STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF FLINT,
Respondent-Public Employer,

Case No. C00 L-208

-and-

FLINT FIRE FIGHTERS UNION, LOCAL 352,
IAFF,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Keller Thoma, P.C., by Frederic E. Champnella, Esq., and Samuel J. Veltri, Esq., for Respondent

Sachs Waldman, P.C., by George H. Kruszewski, Esq., for Charging Party

DECISION AND ORDER

On March 29, 2002, Administrative Law Judge (ALJ) Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent City of Flint did not refuse to bargain in good faith in violation of Section 10(1)(e) of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.210 (1)(e), and recommending that the Commission dismiss the unfair labor practice charge and complaint. On April 24, 2002, Charging Party, Flint Fire Fighters Union, Local 352, IAFF, filed timely exceptions to the Decision and Recommended Order of the ALJ.[1] Respondent filed a timely brief in opposition to the exceptions on May 29, 2002.

The facts of this case were accurately set forth in the ALJ's Decision and Recommended Order and will only be repeated as necessary here. Charging Party represents a bargaining unit consisting of all

1 Exceptions for this case were due in our office by April 22, 2002. Due to our office relocation, we did not receive mail from Friday, April 19, 2002 through Tuesday, April 23, 2002. Because of the foregoing, and since Respondent did not object, we will treat Charging Party's exceptions as timely.

classified employees of the Flint Fire Department and is a party to a collective bargaining agreement with Respondent. When Respondent became aware of impending financial difficulties in the summer of 2000, it began to hold meetings with its six bargaining units to discuss early retirement incentives for cost-saving purposes. At these meetings, the interim city administrator, who indicated that he was working with the City Council, reported to the unions on what the Council found acceptable. The union representatives discussed the terms that they expected to be acceptable to their members. Charging Party's president signed an initial early retirement agreement, but Respondent declined to do so upon discovering that previously anticipated cost savings would not be realized. A second agreement, which was the same as the first except for the deletion of a provision permitting retirement after twenty years of service, was signed by Charging Party's president on August 18, 2000. Respondent's director of labor relations signed the agreement, and faxed it to Charging Party's president. Charging Party's treasurer also signed the agreement, and its president subsequently took it to the City's labor relations manager.

Sometime during that same month, the labor relations manager sent an internal office memorandum to both the interim city administrator and the director of labor relations which stated that City Council ratification was a prerequisite to the implementation of the agreements with each of the unions, and that they should set up a City Council vote. On September 20, 2000, the interim city administrator and Charging Party's president attended a City Council finance committee meeting at which concerns arose as to the meager cost savings with the fire department in particular, and it was agreed that the interim city administrator would draft a further restriction in the agreement letters. The interim city administrator submitted these letters to the unions, advised them that the previous agreement had not passed the Council, and requested that each unit commit, in writing, to submit the new proposal to its members for ratification on the basis that this would aid in securing Council ratification. Charging Party's president did so on September 21, and on September 25, 2000, the City Council's special affairs committee reviewed the agreements and voted on which would be advanced to the whole Council. All of the agreements were approved except for the agreement with Charging Party's unit because it was determined that no cost savings would be realized in the fire department.

On December 8, 2000, Charging Party filed an unfair labor practice charge alleging that Respondent had refused to bargain in good faith by repudiating and refusing to implement the tentative agreement. In recommending dismissal of the charge, the ALJ found that it was obvious that both union and management representatives understood that they had reached a tentative agreement subject to ratification by both sides. Since the ALJ concluded that Charging Party failed to demonstrate that there was a contrary understanding, the ALJ held that Respondent did not fail to bargain in good faith when it refused to implement the agreement without City Council ratification.

