STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF SPRINGFIELD,
Respondent-Public Employer,

Case No. C98 D-109

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 25,
LOCAL 331,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Michael R. Kluck & Associates, by Michael R. Kluck, Esq., and Thomas H. Dederian, Esq., for Respondent

Miller Cohen, P.L.C., by Gail M. Wilson, Esq., for Charging Party

DECISION AND ORDER

On April 19, 1999, Administrative Law Judge (hereinafter "ALJ") Julia C. Stern issued her Decision and Recommended Order in the above case, finding that Respondent City of Springfield violated Section 10 of the Public Employment Relations Act (hereinafter "PERA"), 1965 PA 379, as amended, MCL 423.210; MSA 17.455(10), by failing to bargain in good faith with Charging Party American Federation of State, County and Municipal Employees, Council 25, Local 331 (hereinafter "AFSCME"), in negotiations for a new contract. The ALJ recommended that the Employer be ordered to cease and desist from the conduct found to be violative of the Act, to bargain in good faith with the Union with regard to wages, hours and other working conditions, and to withdraw its last bargaining proposal. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA, MCL 423.216; MSA 17.455(16). On May 11, 1999, the Employer filed timely exceptions to the Decision and Recommended Order of the ALJ.

The facts in this case are not materially in dispute. AFSCME represents a bargaining unit consisting of all full-time and regular part-time nonsupervisory employees of the City's department of public works. In March of 1997, the parties began negotiations for a new collective bargaining agreement to replace the existing contract which was due to expire on April 4, 1997. The Employer was represented at the bargaining table by its city manager, Jim Graham. The Union's negotiating team was lead by Council 25 staff representative Cheryl McCreary and chapter chairperson James Staib, Jr. Negotiations on a successor contract continued for approximately one year. The parties

reached three tentative agreements during that period, each of which was ultimately rejected by the city council.

The first tentative agreement was rejected by the city council during an informal session held in July of 1997. Thereafter, Graham presented McCreary with a list of seven items which allegedly comprised the basis for the city council's rejection of the agreement. The parties bargained over those issues and ultimately reached a second tentative agreement in September of 1997. AFSCME agreed to adopt the City's position on three issues, and the parties agreed to compromise language on a fourth. With regard to the remaining issues, the city manager agreed to retain the language from the prior tentative agreement. After presenting this agreement to the city council, Graham informed AFSCME that the contract was still unacceptable to the Employer.

When the parties returned to the bargaining table on October 20, 1997, city council member Sue Anderson was present. According to McCreary, Anderson introduced herself at the meeting as a representative of the city council. The only issues discussed at the meeting were the three items from the first tentative agreement which the city manager had agreed to carry over into the second agreement. At the conclusion of the meeting, both the Union and the Employer believed that they had reached an agreement. The parties agreed to continue the present pension plan, with the City paying the full cost. AFSCME agreed to the wage increase schedule proposed by the City. With regard to the third issue, the sick and accident plan, the parties reached a compromise.

Following the October meeting, Graham presented the tentative agreement in written form to the city council and recommended its approval. The council voted unanimously to reject the agreement on December 15, 1997. Thereafter, McCreary went to Graham's office to find out why the agreement was unacceptable. Graham told her only that the city council had decided to hire a new chief negotiator. Later, McCreary learned informally that the city council would not agree to the pension provision and the sick and accident plan negotiated by Graham. When the parties returned to the bargaining table on March 20, 1998, the Employer made a proposal which ignored virtually all of the bargaining which had occurred during the preceding year. In response, AFSCME filed the instant charge and has refused to bargain further with the City.

