STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GRAND RAPIDS COMMUNITY COLLEGE,
Respondent-Public Employer,

Case Nos. **C96 A-21**
-and- & **C96 F-143**

GRAND RAPIDS COMMUNITY COLLEGE FACULTY ASSOCIATION,
Charging Party-Labor Organization.
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APPEARANCES:

Miller, Canfield, Paddock and Stone, by Thomas P. Hustoles, Esq., for the Respondent

Pinsky, Smith, Fayette & Hulswit, by Edward M. Smith, Esq., and Katherine M. Smith, Esq., for the Charging Party

DECISION AND ORDER

On April 28, 1998, Administrative Law Judge James P. Kurtz issued his Decision and Recommended Order in the above matter finding that Respondent Grand Rapids Community College did not violate its bargaining obligation under Section 10(1)(e) of the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.210(1)(e); MSA 17.455(10)(1)(e), by unilaterally curtailing the amount of overload hours that each faculty member could be assigned. The Administrative Law Judge concluded that overload work was in the nature of overtime and, as such, constituted a permissive subject of bargaining.

On May 29, 1998, Charging Party filed timely exceptions to the Decision and Recommended Order of the ALJ. Respondent filed a brief in support of the recommended order and in opposition to Charging Party's exceptions on July 27, 1998.

Discussion and Conclusions of Law:

The basis facts in this case are not in dispute. The unfair labor practice charges involve the assignment of overload teaching hours to members of a bargaining unit represented by Charging Party Grand Rapids Community College Faculty Association. Overload refers to those hours voluntarily assumed by a faculty member during a given semester in addition to his or her normal teaching load. For many years, regular faculty members were allowed to assume unlimited overload hours with some

members assuming in excess of thirty hours in a single semester. During negotiations on a contract reopener and extension in late 1992 or early 1993, the Employer proposed various limitations on overload, but no restrictions were ever implemented.

In December of 1994, the Employer announced that overload hours would be limited to a maximum of 30 hours per faculty member beginning with the Spring 1995 semester. The Union filed a series of grievances protesting the limitation and ultimately prevailed in arbitration with regard to restrictions which took effect prior to the August 27, 1995, expiration of the labor agreement. With regard to limitations placed on overload hours after the contract had expired, however, the arbitrator concluded that the grievances were not arbitrable. The limitations imposed by the Employer for the Fall 1995 and Spring 1996 semesters are the subject of the instant charges.

The central question in this case is whether overload hours are, as the Administrative Law Judge concluded, in the nature of overtime work and, therefore, a permissive subject of bargaining. Charging Party argues that the overload teaching hours do not constitute overtime but instead are part of the core work of the members of the bargaining unit. According to the Union, overload classes are identical to those included in the normal class load of the faculty and involve the same students as the normal load classes. Moreover, the Union contends that overload classes are not an adult education or summer program supplemental to their regular work and that faculty members are not paid at the standard overtime rate of time and one-half. While conceding that the total aggregate number of overload hours to be offered each semester is an economic decision to be made by the Employer, the Union argues that issues relating to the distribution should be made by the bargaining unit.

After carefully considering the exceptions and other pleadings filed by the parties, we conclude that overload hours are in the nature of overtime for purposes of PERA. Overload hours represent voluntary work in excess of the normal or regularly assigned workload. Faculty members to whom overload hours are assigned are paid separately from and in addition to their base salary. The record indicates that unit members themselves have likened overload hours to overtime. In a "Self-Study" issued in 1984, the faculty used the terms overtime and overload interchangeably. Moreover, Union witness Edward Wells conceded at the hearing that overload was in the nature of overtime. Accordingly, we agree with the Administrative Law Judge's characterization of overload hours as overtime and affirm his determination that the Employer had no duty to bargain with the Union regarding the curtailment of such hours after expiration of the contract.

