STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INTERNATIONAL ASSOCIATION OF THEATRICAL AND STAGE EMPLOYEES, LOCAL 274, AFL-CIO,
Respondent-Labor Organization,

Case No. CU00 D-14

-and-

LANSING ENTERTAINMENT AND PUBLIC FACILITIES AUTHORITY,
Charging Party-Employer.
_____/

APPEARANCES:

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

Foster, Swift, Collins & Smith, P.C., by Stephen O. Schultz, Esq., for Charging Party

DECISION AND ORDER

On May 22, 2001, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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Pinsky, Smith, Fayette & Hulswit, by Michael L. Fayette, Esq., for the Respondent

Foster, Swift, Collins & Smith, P.C., by Stephen O. Schultz, Esq., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

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), this case was heard at Lansing, Michigan on September 27, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on November 20, 2000, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On April 4, 2000, the Lansing Entertainment and Public Facilities Authority filed this charge against Local 274, International Association of Theatrical and Stage Employees. The Respondent Union represents several bargaining units of employees of the Charging Party Employer, including a unit of technical services employees. The charge alleges that the Union violated its duty to bargain in good faith under Section 10(3)(c) of PERA when, after reaching a tentative settlement of a contract covering the technical services unit, it permitted members of the Union who were not members of this unit to vote on the ratification of this agreement.

Facts:

The Employer operates a convention facility, a baseball stadium, and the Lansing City Market. The Employer organizes, promotes and presents shows, concerts and other entertainment activities.

The Employer's technical service bargaining unit includes two full-time employees: a technical services manager and an audio-visual/maintenance technician. The Union also represents other units of the Employer's employees. The Union and the Employer are party to a collective bargaining agreement covering the employment of on-call stagehands, including audio-visual technicians. When the Employer needs stagehands or additional audiovisual technicians for a specific performance it contacts the Union, and the Union refers its members for employment. Audiovisual technicians working for the Employer under the stagehand agreement are paid the same hourly rate as other stagehands.

Article 16, Section 4, of the Union's constitution and by-laws reads as follows:

> [The business representative] shall have full charge of the office of this union . . . He shall be chair, ex officio, of all negotiating committees. Contracts negotiated by any such committee shall be subject to ratification of the membership unless the membership has in advance empowered the committee to conclude the contract without ratification.

It is the Union's usual practice, after reaching a tentative agreement, to obtain the informal approval of its members in the unit covered by the contract. If the unit members approve the agreement by informal consensus, a formal ratification vote is taken at a general membership meeting. A member of the bargaining unit covered by the contract usually speaks at the meeting in support of ratification. All members of the union in good standing are permitted to vote. Union members not covered by the agreement at issue often abstain from voting, but they are not required to do so.

In September 1999, the parties reached a tentative agreement for a new contract covering the technical services unit. The tentative agreement created an additional position within the unit entitled "first on-call audiovisual technician." The hourly rate for this position was less than the hourly rate paid to on-call employees under the stagehand agreement.

On September 21, 1999, the Employer sent the Union president copies of the final draft contract for the technical services unit based on the parties' tentative agreement. The record indicates that the Union departed from its usual practice of obtaining the informal agreement of the members of the unit before presenting the agreement for ratification at a general membership meeting held on October 4, 1999. About sixteen members were present at this meeting, including one of the two individuals covered by the proposed agreement. This individual spoke against the creation of the new on-call position. A motion was made and passed to accept the agreement, except for the provision creating the new position. The minutes do not indicate that anyone abstained from voting.

On October 10, the Union notified the Employer that the membership had ratified the agreement, excluding the article covering the new position. After the Employer learned that union members who were not part of the bargaining unit had voted on the contract, it filed this unfair labor practice charge.