Discussion and Conclusions of Law:

The thrust of Respondent's argument on exception is that the ALJ failed to cite any facts in support of her determination that Respondent's conduct was "not consistent with a sincere desire to reach a good faith agreement." The Employer contends that it was improper for the ALJ to find a PERA violation without identifying any specific act on the part of the City which was unlawful. We disagree. In refusal to bargain cases, the important issue is whether the employer approached the bargaining process "with an open mind and a sincere desire to reach an agreement." *Detroit Police Officers Assn v Detroit*, 391 Mich 44, 54, 85 LRRM 2536, 2538 (1974). Such a claim must be considered in the context of the Employer's total conduct. E.g. *Alba Public Schools*, 1989 MERC Lab Op 823, 827; *Kalamazoo Public Schools*, 1977 MERC Lab Op 771, 766. See also *Virginia Elec & Power Co*, 314 US 469; 9 LRRM 405 (1941). Even if specific actions, standing alone, might be insufficient to support a finding of a refusal to bargain, a party's overall course of conduct in

negotiations may justify a determination that a party engaged in bad-faith bargaining. E.g., *NLRB v General Electric Co*, 418 F2d 736, 756; 72 LRRM 2350 (CA2, 1969); *Rhodes-Holland Chevrolet Co*, 146 NLRB 1304, 1304-1305; 56 LRRM 1058 (1964). See also Patrick Hardin, *The Developing Labor Law*, 609 (3rd Ed 1992). After a careful examination of the record, including the transcript and exhibits submitted by the parties, we agree with the ALJ that the Employer's actions in this case, when viewed cumulatively, support an inference of bad faith.

It is well-established that a public employer is not required to clothe its bargaining agent with the authority to enter into a binding agreement. *Farwell Public Schools*, 1985 MERC Lab Op 948, 949. See also *River Rouge Bd of Education*, 1968 MERC Lab Op 724; *North Dearborn Heights School Dist*, 1967 MERC Lab Op 673. However, the employer must "treat the negotiation sessions as something more than an exchange of ideas." *NLRB v Alterman Transport Lines, Inc*, 587 F2d 212, 221; 100 LRRM 2269 (CA 5, 1979), quoting *Great Southern Trucking Co v NLRB*, 127 F2d 180, 185; 10 LRRM 571 (CA 4, 1942). An employer may not sit idly by while its representatives negotiate with the union for an extended period of time and then, under the guise of exercising a reserved right of approval, reject, in large part, the results of those negotiations. *Alterman*, 587 F2d at 228. We find that the evidence in the instant case clearly demonstrates Respondent's failure to bargain in good faith. The city council rejected three successive tentative agreements negotiated by its bargaining agent. Following rejection of each of the first two agreements, Graham indicated to the Union the specific provisions with which the council disagreed. In our view, this clearly implied that Graham was speaking on behalf of the governing body, and it created a reasonable expectation that further concessions with respect those items would effectuate a settlement. Although the Union proceeded to make such concessions, the subsequent agreements negotiated between Graham and the McCreary were nonetheless rejected. Significantly, Anderson herself voted against the contract negotiated in her presence.[1] The obvious inference which arises from these facts is that the governing body either failed to keep adequately informed as to the status of the negotiations, or that it used its reserved right of ratification as a device to frustrate the bargaining process and avoid reaching an agreement.

Respondent's conduct following rejection of the third agreement also raises serious questions as to its motivation. After approximately one year of bargaining on a successor contract, the Employer made a proposal which not only eliminated major elements of the prior tentative agreements, but also substantially altered the language of the expired contract. Significantly, the City's offer contained no compensatory provisions to offset its regressive qualities. While the making of a proposal in contract negotiations which offers less than that party's previous proposal is not per se bad faith, successively less generous offers, when made without reasonable justification and without any significant compensatory proposals, may indicate an intention not to reach an agreement.

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[1]The bargaining process envisions an obligation on the part of the negotiators to affirmatively support the tentative agreement and failure to do so may, in and of itself, constitute an unfair labor practice. See *City of Burbank*, 4 PERI 2048 (IL SLRB 1988); *Town of Putnam Valley*, 17 PERB 3041 (NY 1984). However, because there was some question at the hearing with regard to whether Anderson actively participated in the negotiations, we decline to issue any ruling on this basis.

Alba Public Schools, 1989 MERC Lab Op 823, 827. In the instant case, the Employer has never set forth any justification for its refusal to approve and execute the tentative agreements negotiated by its agent, nor has it proffered any reasonable justification for making regressive bargaining proposals. Under such circumstances, we agree with the ALJ that Respondent's actions, taken as a whole, were inconsistent with a sincere desire to reach an agreement. Accordingly, we incorporate and adopt the Decision and Recommended Order of the ALJ.

