STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CHIPPEWA COUNTY ROAD COMMISSION,
Respondent-Public Employer,

Case No. C98 H-177

-and-

UNITED STEELWORKERS OF AMERICA,
LOCAL 13685,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Michael F. Ward, Esq., for Respondent

John McCormick, Local President, and Jim Fowler, Staff Representative, for Charging Party

DECISION AND ORDER

On September 28, 1999, Administrative Law Judge James P. Kurtz 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

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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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APPEARANCES:

Michael F. Ward, Atty, for the Public Employer

John McCormick, Local President, and Jim Fowler, Staff Representative, for Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

This matter was heard at Lansing, Michigan on March 16, 1999, before James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to a complaint and notice of hearing dated October 14, 1998, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.216, MSA 17.455(16). Based upon the record and post-hearing briefs filed on or before May 3, 1999, the undersigned makes the following findings of fact, conclusions of law, and recommended order required by Section 16(b) of PERA:

Charge and Background Matters:

This unfair labor practice charge was filed by the Local Union on August 25, 1998, alleging that, ". . . the employer unilaterally made changes to the newly negotiated bargaining agreement that was ratified by both parties with respect to the retirement language and health care coverage language." The answer of the Respondent Employer, filed on September 10, 1998, denied the allegations of the charge. The Union has been for many years the collective bargaining representative of a unit composed of all employees of the Employer Road Commission, excluding supervisors and office clerical employees. This case involves the bargaining on the most recent contract to replace the two-year agreement that expired on January 31, 1998. There is no dispute in the facts herein.

Factual Findings:

In the contract that expired on January 31, 1998, and in previous contracts, the Employer has agreed to pay the full cost of hospitalization insurance for retired employees. The clause in question, in pertinent part, reads, "The Employer agrees to pay the full cost of hospitalization for retirees, and their dependents, who retire after February 1, 1985, until employee death,. . . ." The same article of the contract also provided for a group retirement program provided by the Employer, with a minimum age requirement of 55 years and a service requirement of 25 years, or age 60 with 10 years of service. The provision for hospitalization insurance for retirees has always been interpreted by the Employer as requiring fulfillment of both the age and service requirements, and there is no precedent to the contrary.

Negotiations on a new contract began in December 1997. Among the Union's proposals were retirement at age 50 after 25 years of service and eligibility for paid health insurance for employees retiring after 25 years of service but who do not meet the age requirement of 55 years. These proposals were discussed at several bargaining sessions, at least five by the Employer's estimate, but they were rejected. A tentative agreement on a new contract was reached by the parties at meetings held on February 17 and 19, 1998. This agreement made no change in the language relating to retiree health insurance. Following the usual procedure of the parties, the Employer agreed to prepare the new contract with the agreed changes before presentation to the Union and the Road Commission for final ratification.[1]

Preparation of the contract was delayed due to the absence of the manager for a period of time and the vacation of a secretary. On April 3, 1998, before the contract draft was completed, the Employer received a grievance, signed by officers of the Union, requesting health insurance for an employee, John Fountain. The employee had just retired with his pension deferred after 25 years of service but before attaining age 55.[2] This grievance was denied on or about April 14 by the Employer's manager, who remarked to the Union representatives that this issue had been discussed by the two parties during the negotiations. The Employer took the position that the Union accepted its interpretation of the health insurance language after the Union's proposal was rejected and the parties reached a tentative agreement. The Union subsequently dropped the grievance and pursued this charge.

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[1]The controversy in the record as to when or if the Union ratified this tentative agreement has no bearing on the decision in this case.

[2]The attorney for Fountain, Paul W. Heil, attended the hearing as an observer, but was not a party and was not permitted to question witnesses. He did, however, make an offer of proof that parol evidence of the intended meaning of the contract was offered by the parties, and that there is no prior precedent relative to retiree health insurance for someone leaving employment with a vested pension prior to reaching the age limitation. These are matters of record and are, obviously, the reason for the Employer's insistence that the new contract be clarified.

