STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CHARTER TOWNSHIP OF PLYMOUTH,
Public Employer-Respondent,

-and-

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, COUNCIL 25,
Labor Organization-Charging Party.

Case Nos. C00 I-165
C00 K-194
C00 L-205
C00 L-206
C01 E-101

/

APPEARANCES:

Lange & Cholack, P.C., by Eric W. Cholack, Esq., for Respondent

Miller Cohen, P.L.C., by Bruce A. Miller, Esq. and Eric I. Frankie, Esq., for Charging Party

DECISION AND ORDER

On October 31, 2003, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter recommending the dismissal of the charges filed by Charging Party American Federation of State, County and Municipal Employees, Council 25 (AFSCME) against Respondent Charter Township of Plymouth (Township). The ALJ found that the evidence did not establish that Respondent committed unfair labor practices in violation of Section 10(1)(a), (c), and (e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(a), (c), and (e).

The ALJ's Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. After filing a timely request, Charging Party was granted an extension to file its exceptions to the ALJ's Decision and Recommended Order and filed timely exceptions on December 29, 2003. Respondent requested a retroactive extension to file a brief in support of the ALJ's Decision and Recommended Order on March 4, 2004. We granted this extension, and Respondent filed its brief in support of the ALJ's Decision and Recommended Order on April 7, 2004.

We have carefully and thoroughly reviewed the record and have decided to affirm the findings and conclusions of the ALJ and to adopt the recommended order. Charging Party's exceptions assert that the ALJ erred in failing to find that Respondent violated PERA by discriminating against employees Karen Akans and Carol Pyykkonen.

An essential element of a discrimination claim under PERA is anti-union animus. Where a charging party has alleged that the employer has taken adverse action that was motivated by anti-union animus, the charging party must demonstrate that protected concerted activity was a motivating or substantial factor in the respondent's decision to take the action about which the charging party has complained. *Schoolcraft College Ass'n of Office Personnel, MESPA v Schoolcraft Cmty College*, 156 Mich App 754, 763 (1986). *MESPA v Evart Pub Schs*, 125 Mich App 71, 73-75 (1983). Union animus may be proven by indirect evidence, however mere suspicion or surmise will not suffice. The charging party must present substantial evidence from which a reasonable inference of discrimination may be drawn. *Michigan Employment Relations Comm v Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974); *City of St Clair Shores*, 17 MPER 27 (2004); *City of Grand Rapids Fire Dep't*, 1998 MERC Lab Op 703, 707.

In our review of the record, we have considered each of the incidents challenged by Charging Party and find no convincing evidence of anti-union animus. The record reveals that, in fact, the Employer encouraged and supported the Union's organizational efforts. The fact that the Employer expressed a desire to maintain conditions of employment until after collective bargaining took place is not indicative of union animus, as alleged by Charging Party. Whatever problems or complaints these two employees may have had regarding their positions or job responsibilities, Charging Party has not met its burden of demonstrating that their minimal union activity was a factor in the Employer's actions.

We have carefully considered all of Charging Party's remaining arguments and find them to be without merit. Accordingly, we issue the following Order:

ORDER

We hereby adopt the Administrative Law Judge's Decision and Recommended Order as our final Order in this case and dismiss the charges in their entireties.

_____
Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

_____
Nino E. Green, Commission Member

Dated: _____

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Miller Cohen, P. L. C., by Bruce A. Miller and Eric I. Frankie, Esqs., for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission (MERC) on June 15, 2001, August 27, 2001, March 8, 2002, May 3, 2002 and September 10, 2002, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based upon the record and post-hearing briefs filed by January 22, 2003, I make the following findings of fact, conclusions of law and recommended order pursuant to Section 16(b) of PERA.

The Unfair Labor Practice Charges:

This case involves five unfair labor practice charges involving over two dozen allegations that were filed by Charging Party American Federation of State, County and Municipal Employees, Council 25 against Respondent Charter Township of Plymouth between September 26, 2000 and May 30, 2001. The charges arise out of events surrounding Charging Party's organizing campaign that began in the summer of 1999 and a November 2000 reorganization. The charges allege violations of Sections 10(1)(a)(c) and (e) of PERA.

I. Background

A policy-making board of trustees that includes elected trustees, the treasurer, the clerk and the Township supervisor governs the affairs of Respondent Charter Township of Plymouth. In September 2000, Kathleen Keen-McCarthy was the supervisor and Ron Edwards was the treasurer. On March 14, 2000, after a consent election, Charging Party

was recognized as the exclusive bargaining agent of employees in the following classifications:

> Information systems/trainer, accountant, building inspector, construction plan examiner/inspector, ordinance officer, records management analyst, solid waste/recycling coordinator, administrative assistant, administrative assistant/office manager, treasurer assistant, senior records clerk, park ranger, administrative clerk, clerk, building and grounds maintenance, recording secretary, information systems processor, operator but excluding the administrative aide, human resources assistant, executive assistant and all executive, supervisory, confidential, occasional and all other employees.

Prior to the election, the parties agreed to delete administrative assistant/deputy clerk and administrative assistant/deputy treasurer positions from the petitioned-for unit to allow the Township clerk and treasurer to exercise their statutory authority as elected officials to appoint deputies as at-will employees.