ORDER

Pursuant to Section 16 of PERA, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF SPRINGFIELD,
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AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25, LOCAL 331,
Labor Organization-Charging Party
/

Michael R. Kluck & Assoc., by Michael R. Kluck, Esq., and Thomas H. Dederian, Esq., on the brief, for the Respondent

Miller Cohen, P.L.C., by Gail M. Wilson, Esq., for the Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

This case was heard at Lansing, Michigan on November 5, 1998, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. This hearing was conducted pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 & 423.216, MSA 17.455(10) & 17.455(16). Based upon the entire record, including post-hearing briefs filed by the parties on or before December 29, 1998, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The charge was filed on May 26, 1998, by the American Federation of State, County and Municipal Employees (AFSCME), Council 25, Local 331. Charging Party represents a bargaining unit consisting of all full-time and regular part-time nonsupervisory employees employed in the City of Springfield's department of public works. In April 1997 Respondent and Charging Party began negotiations for a new collective bargaining agreement. The charge alleges that Respondent failed to bargain in good faith in these negotiations by (1) failing to give its negotiator adequate authority to negotiate a tentative agreement, and (2) making regressive bargaining proposals.

Facts:

On March 25, 1997, the parties began negotiating an agreement to replace their 1994-1997 contract. Respondent was represented at the bargaining table by Jim Graham, its city manager. Respondent's director of public works also attended some bargaining sessions. City Council member Sue Anderson attended meetings held on October 20, 1997 and March 20, 1998.[2] Charging Party's negotiating team was headed by Council 25 staff representative Cheryl McCreary. Charging Party's team also included its chapter chairman and another employee, who left the bargaining team sometime after July 1997 because of illness. Only Anderson, McCreary, and Charging Party's chapter chairman testified at the hearing.

At the March 25 meeting Charging Party gave Respondent its initial bargaining proposals. The parties also executed a letter of understanding that their contract would remain in full force and effect until the parties negotiated a successor agreement. Respondent presented Charging Party with its initial proposals at the second meeting, held on April 8. The parties continued to meet regularly, and on May 30, 1997, they initialed a six-page document titled "tentative contract." This document consisted of approximately 20 provisions from the previous contract, with language additions and changes highlighted in bold type, and an attached letter of agreement creating a sick and accident leave plan.

The parties agreed that the May 30 document did not constitute a complete TA, and they continued to meet. On July 16, 1997, they initialed a second document in the same format, and including all provisions contained in the May 30 document. The July 16 document also added language creating long term sick leave banks and providing for compensatory time in lieu of overtime pay. The 1994-97 contract did not contain provisions covering either of these subjects. After the parties initialed the July 16 document, Graham told Charging Party's bargaining team that he would take the document to a City Council executive meeting and have the Council look it over informally. In the meantime, Charging Party scheduled a ratification vote for its membership. The night before this vote, Graham telephoned McCreary. He told her that he had met in executive session with the City Council, and that the Council would not approve the TA. Graham said that there were just a few things that he believed the parties would be able to reach agreement on. Graham and McCreary did not discuss the problems with the TA in that conversation, but Charging Party canceled its ratification meeting.

The parties returned to the bargaining table on August 5, 1997. Graham presented Charging Party with a written list of seven items which he said reflected the Council's problems with the July 16 TA. The seven items were as follows. First was a suggested change in the language of a provision addressing the seniority of employees who leave the bargaining unit to take nonunit positions. The second and third items were suggested language changes in a provision covering the posting of vacant positions, and in a provision covering the providing of replacement uniforms and personal safety equipment. The fourth item rejected language in the TA granting employees the right to return to

[2] Between these two dates Anderson also became Respondent's mayor.