Discussion And Conclusions Of Law:

We note that Respondent repeatedly rejected the tentative agreements though each one was successively more restrictive with respect to the employees' ability to take advantage of the early retirement

program. 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. *City of Springfield* 1999 MERC Lab Op 399; *Alba Public Schools*, 1989 MERC Lab Op 823, 827. In this matter, the Respondent's repeated successful requests for concessions culminating in Respondent's refusal to ratify the agreement was not indicative of bad faith because it was clear to all parties throughout the bargaining process that the goal was to develop an agreement that would result in significant cost savings for the Employer. Despite all the efforts of Charging Party's and Respondent's negotiators, the parties were unable to come up with an agreement that would provide Respondent with the desired cost savings. Inasmuch as none of the tentative agreements would accomplish Respondent's announced cost-savings goal, Respondent's refusal to ratify them is not indicative of bad faith.

On exception, Charging Party argues that the ALJ erred in concluding that City Council ratification was a precondition to the agreement. In particular, Charging Party contends that ratification of an agreement is not required as a matter of law. As authority for this contention, it relies on *ATU 1039*, 1978 MERC Lab Op 987; and *Calhoun Co Bd of Comm'rs*, 1980 MERC Lab Op 323. Charging Party suggests that because parties may agree that ratification is a condition precedent to the effectiveness of a tentative agreement, the corollary is also true. Thus it contends that a party's repudiation of an agreement on the basis that it lacks ratification is bad faith bargaining. We disagree.

It is well established that to become final under PERA, a tentative collective bargaining agreement must be ratified by formal action of the governing body of a public employer. See *North Dearborn Heights Sch Dist*, 1967 MERC Lab Op 673; *River Rouge Bd of Ed*, 1986 MERC Lab Op 724; *Munising Pub Schs*, 1996 MERC Lab Op 167. Moreover, a governmental body cannot delegate its statutory right or obligation to enter into contracts. See *North Dearborn Heights Sch Dist.* Further, the two cases upon which Charging Party relies have little, if any, relevance to the instant case. In both of those cases, it was agreed by the parties that ratification was a prerequisite, and the issue was whether the agreement was binding due to alleged internal ratification procedural flaws. It is clear that those cases stand for the proposition that once a party represents that a tentative agreement has been ratified, the other party may rely on such representation and the agreement may not subsequently be rescinded based upon internal ratification flaws. See *ATU 1039; and Calhoun Co Bd of Comm'rs*.

Charging Party also contends on exception that the ALJ erred when she found that the Union knew that Respondent's representatives did not have authority to bind it without City Council approval. Based on our review of the record, we find that the ALJ correctly characterized the facts. Although the interim city administrator did not recall a specific conversation with the Union's president regarding this issue, he credibly testified that he began each session with a report of his efforts to secure Council support. The record also indicates that the Union president and other Union representatives attended Council meetings wherein the letters of agreement were discussed. Therefore, we hold that Charging Party's exception on this point is without merit.

Further, Charging Party excepts to the ALJ's finding that it failed to convincingly demonstrate that there was a contrary understanding, or that past agreements were regularly put into effect without Council approval. The prior letters of agreement submitted by Charging Party have little relevance to this decision as none of these agreements had the significance or potential impact of the early retirement proposal. The majority of the agreements were prompted by and executed relative to grievance settlements that had no application beyond the resolution of the individual grievances. That one agreement may have resulted in amending the terms of the parties' contract without City Council approval is simply not sufficient to create a binding precedent.

We have carefully considered all other arguments raised by Charging Party and find that they do not warrant a change in the outcome of this case.

ORDER

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

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
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APPEARANCES:

Frederic E. Champnella, Esq, Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C., for the Public Employer

George H. Kruszewski, Esq., Sachs Waldman, P.C., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Detroit, Michigan, on April 23 and May 21, 2001, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on December 8, 2000, by the Flint Fire Fighters Union, Local 352, IAFF, alleging that the City of Flint had violated Section 10 of PERA. Based upon the record, including briefs filed on or before July 26, 2001, the undersigned makes the following findings of fact and conclusions of law and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

The charge alleges that:

Since August, 2000, the above-captioned Employer has refused, and continues to refuse, to bargain in good faith with the Charging Party by repudiating and refusing to implement an

agreement reached between the parties to allow members to purchase time towards retirement and/or retire early.