Charging Party's organizing campaign began in July 1999. It was encouraged and/or supported by several of Respondent's agents. Treasurer Ronald Edwards suggested to administrative assistant/deputy treasurer Irene Whitmore that employees organize and bargain as a group. Sharron Stafford, an employee in the treasurer's office, distributed union literature during working hours without being disciplined. Administrative assistants Carol Pyykkonen and Karen Akans openly discussed their support for unionization with Rosemary Harvey, the administrative services department director. Akans also told building department director Charles McIlarghey that she was in favor of a union. Pyykkonen also discussed her union sympathies with Steven Mann, the president of the police officers' union and Township's supervisor-elect. Mann won the August 2000 primary election for supervisor with the support of Pyykkonen and Akans, who campaigned for him.

After Charging Party's certification, Respondent was notified that Karen Akans, Chris Haas, Nicole Hunt and Carolyn Cox were elected as president, vice president, secretary and treasurer, respectively, and that they would serve as stewards and negotiating team members. On November 14, 2000, Charging Party made its first request to begin bargaining an initial contract.

Also on November 14, 2000, a week before supervisor-elect Mann's and a new trustee's terms of office began, Respondent's board of trustees voted 4-3 to approve a reorganization that was proposed by treasurer Edwards and trustee Casey Mueller, who was attending her last board meeting. The administrative services department was eliminated and its director, Rosemary Harvey, was terminated. According to Edwards, the reorganization was designed to address concerns and complaints about the administrative services department's inefficiency. The minutes of the November 14 meeting indicate that trustee Mueller expressed her concern that some employees appeared to be working primarily in their own self-interests and not necessarily in the Township's best interest. He implored the new supervisor not to be influenced by those who seemed to bear gifts of support and loyalty.

Trustees opposed to the reorganization also included reasons for their opposition in the minutes. They decried it as being motivated by politics or union animus. Ronald L. Griffith, who was called as a witness by Charging Party, testified that he opposed the reorganization because he was suspicious of its timing since it came at a time when the union was struggling "to get off the ground with the first contract." Trustee Arnold complained that it represented "last minute midnight politics at its worst." Outgoing-supervisor Keen-McCarthy also denounced it as "politics at its worst" and a "blatant attempt to retaliate against three individual employees" that earned their punishment by exercising their right to organize and campaigning for the candidate of their choice.

On November 21, 2000, supervisor Mann sent memoranda to Charging Party and administrative services department employees and to Charging Party, advising them of the reorganization and informing the employees that they would continue to perform their same duties and report to him until the reorganization's permanent effects were negotiated with the Union. The reorganization became effective on February 1, 2001.

II. Case No. C00 I-165 and C00 K-194[1]

Charging Party filed Case No. C00 I-165 on September 26, 2000. The charge was amended by an October 25, 2000 response to a motion for a bill of particulars.[2] Charging Party contends that since on or about August 2000, Ron Edwards, Respondent's Treasurer has restrained or coerced employees in the exercise of their rights guaranteed under Section 9 of PERA. Specifically, it claims that: (1) On or about September 26, 2000, Edwards made inaccurate comments about Carol Pyykkonen's health to influence Respondent to eliminate the assessor II position; (2) On or about October 9, 2000, Edwards threatened Akans with "legal action"; (3) On October 23, 2000, upon information and belief, Respondent at Edwards' request, eliminated the position of purchaser held by AFSCME Local 851 president Karen Akans; and (4) On or about October 25, 2000, Edwards eliminated Irene Whitmore's (a bargaining unit member) work as deputy treasurer and the compensation therefor. Charging Party also claims that Respondent unilaterally removed the classification and work of the deputy treasurer from its bargaining unit without bargaining over this mandatory bargaining subject.

Charging Party claims that Respondent's actions against Akans, Pyykkonen and Whitmore were undertaken because of their union activity in violation of Section (10)(1)(a) and (c) of PERA. Where it is alleged that an employer's adverse action is motivated by union animus, the charging party must demonstrate that protected conduct was a motivating or substantial factor in the employer's decision. The burden of going forward shifts to the employer to demonstrate that the same action would have occurred even in the absence of protected conduct. The ultimate burden of proving discrimination remains, however, with the charging party. *MESPA v Evart Public Schools*, 125 Mich App 71, 74. The elements of a prima facie case of discrimination include employee union

[1]At the hearing on May 3, 2002, Charging Party withdrew allegations related to: telephoning Chris Haas at home to verify whether she was ill or not; reprimanding Hass for signing an Internet policy "for receipt purposes only"; requiring Haas to meet and discuss the progress of negotiations; insisting that Haas discipline a bargaining unit member; asking Haas why she wanted to join a union and requesting a copy of the union's contract proposals; and requiring Nicole Hunt to get approval for vacation time.

[2]The response to the motion for a bill of particulars was erroneously docketed as Case No. C00 K-194 on November 8, 2000.

or protected activity; employer knowledge of that activity, union animus or hostility towards the employee's protected rights; and suspicious timing or other evidence that protected activity was the motivating cause of the alleged discrimination. *City of Battle Creek (Police Department),* 1998 MERC Lab Op 727.

A. Findings of Fact and Conclusions of Law - Inaccurate Comments about Carol Pyykkonen's Health and Threat of Legal Action Against Akans

Respondent hired Carol Pyykkonen in 1989. She has worked as an administrative assistant in the administrative services department. She performed clerical duties related to the Township's property assessment responsibilities. Pyykkonen used Respondent's tuition reimbursement program to become licensed as an assessor II. However, she has never worked as an assessor and there is no assessor position in the bargaining unit. Only an assessor III, who has completed two years of assessing fieldwork and ten classes, can perform property assessments. Since 1982, the Township's assessment responsibilities have been performed by Wayne County Appraisals, a private company.