their same or a similar position after a medical leave of absence. The document indicated that the existing language restricting this right to three months should be retained. The TA gave employees the right to use accumulated time or be granted a leave of absence for purposes of undergoing drug or alcohol rehabilitation. Graham's list proposed limiting this right to one occurrence. The TA also provided that Respondent would continue to provide employees with the same level of pension benefits. Graham's list stated that Respondent did not yet have enough cost information to agree to this provision. Finally, the TA included scheduled wage increases which gave employees larger increases in the first years of the contract. The list proposed the same percentage increase for all three years of the contract. At the August 5 meeting the parties identified the critical areas of disagreement as the long-term leave of absence provision, the pension provision, and the wage increase schedule. Nothing was initialed at the August 5 meeting or thereafter. However, by September the parties had reached oral agreement on all issues. The record indicates that the parties agreed at this time to give employees the right to use accumulated sick leave or take a leave of absence twice for purposes of drug or alcohol rehabilitation. Charging Party agreed to adopt Respondent's suggested changes in the seniority provision, the posting provision, and the uniform and safety equipment provisions. The record also indicates that the parties agreed to keep the wage schedule and the sickness and accident plan as set out in the July TA. This time, Charging Party's negotiators asked Graham to discuss the agreement with the Council informally before Charging Party scheduled a ratification vote. A few days later, Graham called McCreary and said that the parties had to return to the table.

The parties met again on October 20, 1997. Sue Anderson and Graham were present for the Respondent. Anderson introduced herself to McCreary as representing City Council. Only three items were addressed at this meeting - the pension plan, the sick and accident plan, and the structure of the wage increases. At the end of the meeting, both parties believed they had an agreement, although no contract language was initialed. The parties agreed to delete language providing that employees would be placed on a medical leave of absence after exhausting their banked sick leave. They also agreed to delete language providing for payment of unused sick time at the time of retirement. They agreed to continue the present pension plan, with Respondent paying the full cost. Finally, they agreed to replace the wage increase schedule from the July TA with the one proposed by Respondent in August. At the conclusion of this meeting, Charging Party's representatives asked Graham to present this agreement to the Council for a formal vote before Charging Party scheduled a ratification meeting.[3] Graham agreed to do so. After the meeting, Graham put together a written document in the form of a complete TA. This document, which Graham faxed to McCreary on October 22, reflected the changes agreed to at the meeting.

The October 22 document, with one minor change to incorporate an item to which the parties had tentatively agreed in May, was presented to Respondent's City Council for its approval at its meeting of December 15,1997. Graham recommended its approval. The Council, including Anderson, voted unanimously to reject the agreement. On December 16, the Council sent McCreary a letter which simply stated that the agreement had been rejected. Shortly thereafter, McCreary went to Graham's office to ask why the TA had been rejected. Graham told her only that Council was

[3] This agreement was never presented to Charging Party's membership for ratification.

hiring a new chief negotiator. Sometime thereafter, McCreary was told informally that the City Council had problems with the sick and accident plan and with the pension provision.

After the December 15 Council meeting Respondent hired a new chief negotiator, although Graham remained a part of the bargaining team. The parties next met again on March 20, 1998. At this time Respondent presented Charging Party with a new proposal, in the form of a complete contract. Changes were proposed in nearly every article of the 1994-97 contract. Some of the proposed changes merely sought to make contract language clearer. However, Respondent also proposed many substantive changes involving issues not previously raised in the negotiations. Among these were (1) a proposal to add a section to the agency shop clause regarding an employee's right not to pay fees related to non-representational activities of the Union; (2) a proposal to add a provision whereby an employee, or the Charging Party, seeking to adjudicate a claim of discrimination in a court or administrative proceeding would waive the right to arbitrate this claim; (3) a proposal to delete a requirement that Respondent give new employees copies of the contract and fee authorization forms; (4) a new requirement that Charging Party make a request to bargain over the wage rate paid to a new position within five days of being notified of the new position by the Respondent; (5) a proposal to delete a provision giving preference to bids by unit employees for nonunit positions; (6) a proposal to delete a provision on temporary assignments; (7) proposed changes to the layoff and recall procedure, including deletion of the requirement that the Respondent meet with the Charging Party at least seven days prior to the effective date of a layoff, and deletion of a restriction on the assignment of overtime when employees are on layoff; (8) a proposal to replace the section on discipline with an entirely new section; (9) a proposal to replace the section of the grievance procedure dealing with arbitration with an entirely new section; (10) a proposal to delete language permitting the reinstatement of withdrawn grievances under some circumstances; (11) a proposal to substantially increase employees' monthly contributions to their hospitalization insurance; (12) a proposal to delete language dealing with workers' compensation leave; (13) a proposal to eliminate a clause requiring Respondent to maintain existing benefits not specifically covered by the contract. Respondent's March proposal contained some of the provisions from the October TA, but eliminated others. Eliminated was any mention of compensatory time in lieu of overtime, sick leave banks, any requirement that the Respondent pay for personal protective equipment, and any right to use sick leave for alcohol or drug rehabilitation. The wage increases included in the March proposal were smaller than those that Respondent had proposed in August 1997. Finally, Respondent's March 1998 proposal, for the first time, proposed a contract of four rather than three years duration. The parties went through Respondent's proposal in detail at this meeting. However, there is no indication that Respondent gave Charging Party an explanation of why the new proposals were necessary. At the end of the meeting, McCreary told Respondent's bargaining team that it was bargaining in bad faith, and that Charging Party planned to file charges. Charging Party did not formally request another bargaining session, and it did not submit counter proposals. No further bargaining had taken place between March 20, 1998 and the date of the hearing in this case.

