STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C98 F-135

-and-

UNITED AUTOMOBILE AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) LOCAL 2334, SANITARY CHEMISTS AND TECHNICIANS ASSOCIATION,
Charging Party-Labor Organization.
_____/

APPEARANCES:

City of Detroit Law Department, by David Masson, Esq., for the Respondent

Scheff & Washington, P.C., by George B. Washington, Esq., for the Charging Party

DECISION AND ORDER

On May 28, 1999, 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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OF AMERICA, (UAW) LOCAL 2334,
SANITARY CHEMISTS AND TECHNICIANS
ASSOCIATION,
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APPEARANCES:

David Masson, Esq., City of Detroit Law Department, for the Public Employer

George B. Washington, Esq., Scheff & Washington, P.C., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Detroit, Michigan on October 29, 1998, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on June 19, 1998, by the UAW, Local 2334, alleging that the City of Detroit had violated Section 10 of PERA. Based upon the record and briefs filed on or before December 28, 1998, 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 the following:

On or about June 19, 1998, the City of Detroit, by its agents, has

refused to bargain with the union because the union included on its bargaining team a member of another City union.

Facts:

UAW Local 2334, Sanitary Chemists and Technicians Association (SCATA), represents a bargaining unit of approximately 120 nonsupervisory employees in classifications which include analytical chemists, microbiologists, water system chemists, and others. Supervisory personnel in these classifications are represented by the Detroit Water Systems Chemists Association, also known as the Senior Chemists Association.

The general practice in the City of Detroit is to set a pattern in negotiations with its largest labor organization, the American Federation of State, County and Municipal Workers (AFSCME), with certain groups receiving special adjustments. There have also been occasions when joint bargaining took place. For example, in 1983 concessionary negotiations, after the City reached agreement with AFSCME, the City agreed to bargain with a coalition of unions which included SCATA, the Senior Chemists, the Senior Auditors, Appraisers and Accountants (SAAA), the Detroit Public Library Employees, and other professional unions.

In negotiations with the City for a 1995-1998 contract, SCATA representatives were told in response to a wage proposal that the City was waiting for fact finding with the Senior Chemists to conclude and that they would not really talk wages until that process was concluded. By the end of November 1996, the City had reached a tentative agreement with the Senior Chemists. In December 1996, City representative Derrick Burgess told the SCATA president that if they were willing to settle for what the Senior Chemists had, they could reach agreement. The Senior Chemists had received a total increase of 8% for three years, which was the general wage increase given to all unions. In addition, the Senior Chemists received a special adjustment of 4% for water system chemists and 7% for analytical chemists. SCATA members subsequently received the same increases.

Prior to the start of negotiations in 1998, SCATA representatives met with the Senior Chemists Association leadership and decided that since they had been "played off against each other" in the past, it would be stronger to coordinate their bargaining. They agreed that the president of each of their unions would attend the bargaining of the other group to coordinate bargaining on the wage issues. They would not have a vote or a voice at the bargaining table but would attend as observers, as had been the practice with other individuals, such as experts on various subjects. UAW bylaws required that the bargaining committee of ten be comprised of four top officers and six elected members.

SCATA President David Sole was invited to attend negotiations between the City and the Senior Chemists Association by the President of the Detroit Water Systems Chemists Association, Ray Kuznia, in May of 1998. Sole took a place in the back of the room, but when City negotiators came in they refused to proceed with Sole present. In order not to disrupt the process, Sole agreed

to leave. Shortly thereafter, Kuznia attempted to attend the SCATA negotiations. Again City representatives said that they would not proceed with bargaining if Kunzia remained in the room.

On June 15, 1998, Sole wrote to Labor Relations, informing them who would be serving as spokespersons for their group in bargaining. He also indicated that the Union's attorney had informed them that they had a legal right to bring a representative of the Senior Chemists to bargaining sessions. He concluded as follows:

> We would also remind the City of the precedent set in bargaining in the early 1980's when the City met with a group of unions representing professionals, including representative of both SCATA and the Senior Chemists. Therefore we are informing you of our intention to bring Mr. Ray Kuznia into bargaining with the City on June 17th.

On June 16, 1998, attorney for SCATA George B. Washington wrote to Labor Relations, citing legal precedent and advising them that it would be an unfair labor practice to refuse to bargain with either Union because either chose to have a representative of the other Union present at the table. Counsel for the City, David J. Masson, responded to Washington's letter informing him that under Commission precedent, supervisory and nonsupervisory employees must maintain completely separate bargaining representatives and it would therefore be appropriate for the City to refuse to bargain with a joint bargaining committee. SCATA subsequently filed this unfair labor practice charge.