In January 2000, the board of trustees, pursuant to a proposal by administrative services department director Rosemary Harvey, created an assessor III position for Pyykkonen, provided she sign a letter promising to become certified as an assessor III within eighteen months. The letter, however, was never drafted. In the meantime, Township supervisor Keen-McCarthy told Harvey that "because of union activity, that she was not going to fill that position; that the union vote was going to be taking place and that she wasn't going to make any changes or any additions at that time." On August 18, 2000, Akans sent Keen-McCarty a letter informing her that under the Michigan Employment Relations Commission's guidelines, the terms and conditions of bargaining unit members should not be changed until after negotiations.

The next month, Harvey made another proposal to upgrade Pyykkonen's position. During a September 20, 2000 board of trustees' meeting, Harvey asked the board to bring the Township's property assessment responsibility in-house to take advantage of Pyykkonen's assessor II training. The board created an assessing study committee composed of Edwards, trustee Mueller and Harvey. Edwards expressed his reservations about the costs of the proposal to Mueller and Harvey. He told them that because Pyykkonen had surgery on her legs in 1997, he was concerned that if she were unable to perform enough house appraisals, another person would be needed at increased costs.

A few days later, on September 26, 2000, Pyykkonen sent a letter to Akans complaining that Edwards had made false and malicious statement about her ability to perform assessing fieldwork because of the condition of her legs. The same day, Akans sent a letter to members of the board of trustees alleging that Edward's made "false and malicious" statements about a bargaining unit member implying that "due to health conditions the employee may be unable to perform work assigned or in regards to upgrades for future positions."

Subsequently, on October 12, 2000, Akans received a letter from Edwards' attorney demanding that she "immediately send a letter to all those people to whom you published the remarks [about Edwards] unequivocally withdrawing the remarks" or legal action would follow after five days. Edwards testified that he authorized his personal

attorney to send the letter because he believed Akans' correspondence "was libel towards me" and he hoped she would retract her statements. Akans did not retract her statements and Edwards did not take any legal action.

In the meantime, Pyykkonen refused the assessing study committee's suggestion that she train with Wayne County Appraisal to gain the fieldwork experience needed to become an assessor III. Pyykkonen testified that she thought it was a conflict of interest for a contractor to train her. On November 14, 2000, the board of trustees adopted the assessing study committee's recommendation to continue the Township's contract with Wayne County Appraisal to perform its assessing responsibilities.

Charging Party alleges that Edwards made inaccurate comments about Carol Pyykkonen's health to influence Respondent to eliminate her assessor II position and that Edwards threatened Akans' with legal action for representing a union member. I find no support for either argument. The facts do not support that claim that Pyykkonen's assessor II position was eliminated. There is no assessor II position in the bargaining unit and Pyykkonen has never worked as an assessor.

Moreover, Edwards did not threatened Akans with legal action because of her representation of a union member. Rather, Edwards contemplated legal action against Akans because he believed her correspondence to the board of trustees was defamatory. Moreover, there are no facts to demonstrate that Edwards was acting as Respondent's agent. Edwards' personal attorney sent the letter to Akans. The Commission has held that an individual board member's statements do not constitute coercive threats where that is no further action by the entire board. See *Owendale-Gagetown School District*, 1985 MERC Lab Op 584. The board of trustees did not take any action against Akans.

B. Findings of Fact and Conclusions of Law:
Elimination of Akan's Purchasing Position

Karen Akans was hired in March 1992 as an administrative clerk in the building department. Two years later, she was promoted to administrative assistant in the finance department where she reported to Rosemary Harvey. Her responsibilities included entering payables data, preparing audit schedules, maintaining a data base for fixed assets and building bond refunds, and serving as Harvey's secretary. In January 1999, the effective date of a 1998 reorganization, the finance department became the administrative services department. At about the same time, the bookkeeper/buyer retired and Akans began performing certain purchasing functions. Akans testified that when the 1998 reorganization was being discussed, she was told that a higher grade purchasing position, with commensurate compensation, would be created for her at a later date.

In June 1999, Harvey submitted a job description for an administrative analyst – finance/purchasing position to Keen-McCarthy, the Township's supervisor. However, in September 1999, McCarthy told Harvey that because the Union's organizing campaign had begun, she was not going to make any changes in job descriptions. Between September 1999 and September 2000, Akans' duties included processing purchase orders and flex benefits, and performing secretarial functions for Harvey. Akans, in describing her daily routine, testified that "most of the time she really did not have anything to do."

On August 18, 2000, several months after Charging Party was certified as bargaining agent, Akans, who was elected union president, sent Keen-McCarthy a letter informing her that MERC's guidelines require that until negotiations take place, bargaining unit employees' terms and conditions should not be changed. However, at a September 2000 board meeting, Harvey presented a 2001 general fund budget that included upgrading Akans' secretarial position to purchaser which, according to Akans, would increase her salary approximately $5,000 annually.