Discussion and Conclusions of Law:

Charging Party argues, first, that Respondent violated its duty to bargain in good faith by

failing to give its negotiator, Graham, authority to reach a tentative agreement. Charging Party points out that on several occasions Graham and the Charging Party reached tentative agreements which, according to Graham, were unacceptable to Respondent's City Council. On returning to the bargaining table, Graham represented to Charging Party that if certain issues were resolved, the agreement would be approved. Charging Party asserts that it relied to its detriment on Graham's representations by subsequently agreeing to concessions that failed to bring about a contract. According to Charging Party, it is apparent that Graham had no actual authority to negotiate a tentative agreement. Respondent argues, in reply, that its City Council had the right to reject the tentative agreement, and that no evidence was introduced to suggest that Graham did not possess the authority to bargain.

Under PERA, a public employer is not bound to the terms of a tentative collective bargaining agreement unless and until that agreement is ratified by the employer's governing body. *River Rouge Bd. of Education*, 1968 MERC Lab Op 724; *North Dearborn Heights School District*, 1967 MERC Lab Op 673. A public employer is not required to clothe its negotiators with the authority to enter into a binding agreement; the authority to bargain a tentative agreement subject to later ratification by the governing board is sufficient. *Farwell Public Schools*, 1985 MERC Lab Op 948,950.

The record establishes that the parties reached complete tentative agreements on three occasions. The first was on July 16, 1997, the second was sometime after August 5, 1997, and the third was at a meeting on October 20, 1997. After the first tentative agreement, Graham represented to Charging Party that he had met with the Board in executive session. He returned to the table with a list of seven items which he indicated constituted the Council's objections to that tentative agreement. The parties bargained over these issues, and, in August or September 1997, reached a second tentative agreement. Charging Party agreed to adopt Respondent's position on three issues, and the parties agreed to compromise language on a fourth. On three items, the wage increase schedule, the pension provision, and the sick and accident plan, Graham agreed to continue the language from the July TA. Charging Party asked Graham to present this agreement informally to the Council. He subsequently told Charging Party that he had done so, and that the agreement was still not acceptable. On October 20, the parties returned to the table. For the first time a member of the Council, Sue Anderson, was present. Only three issues were discussed at the October 20 meeting. They were the three provisions from the July TA which Graham had agreed to keep in the second tentative agreement, despite Council's earlier objections. By the end of the October 20 meeting, the parties had agreed to the wage increase schedule included in Respondent's proposal of August 5. They had also agreed to continue the pension provision, as Charging Party had proposed. On the third issue, the sick and accident plan, the parties had reached a compromise. After the meeting, Graham put these tentative agreements together with the other proposals agreed upon in July and May. A complete tentative agreement reflecting all prior agreements was presented to the City Council, and rejected, on December 15, 1997.

