

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

WAYNE COUNTY AIRPORT AUTHORITY,  
Public Employer-Respondent

MERC Case No. 20-C-0596-CE-1

-and-

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES,  
COUNCIL 25, LOCAL 1690  
Labor Organization-Charging Party.

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WAYNE COUNTY AIRPORT AUTHORITY,  
Public Employer-Respondent

MERC Case No. 20-C-0596-CE-2

-and-

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES,  
COUNCIL 25, LOCAL 1690  
Labor Organization-Charging Party,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,  
Labor Organization-Intervenor

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APPEARANCES:

The Allen Law Group, P.C., by Bryan W. Langeffeffer and Floyd E. Allen, for Respondent

Miller Cohen, PLC, by Judith Champa and Jonathan Cakmakci, for Charging Party

Christopher Tomasi, Assistant General Counsel, for the Intervenor

**DECISION AND ORDER**

On October 27, 2020, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order<sup>1</sup> in the above matter finding that, with regard to case no. 20-C-0596-CE-1, Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it

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<sup>1</sup> MOAHR Hearing Docket Nos. 20-006089 & 20-006898

cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

With regard to case no. 20-C-0596-CE-2 Administrative Law Judge Peltz found 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 in that case.

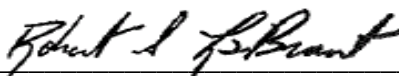
The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

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

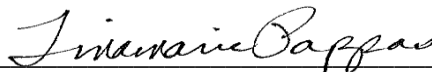
**ORDER**

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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Robert S. LaBrant, Commission Member



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Tinamarie Pappas, Commission Member

Issued: February 2, 2021

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

In the Matter of:

WAYNE COUNTY AIRPORT AUTHORITY,  
Respondent-Public Employer,

Case No. 20-C-0596-CE-1  
Docket No. 20-006089-MERC

-and-

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES,  
COUNCIL 25, LOCAL 1690,  
Charging Party-Labor Organization.

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In the Matter of:

WAYNE COUNTY AIRPORT AUTHORITY,  
Respondent-Public Employer,

Case No. 20-C-0596-CE-2  
Docket No. 20-006898-MERC

-and-

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES,  
COUNCIL 25, LOCAL 1690,  
Charging Party-Labor Organization,

-and-

POLICE OFFICERS ASSOCIATION OF  
MICHIGAN,  
Intervenor-Labor Organization.

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APPEARANCES:

The Allen Law Group, P.C., by Bryan W. Langeffeffer and Floyd E. Allen, for the Respondent

Miller Cohen, PLC, by Judith Champa and Jonathan Cakmakci, for the Charging Party

Christopher Tomasi, Assistant General Counsel, for the Intervenor

**DECISION AND RECOMMENDED ORDER**  
**OF ADMINISTRATIVE LAW JUDGE**

These cases arise from unfair labor practice charges filed by the American Federation of State, County & Municipal Employees (AFSCME) Council 25, Local 1690 against the Wayne County Airport Authority. 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 cases were heard by David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (the Commission).

The Unfair Labor Practice Charges and Procedural Background:

On March 14, 2020, AFSCME Council 25, Local 1690 filed an unfair labor practice charge alleging that Wayne County Airport Authority (WCAA) violated PERA by meeting with individual members of Local 1690 employed in the position of Airport Resource Center (ARC) Supervisor to discuss an increase in compensation if those members were to switch to a newly created position in a bargaining unit represented by the Police Officers Association of Michigan (POAM). A telephone hearing was scheduled for April 13, 2020.<sup>1</sup>

On April 8, 2020, AFSCME filed an amended charge alleging that the Employer unilaterally removed the ARC Supervisor position from its bargaining unit and transferred the work previously performed by individuals employed in that position to a newly created position in the POAM bargaining unit entitled Lead Communication Specialist.

The dispute was bifurcated into two separate cases so as to avoid unnecessary delay of the hearing which had already been scheduled. The allegations set forth in the original charge were assigned Case No. 20-C-0596-CE-1; Docket No. 20-006089-MERC and were heard as scheduled on April 13, 2020, by telephone. Post-hearing briefs were filed in that matter on or before May 26, 2020.

