STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CENTRAL MICHIGAN UNIVERSITY,
Respondent-Public Employer,

Case No. C96 I-211

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 AND LOCAL 1568,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Vercruysse, Metz & Murray, by Robert M. Vercruysse, Esq., for the Respondent

Donald Gardner, Staff Specialist, for the Charging Party

DECISION AND ORDER

On July 27, 1998, Administrative Law Judge Roy L. Roulhac issued his 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

_____

Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

_____

C. Barry Ott, Commission Member

Date: _____

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-and- **Case No. C96 I-211**

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 AND LOCAL 1568
Charging Party
_____/

APPEARANCES:

For Respondent: Vercruysse, Metz & Murray,
By Robert M. Vercruysse, Esq.
and Susan Alfred Schechter, Esq.
on the brief

For Charging Party: Donald Gardner, Staff Specialist

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 et seq, MSA 17.455 et seq, this case was heard in Lansing, Michigan on February 18, 1998, by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon an unfair labor practice charge filed by Charging Party on September 18, 1996, which alleged a violation of Section 10 of PERA. Based upon the record, including post-hearing briefs filed on or before May 8, 1998, I make the following findings of fact, conclusions of law, and issue the following recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charge

The Charging Party filed its charge with the Commission on September 18, 1996. It reads:

On March 27, 1996 and later on August 15, 1996, CMU unilaterally and without

bargaining announced that, contrary to well-established practice, the union's team would not be paid for negotiations. CMU has failed and/or refused to bargain in good faith.

Findings of Fact:

The facts are essentially undisputed. For many years Charging Party has represented a bargaining unit of dietary, custodial and various skilled trades employees at Central Michigan University. The latest collective bargaining agreement between the parties covered the period November 1, 1993 to October 31, 1996.

On March 27, 1996, James Woods, Respondent's former employee relations manager, sent a letter to Charging Party's president, Linda Philo, notifying her that, Respondent would not pay Charging Party's negotiators for time spent bargaining a successor contract.[1] The letter reads:

> This is to provide adequate notice to the union that the University will no longer pay union bargaining teams to bargain contracts with the University. There is no contractual requirement obligating the University to pay the Union's bargaining team. This will be implemented with the next full contract bargaining session. The University would consider collective bargaining a legitimate business reason, if your unit has paid release time available for Union business.

Charging Party did not respond to the letter. On August 15, 1996, Woods sent another letter to Philo offering dates to begin bargaining and reiterating that Respondent would not pay the Union's team for negotiating the contract. A copy of the March 27, 1996 letter was included with Respondent's August 15, letter.

In an August 28, 1996, response, Charging Party's staff director Diane Rigotti, wrote:

> In light of your position with regard to non-payment of bargaining committee members who participate in negotiations, please be advised that it is the position of this Union that our Bargaining committee members should suffer no loss of pay for participating in the collective bargaining process.
>
> To that end we are proposing that all bargaining sessions begin at 7:00 p.m...

[1]During negotiations for three prior contracts, the Union's negotiating teams were pay for time spent bargaining.

In a follow-up letter of September 4, 1996, Rigotti wrote that unless Respondent was willing to change its position regarding paying bargaining team members for time spent bargaining, Charging Party stated that it would be willing to hold bargaining sessions either before or after work. Rigotti noted that Charging Party believed, in light of *United Auto Workers LOCAL 6999* v *Central Michigan University* and *City of Detroit Police Officers* v *City of Detroit,* that Respondent was "committing an Unfair Labor Practice by your insistence that a long-standing, mutually acceptable past practice be unilaterally changed without negotiations."

In a September 4 letter, Woods reminded Rigotti that despite being notified on March 27, that Respondent would no longer pay the Union's bargaining team for time spent bargaining, Charging Party neither "objected to the change in past practice, filed a grievance on the change, or requested to bargain over the change." The unfair labor practice charge followed on September 18, 1996.

Conclusions of Law:

Charging Party's principal argument is that Respondent "committed an unfair labor practice by ceasing a contractual benefit provided from past practice without prior negotiating this mandatory subject of bargaining." I find no merit to Charging Party's argument. Contractually provided union release time which compensates union representatives for time spent pursuing union activities is a mandatory bargaining subject. *Central Michigan University,* 1994 MERC Lab Op 527, 530, *aff'd* 217 Mich App 527 (6/7/96), lv to appeal denied, 453 Mich 883 (9/17/96). The courts and the Commission have repeatedly held that an employer is not obligated to bargain over a mandatory topic until or unless it receives a timely demand from the union to do so. See *Charter Township of Meridian,* 1990 MERC Lab Op 153, *aff'd,* Court of Appeals, Dkt. No. 130093 (Unpub. 6/30/92);*United Teachers of Flint* v *Flint School District,* 158 Mich App 138 (1986); *SEIU LOCAL 1586* v *Village of Union City,* 135 Mich App 533 (1984); *City of Rochester,* 1996 MERC Lab Op 332, 336-337.

In this case Charging Party waived its right to bargain by failing to make a bargaining demand. Respondent advised Charging Party of its intention to discontinue the practice of paying union negotiators for time spent bargaining in March and August, 1996. Rather than making a bargaining demand, Charging Party simply suggested after-hours bargaining so negotiators would not suffer a pay loss and opined that Respondent was committing an unfair labor practice by unilaterally changing a mutually acceptable past practice without bargaining. A mere statement that an issue is negotiable, or even a protest of an employer's action, does not constitute a demand to bargain. See *Genesee County Board of Commissioners,* 1994 MERC Lab Op 122; *Michigan State Univ.,* 1993 MERC Lab Op 52; *City of Grand Rapids,* 1994 MERC Lab Op 1159, 1162.

There is no evidence on the record to support a finding that Respondent violated its obligation to bargain in good faith in violation of Section 10(1)(e) of PERA. I therefore recommend that the Commission issue the order set forth below.

Recommended Order

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____