On October 6, 2000, supervisor McCarthy sent Akans a letter advising her that there was no approved job description for a purchaser or an approved purchaser position. According to Harvey, at the October 10, 2000 board meeting, treasurer Edwards singled out the proposed purchaser position and had it removed from the budget. Edwards testified that he opposed creating a purchaser position because of the small volume of purchase orders, the planned automation of the purchasing function that would allow departments to process their own purchase orders, and the Township's ability to buy goods through other bidding processes. During the meeting, other items – additional police personnel, an associate engineer position, and a motor carrier officer position – were also removed from the budget.

Charging Party contends that the record contains substantial evidence that Respondent eliminated Akans' purchaser position because of her union activity. Charging Party claims that the "timing of the elimination of the purchaser position, together with Edward's threat of legal action and inconsistent reasons for elimination of the purchaser position show that these reasons were a pretext for Edwards' discriminatory motivation."

I find no merit to Charging Party's argument. Charging Party again misrepresents the record by claiming that Akans' purchasing position was eliminated. There is no purchasing position in the bargaining unit and Akans has never been classified as a purchaser. Thus, there was no purchaser position for Respondent to eliminate. The record establishes that Harvey made two unsuccessful attempts to create a purchaser position for Akans. Keen-McCarthy refused to approve a purchaser position for Akans in 1999, and in October 2000, the board of trustees not only eliminated the purchaser position from the budget submitted by Harvey, but also removed other positions.

Moreover, Harvey was seeking to an upgrade in Akans position at about the same time that Akans, in her capacity as union president, informed the Township supervisor Keen-McCarthy, that MERC's guidelines prohibit changing bargaining unit employees' terms and conditions of employment not change until negotiations take place. Akans' statement reflects Commission precedent that unilateral changes made by an employer after a union wins an election has the effect of bypassing, undercutting, and undermining the union's status as the bargaining representatives. *Central States Community Services*, 1995 MERC Lab Op 552, 564.

C. Findings of Fact and Conclusions of Law: Elimination of Irene Whitmore's Work as Deputy Treasurer

Respondent hired Irene Whitmore in December 1983 as a clerical employee. By 1996, she was an administrative assistant/deputy treasurer. When Edwards became treasurer in 1996, he continued Whitmore's appointment as deputy treasurer. Whitmore

who had served as deputy treasurer for twelve years prior to Edwards' election, received a $3,900 stipend for serving as deputy. In 1999 Edwards suggested to Whitmore that clerical employees should organize and bargain as a group. Thereafter, Whitmore led the employees' organizing campaign, sought the opinion of other employees and contacted a number of unions, including Charging Party.

On October 21, 1999, shortly after Charging Party filed a representation petition, Charging Party and Respondent executed a letter of understanding that provided for a consent election and an agreement that Charging Party's representation of employees would not infringe upon elected officials' statutory right to appoint deputies who, for purposes of the deputy designation, would serve at the pleasure of the elected officials.

According to Whitmore, after Charging Party's March 2000 certification, treasurer Edwards told her that she "could not discuss anything about the Union during working hours or on the grounds; that it had to be on my own time." According to Edwards, he recalled telling Whitmore that, "during working hours, that she's there working her seven and a half hours, she should not be talking about Union business." Eight months later, in November 2000, Respondent informed Charging Party that Edwards had exercised his right to hire a deputy treasurer. According to Edwards, he needed someone who had more accounting knowledge and that he, therefore, replaced Whitmore with a certified public accountant. Thereafter, Whitmore only performed her administrative assistant responsibilities.

In its charge, Charging Party claimed that Edwards, Respondent's treasurer, coerced and restrained Whitmore in exercise of her Section 9 PERA rights by eliminating her work and pay as deputy treasurer and that Respondent unilaterally and without bargaining in good faith, removed the deputy treasurer's classification and work from its bargaining unit. Charging Party has abandoned the failure to bargain aspect of its charge. In its post-hearing brief it concedes that the parties' October 1999 letter of agreement, recognizes the treasurer's statutory right to hire an at-will deputy.

Charging Party also contends that Edwards was motivated by anti-union animus to terminate Whitmore's deputy designation. According to Charging Party, Respondent's timing and consistent effort to deprive bargaining unit employees of meaningful work is evidence of its scheme to dilute the Union's effectiveness, and therefore, Edwards' reason for hiring a non-union deputy can only be regarded as a pretext. As evidence of anti-union animus, Charging Party points to Whitmore's testimony that after the March 2000 consent election, Edwards told her that she could not discuss union matters during working hours or on the premises, but that discussions had to be on her own time.

I find no merit to this contention. It is just as reasonable to infer that Edwards, who encouraged Whitmore to explore unionization and tacitly supported the distribution of union literature during working hours by an employee, was simply bringing to Whitmore's attention that she should not allow her union-related activities to interfere with her work. Under PERA, an employer may regulate the time that union representatives spend in negotiations or on other union business during working hours. Compare *City of Detroit (Department of Public Works)*, 2001 MERC Lab Op 73, 79. Even if Edwards' statement is evidence of union animus, I find no evidence that it was a factor in Edwards' decision to end Whitmore's designation as deputy treasurer.

I also find that the timing of Edwards' appointment of a non-union deputy treasurer, fourteen months after the organizing campaign began and eight months after Charging Party's certification, was part of a scheme to dilute Charging Party's effectiveness. The deputy treasurer's position has never been included in the bargaining unit and Edwards' appointment of a new deputy treasurer did not change the unit's composition. Whitmore remained in the unit and continued to perform her work as an administrative assistant.

