STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CLAIRMOUNT LAUNDRY, INC.,
Respondent-Employer,

Case No. C00 G-138

-and-

CHICAGO & CENTRAL STATES JOINT BOARD, UNITE, AFL-CIO,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Phillip and Erica Bowles, for Respondent

Martens, Ice, Geary, Klass, Legghio, Israel & Gorchow, P.C., by John G. Adam, Esq., for Charging Party

DECISION AND ORDER

On January 11, 2001, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that the Respondent Clairmount Laundry, Inc., violated Section 16(6) of the Labor Relations And Mediation Act (LMA), 1939 PA 176, as amended, 1965 PA 282, MCL 423.16, by refusing to recognize Charging Party Chicago & Central States Joint Board, UNITE, AFL-CIO, as the exclusive representative of its employees, and by refusing to meet and negotiate in good faith with the Union regarding a new contract. The ALJ also concluded that Respondent unlawfully altered the existing wages and benefits of its employees after the contract expired and prior to reaching impasse. On January 19, 2001, Charging Party filed timely exceptions to the Decision and Recommended Order of the ALJ. Respondent filed cross-exceptions to the ALJ's recommended order on January 29, 2001.

The facts in this case were set forth fully in the Decision and Recommended Order of the ALJ and need not be repeated here. On exception, neither party raises any issue with respect to the ALJ's findings of fact and conclusions of law. The exceptions filed by the Union pertain only to the affirmative relief provision of the recommended order. In its cross-exceptions, Respondent does not explicitly identify any part of the ALJ's recommended order to which objection is made, nor does the Employer set forth specifically any question of procedure, fact, law or policy to which it takes exception. Rather, the document filed by the Employer on January 29, 2001, merely appears to be a response to the exceptions filed by the Union. In any event, the record overwhelmingly establishes that Respondent unilaterally ceased making

contributions to the Union's insurance and pension funds, terminated holiday pay, and raised the wages of one of its employees. Accordingly, we hereby adopt the ALJ's findings of fact and conclusions of law with respect to the merits of the underlying charge.

On exception, the Union contends that the affirmative relief ordered by the ALJ fails to adequately remedy the unfair labor practices committed by the Employer in this case. The remedial order issued by the ALJ provides, in part, that Respondent must "[I]mmediately resume making contributions to Charging Party's insurance and pension funds for all employees in the bargaining unit at the rate provided in the expired contract, and pay all contributions to the pension fund owed for periods after July 1, 2000." Charging Party asserts that the remedial order should be clarified to require that Respondent make both the insurance and pension funds whole, pay all contributions to both funds for periods after July 1, 2000, make employees whole for any losses that may have resulted from the Employer's unlawful termination of the insurance and pension fund contributions, and cease offering health insurance plans without bargaining. According to Charging Party, such relief is appropriate in light of the ALJ's conclusion that the employer unlawfully ceased to make contributions to the insurance and pension funds, ceased to pay holiday pay, unilaterally raised the wages of one of its employees, and repudiated its legal obligation to bargain. After reviewing the record in this case, we agree.

Where an employer has violated its duty to bargain by unilaterally altering the terms and conditions of employment of unit members, the appropriate remedy typically includes an order requiring the employer to restore the status quo ante and make employees whole for losses suffered as a result of the unilateral action. See e.g. *City of Ecorse,* 1998 MERC Lab Op 306; *City of Detroit Dep't of Transp*, 1995 MERC Lab Op 362; *St. Clair Community Schools*, 1985 MERC Lab Op 114. We can see no reason why the affirmative relief provision in this case should not extend to both the insurance and pension funds. Therefore, we hereby amend the recommended order to require the Employer to make retroactive contributions to the insurance and pension funds beginning July 1, 2000, and to make its employees whole for any losses they may have suffered because of its failure to pay the required contributions, including, but not limited to, medical expenses which would have been covered under the Union's insurance fund or any sums paid by employees for substitute medical coverage, together with 5% per annum interest thereon. Moreover the order shall direct the Employer to cease and desist from offering health insurance plans without bargaining.

