STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

FLINT BOARD OF EDUCATION,
Respondent-Public Employer,

Case No. C96 G-162

-and-

CONGRESS OF FLINT SCHOOL ADMINISTRATORS,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Bellairs, Dean, Cosley, Siler & Moulton, L.L.P, by C. Rees Dean, Esq., for the Public Employer

Gregory, Moore, Jeakle, Heinen, Ellison, Brooks & Lane, P.C., by Scott A. Brooks, Esq., for the Charging Party

DECISION AND ORDER

On August 27, 1998, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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

Date: _____

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C. Rees Dean, Esq., Bellairs, Dean, Cosley, Siler & Moulton, LLP, for the Public Employer

Scott A. Brooks, Esq., Gregory, Moore, Jeakle, Heinen, Ellison, Brooks, & Lane, PC

DECISION AND RECOMMENDED ORDER
ON
MOTION FOR SUMMARY DISPOSITION

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216, MSA 17.455(16), this matter was assigned to Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The unfair labor practice charge was filed on July 15, 1996, by the Congress of Flint School Administrators, alleging that the Flint Board of Education had violated Section 10 of PERA. Because a related grievance had advanced to arbitration, the parties agreed to adjourn this matter pending the arbitration hearing. On June 1, 1998, after the arbitration award was issued, Respondent Employer filed a Motion for Summary Disposition, arguing that the issues before the Commission had been considered and disposed of by the arbitration award. Charging Party filed a response to this Motion on August 6, 1998, asserting that the arbitration award did not dispose of the charge brought in the instant case. Based upon the charge, motion, and briefs of the parties, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

The charge alleges that:

The employer, the Board of Education of the City of Flint, Michigan,

> did, commencing on or about March 20, 1996, fail and refuse to bargain in good faith with representatives of charging party, the Congress of Flint School Administrators, with respect to wages, hours of work and other terms and conditions of employment, specifically, the number of work weeks in a school year for certain administrative personnel, who are members of charging party's bargaining unit. The employer did unilaterally reduce the number of work weeks in the school year, with a commensurate reduction in wages, for the school year to commence in the fall of 1996.

The Employer in its answer maintained that the District's decision to reduce the number of weeks worked by administrators was pursuant to a plan of reorganization and within the scope of management's prerogative. To the extent that there was a bargaining obligation, the Employer argues that it had been fulfilled in the most recent collective bargaining agreement of the parties, expiring June 30, 1998.

Background:

In support of its motion, Respondent attached the arbitrator's award and set forth the following facts, which are not disputed by Charging Party. Near the end of the 1995-96 school year, the Employer notified the District's administrators that due to budgetary problems their individual contracts would not be renewed and their services would be discontinued on June 30, 1996. On May 5, 1996, the Board of Education gave notice of its resolution to recall most of the administrators and attached a list of those recalled with the number of weeks of annual employment next to their names. For all administrators who had previously worked 44 weeks or less, there was no change in schedule. Administrators who had previously worked more than 44 weeks had their annual employment reduced by one week; this affected approximately 40 administrators out of the 140 employees in the bargaining unit.

On May 15, 1996, Charging Party filed the following grievance on behalf of its members:

> Failure of Employer to bargain over hours, wages, terms and conditions of employment, before unilaterally altering a setting Master Agreement.

The Union cited several articles of the contract, including Article II, Rights of Bargaining Unit Members; III, Board Rights; XI, Assignments, including Layoffs; and XII, Reorganization. On June 14, 1996, the Union demanded arbitration of this grievance. The Union filed the unfair labor practice set forth above alleging a refusal to bargain on July 15, 1996. The parties agreed to adjourn the

hearing on the unfair labor practice charge to a date subsequent to the arbitration.

The arbitrator issued his award on February 27, 1998, denying the grievance. In making his determination, the arbitrator construed several articles of the contract. He found that under Article XI, Section 3(B)(5), the Employer has the right to change the scope of bargaining unit jobs, and as used in this context "scope" could refer to the duration or time range of a job as well as the extent of its duties and responsibilities. He also found that under Section C of this article, Layoffs, a position could be either reduced or eliminated, and that a reduction of weeks of pay was the exercise of a contractual right where the superintendent has unfettered discretion. In addition, the arbitrator construed Article XII, Reorganization, giving the employer the right to change the scope, duties, and responsibilities of certain positions, and determined that a reduction in weeks is a modification in the scope of a position. The arbitrator concluded as follows:

> The employer did not bargain because in Article XIII, Section C (the zipper clause), they are not required to renegotiate matters already covered in the agreement. Nor were they required to reopen the bargaining to fix the number of weeks for each job as that is a matter which has in the past always been left to the administrator's individual contracts.
>
> In summary, this arbitrator must note that this is a bargaining unit which represents many high ranking district administrators. In the private sector or in many other states, such a management group would not have collective bargaining rights. When such a group of executives are under a labor agreement, the individuals still rely heavily on their individual contracts and the employer strongly preserves its right of flexibility in dealing with its administrative leaders. Thus, the governing labor agreement in this case give the Board wide powers to modify jobs and to reassign its administrators. Therefore, there was no contract violation when several administrators' positions were reduced by one week.

Discussion and Conclusions:

Respondent-Employer argues in its motion that all matters brought before the Commission by way of the unfair labor practice charge have already been considered and disposed of by the arbitrator's award, which holds that the Employer had the contractual right to act as it did. Charging Party asserts that the arbitration award did not dispose of and decide all matters brought before the Commission and, in fact, the arbitrator explicitly left it to the Commission to decide the unfair labor practice charge. According to Charging Party, there are still outstanding issues for the Commission to decide, i.e., whether PERA was violated by Respondent's refusal to bargain.

The arbitrator in his award did make the statement that he was restricting his review to the question of whether the Employer's actions violated the collective bargaining agreement and would leave it to the Commission to decide whether an unfair labor practice was committed because of a refusal to bargain. However, in this dispute, which arose during the term of the contract, the statutory and contractual issues overlap.

In *Houghton Lake Community Schools*, 1997 MERC Lab Op 42, the Commission reiterated its rule that when a matter is "covered by" a collective bargaining agreement, the union has already exercised its bargaining rights and any dispute arising as to the terms of the agreement should be left to the grievance-arbitration procedures under the contract. *Port Huron Ed. Ass'n v Port Huron School Dist.*, 452 Mich 309, 319-322 (1996); *St. Clair County Road Comm'n*, 1992 MERC Lab Op 533; *St. Clair Intermediate School Dist. v. Intermediate Education Ass'n/Michigan Education Ass'n and Michigan Educational Special Services Ass'n* __Mich __ , (1998). Charging Party in its grievance cited several articles of the contract alleged to have been violated by the Employer when it acted to reduce the number of weeks worked by certain administrators. The Employer maintained that under the contract it had retained discretion to fix the administrators' schedules. Thus both sides in effect acknowledged that the matter was covered by the collective bargaining agreement. The arbitrator construed these articles, and the agreement as a whole, to find that under the contract, the number of weeks scheduled for administrators was a discretionary matter for the superintendent and the Board to determine. Under these circumstances, the contract controls and no PERA issue is presented. *St. Clair Co. Road Comm'n*, supra at 538.

Based on the above discussion, I find that Respondent had no duty to bargain with Charging Party over the schedule change because this matter was covered by the existing contract and therefore had already been negotiated. It is therefore recommended that Respondent's Motion for Summary Disposition be granted and that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch
Administrative Law Judge

Dated: _____