The allegations in the amended charge were assigned Case No. 20-C-0596-CE-2; Docket No. 20-006898-MERC and set for hearing on May 5, 2020. I advised the parties that although the cases would be heard separately, the transcript in Case No. 20-C-0596-CE-1; Docket No. 20-006089-MERC could be relied upon in Case No. 20-C-0596-CE-2; Docket No. 20-006898-MERC and vice versa to prevent the possibility of duplicative testimony.

Because it appeared that the POAM might have an interest in Case No. 20-C-0596-CE-2; Docket No. 20-006898-MERC, I sought and obtained the consent of AFSCME and the WCAA to notify the POAM of the existence of this dispute. On April 28, 2020, the POAM filed a motion to intervene. The motion was opposed by AFSCME. I convened a telephone conference call on April 30, 2020, during which I indicated that I would be granting the POAM's motion and formally adding that labor organization as an interested party in Case No. 20-C-0596-CE-2; Docket No. 20-006898-MERC. The hearing was held

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<sup>1</sup> The hearings in this matter were held virtually due to the ongoing pandemic.

on May 5, 2020, via video conference. Post-hearing briefs were filed by the parties on or before June 23, 2020.

Although the cases were heard separately, I have reviewed both records and determined it appropriate to consolidate these cases for purposes of this decision due to the extensive factual overlap between these disputes.

### Findings of Fact:

#### I. Background

Charging Party represents a bargaining unit consisting of supervisory employees of the WCAA. Bargaining unit positions are identified in Appendix A of the collective bargaining agreement, which covers the period October 1, 2018, to September 30, 2021. Appendix A lists ARC Supervisor as a working title within the Operations Supervisor classification. Other positions within that classification include Landside Supervisor and Security Supervisor. Appendix A gives the Employer the right to add, delete or revise working titles upon 14 days written notice to the Union. Article A also contains a managements rights provision, Article 8.01, which authorizes the WCAA to determine the “level of supervision” for bargaining unit positions.

Article 4 of the contract between Charging Party and the WCAA is entitled “Aid to Other Unions.” Article 4 provides, in part, “The Employer agrees not to aid, promote, or finance any other group or organization which purports to engage in collective bargaining or to make any agreement with any group or organization for the purpose of undermining the union.”

In addition to the supervisory bargaining unit represented by AFSCME Local 1690, there are at least six other units of WCAA employees, including AFSCME Local 953, AFSCME Local 2057, AFSCME Local 2926, the Government Administrators Association (GAA) Local 3317, and the POAM. The POAM represents all employees performing non-supervisory law enforcement and communications/dispatch work, including, but not limited to, Police Officer, Corporal, Detective, Communication Specialist and Lead Communication Specialist. As described in more detail below, the Lead Communications Specialist was added to the POAM unit in the most recent contract between that labor organization and the WCAA.

#### II. ARC Supervisor

The Airport Resource Center (ARC) is the public safety headquarters for Detroit Metropolitan Airport and Willow Run Airport. The ARC is responsible for dispatching security, police and fire to incidents and alarms for those facilities and is also a Public Safety Answering Point for 911 calls. The ARC is staffed by a team of dispatchers referred to as Communication Specialists who, as noted above, are part of the POAM bargaining unit, as well as the ARC Supervisors. The ARC Supervisors report to the ARC Manager, Corey Noble, who is responsible for overseeing the daily operations of the dispatch center. As ARC Manager, Noble is currently a member of the GAA bargaining unit. He is also a former president of AFSCME Local 1690. In addition to the ARC Supervisors and the

Communication Specialists, Noble supervises the work of an assistant manager and a training coordinator, both of whom are members of Charging Party's unit. In total, there are twenty employees working in the ARC.