The remaining exceptions concern Charging Party's request for a broad cease and desist directive, together with a general make-whole remedy. In our opinion, the cease and desist order recommended by the ALJ is adequate and requires no further amplification. We are also of the opinion that the amended remedy is sufficient to restore the *status quo ante* and to make the Union and its members whole for losses resulting from the Respondent's unlawful actions. With respect to the Union's request for attorney fees and costs, we decline to award such a remedy in this case only because we are constrained from doing so by the decision of the Michigan Court of Appeals in *Goolsby v City of Detroit, 211 Mich App 214 (1995).* We believe that *Goolsby* was wrongly decided and urge the Court of Appeals to revisit the issue. *See Police Officers Labor Council, 1999 MERC Lab Op 196 at 202*, and the authorities cited therein.

For the reasons set forth above, we adopt the findings and conclusions of the ALJ and issue the following amended order.

ORDER

Respondent Clairmount Laundry, Inc., its officers and agents, shall:

1. Cease and desist from refusing to recognize and bargain with Charging Party Chicago & Central States Joint Board, UNITE, AFL-CIO, as the exclusive representative of its employees for purposes of collective bargaining.

2. Upon demand, meet with Charging Party for the purpose of negotiating a new contract to replace the collective bargaining agreement which expired on June 30, 2000.

3. Cease and desist from unilaterally altering its employees' wages, hours or terms and conditions of employment, including offering health insurance plans without bargaining.

4. Take the following affirmative action:

a. Immediately resume making contributions to Charging Party's insurance and pension funds for all employees in the bargaining unit at the rate provided for in the expired contract, and pay all contributions to the insurance and pension fund owed for periods after July 1, 2000. Make employees whole for any losses they may have suffered because of the employer's failure to pay the required contributions, including, but not limited to, medical expenses which would have been covered under the union insurance fund and/or any sums paid by employees for substitute medical coverage, together with 5% per annum interest thereon, computed quarterly.

b. Resume paying holiday pay as provided for in the expired contract and make employees whole for any holiday pay they did not receive but would have received if Respondent had not altered its existing practice. Sums paid shall include interest at the rate of 5% per annum, computed quarterly.

c. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees are usually posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Maris Stella Swift, Chair

_____

Harry W. Bishop, Member

_____

C. Barry Ott, Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CLAIRMONT LAUNDRY, INC.,
Respondent-Employer,

Case No. C00 G-138

-and-

CHICAGO & CENTRAL STATES JOINT BOARD, UNITE, AFL-CIO,
Charging Party-Labor Organization
/

APPEARANCES:

Phillip and Erica Bowles, for the Respondent

Martens, Ice, Geary, Klass, Legghio, Israel & Gorchow, P.C., by John G. Adam, Esq., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 16 and 23 of the Labor Mediation Act, (LMA), 1939 PA 176, as amended, MCL 423.16 & 423.23; MSA 17.454(17) & 17.454(25), this case was heard at Detroit, Michigan on September 19 and October 19, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the testimony and exhibits submitted at the hearing, I make the following findings of fact conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The charge was filed on August 2, 2000, by the Chicago and Central States Joint Board, UNITE, AFL-CIO, against Clairmont Laundry, Inc. Charging Party asserts that it is the certified bargaining representative for employees of this employer. It alleges that on or about May 8, 2000, Respondent announced it had no further obligation to bargain with the Charging Party. Charging Party alleges that since that time Respondent has unlawfully refused to meet or bargain with it over the terms of a new contract. Charging Party also alleges that since on or about July 1, 2000, Respondent has made unlawful unilateral changes in the terms and conditions of employment of members of Charging Party's bargaining unit. Finally, Charging Party alleges that since about April 2000, Respondent has dealt directly with bargaining unit members concerning wages, hours, and terms and conditions of employment, in violation of its duty to bargain under Section 16 of the LMA.