Discussion and Conclusions:

Charging Party asserts that the Employer has breached sections 10(1)(a) and (e) of PERA by refusing to bargain with the Union because the Union brought a representative of the Senior Chemists Association to the bargaining table. Charging Party maintains that Local 2334 has the right to pick its own observers and bargaining committee, unless the Employer demonstrates bad faith, or a clear and present danger to the bargaining. The Employer takes the position that the Commission has always required that supervisory and nonsupervisory units maintain a complete separation in bargaining and that the coordinated bargaining sought by Charging Party in this instance would constitute an unfair labor practice.

In *General Electric v NLRB*, 412 F2d 512, 71 LRRM 2418 (CA 2, 1969), aff'g 173 NLRB 253, 69 LRRM 1305 (1968), the Court of Appeals affirmed the NLRB's finding that only substantial evidence of ulterior motive or bad faith would justify qualification of a union's right to select the persons who will represent it at the negotiating table. In that case the NLRB considered the issue of whether the mere presence of "outsiders" at the bargaining table was so inherently disruptive of the bargaining process as to justify a refusal to bargain.The employer had refused to meet with the International Union of Electrical, Radio and Machine Workers (IUE) because its

bargaining committee included representatives of other unions, even though it was informed that the seven new members of the IUE committee were non-voting members who were present solely to aid the IUE negotiations and not to represent their own unions. The NLRB found that the law guarantees that employees shall have the right to bargain collectively through representatives of their own choosing, and concluded that the employer had committed an unfair labor practice. The Court of Appeals affirmed the NLRB, stating:

> There have been exceptions to the general rule that either side can choose its bargaining representative freely, but they have been rare and confined to situations so infected with ill-will, usually personal, or conflict of interest as to make good faith bargaining impractical.

In *St. Clair Community College*, 1984 MERC Lab Op 879, an Administrative Law Judge of the Commission applied *General Electric*, *supra*, in a situation where the employer refused to bargain when the union included a security guard on its bargaining team while an accretion election involving security guards was pending. The ALJ reiterated that the law gives a clear right to both an employer and a labor organization to choose their representatives in collective bargaining and that a party objecting to a representative chosen by the other party must demonstrate exceptional circumstances, such as bad faith or ulterior motive, to sustain any objection. As these cases illustrate, the right to choose a bargaining representative is not totally unrestricted, although exceptions to the rule are rare. The issue presented in the instant case is whether the Union has the right to choose a supervisory employee to sit on its team as an observer, or does the presence of a supervisor on a nonsupervisory bargaining team create such a conflict of interest as to make good faith bargaining impossible.

While recognizing that supervisory employees have rights under PERA, the Commission has historically maintained a policy of separation between supervisory and nonsupervisory bargaining units. In *Livonia Public Schools*, 1967 MERC Lab Op 780, the Commission indicated that although supervisors could maintain membership in an employees' union, they could not be active in activities which pertain to the union's status as collective bargaining representative. Subsequently, in *Hillsdale Community Schools*, 1968 MERC Lab Op 859, aff'd 24 Mich App 36 (l970), the Commission found supervisors to be included within the definition of public employee, and therefore within the coverage of PERA, but cautioned that under Section 9(e) they could not be included in the same unit with supervisory employees. In *St. Clair County Road Comm*, 1982 MERC Lab Op 685, an ALJ of the Commission interpreted these cases as requiring a complete separation in collective bargaining:

> The undersigned finds, based upon the Commission's findings in the *Hillsdale* and *Livonia* cases cited above, that the Commission contemplated more of a separateness in collective bargaining between

> supervisory and rank and file employees than merely a separate grouping for contract purposes, but expected the parent organization to provide separate internal governance of supervisory and rank and file bargaining units and complete separation in collective bargaining.

The policy of complete separation between supervisors and nonsupervisors in collective bargaining has been consistently enforced by the Commission. See, for example, *Northern Michigan Univ*, 1982 MERC Lab Op 196; *Michigan State Univ*, 1984 MERC Lab Op 592; *Clio-Vienna Police Dept*,1994 MERC Lab Op 39. In the opinion of the undersigned, Charging Party's attempt to include a supervisor on its team, even as a silent observer, flies in the face of this firmly established and statutorily based policy and would create the type of conflict of interest anticipated by the Court in the *General Electric* case. I therefore find no violation of PERA by the Employer when it refused to bargain with a nonsupervisory bargaining team which included a supervisory employee.[1] It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

DATED: _____

[1]Joint bargaining by agreement, which occurred between the City and its unions in the past, must be distinguished from a situation where one side attempts to impose joint bargaining on the other. If the aim of the unions here is coalition bargaining, in which the unions agree that an agreement with one is dependent on agreement with the other, this has been found to violate PERA. See *Hart Educational Support Personnel Ass'n*, 1994 MERC Lab Op 734.