Prior to the events giving rise to this dispute, there were five individuals employed by Respondent as ARC Supervisors. Three of the ARC Supervisors were former Communication Specialists and, in that capacity, were members of the POAM bargaining unit. The other two ARC Supervisors, Gayle Perkins and her daughter Danielle, have worked for Respondent for 22 and 19 years respectively, and have always been employed in positions within Charging Party's unit. Gayle Perkins began working as an ARC Supervisor in 2015 and is still employed in that position. However, she was off work on medical leave as of the hearing dates in these matters. Danielle Perkins worked as an ARC Supervisor from 2014 until December 2, 2019, when she voluntarily transferred to Security Supervisor, a position which, like the ARC Supervisor, is included within the Operations Supervisor working title and is in the bargaining unit represented by AFSCME, Local 1690. The other three ARC Supervisors recently transferred to Communication Specialist positions, as explained in more detail below.

The ARC Specialist was originally intended to be a more senior, supervisory-type position; however, according to Noble and Lynda Racey, Respondent's Vice President of Human Resources, the duties of the position evolved over time to be almost identical to the work performed by the Communication Specialists. Noble estimated that dispatching now accounts for approximately 95 percent of the ARC Supervisors' duties. Similarly, Danielle Perkins testified that when she worked as an ARC Supervisor, she performed dispatching functions on an almost everyday basis. Although Gayle Perkins initially asserted that the ARC Supervisors fill in for the Communication Specialists only in the event of staff shortages, she later testified that she spent approximately three quarters of each day performing dispatch duties. In fact, Gayle testified that there were only five to six days per month when she was not engaged in dispatching.

At the hearings in this matter, Gayle and Danielle Perkins testified in detail regarding the duties the ARC Supervisors perform when they are not directly engaged in dispatching. At the start of each shift, the ARC Supervisor assigns the Communication Specialists to perform dispatch work for either airport security, police or fire, depending on each individual Communication Specialist's experience, training and skills. The ARC Supervisors also correct and approve reports, prepare weekly memos, draft standard operating procedures, complete alarm logs and attend monthly supervisor meetings. They assign lockers to new employees, drive staff to and from training sessions and other locations and schedule Communication Specialists to ride along with the police department. The ARC Supervisors receive training in how to set up a mobile command post in the event of an emergency and how to conduct building evacuations. They are also responsible for signing out keys for facilities on the airport grounds. According to Gayle and Danielle, the ARC Supervisors play a role in the disciplinary process by counseling the Communication Specialists when there are performance problems and reporting those issues to the ARC Manager, who is then responsible for taking further disciplinary action if necessary. The ARC Supervisors do not conduct performance reviews or take part in disciplinary hearings, though some of the feedback that they provide may be used by management in the evaluation process.

### III. Lead Communication Specialist

During negotiations between Respondent and the POAM on a successor collective bargaining agreement in the fall of 2019, the parties identified and discussed the issue of employee turnover within the ARC. Based upon its research, the POAM surmised that the turnover issues were due, in part, to the lack of a career path for ARC staff. To rectify that issue, the POAM proposed the creation of a new position entitled Lead Communication Specialist. According to Racey, the Lead Communication Specialist was conceived not as an FTW position but rather as a designation given to certain Communication Specialists to indicate that they are the “point person” to answer questions on a given shift. Racey testified that the designation was modeled after what is being done in comparable communities and is similar to the designation given to other POAM positions within the WCAA which receive additional compensation for taking on specialized roles.

On September 13, 2019, the WCAA and the POAM reached a tentative agreement on a new contract. Article 38 of the new agreement, entitled Economic Improvements, contained the following language concerning the Lead Communication Specialist:

An employee appointed to the position of Lead Communication Specialist will receive an additional \$3,000 to be included in their annual rate of pay for as long as they hold that assignment.

Appointments to the position of Lead Communication Specialist shall be filled in accordance with the following:

1. Employees who have passed their probation as a Communication Specialist may be considered for appointment to Lead Communication Specialist.
2. All appointments to the position of Lead Communication Specialist shall be discretionary and shall be made from a list compiled from a specific posting. The posting will include minimum requirements for the position and the assessment process to be used.
3. Duty assignments, number of positions, configuration of assignments, duration of assignments and the rotation of assignments shall be at the sole discretion of the employer. Lead Communication Specialist may be required to do all of the duties of a Communication Specialist while acting as Lead.
4. Removal from the position of Lead Communication Specialist shall be for documentable cause. Notice will be sent to the Union and the Employee with reasons for the removal stated. Any such decision will be final and binding.