Facts:

Erica and Phillip Bowles are the sole officers and proprietors of Clairmont Laundry, Inc., a corporation under subchapter S, chapter 1, subtitle A of the internal revenue code. Clairmont operates a shirt laundry and dry cleaning establishment. At the time of the hearing, the business was primarily retail. Prior to filing the instant charge, Charging Party filed an unfair labor

practice charge against Respondent with the National Labor Relations Board (NLRB). This charge was dismissed by the NLRB's Regional Office on July 25, 2000, on the grounds that the Board's investigation indicated that Clairmont did not meet the Board's monetary jurisdictional standards. Charging Party filed the instant charge after its charge with the NLRB was dismissed.

Charging Party was certified as the bargaining agent by the NLRB after an election conducted by that agency in about 1985. At the time of the hearing, the bargaining unit consisted of five employees. The parties' last collective bargaining agreement covered the term July 1, 1997 to June 30, 2000. This agreement set out the minimum hourly wage rates(exclusive of piece work rates) to be paid to each classification. The contract provided vacation, holiday, and sick pay, and sick and accident disability benefits. Under the agreement, Respondent agreed to contribute a certain amount per employee per week to the Charging Party's insurance fund for the provision of insurance and pension benefits. Article XV of this contract stated:

> This Agreement shall be effective on July 1, 1997 and it shall remain in full force and effect until June 30, 2000, provided that this Agreement shall continue thereafter from year to year unless one of the parties hereto gives the other party at least sixty (60) days written notice prior to June 30, 2000 or any June 30th immediately after the giving of such notice. In the event that notice of intention to modify or amend is given, this Agreement shall remain in full force and effect until the parties hereto agree upon the terms of a new agreement or until either party gives the other at least twenty-four (24) hours notice of intention to terminate.

On February 18, 2000, Charging Party Business Representative Aretha Tucker met with Phillip Bowles to discuss a grievance filed by one of his employees. During this discussion he told Tucker that he did not have to worry about the grievance because he was not signing another contract with Charging Party, and within the next six months there would not be a union.

On April 3, 2000, Tucker sent a letter to Phillip Bowles asking to meet for the purpose of negotiating amendments to the existing agreement, as provided in Article XV. The Bowles sent Tucker the following reply:

> To ACTWU
>
> April 17, 2000
>
> We do not wish to renew our union contract in June of 2000.

Sometime around the middle of April, an employee who had previously told Phillip Bowles that she planned to retire on May 12 told him that she was postponing her retirement until after "we redid the contract." Bowles told her there wasn't going to be another contract.

On April 17, the Bowles posted this notice to their employees:

> We do not wish to renew our union contract in June of 2000.
>
> We understand that in a large corporation a union might be a necessity. We feel that with the small number of employees that we have the problems could be handled on a one-on-one basis.
>
> We will not make any changes in the holiday, vacation pay, etc. of the employees that are hired prior to 6-30-00.

> Raises will be given at least every 12 months. They will be based on the employees' attendance, performance, and overall attitude. The raises will be no less than the cost of living per year.
>
> The medical benefits we plan to provide to full-time employees will be Blue Cross. There is no deductible - only a $10 office visit and $10 prescription co-pay.

On May 4, Charging Party's insurance and benefit fund sent Respondent its regular monthly bill for insurance and pension contributions for the five employees in the unit. Phillip Bowles returned the bill with a check and the following handwritten notation:

> I am paying 1 week extra to take coverage through 6-30-00. That is the end of the contract and I will not be paying insurance or pension after 6-30-00.

On May 8, Tucker sent the Bowles a letter stating that it was not the Bowles' choice whether or not to renew the contract, and asking them to contact her to arrange dates for bargaining. The letter was sent by certified mail, but the Bowles did not receive it. On May 17, Tucker went to the laundry to speak to Phillip Bowles. Tucker told Bowles that they needed to set up a date to begin negotiations. Bowles said that he was not signing another contract, that he didn't see the use of a union, and that he couldn't afford the benefits he was paying. Bowles said that the employees would get a wage increase every twelve months, and he would give them insurance.