It is well-established that overtime constitutes a permissive, rather than a mandatory, subject of bargaining under PERA. See *Branch Intermediate School District*, 1994 MERC Lab Op 163; *St. Clair County Road Commission*, 1992 MERC Lab Op 316; *Battle Creek Fire Dep't*, 1989 MERC Lab Op 726; *City of Roseville*, 1986 MERC Lab Op 182; *Leelanau County*, 1970 MERC Lab Op 1054, 1061-1062. Although all of the cited decisions were issued without exception, the Michigan Court of Appeals recently expressed agreement with the basic principle expressed therein as to the bargaining status of overtime work. See *Organization of School Administrators and Supervisors v Detroit Board of Education*, 229 Mich App 54, 69 n 5 (1998), lv pending. Whether the issue is cast

in terms of a limitation on the total number of hours of overtime available to the bargaining unit in the aggregate or as a restriction on the number of overload hours each individual faculty member may work, we believe the decision falls within the "core of entrepreneurial control," and is not a mandatory subject of bargaining. *Flint-Hurley Hospital*, 1973 MERC Lab Op 74, 76-78*; Westwood Community Schools*, 1972 MERC Lab Op 313, 321.

In support of its contention that overtime is a mandatory subject of bargaining, the Union relies on various decisions arising under the National Labor Relations Act (NLRA), 29 USC 150 *et seq*. We believe that these decisions are factually distinguishable. Moreover, while federal precedent is to be given great weight in interpreting PERA, this Commission is not bound to follow its every turn and twist, *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 537; *Marquette County Health Dep't*, 1993 MERC Lab Op 901, 906, and we see no reason to abandon our longstanding policy with regard to this issue. Charging Party's reliance on *Central Michigan University Faculty Ass'n. v. Central Michigan Univ*, 404 Mich 268 (1978), is also misplaced. In that case, our Supreme Court set forth several examples of mandatory bargaining subjects under PERA, including overtime pay. *Id*. at 278, quoting *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 55 (1974). Based on that language, the Union argues that the Employer had a duty to bargain prior to implementing the limitation on overload hours in the instant case. There is fundamental difference, however, between reducing the rate of pay for overtime work and limiting the number of overload hours available to unit members. While both decisions may have an impact on "wages, hours and other terms and conditions of employment," it is only the latter which we consider part and parcel of the Employer's right to regulate and control its operations. In any event, *Central Michigan Faculty Ass'n* did not concern the bargaining status of overtime work. Rather, the issue which was addressed in that case involved the school's criteria for reappointment, retention and promotion of faculty. The reference to overtime pay was nothing more then illustrative dicta.

Next, Charging Party argues that the Administrative Law Judge erred in failing to recognize the significance of the fact that Employer unilaterally changed a term and condition of employment while the parties were actively engaged in fact finding and mediation. Relying on *Village of Constantine*, 1991 MERC Lab Op 467 and *County of Wayne*, 1984 MERC Lab Op 1142, aff'd 152 Mich App 87 (1986), the Union contends that such action may not be taken by the Employer until after mediation and fact finding procedures have been completed and for a reasonable period of time thereafter, even if bona fide impasse has been reached. We disagree. When a permissive subject of bargaining is involved, neither party can insist on bargaining to impasse. *Local 1277, AFSCME v Center Line*, 414 Mich 642, 652 (1982); *Detroit Police Officers Association*, *supra*. Upon expiration of the collective bargaining agreement, the Employer is free to unilaterally change permissive terms and conditions of employment, although the effects of the change may be bargainable. Since the number of overload hours was a permissive, rather than a mandatory, subject of bargaining, the Union's arguments concerning mediation and fact finding are without merit.

Finally, we agree with the Administrative Law Judge's determination that the principle established in *Plymouth-Canton Comm Schools*, 1984 MERC Lab Op 894, 898 (the Commission will resolve a dispute over contract language where no final and binding contractual means exist for the

ultimate resolution of the dispute), does not apply in this case since the contract had expired and the disputed issue was a permissive subject of bargaining.

Accordingly, we conclude that Respondent did not violate its duty to bargain under PERA. In view of this finding, it is not necessary to address the remainder of Charging Party's exceptions or comment on the other defenses raised by the Employer.

ORDER

Pursuant to Section 16 of PERA, we hereby adopt the recommended order of the Administrative Law Judge. The unfair labor practice charges filed in this matter are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated: _____