#### IV. Noble/Perkins Meeting and Aftermath

Ratification of the POAM agreement was scheduled for September 24, 2019. Around that time, two ARC Supervisors, Felicia Smith and Per Andy, approached Noble with concerns regarding the implications of that agreement for the ARC Supervisors. According to Noble, Smith and Andy expressed anxiety about losing their jobs as a result of the POAM contract and they indicated to Noble that Danielle Perkins was particularly worried about the security of her position. Noble assured Smith and Andy that no jobs would be lost and that if any of the current ARC Supervisors wanted to transfer to Lead Communication Specialist positions within the POAM bargaining unit, he would attempt to ensure that they maintained their current seniority.

Early in the morning on September 24, 2019, Noble invited Danielle Perkins into his office for a meeting. Noble also asked Talia Hamid, a Communication Specialist and POAM representative, to join the meeting. Noble stated to Perkins that he wanted to discuss her concerns regarding the POAM contract and answer any questions she might have about the Lead Communication Specialist position. Hamid told Perkins that the POAM was not trying to “mess over” the ARC Supervisors, but rather to get more money for the ARC staff. Perkins testified that Hamid advised her that the only way for an ARC Supervisor to get a raise would be to transfer to a Lead Communication Specialist position within the POAM bargaining unit and that such a transfer would be based upon seniority.

Perkins told Hamid that while she agreed that the Communication Specialists deserved a raise, she did not want to switch to a Lead Communications Specialist position because it would mean that she would be placed at the bottom of the POAM seniority list and, therefore, would be vulnerable if layoffs were to occur. Perkins asked whether she and her mother could transfer to a different position within the AFSCME, Local 1690 bargaining unit instead of taking a Lead Communication Specialist position. Hamid told Perkins that this possibility had already been discussed and that Racey had indicated that if Danielle and Gayle wanted to transfer to a different position within Charging Party’s unit, Respondent would “see what they can do.”

At this point, Noble rejoined the conversation, telling Perkins that he would hate to see her and her mother leave the ARC. He indicated that the ARC would soon be taking over operation of the Maintenance Call Center and, therefore, she would not be able to transfer to a position within that department if she waited to make a decision. Noble further stated that there was a vacant position in the Compliance Department, but that there were three individuals on the list for that position, each of whom had more seniority. During the conversation, Noble also asserted to Perkins that AFSCME did not care about her. Perkins reiterated that she would still like to transfer to another position in the AFSCME bargaining unit and, at that point, the meeting ended.

At the hearing in Case No. 20-C-0596-CE-1; Docket No. 20-006089-MERC, Noble stated that the meeting was not intended to be a discussion regarding the ARC Supervisor position and that it did not concern the establishment or modification of any wage rate. Rather, Noble testified that the purpose of the meeting was to convey to Perkins information concerning the POAM tentative agreement and the new Lead Communication Specialist designation. Noble testified that the reason he brought Hamid into the meeting was because



she knew more about the POAM contract and would be better able to answer questions relating to the new position. According to Noble, Hamid relayed to Perkins what was in the POAM contract and explained that the Lead Communication Specialists would be paid more than the ARC Supervisors. Noble testified that there was no discussion regarding a “raise.” In addition, Noble testified that he has no authority to negotiate on behalf of the WCAA and that he never represented to Perkins that he had such authority. Although Noble contends that he did not tell Perkins that she should switch to a different union, he admitted that he never disputed anything that Hamid told Perkins during the meeting. Hamid was not called to testify in this matter.