III. Case No. C00 L-206

Case No. C00 L-206 was filed on December 12, 2000. As clarified by its March 13, 2001 response to a request for a bill of particulars, Charging Party claims that: (1) On or about November 14, 2000, Respondent subcontracted its assessing work, which had previously been exclusively Charging Party's bargaining unit work, to Wayne County Appraisal without negotiating in good faith to impasse over this mandatory bargaining subject; (2) On November 14, 2000, Respondent implemented a reorganization plan without bargaining to impasse over this mandatory subject of bargaining; and (3) Since November 2000, Ron Edwards has monitored Akans and Pyykkonen's activities, which he does not do to other employees. Charging Party claims that these actions were undertaken by Respondent to interfere with, restrain and/or coerce its employees in the exercise of their rights to engage in lawful concerted activities and in violation of its duty to bargain in good faith. Charging Party contends that Respondent Sections 10(1)(a), (c) and (e) of the Act.

A. Findings of Fact and Conclusions: Subcontracting Assessing Work Without Bargaining

As noted above, Carol Pyykkonen works as an administrative assistant in the administrative service department. She is a licensed assessor level II, but has never worked as an assessor and there is no assessor position in Charging Party's bargaining unit.

Pyykkonen testified that in November 1999, while chatting with Edwards she told him that she had asked her boss [Harvey] for a raise and Edwards told her it was bad timing. Pyykkonen testified that, "it was prior to the union vote in March of 2000. I think it was November 1999. I had asked for a raise from my boss in September. And I was working overtime in November and he had come through the building and we chatted about various Township subjects. And when he was leaving, he told me it was bad timing for a raise." A year later, on November 14, 2000, the board of trustees adopted an assessing study committee's recommendation to continue its eighteen-year relationship with Wayne County Appraisal to perform its property assessment responsibilities.

Charging Party claims that Respondent subcontracted its assessing work, which had previously been exclusively Charging Party's bargaining unit work, to Wayne County Appraisal without negotiating in good faith to impasse. This assertion requires little comment. Charging Party's bargaining unit members have never performed the Township's assessing responsibilities. Moreover, Pyykkonen, as an assessor II is not qualified to perform property assessments and rejected an offer to train with Wayne County Appraisal, who has performed the Township's assessing responsibilities since

1982, to gain the fieldwork experience necessary to work as an assessor. It is well-settled that in order to establish than an employer failed to bargain about the unilateral transfer of bargaining unit work, a charging party must demonstrate that the work in question was work that had been performed exclusively by bargaining unit members. *City of Southfield*, 433 Mich 168, 185 (1989).

B. Findings of Fact and Conclusion: Failure to Bargain Reorganization Plan to Impasse and Its Impact

On November 14, 2000, Respondent approved a reorganization plan that removed the assessing, human resources, and purchasing responsibilities from the administrative services department and placed them under the supervision of the Township supervisor. According to the minutes of the meeting, the motion to reorganize was made with the condition that its effects would be negotiated with the represented employees. The reorganization did not result in any layoffs, demotions or pay reduction for any bargaining unit member. On the same day, November 14, 2000, Charging Party sent Respondent a request to begin negotiations for an initial contract.

A week later, Steven Mann, upon taking office as Township supervisor, issued memoranda to the administrative services department's employees advising them that until the effects of the reorganization were negotiated with the union, they would continue to perform their same duties and report to him. On December 29, 2000, Mann notified the employees and the Union that the reorganization would take effect on February 1, 2001.

Charging Party claims that Respondent was not only obligated to bargain about the effects of its November 2000 reorganization plan, but was also required to negotiate about the reorganization before it was implemented. Charging Party also contends that Respondent never made an attempt to contact the Union to discuss the reorganization, although the minutes of the November 14, 2000 board meeting, indicates that the reorganization's effects would be negotiated with Charging Party.

Charging Party's contentions lack merit. The record shows that although Charging Party knew of Respondent's reorganization plans, it never made a request to bargain about the its effects. Charging Party's suggestion that Respondent never made an attempt to contact the Union to discuss the reorganization's effects places the duty to seek collective bargaining on the wrong party. *City of Oak Park,* 1998 MERC Lab Op 519, 523. An employer's bargaining duty is conditioned upon a request for bargaining from the bargaining agent. *SEIU, Local 586* v *Village of Union City*, 135 Mich App 533, 558 (1984). Since Charging Party did not make a bargaining request, it is unable to establish that Respondent violated its duty to bargain.

C. Findings of Fact and Conclusions: Monitoring of Akans' and Pyykkonen's Activities by Edwards[3]

Sometime in September 2000, treasurer Edwards observed Akans arriving five minutes late for work while he was either looking out of his office window or walking

[3]Charging Party did not offer any evidence regarding treasurer Edwards' alleged monitoring of Pyykkonen.

through the parking lot. Having heard comments about other people arriving late, Edwards called Rosemary Harvey, Akans' supervisor, and asked to see time sheets. Harvey testified that Edwards reported to her that he was aware of a letter that Akans sent to the board of trustees regarding his comments about Pyykkonen's health, he had been observing Akans in the parking lot and knew what time Akans came in that morning. According to Harvey, Edwards also told her he was he was going to be watching Akans and was going after her "tit for tat." Edwards testified that he did not believe that he told Harvey that he had received Akans' letter and he did not tell Harvey that he was going to watch Akans.