Facts:

The Flint Fire Fighters Union, Local 352, IAFF, represents a bargaining unit of all classified employees of the Flint Fire Department. The City and the Union are parties to a collective bargaining agreement covering the period from July 1, 1997 through June 30, 2000, which was extended on June 30, 2000, pending negotiation of a successor agreement.

In June of 2000 it became apparent to City administrators that they were encountering serious budget problems, with a projected $11 million deficit for fiscal year 2001. In July, interim city administrator Gary Bates and labor relations representatives met several times with representatives of the six City bargaining units to explore cost-saving measures, including an early retirement incentive. Sam Stewart, President of Local 352, attended most of these meetings on behalf of the fire fighters. Bates testified that he opened each of the meetings by indicating that they were working with City Council to develop cost-saving measures. As the meetings progressed, Bates testified that he reported back to the various unions on what was acceptable to Council. Bates also testified that in the first few meetings, the union representatives discussed what would be acceptable terms to get the maximum number of employees to retire, and what they thought they could sell to their membership.

The initial early retirement proposal allowed employees to purchase time to use for retirement and to retire with 20 years of service. Stewart signed this agreement on behalf of Local 352. He subsequently received a call from Bates indicating that the letter of agreement would not be signed by the City due to the fact that the fire department would not suffer any layoffs because a fire station was not going to close as previously thought.2

A second letter of agreement was then prepared and submitted to the Union. This proposal dropped the provision that employees could retire with 20 years of service but otherwise remained the same. Stewart signed this letter of agreement on August 18, 2000, and took it to Tony Morolla, director of labor relations. Morolla signed it and faxed it back the same day. According to Stewart, he subsequently talked to other members of the Local's executive board who thought a second signature was advisable since Stewart was a new president. Union treasurer Michael Murphy also signed the letter of agreement and Stewart took this document to labor relations manager Lucian Henry.

In August, Henry sent an internal office memo to Bates and Morolla regarding implementation of the letters of agreement with each of the unions. In this memo he noted that City Council ratification was a prerequisite and indicated that they should set up a vote by City Council on the letters of agreement.

2 The cost saving rationale for the early retirement proposal was that the retirement of long term higher paid employees would permit any employees on layoff, who were less senior and hence lower paid, to return.

On September 20, Bates attended a meeting of the Council's finance committee. The minutes of this meeting reveal that the Council had concerns with several aspects of the letters of agreement and what cost savings would be realized. They specifically discussed the fire department and the fact that since no members would be laid off, the incentive would not have the desired financial impact. Stewart was present at the meeting and heard these concerns discussed. In response to the committee's concerns, Bates agreed to draft a further restriction in the letters of agreement providing that those who bought time would have to leave during a specified window period.

Bates subsequently prepared another draft and submitted it to the unions, telling them that the previous agreement had not passed Council. Bates requested each bargaining unit to commit in writing to submit the proposal to its membership for ratification at the earliest possible date, telling them that this would help smooth the process of gaining Council ratification. Stewart signed the following agreement on September 21, 2000, on behalf of Local 352:

LETTER OF UNDERSTANDING

> It is the intent of Fire Local 352 to submit the second letter of agreement regarding the early retirement incentive to our membership for ratification at the earliest possible date.

In his testimony, Bates acknowledged that when he signed this agreement, he knew that Bates was trying to make the proposal acceptable to City Council.

On September 25, 2000, the Council's special affairs committee discussed the early-out retirement incentive agreements for each bargaining unit and voted on which would be referred to the whole Council. Agreements with all the unions except Local 352 were approved. It was the committee's decision that since no cost savings would be realized in the fire department, the agreement with Local 352 was dropped.

