STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DURAND, POLICE DEPARTMENT,
Respondent-Public Employer,

Case No. C99 F-103

-and-

TEAMSTERS STATE, COUNTY AND MUNICIPAL WORKERS, LOCAL 214
Charging Party-Labor Organization.
_____/

APPEARANCES:

Henneke, McKone, Fraim & Dawes, P.C., by Charles R. McKone, Esq., for Respondent

Pinsky, Smith, Fayette & Hulswit, by Michael L. Fayette, Esq., for Charging Party

DECISION AND ORDER

On March 24, 2000, 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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Henneke, McKone, Fraim & Dawes, P.C., by Charles R. McKone, Atty, for Public Employer

Pinsky, Smith, Fayette & Hulswit, by Michael L. Fayette, Atty, for Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

This case was heard at Detroit, Michigan on August 25, 1999, before James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to a complaint and notice of hearing dated June 23, 1999, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216, MSA 17.455(16). Based upon the record and post-hearing briefs filed on October 18, 1999, the undersigned makes the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA, and Section 81 of the Administrative Procedures Act of 1969, MCL 24.281, MSA 3.560(181):

Charge and Background Matters:

The charge in this case was filed by the above labor organization (Union) on June 8, 1999, alleging that the public employer, City of Durand, was refusing to bargain a new contract at the termination of an existing contract covering a nonsupervisory unit of full-time police officers and sergeants. On June 28 the Employer filed an answer denying the allegations, and affirmatively alleging that the existing contract continued in full force and effect through June 30, 2000, rather than June 30, 1999. The Employer contended that the Union was attempting to take advantage of a typographical error, caused by the Union, in preparing the duration clause and the title page of the signed contract.

Factual Findings:

This charge involves the contract replacing the 1991-1994 contract, which expired on June 30, 1994. Bargaining on the new contract continued until the afternoon of July 10, 1995. The chief negotiator for the Employer was its city manager, Lynn Markland, assisted by the city clerk. The latter was apparently not present when the tentative agreement was reached. On the Union side, the bargaining was handled by the business representative for the Local, Anthony J. Marok, who was assisted by the unit steward, Paul L. Hubble. For some years the parties' collective bargaining agreements have been tied to the City's fiscal year expiring on June 30. Yearly wage increases generally, but not always, have been effective July 1. If a new contract was not reached by the expiration date of the old, increases were normally retroactive to the starting date of the new contract. In this case, the record establishes that the parties throughout the negotiations discussed only yearly wage increases beginning July 1 of the contract term, with a wage increase being offered for each year of the contract. The parties disagreed, however, over the amounts to be granted each year.

At the July 10 meeting wages were the main issue, and a number of proposals were exchanged by the parties, but no contract was reached. By the end of the meeting, the Employer was seeking a five-year contract expiring June 30, 1999, with a wage offer of 2% the first year (1994), 2.5% the second (1995), and 3% for the remaining three years, fiscal 1996, 1997, and 1998. This offer had been rejected by the Union, which was seeking 4% across the board. Before adjourning the meeting the Employer decided to offer an additional 3% increase for the fiscal year 1999, or what amounted to a six-year agreement. The Union also rejected this offer, and the meeting ended.

Immediately thereafter, the city manager reviewed the matter and decided to make yet another offer. After the Union team returned to the bargaining table, Markland offered a signing bonus of $650 for the first year, and a 3% wage increase for the next five years. This offer was accepted by the Union, and the three participants signed a one page tentative agreement that evening. Both the notes of Markland and the tentative agreement set forth the following on wages and dates:

1994	1995	1996	1997	1998	1999
$650	3%	3%	3%	3%	3%

This format for the tentative agreement was the same as the City's offer to the Union made just before the break in negotiations, except that the year 1999 was added with a 3% increase, and the amounts for 1994 and 1995 were changed or increased. Markland testified that the termination date in the year "2000" was verbalized by both Marok and himself during the negotiations in connection with the Employer's last offer. Markland testified that he had no authority to agree to any wage increase outside the term of the contract. Marok, who was replaced as business representative by Les Barrett in 1997, did not testify. Hubble, who had taken another job in 1996, testified, but he had trouble remembering the details of the negotiations and he had no recollection of the 3% increase for the year 1999. He further testified that he had no memory of anything being said about the year "2000."