Shortly after the meeting, the POAM membership voted to ratify the tentative agreement, including the language quoted above pertaining to the Lead Communication Specialist. That same day, John Gaynier, President of AFSCME Local 1690, asked Vice President Mike Hoffner to investigate the matter by conferring with POAM representatives and members of Local 1690. Gaynier also sent an email to Respondent seeking more information regarding management’s contact with Perkins. In the email, which was copied to Racey, Gaynier wrote:

It has come to our attention that on behalf of the WCAA an Authority employee, a GAA member, and HR/Labor Relations have negotiated with POAM to remove L1690 ARC Supervisors and their duties from L1690 to POAM. We have also been informed that L1690 members have been told by management of the ARC that they would receive higher pay if they moved from L1690 to POAM, that they would not receive higher pay if they stayed in L1690, and the ARC Supervisors had no say in the matter.

L1690 has not been included in any of these discussions regarding L1690 represented positions. Although our investigation is ongoing, with the documentation we have, it is our opinion that this is a direct violation of sections 3.01 and 3.02 of the CBA, and PERA 423.210.

Racey responded to Gaynier that same day. In the email, Racey wrote that although negotiations between Respondent and the POAM had concluded, she would “not discuss specifics” but would schedule a meeting with “all interested parties” once the POAM contract was finalized. At the hearing in Case No. 20-C-0596-CE-2; Docket No. 20-006898-MERC, Racey testified that she did not provide more information to Gaynier at that time because the WCAA and the POAM had agreed to keep their negotiations confidential.

Gaynier wrote back to Racey and disputed her claim that AFSCME was merely an “interested party.” Gaynier wrote:

POAM is not the only union representing workers in the ARC. If changes to working conditions were negotiated with POAM that affect L1690 represented positions in the ARC, then L1690 has a right to be involved in those negotiations. Furthermore, the WCAA has the contractual and legal obligation to negotiate with L1690.

In addition, there is a very real concern that ARC management is using those negotiations to interfere with, and coerce L1690 members in violation of PERA 423.210, prior to information being provided to L1690.

In your email you admit that several issues were negotiated with POAM that L1690 has an interest in. Therefore, L1690 should be included in those negotiations. We believe failure to do so is unethical, violates the CBA, violates PERA, and will force L1690 to seek other remedies outside the WCAA.

On or about November 18, 2019, Charging Party filed a grievance asserting that the WCAA had breached the recognition clause of the parties' collective bargaining agreement by meeting with individual members of AFSCME Local 1690 to discuss wage and compensation issues without the presence of Union representatives. Around that same time, Racey notified Gaynier by email that the POAM contract had been ratified and that the WCAA would like to schedule a meeting with AFSCME representatives sometime in December. Racey testified that the purpose of the meeting was to address concerns that Charging Party's members would lose their jobs as a result of the POAM agreement. However, the meeting was delayed until the following year while AFSCME Local 1690 conducted an investigation into an unrelated matter.

By the time the parties finally met on March 10, 2020, Gayle Perkins was off on medical leave, Danielle Perkins had transferred to another position within the AFSCME bargaining unit and the other three ARC Supervisors had transferred back to Communication Specialist positions. During the meeting, management informed the Union that Gayle Perkins would return to her ARC Supervisor position when she came back from medical leave, but that the four remaining vacant ARC Supervisor positions would not be filled. Management indicated that the reason for the change was that the ARC Supervisors were not actually performing supervisory work and, therefore, the position was no longer necessary. The Union was further notified that in Gayle Perkins' absence, the duties of the position were being performed by the ARC Manager, the Assistant ARC Manger and possibly the Training Manager. At hearing, Racey explained that the change was the result of management wanting to devote staffing resources to the "live-saving" dispatcher function. Racey explained, "[W]e didn't feel we needed five individuals – or four individuals in that classification or in that working title with the way the ARC was currently operating."

As of the time of the hearings in this matter, Respondent had not yet filled the Lead Communication Specialist position and no position description had been created. Racey reiterated that Gayle Perkins will resume her ARC Supervisor duties when she returns from medical leave but that the WCCA has not yet determined what will happen when Perkins ultimately leaves the position. Racey testified that there is no specific number of ARC Supervisor positions delineated in the WCAA budget. Rather, the budget enumerates how many total FTE positions are available per fiscal year and, when a vacancy occurs, management examines its needs and decides what position to designate for the vacant LTE slot. Racey indicated that WCCA will sometimes reallocate the FTE to a different department or sometimes not fill it at all. According to Racey, this has been Respondent's practice since 2002.