Akans testified that around the first part of November 2000, after a weekend, she noticed that the camera outside the police department, which normally faced towards the parking area, was moved to point at the designated smoking area of the building where she worked. According to Akans, both bargaining unit employees and non-bargaining unit employees used the smoking area. According to Edwards, he never asked the police department to move the cameras or point them in a certain direction. He testified that the camera provides surveillance outside the front door of the police department and does not tape anything.

On February 1, 2001, the effective date of the reorganization, Akans was relocated to the Township supervisor's office. Akans testified that her new workspace was in a corner and "Ron Edwards could stand in his office and look through three departments to see if I was sitting at my desk or not." According to Township supervisor Mann, Akans workspace was one hundred twenty feet from the treasurer's office with no direct line of sight from his desk to Akans' workspace. Rather, according to Mann, in order for Edwards to observe Akans at her desk, he would have to stand on the public side of the treasurer's office counter and look through three glass doors, the building department and a lobby

Charging Party argues that Respondent interfered with Akans rights under Section 10 of PERA and discriminated against her by monitoring her and relocating her to an office where she could be more easily observed and monitored. There is no merit to this assertion. Assuming that Edwards observed Akans reporting to work five minutes late, no evidence was presented to show that his observation of her in the parking lot arriving late for work restrained or coerced Akans from engaging in protected activity or discriminated against her in violation of Sections 10(1)(a) or (c) of PERA. I also find no evidence that Edwards used the police department camera to monitor Akans. Although photographing or videotaping of employees by an employer, absent proper justification, is presumptively coercive, *National Steel and Shipbuilding Co*, 324 NLRB 449; 157 LRRM 1010 (1997), there is nothing on the record to show that Edwards was responsible for the camera's movement, if it were moved, or that its movement was designed to monitor Akans. Other employees, bargaining unit and non-bargaining unit members, used the smoking area where the camera was allegedly pointed.

As to Charging Party claim that Akans office was relocated so that she could be more easily monitored, I find it highly unlikely, considering the distance and barriers that separated Akans' and Edwards' workspaces, that Akans' was relocated so that Edwards could monitor or interfere with her protected activities.

IV. Case No. C01 E-101

In Case No. C01 E-10l, as amended on December 13, 2001, Charging Party claims that since February 2001, Respondent restrained, coerced and discriminated against employees and failed to bargain in good faith in violation of Sections 10(1)(a), (c) and (e) of PERA as follows: (1) On or about March 1, 2001, the Township supervisor ordered his secretary to monitor Akans, to question anyone she spoke with to determine if she were engaging in protected activity and ordered Akans to stay at her desk to prevent her from engaging in protected activity; (2) On or about May 21, proposed further elimination of Akans' job duties as purchaser because of protected activities; (3) Since May 2001, Respondent has not posted positions formerly held by Hass and Ward in violation of the parties' past practice and Township policy; (4) Since February 2001, distributed job functions of various positions to other employees without notice and bargaining with Charging Party; (5) Since February 2001, supervisory and non-union personnel have been performing bargaining unit work; and (6) on or about July 20, 2001, Respondent constructively discharged local president Akans because of her protected activities.[4]

A. Findings of Fact and Conclusion: Monitoring of Akans by Township Supervisor

In March or May 2001, while Akans was having a 15-20 minute conversation with a building inspector, Secretary Mann's secretary interrupted Akans and told her that Mann was looking for her. When she returned to her office Mann told her that she had been away from her desk for a long time and there was a lot of work to be done, and if she were discussing union matters, it should take place after working hours.

Mann testified that he never asked anyone to monitor Akans and regularly Akans "would come in, put her stuff at her desk, go to the kitchen, maybe get coffee . . . and several times didn't make it back until ten after 8:00, 8:15.; she'd be talking with employees in the . . . building department." According to Mann, once Akans was away from her desk for 25 minutes and he asked his secretary to go find Akans and see what she was doing. Akans testified that Mann never ordered her to stay at her desk.

Except for a statement in its post-hearing brief that Mann's reasons for monitoring Akans are a pretext, Charging Party provides no analysis or legal support for any of its monitoring claims. However, it is well-settled that an employee's status as a union officer does not exempt her from legitimate counseling or discipline about her workplace conduct. *City of Detroit (Dept of Public Works)*, 1990 MERC Lab Op 94, 100. The evidence presented by Charging Party does not establish that Respondent discriminated against or interfered with Akans' right to engage in protected activity by questioning her about extended absences from her workstation. There is also no evidence on the record to show that Mann directed his secretary to monitor Akans to determine if she were

[4]On May 3, 2002, Charging Party withdrew allegations that Respondent unilaterally changed the parties' practice of discussing available positions, posting vacancies, allowing employees to have union representation during discussions over job requirements, changing its attendance policy. Also withdrawn were charges related to: disciplinary meetings without union representation; the denial of a pay raise and the constructive discharge of Carolyn Cox; the investigation of a union officer's overtime; the constructive discharge of Chris Haas and conducting an exit interview with her that did not conform to the parties past practice, and denial of Haas' benefits and pay; and the constructive discharge of Chris Ward.

engaging in protected activity. Moreover, an employer is not prohibited from restricting employees' concerted activities during working time and in work areas. *University of Michigan*, 1990 MERC Lab Op 272, 290.