On May 19 the Bowles posted the following notice to employees:

> To All Union Employees:
>
> Your present health insurance will be canceled as of June 30, 2000.
> Any employee wishing to stay on can see Phil about signing up for your new insurance policy.

Tucker filed the charge with the NLRB on June 8, 2000.

Tucker visited the laundry again on June 28. She asked Phillip Bowles if he was ready to start negotiations. Bowles told her again that he wasn't, that he wasn't going to have a union. He said that there were other plants that didn't have a union and that he felt he didn't need one either. Bowles told Tucker that when she organized everybody else in the dry cleaning industry, or when he had more employees or his business picked up, then he would consider having a union. Bowles also told Tucker that he wasn't paying any more insurance or "doing any of that."

Between June and September 2000, Respondent gave one employee a raise because, as Erica Bowles explained, the Bowles believed that the wage rate in the contract for her classification was too low. As of September 2000, the other employees were still receiving the wage rates as set forth in the contract at the time of its termination. According to Phillip Bowles, Respondent plans to review their employees' performance every 12 months and give raises at that time based on performance. The record indicates that Respondent did not pay employees for July 3, 2000, a day on which the business was closed, although Independence Day was previously a paid holiday for employees. Respondent has not made contributions to Charging Party's health and welfare funds for any period after June 30, 2000, and employees are no longer receiving health insurance through that plan. As of the date of the hearing, no employee had signed up for the health plan referred to in Bowles' notice.

Discussion and Conclusions of Law:

During the hearing, Phillip Bowles argued that according to the contract, he could terminate it simply by giving written notice sixty days prior to the expiration date. Bowles

pointed out that he had given Charging Party notice that he did not wish to renew. Both Bowles obviously believed that upon termination of the contract they would have no further obligation to bargain or otherwise deal with Charging Party.

Charging Party makes two arguments. It asserts, first, that because Charging Party notified Respondent on April 3, 2000 that it desired to reopen the contract, Respondent's April 17 letter did not serve to terminate the contract. Therefore, according to Charging Party, the contract has renewed itself, and Respondent has unlawfully repudiated its obligations under that contract. Charging Party argues that the Commission should not only order Respondent to recognize the Charging Party and bargain, but to maintain the conditions of the contract until adequate notice is given to terminate the agreement. However, Respondent's notice was clear and was given within the time period provided for in the agreement. I find that the Bowles' letter dated April 17, 2000 served to terminate the parties' contract effective June 30, 2000.

Charging Party also argues that even if the contract terminated on June 30, Respondent has a continuing obligation to recognize and bargain with the Charging Party. According to Charging Party, Respondent blatantly repudiated its obligations under the LMA by refusing to meet and bargain. It also argues that acted unlawfully by eliminating its employees' existing health insurance, pension, and sickness and disability benefits without first bargaining to agreement or impasse. I agree with Charging Party that Respondent clearly repudiated its legal obligation to bargain. I also agree and that Respondent unlawfully altered its employees' existing wages and benefits after the contract expired. The fact that Respondent's competitors were not organized has no bearing on its continuing obligation to recognize and bargain with Charging Party under Sections 26 and 30 of the LMA, MCL 423.26 & 423.30; MSA 17.454(28) & 17.454(32).

Under the LMA, as under the NLRA, an employer has a legal obligation to recognize and bargain with the exclusive representative of its employees over the terms and conditions of their employment. Part of this obligation is the obligation to meet and bargain a contract, but the obligation itself does not depend on the existence of a contract. See, e.g., *Camelot Hotel*, 1970 MERC Lab Op 86. Section 16(6) of the LMA provides that it shall be unlawful for an employer or any officer or agent of an employer to refuse to bargain collectively with the representative of his employees, subject to the provisions of Section 26. In this case, Respondent told Charging Party that it wouldn't bargain with it after the contract expired, refused to meet to negotiate a new agreement, and refused to recognize Charging Party as its employees' representative after the contract expired. I conclude that Respondent violated Section 16(6) of the LMA by refusing to continue to recognize Charging Party as the exclusive representative of its employees and by refusing to meet to negotiate in good faith regarding a new contract.

