab Op 768; *Lansing Sch Dist,* 20 MPER 3 (2007). In short, under Commission case law, absent the union's agreement an employer cannot lawfully move a position from its existing bargaining unit and place it in another, or declare it to be unrepresented, merely because the employer has concluded that the position's work has more in common with that of positions in the second unit or with other unrepresented positions. It also cannot change the unit placement of a position based solely on its expectation that the position's job duties will change sometime in the future.

As noted above, however, the threshold question in this case is whether Respondent was ordered or specifically permitted by Judge Cox's November 4, 2011, order to remove positions from Charging Parties' bargaining units and either assign them to bargaining units represented by other unions or designate them as unrepresented positions. As Charging Parties point out, Judge Cox's November 4, 2011 order did not direct the DWSD to eliminate any bargaining unit or any union. As the Commission noted in *City of Detroit (Detroit Water & Sewerage Dept),* Judge Cox's November 4, 2011 order does not explicitly give the DWSD the authority to alter existing bargaining units. Nor did Judge Cox explicitly tell the DWSD to reduce the number of its classifications by 80%, or eliminate all of its existing classifications and replace them with new ones. I conclude, however, that once the DWSD undertook a reorganization of its entire job classification system, forcing the DWSD to continue to keep employees within their existing bargaining units would have restricted its ability to combine classifications for maximum efficiency. The DWSD was not prepared to substantially change the day-to-day job duties of all or even most of the employees immediately upon their reclassification, and in any case it was not its objective. Rather, the DWSD wanted to be able to, in accord with Judge Cox's directive to increase workplace flexibility, assign employees to do additional work that they did not regularly do when the organization needed them to do it. As discussed above, except in the unlikely case that a union agreed to give up positions, the DWSD would have been prevented by PERA from combining classifications from different bargaining units into one new title. In that case, if the DWSD in the future wanted to reassign work across bargaining unit lines, it would have had to bargain with the unions over the reassignment of work, encumbering its ability to respond quickly to operational needs.

The Commission addressed the scope of paragraph 8 of Judge Cox's November 4, 2011 Labor Orders in *City of Detroit (Detroit Water & Sewerage Dept).* It concluded:

> [W]e find that since Cox's order included an injunction on our exercise of jurisdiction, that he intended to give the DWSD the authority to reduce job classifications without necessarily respecting existing bargaining unit configurations, as we would have ordered it to do. We also agree with the DWSD that in ordering the DWSD to reduce the number of its classifications to "increase flexibility," Cox contemplated that the DWSD would assign at least some of its employees to new classifications without substantially changing their job duties.

I agree with Respondent that eliminating classifications and transferring employees and their work to newly-created classifications, even if this disrupted existing bargaining unit configurations, was part of what Judge Cox ordered Respondent to do in paragraph 8 of his November 4, 2011 order. I conclude, therefore, that the Commission would violate the injunction contained in Judge's Cox's December 15, 2015, order were it to find that the DWSD violated its duty to bargain by refusing, after September 2015, to recognize the Charging Parties as the bargaining representative for the forty employees that formerly constituted its bargaining units.

Charging Parties also argue that the transfer of all positions and employees from its bargaining units constituted an unlawful repudiation of the recognition clause in their collective bargaining agreement. As they point out, in his November 4, 2011, order Judge Cox said explicitly that he was not terminating existing collective bargaining agreements. However, the classifications listed in the recognition clause were all eliminated. I conclude that the fact that the parties in this case had an existing collective bargaining agreement did not prevent Respondent in this case from unilaterally transferring the employees in Charging Parties' bargaining unit, and their work, to new classifications and then refusing to recognize Charging Parties as the bargaining agent for these employees.

In accord with the facts and the conclusions of law set out above, I recommend that the Commission grant the Respondent's motion for summary disposition and that it issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 24, 2016