B. Findings of Fact and Conclusion: Further Elimination of Akans' Duties as a Purchaser on May 21, 2001

On May 21, 2000, a "Staff Facts Memo" was distributed to employees to inform them of what was discussed at the weekly management staff meeting. The Memo included the following reference to Respondent's purchasing policy:

> It was reported that the Township's purchasing policy is being worked on and should be presented to the Board sometime in June. The new policy will enable individual Departments to handle their own purchase order requests via computer and submit [sic] to the Department Head, Supervisor or Board for approval .. .

Akans testified that she was concerned that implementing a policy to allow departments to process their purchase orders independently, "would take one of the function of purchasing away from me independently." According to Supervisor Mann, the new policy would reduce duplication; instead of someone writing a request for purchasing, getting a supervisor's approval, submitting it to Akans for typing, and returning it to the supervisor for another signature, it would enable an employee to enter the request directly into a computer to get the supervisor's approval electronically.

After May 21, 2000, Mann met with Akans and he assured her that the new procedure would make the purchasing process more efficient and after its implementation, she would still have a position with the Township.

According to Charging Party, the record contains substantial evidence to demonstrate that Akans' purchasing position was eliminated and her functions were reduced because of her union activity. I disagree. As discussed in Section II B above, there is no factual support for this argument. Akans did not occupy a purchasing position; there is no purchasing position in Charging Party's bargaining unit; and Harvey, Akans supervisor, was unsuccessful in her efforts to create a purchasing position for her.

C. Findings of Fact and Conclusions: Failure to Post Job Vacancies

Akans testified that Respondent had a practice of posting vacant positions in-house for two weeks before publishing them in a newspaper. According to Akans, in February 2001, there was a change from that policy when the general ledger accountant position was not posted. When Akans brought the matter to supervisor Mann's attention, he told her that he would take the matter under advisement, but that he was not required to post the position. A day or two later, Mann told Akans that Respondent would post the position as a courtesy to the Union. According to Mann, Respondent elected not to fill the information system processor position held by bargaining unit member Chris Ward.

Charging Party claims that Respondent's unilateral decision not to post the accountant for the general ledger and information system processor positions without bargaining constitutes a basis failure to negotiate in good faith towards a collective bargaining agreement in violation of Section 10(1)(e) of PERA. This assertion ignores evidence that the accountant position was posted within a day or two after Akans brought the matter to Respondent's attention. Further, since Respondent decided not to fill the information system processor position, there was no need to post it as a vacant position. Charging Party's allegations do not establish a violation of PERA.

D. Findings of Fact and Conclusions:
Distribution of Job Functions Without Notice and Bargaining, and the Performance of Bargaining Unit Work by Supervisors and Non-Union Employees

On December 29, 2000, Respondent sent a memorandum to Karen Warner, Charging Party's administrative director, and to each administrative services department employees – Akans, Bob Janks, Carol Pyykkonen, Mike Richardson and Chris Ward – advising them of their assignments and responsibilities after February 1, 2001, the reorganization's effective date. Ward was advised of her transfer to the public service department and that her pension contribution calculation and website maintenance responsibilities would be transferred to the human resources director and to Bob Jenks, a non-bargaining unit employee, who had shared website maintenance responsibilities with Ward.

When Ward resigned in May or June 2001, some of her duties were transferred to other bargaining unit employees, while Jenks or the assessor assumed other duties, such as responding to rare inquiries for statistical information. According to Mann, the parties discussed transferring Ward's pension contribution calculations duties to the human resource director and Ward's website maintenance responsibilities to Jenks.

According to treasurer Edwards, the deputy clerk's practice of taking minutes during the recording secretary's absence existed before the union's certification and that on August 22, 2001, the parties agreed to a procedure to offer bargaining unit members an opportunity to perform recording secretary functions pending filling the position.

According to Whitmore, in November 2000, when she was replaced as deputy treasurer by a non-bargaining unit appointee, Edwards and the new deputy took over more and more of her deputy treasurer duties and thereafter, she only performed only basic clerical functions. Treasurer Edwards' testified that before and after the union's certification he performed about every function in the treasurer's office.

Charging Party claims in its post-hearing brief that Respondent violated PERA by distributing three of Chris Ward's information systems processor job functions – calculating pension contributions, responding to questions regarding the computer system, and responding to requests for statistical information from realtors - that had been exclusive bargaining unit work to non-union employees and supervisors without notice and bargaining.

The evidence shows that in a November 29, 2000 memorandum, Respondent notified Charging Party that Ward's responsibility for calculating pension contributions would be assumed by the human resource director, a supervisor, and that Jenks, who had shared web site maintenance with Ward, would be responsible for maintaining the web site. There is nothing in the record to establish that Charging Party made a demand to bargain after November 29, 2000, or at anytime after it learned that non-union employees and/or supervisors were performing bargaining unit work. As noted above, the duty to bargain is triggered by a bargaining request from the union. See *SEIU, Local 586, supra*. Moreover, the evidence shows that the parties discussed transferring Wards' pension contribution calculations functions to the human resource director and her website maintenance duties to Jenks.

Charging Party also asserts that treasurer Edwards and his new deputy took on more and more of Irene Whitmore functions and that since October 2000, she performed only basic clerical functions. It follows that after Whitmore was replaced as deputy treasurer, she would no longer perform deputy treasurer functions. Respondent did not violate PERA by not assigning her deputy treasurer duties after her deputy treasurer designation was eliminated.