## Discussion and Conclusions of Law:

In Case No. 20-C-0596-CE-2; Docket No. 20-006898-MERC, Charging Party asserts that the WCAA unilaterally removed the ARC Supervisor position from its bargaining unit and transferred the work previously performed by the individuals employed in that position to the newly created Lead Communication Specialist designation within the POAM unit. The distinction between removing duties and responsibilities from a bargaining unit versus the transfer of individual employees or positions from one unit to another without a corresponding change in duties is significant. The latter implicates matters of unit placement which fall within the exclusive jurisdiction of the Commission. “[B]argaining unit placement is neither a mandatory subject of bargaining nor a matter of managerial prerogative but a matter reserved to the Commission by Section 13 of PERA. That is, an employer may not alter bargaining unit placement unilaterally or after bargaining to impasse, but must either obtain the union’s agreement to changes in bargaining unit composition or obtain an order from this Commission . . . .” *Detroit Fire Fighters v City of Detroit*, 96 Mich App 543 (1980). See also *City of Grand Rapids*, 19 MERC Lab Op 69 (2006); *Northern Mich Univ*, 1989 MERC Lab Op 139.

In contrast, an employer’s decision to unilaterally transfer duties and responsibilities from one unit to another may constitute a violation of the duty to bargain, but only if it can be established that the work was exclusive to the members of the bargaining unit bringing the unfair labor practice charge. *City of Southfield*, 433 Mich 168, 185 (1989), aff’g 1985 MERC Lab Op 1025; *Mid-Michigan Comm College*, 29 MERC Lab Op 61 (2016) (no exceptions); *Kent County Sheriff*, 1996 MERC Lab Op 294. An employer has no duty to negotiate where job functions have historically been assigned interchangeably to both unit and non-unit employees because such work is not the “bargaining unit work” of the unit from which the work has been removed. This is true even where the transfer of work is for the purpose of reducing costs. To prevail on such a claim, the charging party must also show that the transfer had a significant impact on unit employees. The record must establish, for example, that unit employees were laid off, terminated, demoted, not recalled or lost a significant amount of overtime as a result of the transfer of work. The mere loss of unit positions or speculation regarding the loss of promotional opportunities within the unit does not constitute a significant adverse impact. *City of Detroit (Water & Sewerage Dep’t)*, 1990 MERC Lab Op 34.

In the instant case, Charging Party failed to introduce any evidence establishing that the Lead Communication Specialist is merely the same position as the ARC Supervisor, but with a different title, nor does the record support a finding that Respondent unlawfully transferred the duties and responsibilities of the ARC Supervisor position to Lead Communication Specialist. In fact, as of the date of the hearing in this matter, the WCAA had not yet designated any individual as Lead Communication Specialist or even created a job description for that position. The only information in the record pertaining to the duties and responsibilities of the Lead Communication Specialist is Racey’s testimony that the position will act as a “point person” and answer questions on any given shift. Even assuming arguendo that there has been, or will soon be, a transfer of work from Charging Party’s bargaining unit to employees in the POAM or any other bargaining unit, there is no evidence showing that such work was exclusive to AFSCME Local 1690. It is the Charging Party which carries the burden of proof as to exclusivity. *Kent County Sheriff*, *supra* at 302.

Furthermore, there is nothing in the record to even suggest that the creation of the Lead Communication Specialist has resulted in any significant impact on Charging Party's members. To the contrary, the evidence establishes that of the five individuals employed as ARC Supervisors in 2019, four transferred to other positions within the WCAA, and the fifth, Gayle Perkins, will continue working as an ARC Supervisor when she returns from medical leave. Quite simply, the allegations set forth by Charging Party in Case No. 20-C-0596-CE-2; Docket No. 20-006898-MERC pertaining to the Lead Communication Specialist position are, at best, speculative.