I conclude that there is insufficient evidence to support a finding that Respondent failed to give Graham actual authority to negotiate a tentative agreement. Respondent never asserted that Graham lacked authority. Graham did not testify, and McCreary's account of what Graham told her

is the only evidence in the record regarding City Council's actions with respect to the various tentative agreements before their formal vote on December 15. Whatever happened, however, Respondent's City Council had a responsibility, as the party responsible for fulfilling the Respondent's legal obligation to bargain in good faith, to keep itself informed about the state of negotiations. The failure of a governing body to keep itself adequately informed is evidence of bad faith if that failure impedes bargaining. *Saginaw I.S.D.*, 1981 MERC Lab Op 914 (school board bargained in bad faith when its failure to obtain reliable reports from its negotiator impeded bargaining); *Paw Paw Bd. of Ed.*, 1971 MERC Lab Op 382 (school board had an obligation to keep abreast of negotiations and should have required periodic reports from its negotiator). Therefore, City Council either knew, or should have taken steps to make sure it knew, what had taken place in the negotiations prior to its December 15 vote.

As Respondent points out, making a contract proposal which is less favorable to the other party than the previous proposal is not per se evidence of bad faith bargaining. *Kalamazoo Public Schools*, 1977 MERC Lab Op 771. A party's conduct must be viewed in its totality, to determine whether the allegedly regressive proposals are a tactic to avoid reaching a good faith agreement. *Alba Public Schools*, 1989 MERC Lab Op 823,827. For example, in *City of Detroit*, 1982 MERC Lab Op 1042, the employer was not guilty of bad faith bargaining when it refused to ratify a TA and returned to the bargaining table with economic proposals which were less favorable to the union than those contained in the TA, since changes in the employer's economic circumstances had changed between the date of the TA and the date of the ratification vote. In *Hart Public Schools*, 1989 MERC Lab Op 961, an administrative law judge held that the employer was not guilty of bad faith bargaining when it altered its school calendar proposal by turning all half days into full days; the reason given was that the new school superintendent did not favor half days. This was the only allegedly "regressive" proposal, no tentative agreement had been reached at the time, and there was no indication that this was a major issue in negotiations.

However, making new proposals late in the negotiations, coupled with other conduct, may be evidence of bad faith bargaining. I agree with Charging Party that the facts in this case are similar to those in *Napoleon Comm Schools*, 1982 MERC Lab Op 1567. In *Napoleon*, the parties reached oral agreement on all terms of a TA after a week of intensive bargaining. The parties agreed that the union would prepare a paste-up of the agreement and deliver it to the superintendent, that the superintendent would meet informally with the board that week, and that the parties would get back together the following Friday. When the parties met the following Friday, the employer's negotiators indicated that the board had concerns on three major issues, as well as problems with some of the language. The parties discussed these issues and reached another oral TA. The next day the parties met in the office of the superintendent. The parties initialed every page of the agreement as the superintendent's secretary typed it. The parties then made arrangements for ratification votes to be held by the union membership and the board. Four days later the board rejected the TA. The union contacted the employer's chief negotiator and asked why the agreement had been rejected. He said only that he didn't know what the board's intentions were. Thereafter, the board hired a new chief negotiator. At the parties' next meeting, the union again asked why the TA had been rejected. The employer disavowed the TA. Although it admitted that the board was aware that negotiations were

taking place, it claimed that the negotiating team had not had the authority to bargain. The employer then presented a new proposal, which the union refused to discuss on the grounds that it was a significant departure from the TA.

In *Napoleon*, the administrative law judge found the employer guilty of bargaining in bad faith. She based her conclusion on the failure of its board to obtain reliable reports from its negotiator and/or to keep informed about the progress of negotiations, on the employer's later refusal to explain why its board rejected the TA, and on its insistence on resuming bargaining as if no TA had ever been reached. The administrative law judge held that although the board was not obligated to approve the TA, its complete repudiation of that agreement and its return to the old contract to begin bargaining demonstrated a lack of good faith.