The obligation to bargain in good faith under the LMA requires an employer to maintain the status quo as to wages, hours and most other terms and conditions of employment until the parties either reach agreement on new terms or come to an impasse. *1620 Corporation d/b/a Howard Johnson's*, 1972 MERC Lab Op 731,734; *NLRB v Katz*, 369 U.S. 736 (1962). That is, as long as an employer continues to have the obligation to deal with the union as the exclusive representative of its employees, it cannot lawfully decrease, increase or alter wages or benefits without first satisfying its obligation to bargain. An employer violates the LMA when it stops making contributions to a union health and welfare or pension funds after expiration of the collective bargaining agreement. *Howard Johnson's*, *supra*, at 737. Moreover, absent a valid impasse in bargaining, an employer cannot lawfully increase or decrease wages or benefits after the expiration of the contract. *Munson Medical Center*, 1971 MERC Lab Op 1092. I find that Respondent violated its duty to refrain from unilateral action by ceasing to make contributions to Charging Party's insurance and pension funds, ceasing to pay holiday pay, and unilaterally raising the wages of one of its employees.

In accord with the findings of fact, discussion and conclusions of law set forth above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondent Clairmont Laundry, Inc., its officers and agents, shall:

1. Cease and desist from refusing to recognize and bargain with Charging Party Chicago & Central States Joint Board, UNITE, AFL-CIO, as the exclusive representative of its employees for purposes of collective bargaining.

2. Upon demand, meet with the Charging Party for the purpose of negotiating a new contract to replace the collective bargaining agreement which expired on June 30, 2000.

3. Cease and desist from unilaterally altering its employees' wages, hours or terms and conditions of employment.

4. Take the following affirmative action:

   a. Immediately resume making contributions to Charging Party's insurance and pension funds for all employees in the bargaining unit at the rate provided in the expired contract, and pay all contributions to the pension fund owed for periods after July 1, 2000.

   b. Resume paying holiday pay as provided in the expired contract and make employees whole for any holiday pay they did not receive but would have received if Respondent had not altered its existing practice. Sums paid shall include interest at the rate of 5% per annum, computed quarterly.

   c. Post the attached notice to employees in conspicuous places on the Respondent's premises, including all places where notices to employees are usually posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, Clairmount Laundry, Inc., has been found to have committed an unfair labor practice in violation of the Michigan Labor Mediation Act. Pursuant to the terms of the Commission's order

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL cease and desist from refusing to recognize and bargain with Charging Party Chicago & Central States Joint Board, UNITE, AFL-CIO, as the exclusive representative of our employees for purposes of collective bargaining.

WE WILL upon demand, meet with Charging Party for the purpose of negotiating a new contract to replace the collective bargaining agreement which expired on June 30, 2000.

WE WILL cease and desist from unilaterally altering our employees' wages, hours, or terms and conditions of employment, including offering health insurance plans without bargaining.

WE WILL immediately resume making contributions to Charging Party's insurance and pension funds for all employees in the bargaining unit at the rate provided for in the expired contract, and pay all contributions to the insurance and pension fund owed for periods after July 1, 2000. Make employees whole for any losses they may have suffered because of the employer's failure to pay the required contributions, including, but not limited to, medical expenses which would have been covered under the union insurance fund and/or any sums paid by employees for substitute medical coverage, together with 5% per annum interest thereon, computed quarterly.

WE WILL resume paying holiday pay as provided in the expired contract, and make employees whole for any holiday pay they did not receive but would have received if we had not altered our existing practice, including interest at the rate of 5% per annum, computed quarterly.

CLAIRMOUNT LAUNDRY, INC.

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 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.