The Union agreed to prepare the final document for ratification by both parties. After the passage of some time, Marok asked the Employer to send him the agreement again, along with the dollar amounts of the wage increases and language for the signing bonus. Markland faxed this information to Marok on October 12, 1995. The final document, as prepared by the Union, was forwarded to the Employer in early December, containing the signatures of Marok and Hubble. This first typed contract had on the title page an effective date of "July 1, 1995," and an expiration date of "June 30, 1999." It also recited in the opening paragraph that it was being entered into "this first day of July 1995, . . ." The contract, however, contained in the wage schedule an increase for the employees for the year beginning "7/1/99," in addition to a signing bonus for the year beginning July 1, 1994. Though not raised by the parties, it is apparent that the effective date of the contract is a mutual mistake, since the record is clear that the parties intended the contract to be retroactive to the expiration date of the prior contract on June 30, 1994. The duration clause of the same document, however, contained the "1991" and "1994" dates of the prior expired contract. Both parties initially appear to have accepted this draft of the contract without further question.

At some point, however, which is not clear in the record, the obvious errors in the dates of the duration clause were "corrected" to conform with the title sheet. Thus, the duration clause was made to conform to the title page, and the opening paragraph of the contract, as one running from "July 1, 1995 . . . until midnight, June 30, 1999," rather than from July 1, 1994 to June 30, 2000. The wage schedule at all times contained the increase for the fiscal year beginning July 1, 1999. Neither party noticed any mistake in the contract until Markland raised the issue in the early part of 1999. The benefits on both ends of the contract were paid by the Employer, and the contract was treated by both parties as one running from 1995 to 1999.

In the summer of 1998 the Employer and the Union were negotiating a contract covering a unit of the public works' employees. Barrett, the business representative who replaced Marok, telephoned Markland on July 16, 1998 to discuss this contract. In this same conversation, Barrett asked Markland about opening negotiations early on the police contracts. In addition to the unit of full-time police officers involved in this case, the Union also represents a unit of regular part-time officers, whose contract expired on June 30, 1999. Barrett had heard from the stewards of these units that the City was willing to begin negotiations, and this was confirmed by Markland. During this same time period, Markland talked to the new steward for the full-time police officers' unit, who had replaced Hubble, about the need to get together on contract negotiations, which contract he then believed was expiring in June 1999.

During preparation of the City budget for the 1999-2000 fiscal year, Markland noticed while meeting with the chief of police that there was already a wage rate set for the full-time police officers for that year. After Markland reviewed his notes of the 1995 negotiations, he recalled the parties' agreement that the contract for the full-time officers would not expire until June 30, 2000. Markland then met with the Union steward, and asked him whether he knew there was a wage increase in the contract for the 1999-2000 fiscal year. The steward was unaware of the increase, but indicated he would contact the Union about the matter. In March 1999 Barrett sent a letter to the City requesting negotiations on a new contract for the full-time officers. On April 26 Barrett and Markland had a

telephone conversation in which Markland stated that there was a "problem" with the date of expiration of the contract.

The parties continued their negotiations on the contract for the part-time officers. On May 10, 1999, Markland and Barrett had a follow-up telephone conversation on the full-time unit. Markland stated that he had found his notes from the July 10, 1995 negotiations, and he faxed them to Barrett. The Union remained unconvinced about the June 30, 2000-expiration date. On June 7, 1999, Markland informed Barrett that he was going to consult the City attorney, and this charge was filed the next day. The City paid the increase to the full-time officers on July 1, 1999, as called for in the contract.

Discussion and Conclusions:

The Union argues that the parties' conduct, and the signed and ratified contract itself, are consistent with a June 1999 expiration date, and that nowhere in the document is there a date of June 2000. The Union contends that it is possible to have contract provisions that extend beyond the expiration date of the contract. It cites those cases that hold that the status quo under an expired contract includes cost of living and salary grid increases, unless clearly limited by the contract. See *Firefighters, Local 1467 v City of Portage*, 134 Mich App 466 (1984), *rev'g* 1981 MERC Lab Op 952 and 1982 MERC Lab Op 191, *on remand* 1984 MERC Lab Op 999 (COLA provision survives expiration of contract); *Detroit Pub. Schools (Bus Drivers and Site Mgt Units)*, 1984 MERC Lab Op 579 (salary grid increases continue after contract expiration). The Union also argues that if the Employer's argument is true, then there was no meeting of the minds as to the duration of the agreement, making the contract terminable at will, so the Employer was required to bargain upon request in any event.