E. Findings of Fact and Conclusion: Akans Constructive Discharge

According to Akans, between September 1999 and September 2000, "as far as a daily routine of functions and duties to perform, most of the time I really don't have anything to do." Her responsibilities included processing purchase orders and flex benefits and serving as secretary to Rosemary Harvey, the administrative services department director.

After the November 14, 2000 reorganization and the termination of Harvey's position, Akans was no longer responsible for performing Harvey's secretarial work. She, however, continued to perform her other duties – purchasing and flex benefits processing - after she was transferred to Township supervisor Mann's office. Mann had a good relationship with Akans. When he was president of the police officer union, he provided guidance to Akans about organizing a union, Akans helped him "quite a bit" in his campaign for Township supervisor, and visited Mann's home and met his wife and son. The day after the reorganization, Mann spoke individually with Akans and other administrative service department employees to reassure them about the jobs.

Between March and May 2001, Akans had several meetings with Mann and discussed her need for more work. According to Mann he attempted to find additional work for Akans. He asked the Township clerk, treasurer and other departments if they had work that needed to be done, and a few projects were found for Akans. Mann testified that consideration was given to having Akans answer telephones during times that the telephone operators were off duty, but Akans refused because she thought "it was belittling her to reduce her to a telephone operator." Mann explained that he was cautious about the kind of work he assigned to Akans because "every time we turned around, they were filing another unfair labor practice, so I was real cautious on what we wanted to give her" because the work that she might be assigned would "somehow violate some of their, you know union rights . . ." According to Akans, between November 1999 and July

2001, she was given six clerical assignments and her duties took up approximately ten hours of her workweek.

On May 21, 2001, Akans received a copy of Staff Facts via e-mail from another employee that included the following reference to the Township's purchasing policy: "Our new purchasing policy is being worked on and will be presented to the board sometime in June." Akans testified that she was concerned because the new policy would allow departments to process their own purchase orders and reduce her purchasing responsibilities even more. A couple of days later, Akans met with Mann. When he told Akans that she would still had a job after the new purchasing policy was implemented, Akans replied, "Too late. I don't think so." At the end of July 2001, Akans resigned and began work at the University of Michigan at a salary of $34,000, approximately $5,000 more than she earned at the Township. Akans testified that when she resigned, Respondent had not purchased the software to implement the new purchasing system and departments were not performing their own purchasing.

Charging Party contends that because of Akans' union activities, her working conditions became so difficult or unpleasant that a reasonable person would have felt compelled to resign. To establish that Akans was constructively discharged for engaging in protected activity, Charging Party must demonstrate that (1) the burden on her caused, and was intended to cause, a change in working conditions so difficult or unpleasant as to force her to resign; and (2) those burdens were imposed because of her protected concerted activities. See *Louisiana Homes, Inc.,* 1995 MERC Lab Op 1069, 1107 and cases therein cited.

Charging Party claims that Akans resigned because she was forced to work at twenty-five percent capacity between November 2000 and July 2001, in an unsupportive and hostile environment. There is no evidence on the record to support this assertion. Akans own testimony reveals that before November 2000, she was not working to her full capacity. She testified that between September 1999 and September 2000, "as far as a daily routine of functions and duties to perform, most of the time I really don't have anything to do." Although Akans had less work after November 2000, because her secretarial duties for Harvey were no longer needed, no evidence was presented to establish that her working conditions became too difficult or unpleasant that she was forced to resign.

Charging Party would also have this tribunal believe that Mann did not assign Akans more work because of union animus. It points to Mann's testimony that he was cautious about assigning work to Akans for fear that her union rights might be violated because "every time we turned around, they were filing another unfair labor practice" charge. I find that under the circumstances, Mann's caution was justified. Mann attempted to find additional work for Akans by requesting assignments from other department heads and offered to have Akans' relieve telephone operations but she viewed answering telephones as belittling.

Moreover, between September 26, 2000 and May 30, 2001, Charging Party filed four unfair labor practice charges that incorporated over two-dozen allegations. Although many of the claims were withdrawn during the hearing, as illustrated by this record, those that remain are either unsupported by the facts, mischaracterize the facts, or have no legal

basis. Clearly, Charging Party engaged in a pattern of filing unfair labor practice charges without regard to their merit. I find that Mann's observation was not unreasonable and was not an expression of anti-union animus.

Even if Mann's comments were expressions of union animus, the reduction in Akans' workload was not related to any attempt by Mann to retaliate against Akans because of her union activity. Rather, the record demonstrates that Mann had a good relationship with Akans. Mann, who did not take office as Township supervisor until after the November 14, 2000 reorganization, provided guidance to Akans during Charging Party's organizing campaign and she supported him in his bid to become Township supervisor. Moreover, after the reorganization, Mann met with Akans several times to assure her and others in the administrative services department about the status as employees. Mann also found additional work for Akans, albeit limited, after Harvey's termination. I conclude that Charging Party failed to demonstrate that Akans' working conditions were so difficult or unpleasant than a reasonable person would have been forced to resign or than she had less work after November 2000 because of her union activities. Compare the facts and this case with those presented in *Delta-Menominee District Health Department,* 1987 MERC Lab Op 964.

Based on the above findings of fact and conclusions of law, I recommended that the Commission issue the order set forth below:

Recommended Order

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Roy L. Roulhac
Administrative Law Judge

Dated: _____