Discussion and Conclusions of Law:

The Employer maintains that the Union violated its duty to bargain in good faith by permitting members who were not part of the Employer's technical services unit to vote on the tentative agreement for this unit. The Employer argues, first, that the Union's ratification procedures effectively nullify the Commission's unit determination. Secondly, the Employer asserts that by permitting supervisors to vote on the ratification of tentative agreements covering nonsupervisory employees, the Union's ratification procedures destroy the purpose behind the Commission's policy requiring separate units for supervisors and nonsupervisors. Third, the Employer asserts that the Union's ratification procedures effectively require the Employer to bargain with all the Union's members, rather than with just the bargaining unit employees. Finally, the Employer maintains that the Union's ratification procedures violate the same policy the legislature relied upon when it amended PERA to add Section 17, MCL 423.417, MSA 17.455(17).1

As the Employer acknowledges, PERA does not require a bargaining agent to obtain employee ratification of a contract negotiated on behalf of the bargaining unit. *County of Calhoun*, 1980 MERC Lab Op 323, 332; *Kalkaska Public Schools*, 1978 MERC Lab Op 1052, 1056-57, 1065-1066; *Village of Chesaning*, 1974 MERC Lab Op 580, 596. Alleged procedural defects in a union's ratification vote do not constitute a violation of the union's duty to bargain in good faith. *Teamsters Local 214*, 1998 MERC Lab Op 72.

In the Employer's view, the Union has effectively expanded the technical services unit to encompass its entire membership by giving all members the right to vote on the Union's acceptance of this agreement. According to the Employer, "there is no purpose to a requirement that bargaining units share a community of interest if employees outside of that bargaining unit have the ability to dictate the terms and conditions of the bargaining unit's employment." This argument is similar to the Employer's claim that the Union's ratification procedures effectively require the Employer to bargain with the entire union membership, not simply the bargaining unit.

Both these arguments ignore a basic tenet of collective bargaining: an employer has an obligation to bargain with the union that represents its employees, not with the employees themselves. Section 10(1)(e) of PERA prohibits an employer from refusing to bargain with the representative of its public employees. The Employer has a legal duty under Sections 10 and 11 of

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1 Section 17(1) states, in part, that "a bargaining representative or an education association shall not veto a collective bargaining agreement reached between a public school employer and a bargaining unit consisting of employees of the public school employer; shall not require the bargaining unit to obtain the ratification of an education association before or as a condition of entering into a collective bargaining agreement; and shall not in any other way prohibit or prevent the bargaining unit from entering into, ratifying, or executing a collective bargaining agreement."

PERA to bargain with the Union as the exclusive bargaining representative of the employees in the unit. As the Union has the right and the duty to bargain for its members, it has the right to decide to which terms and conditions of employment it will agree. Nothing in the statute prevents the Union, in making these decisions, from considering the interests of its membership as a whole. Moreover, nothing in the statute prohibits the Union from consulting its membership on these questions. I find the Employer's arguments to be without merit.

The Employer's second argument is that the Union's ratification procedures "destroy the purpose" behind requiring separate bargaining units for supervisory and nonsupervisory employees. The Commission is prohibited by statute from including supervisors and nonsupervisors in the same bargaining unit. *United Auto Workers v Sterling Heights*, 176 Mich App 123,125-127 (1989); *Dearborn School District v Labor Mediation Bd,* 22 Mich App 222,226 (1970). However, the Commission permits a union to represent both units of nonsupervisory employees and units of supervisory employees of the same employer. *Northern Michigan Univ*, 1982 MERC Lab Op 1497; *City of Livonia*, 1975 MERC Lab Op 96,99; *City of Ann Arbor*, 1970 MERC Lab Op 440,442. In *City of Ann Arbor*, the Commission stated that that any question of unlawful employer interference or domination of a labor organization by virtue of the role played by supervisors in that organization should be decided on a case-by-case basis upon the filing of a proper unfair labor practice charge. The Commission, however, has never suggested that a union's representation of both supervisory and nonsupervisory units would violate the union's duty to bargain in good faith. In this case there is no evidence that any supervisors participated in the vote conducted on October 4, 1999. Even if the Union allowed supervisors to vote on the ratification of this contract, however, I would find no breach of the Union's duty to bargain in good faith.

The Employer's final argument is that the Union's ratification procedures violate the policy expressed in Section 17 of PERA. Whatever policy this section expresses, it is clear that the legislature intended it to apply only to public school employees, public school employers, and unions representing public school employees. Had the legislature wished this section to apply to all public employers and employees covered by PERA, it could have easily so provided.

Based on the above findings of fact, discussion and conclusions of law, I conclude that the Respondent Union did not violate Section 10(3)(c) of PERA by permitting members of the Union who were not members of the bargaining unit to vote on the ratification of a tentative agreement covering technical services employees of the Charging Party Employer. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge in this case is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _______________