In Case No. 20-C-0596-CE-1; Docket No. 20-006089, Charging Party asserts that Respondent violated Sections 10(1)(a), (b) and (e) of PERA by engaging in direct dealing with Danielle Perkins regarding compensation, including the possibility of a salary increase if she were to transfer to the Lead Communication Specialist position. Once a union is designated or selected by a majority of public employees in an appropriate unit, that union is the exclusive representative of these employees for purposes of collective bargaining with respect to wages, hours or other conditions of employment. *Huron Sch Dist*, 1990 MERC Lab Op 628, 634. Under both PERA and the National Labor Relations Act (NLRA), 29 USC 151 et seq., an employer commits an unfair labor practice when it circumvents the designated representative and attempts to negotiate directly with employees by presenting new information or proposals to employees before or instead of to their bargaining agent. See e.g., *Jackson Co*, 18 MPER 22 (2005); *Pontiac Sch Bd of Ed*, 1994 MERC Lab Op 366, 374; *Medo Photo Supply Corp v NLRB*, 321 US 678 (1944). As the National Labor Relations Board (NLRB) stated in *General Electric Co*, 150 NLRB 192, 195, enf'd 418 F2d 736 (CA 2 1969), "The employer's statutory obligation is to deal with the employees through the union, and not with the union through the employees." The fact that employees approach the employer, and not vice-versa, has no effect on the employer's obligation to avoid direct-dealing. *Medo*, at 687; *Brownstown Twp*, 19 MPER 35 (2006) (no exceptions).

Not all communications between an employer and its employees are unlawful. For example, an employer may communicate factual information regarding the status of negotiations or its position at the bargaining table, provided that it does so in a non-coercive manner and without disparaging the bargaining agent. *MEA v North Dearborn Heights Sch Dist*, 169 Mich App 39, 45-46 (1988); *Jackson County*, *supra*. Furthermore, an allegation of "direct dealing" against an employer must involve a change in the terms and conditions of a mandatory subject of bargaining. *City of Grand Rapids*, 1994 MERC Lab Op 1159, 1162. In allegations of direct dealing, the inquiry focuses on whether the employer's conduct is "likely to erode the union's position as exclusive representative." *City of Detroit (Housing Commission)*, 2002 MERC Lab Op 368, 376 (no exceptions), citing *Modern Merchandising*, 284 NLRB 1377, 1379 (1987).

During the September 25, 2019, meeting, POAM representative Hamid discussed with Danielle Perkins the compensation she would receive if she were to transfer to the Lead Communication Specialist position. Since the Lead Communication Specialist is not within Charging Party's bargaining unit, AFSCME Local 1690 had no right to negotiate over the salary for that position and, therefore, no improper direct dealing could be found based solely upon that statement. Mere discussions between an employer and employee to ascertain an employee's interest in a position that is not subject to the promotional process of the parties' collective bargaining agreement does not constitute a direct dealing violation. *West*

*Bloomfield Twp*, 25 MPER 78 (2012); *City of Detroit (Water and Sewerage Dep't)*, 1983 MERC Lab Op 603.

In the instant case, however, the exchange at issue was not confined to a discussion about the compensation Perkins would receive if she were to transfer to a Lead Communication Specialist position. Rather, Perkins testified credibly that Hamid told her that if she were to remain an ARC Supervisor, she would not get a raise. Such a statement directly pertains to the terms and conditions of employment applicable to members of Charging Party's unit. The fact that the statement was made by Hamid does not, as Respondent asserts, relieve the WCAA of responsibility. Hamid was called into the meeting at Noble's invitation. Given that Noble failed to contradict, correct or disavow Hamid's comments, it would be reasonable for Perkins to assume that her statements were sanctioned by Noble. In any event, Noble was not merely a silent participant to the discussion. Perkins testified without contradiction that Noble made a disparaging comment about Charging Party. After Perkins indicated that she would rather transfer to another AFSCME-represented position than take the Lead Communications Specialist position, Noble told Perkins that Charging Party did not care about her and suggested that it would be difficult for her to transfer to another AFSCME position. In this manner, Respondent attempted to coerce Perkins into transferring to a position in another bargaining unit, thereby violating Sections 10(1)(a) and (e) of PERA.<sup>2</sup>