In this case the parties reached three separate TAs. After each of the first two, Charging Party was told by Respondent's negotiator that the Council had specific problems with these agreements. The parties returned to the table and reached new agreements on the issues purportedly raised by the board. The third TA, although it reflected significant compromises by Charging Party, did not include all of what the Council apparently wanted. Respondent's City Council had no obligation to ratify the TA presented to them on December 15. However, when asked by Charging Party immediately after the rejection why the TA had been rejected, Graham was evasive. Moreover, when the parties returned to the bargaining table in March 1998, Respondent's new proposal not only eliminated major provisions contained in the previous TA, but also proposed wholesale changes in the language of the prior contract. Unlike the employer in *Napoleon*, Respondent did not explicitly disavow the previous TAs. However, Respondent ignored the bargaining which had taken place and effectively attempted to begin the negotiations anew. Moreover, Respondent gave no reasonable explanation, at least on this record, for its March 1998 bargaining posture. Respondent argues that after the rejection of a tentative agreement, raising new issues at the bargaining table is not evidence of an intent to avoid agreement. In fact, it argues, this may be helpful in avoiding impasse. According to the Respondent, "if the Employer could achieve some gains in areas not previously discussed, it may be able to increase its offers in other areas, and fashion a new package proposal the Union may find acceptable." In this case, however, the parties already had a package Charging Party's negotiating team had found acceptable. Moreover, Respondent did not explain what gains in what specific areas would enable it to "increase its offers" to what Charging Party had already agreed. I conclude that Respondent's conduct, taken as a whole, was not consistent with a sincere desire on its part to reach a good faith agreement.

Remedy

The charge requested that the Commission order Respondent to cease and desist from its unlawful conduct and to bargain in good faith with Charging Party "relative to those issues which were on the table as of December 15, 1997." At the hearing, Charging Party amended its request for relief to ask for an order requiring Respondent to implement the tentative agreement reached on October 20, 1997, or "in the alternative, require that Respondent bargain in good faith the issues which were in dispute as of October 20, 1997." The Commission has, in a few cases, held a party

bound to terms of a tentative agreement which it never ratified. In these cases, the party's negotiator either deliberately or mistakenly misrepresented to the other party that ratification had in fact taken place, and that other party relied to its detriment on this misrepresentation. See *Redford Township*, 1982 MERC Lab Op 1078; *East Detroit Federation of Teachers*, 1980 MERC Lab Op 849; *City of Coldwater*, 1972 MERC Lab Op 362. The Commission held that the party responsible for the misstatement of fact was estopped from asserting its right to reject the tentative agreement. Here, Charging Party was never led to believe that Respondent had ratified an agreement. I find no basis for binding Respondent to a contract never ratified by its governing body. [4] I agree, however, that Respondent should be ordered in this case to return to the bargaining table upon Charging Party's demand, to withdraw its March 1998 proposal, and to bargain in good faith over any issues remaining between the parties.

Recommended Order

Respondent City of Springfield, its agents and officers, are hereby ordered to:

1. Cease and desist from bargaining in bad faith with the American Federation of State, County and Municipal Employees, Council 25, Local 331 in negotiations for a new contract to replace the parties' 1994-97 agreement.

2. Take the following affirmative action to effectuate the purposes of the Act:

   a. Upon demand, meet and bargain in good faith with the above labor organization regarding the wages, hours and working conditions of employees represented by that labor organization. Respondent shall withdraw its March 1998 proposal, and bargain in good faith over any issues remaining between the parties.

   b. Post copies of the attached notice to employees in conspicuous places on the Respondent's premises, including all locations where notices to employees are customarily posted. Copies of this notice shall remain posted for 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

[4] In *City of Hamtramck*, 1975 MERC Lab Op 723, the Commission found that the employer demonstrated bad faith after its city council rejected a TA reached after seven months of bargaining. The employer in that case refused to provide the union with any explanation for the rejection except that the employer could not afford the agreement. In that case, the employer was ordered to implement the TA on an interim basis until final agreement was reached. Unlike here, however, the union membership had ratified the TA.

Julia C. Stern
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission , the City of Springfield has been found guilty of unfair labor practices in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT bargain in bad faith with the American Federation of State, County and Municipal Employees, Council 25, Local 331 in negotiations for a new contract to replace the parties' 1994-97 agreement.

WE WILL, upon demand, meet and bargain in good faith with the above labor organization regarding the wages, hours and working conditions of employees represented by that labor organization. We will withdraw our March 1998 bargaining proposal, and will bargain in good faith over any issues remaining between the parties.

CITY OF SPRINGFIELD

By: _____

Title: _____

Dated: _____

This notice must be posted for a period of thirty (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, Michigan Plaza Building, 14th Floor, 1200 6th Street, Detroit, Michigan 48226. Telephone: (313) 256-3540