The Employer takes the position that the parties did have a meeting of the minds on the contract's termination date, and because of delays in preparing the final document and the parties' laxity, the written contract did not conform to their actual agreement. The Employer notes that only Markland testified regarding the parties' actual agreement on the termination date. It also contends that the error in the termination date is demonstrated by the written tentative agreement and the notes of Markland. The City argues that this documentation and the testimony of Markland prove that there is an error in the contract's duration clause, and the contract should expire on June 30, 2000, rather than June 30, 1999.

I agree with the Employer. The only firm and credible evidence of the parties' agreement regarding the contract's term was the testimony and documentation offered by the City. Marok, the spokesperson for the Union team, did not testify. His notes, if there were any, were unavailable or not offered. Hubble, the only other person present when the tentative agreement was reached, admitted he had little memory of the negotiations. He did not know that the contract contained a wage increase for the 1999-2000 fiscal year until it was brought to his attention before this hearing, and he claimed to have had nothing to do with it. He could only testify that he did not remember the year 2000 being mentioned at the bargaining table. Markland, on the other hand, was clear in his

testimony that he and Marok agreed at the last minute to the 3% wage increase effective July 1, 1999, and that they both agreed that as a result the contract was to terminate on June 30, 2000. Markland's testimony, therefore, must control in this instance. I find that the dates in the written contract providing for its termination on June 30, 1999 resulted from an oversight in the drafting of the contract, and the actual date of its expiration should have read June 30, 2000.

The cases cited by the Union regarding what must be maintained as the status quo after the expiration of the contract, such as COLA and wage grid increases, are not pertinent here. What must be maintained as the status quo under an expired contract is quite different from a mistake by the parties in transcribing the expiration clause when the contract was reduced to writing. Standing alone, the July 1, 1999 wage increase, which both parties acknowledge is included in the contract, is not just another run-of-the-mill benefit granted to the Union. The granting of a wage increase outside the term of a contract is unheard-of in the experience of the undersigned, and no precedent for such an increase has been cited or found. Under the facts in this case, and given the lack of authority by the Employer's negotiator to make such a concession, the existence of the July 1 increase at least renders the contract ambiguous as to its intended expiration and requires an explanation.

The Union's argument that a finding that the June 30, 1999-expiration date is in error means that there was no meeting of the minds on the expiration date of the contract, and the contract is, therefore, terminable at will, does not apply to this case. Mutual mistake cases often involve an issue of whether there is an agreement or contract between the parties on a given issue, but in this case the parties were considering only two dates for the expiration of the contract, both expiring on June 30 with the Employer's fiscal year: Either the June 30, 2000-date prevails, or the contract expired on June 30, 1999. The record evidence, as discussed above, substantiates the Employer's position that there was a meeting of the minds on the June 30, 2000-date. Compare *Ionia County and 64A Dist. Ct*, 1999 MERC Lab Op ___(12-28-99) (meeting of minds found on continuation of benefit that employer omitted from final draft of contract); with *City of Grandville*, 1999 MERC Lab Op __(12-22-99) (no meeting of minds found on pension upgrade); see also *Union City Comm. Schools*, 1975 MERC Lab Op 486, 488; *Lowell Board of Light and Power*, 1975 MERC Lab Op 221, 224.

Where a mutual mistake in a contract or benefit has been found, the Commission has allowed it to be corrected over the objection of the other party to the contract. See, for example, *Highland Park Sch. Dist.*, 1978 MERC Lab Op 829, 831-832; and 1976 MERC Lab Op 622, 629-631; compare where the mistake is unilateral, rather than mutual, *Saginaw County Sheriff*, 1991 MERC Lab Op 315, 320-321. Thus, as noted above, I conclude that both parties to the contract intended it to be effective through June 30, 2000, when they agreed to the 3% increase for the added 1999 fiscal year, thereby agreeing to a six, rather than a five, year contract. The parties are bound by the agreement, and the Employer has not refused to bargain with the Union over wages and benefits for the 1999-2000 fiscal year as alleged. All other arguments raised by Charging Party have been considered and do not change the result. Accordingly, I recommend that the Commission enter the following order:

ORDER DISMISSING CHARGE

Based upon the findings and conclusion set forth above, the unfair labor practice charge filed in this matter is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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James P. Kurtz
Administrative Law Judge

DATED:_____