In so holding, I explicitly reject Respondent's contention that the charge in Case No. 20-C-0596-CE-1; Docket No. 20-006089 should be dismissed because it involves a good faith dispute over interpretation of the parties' collective bargaining agreement. The WCCA asserts that the direct dealing allegation raises issues relating to Article 3.01 of the contract which pertains to recognition of AFSCME Local 1690 as the exclusive bargaining representative of the ARC Supervisor and other supervisory positions. It is true that the Commission does not generally involve itself in disputes involving alleged contract breaches. *Macomb Co v AFSCME Council 25, Locals 411 and 893*, 494 Mich 65 (2013); *Genesee Twp*, 23 MPER 90 (2010) (no exceptions). In the instant case, however, Charging Party is not claiming that Respondent's conduct constituted a violation of the parties' collective bargaining agreement. Rather, the Union is asserting that the September 25, 2019, meeting between Perkins, Noble and Hamid violated the Act's prohibition on a public employer circumventing the Union as the recognized bargaining agent of its employees. This statutory claim is properly before the Commission despite the pendency of any grievance asserting related contract claims. See e.g. *City of Detroit*, 26 MPER 23 (2012) (no exceptions).

I have carefully considered the remaining arguments set forth by the parties in this matter and conclude that they do not warrant a change in the result. For the reasons set forth above, I conclude that the record fails to establish that Respondent unlawfully eliminated the ARC Supervisor position and transferred its duties and responsibilities to another bargaining

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<sup>2</sup> I find no merit to Charging Party's contention that the September 25, 2019, meeting also constituted a violation of Section 10(1)(b) of PERA. That section protects the independence of labor organizations by prohibiting public employers from dominating unions or, to a lesser degree, interfering with their administration. The evil that Section 10(1)(b) was intended to prevent was the "subversion of the Union's independence." *Lansing School District*, 21 MPER 21 (2008). Section 10(1)(b) of PERA has no applicability to the facts in this matter.

unit. Respondent did, however, violate Sections (10(1)(a) and (e) of the Act by circumventing Charging Party as exclusive bargaining representative and dealing directly with its members. Accordingly, I recommend that the Commission issue the following order.


**RECOMMENDED ORDER**

The unfair labor practice charge filed by AFSCME Council 25, Local 1690 against Wayne County Airport Authority in Case No. 20-C-0596-CE-2; Docket No. 20-006898-MERC is hereby dismissed in its entirety.

With respect to Case No. 20-C-0596-CE-1; Docket No. 20-006089, Wayne County Airport Authority, its officers and agents, are hereby ordered to:

1. Cease and desist from violating its duty to bargain in good faith with AFSCME Council 25, Local 1690 by circumventing the Union and bargaining directly with employees or engaging in other conduct with the intent of avoiding good faith agreement with the certified bargaining agent.
2. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees in AFSCME Council 25, Local 1690 are customarily posted, for a period of thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

  
\_\_\_\_\_  
David M. Peltz  
Administrative Law Judge  
Michigan Office of Administrative Hearings and Rules

Dated: October 27, 2020

## NOTICE TO ALL EMPLOYEES

WAYNE COUNTY AIRPORT AUTHORITY, a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the order of the MICHIGAN EMPLOYMENT RELATIONS COMMISSION, we hereby notify our employees that:

**WE WILL** cease and desist from violating our duty to bargain in good faith with AFSCME Council 25, Local 1690 by circumventing the Union and bargaining directly with employees or engaging in other conduct with the intent of avoiding good faith agreement with the certified bargaining agent.

**WE ACKNOWLEDGE THAT** 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 PERA.

WAYNE COUNTY AIRPORT AUTHORITY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This notice must be posted for a period of 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, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.