The significance of the Union's position on the Fountain grievance that early retirees are entitled to receive paid health insurance, even though they had not yet attained the age of 55, was not lost on Employer representatives and commissioners. Feeling that the Union had changed its position on the interpretation of the insurance provision and anticipating problems due to the lack of a meeting of the minds on this issue, the Employer decided to insist upon clarification of the contract before ratifying and signing it. The bargaining teams met without success on May 11 in a lengthy session devoted to clarifying the language of the pension and insurance article. The Union then asked for mediation, and on June 15 the bargaining teams met with the mediator present. This meeting resulted in the drafting of contract language that clearly provided that a retiree must meet the age requirement in order to receive paid health insurance. This language was rejected by the Union membership several days later. The tentative agreement was never submitted to a formal meeting of the Commission for ratification, but the Employer has implemented its terms.

Discussion and Conclusions:

The Union contends that the Employer is violating its bargaining obligation under PERA by requiring the Union to alter agreed-upon contract language before it will ratify and execute a tentative agreement that it has already implemented. Putting the issue another way, does a party to a tentative agreement violate its bargaining obligation when it seeks to clarify contract language before ratification after learning that the other contracting party interprets the contract differently than expected? Under the circumstances of this case, I agree with the position of the Employer. The purpose of a written collective bargaining agreement, provided for in Section 15 of PERA, is to memorialize the wages, hours, and working conditions of employees, so that future disputes under the grievance-arbitration procedures may be prevented. In the absence of any evidence that the Employer was attempting to frustrate or subvert the collective bargaining process or to force the Union to agree to some additional concession not obtainable at the bargaining table, no bad faith bargaining can be found. See *City of Flint*, 1988 MERC Lab Op 692, 694-696, regarding the clarification of a tentative agreement; compare *Munising Public Schools*, 1996 MERC Lab Op 167, 172-174, where a party was found to have acted in bad faith when it added language to the final contract draft that had not been part of the tentative agreement.

Both parties in this case realized during the negotiations that the existing insurance clause was ambiguous, and the Union sought to add language to clarify its meaning to eliminate the age requirement for paid health insurance. The Employer stuck to its position that the clause never contemplated such an interpretation, and neither party was able to come up with an actual precedent supporting its interpretation. At the end of the negotiations the Employer could rightfully assume that its interpretation of the health benefits provision of the contract, requiring retirees to meet both age and service requirements before receiving paid health insurance, was accepted by the Union when the latter dropped its demand for language contrary to that interpretation and agreed to the tentative agreement. When this assumption was shattered by the Union's presentation of the Fountain grievance in early April, the Employer was faced with the choice of ratifying the tentative agreement and hoping that its interpretation of the insurance clause would prevail if the issue ever reached an arbitrator, or insisting on clarifying language in the new contract. The refusal to proceed with the

tentative agreement did not arise because of some unilateral misunderstanding or action of the Employer, but was caused by the Union's expressed position on the Fountain grievance, which was contrary to the good faith understanding of the Employer when the parties entered into the tentative agreement. See *City of Battle Creek*, 1994 MERC Lab Op 440, 441-442, where the Commission discusses the difference between repudiating a settlement agreement and refusing to ratify a tentative agreement.

The fact that the grievance was subsequently withdrawn or dropped by the Union does not resolve the dispute. The Union has not rejected its interpretation of the clause, and the Employer has a right to be concerned about future grievances or litigation, especially on an issue with the economic consequences of paid health insurance. For a case where the attempted clarification followed ratification of the contract by both parties, see *Southfield Public Schools*, 1995 MERC Lab Op 139, 144-145; *cf. Allegan County Juvenile Court*, 1995 MERC Lab Op 408, 413, where mistaken notification of ratification had been given before the contract was rejected. There is no evidence that the Employer herein delayed the processing of the tentative agreement in anticipation of the Fountain grievance, or to in any way frustrate the collective bargaining process. Accordingly, I conclude that the Employer did not violate its bargaining obligation by refusing to proceed with the ratification of the tentative agreement in this case, and I recommend that the Commission issue the following order:

ORDER DISMISSING CHARGE

Based upon the discussion and conclusions set forth above, the unfair labor practice charge in this case is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

James P. Kurtz,
Administrative Law Judge

DATED:_____