Bates testified that during the term of a collective bargaining agreement, the Union and Employer may discuss topics which are not covered by the contract and reach an agreement. According to Bates, depending on the significance of the topic, the ancillary agreement could take effect immediately; for example, a grievance settlement would take effect mid-term of the contract. Bates testified that supplemental agreements which were not initially submitted to Council would be ratified later when the entire successor contract went before Council. Lucian Henry, senior labor relations specialist for the City, testified that he believed that the early retirement proposals required ratification by union membership and City Council.[3] Henry also testified that most, although not all, supplemental agreements reached during a contract term were submitted to Council for ratification prior to becoming effective, although he was unable to give specific examples.

3 Mr. Henry, who was seriously ill at the time of hearing, testified pursuant to a telephonic deposition on May 16, 2001.

Joseph Foust, a fire department lieutenant who had previously served as a Local 352 trustee, vice president, and president, also testified regarding the negotiation of supplemental agreements and letters of understanding. According to Foust, these agreements were not always immediately submitted to Council for ratification, and many became effective when signed. Faust identified thirteen letters of agreement/supplemental agreements signed between 1992 and 1998 which he believed were put into effect without submission to Council. The majority of these agreements were designated settlement agreements and resolved grievances; they applied to specific employees and were designated "without precedent." A few of the agreements concerned changes in department staff assignments and manpower; some had temporary application and were subject to further negotiation. One agreement was an expansion of Article 43 of the contract regarding the department's paramedic program.

Discussion and Conclusions:

It is a general rule in public employment that a collective bargaining agreement negotiated by representatives of the employer must be ratified by formal action of the governing body in order to be effective. *City of Pontiac,* 1992 MERC Lab Op 245, 248; *School District of North Dearborn Heights*, 1967 MERC Lab Op 673. In accordance with this principle, it follows that supplementary agreements with significant impact—economic or otherwise--would also require approval by an employer's governing body, absent a contrary understanding or practice. In this case the Charging Party maintains that the Respondent is bound to the early retirement agreement signed by representatives of the City and the Local on August 18, 2000, because Union President Stewart was never told that Council ratification was a prerequisite to an agreement. The Charging Party argues that over the years the parties had entered into numerous letters of understanding and supplemental agreements which were not subject to Council ratification, therefore nothing in the past dealings between the parties would have put the Union on notice that Council ratification was a necessity in this situation.

It is clear that when discussions with the unions began in July concerning cost saving measures, Bates indicated his need to find a solution acceptable to City Council, and the union representatives similarly spoke of ensuring that the proposals could be sold to their membership. The record reveals that during this period Bates was submitting proposals to Council, reporting back to the union representatives regarding Council's objections, and amending the proposals to address Council's concerns. Thus the need for Council approval was not only expressed by Bates, it was implicit in the subsequent discussions and in his actions in presenting the various options to Council. In September, Bates asked each of the bargaining units to signify in writing that they were prepared to submit the second letter of agreement to their membership for ratification at the earliest possible date, stating that this would assist in securing Council's approval. The Local's president signed such an agreement. Under these circumstances, it is obvious that union and management representatives understood that they had reached a tentative agreement which was subject to ratification by both sides. See *Eau Claire Public Sch*, 1973 MERC Lab Op 184, 188. This is precisely what happened with all the other bargaining units.

The Charging Party has failed to convincingly demonstrate that there was a contrary understanding, or that past letters of agreement/supplementary agreements were regularly put into effect without Council approval. Both management representatives Bates and Henry testified credibly that most supplemental

agreements, particularly those of a significant nature, did require submission to Council before becoming effective. Henry specifically testified that the early retirement proposal required Council approval, and wrote memos to Bates and Morolla directing that they schedule such a vote. Of the letters of agreement testified to by former Union officer Foust which were not submitted to Council, only one actually amended an article of the contract; the others were in settlement of grievances and applied to specific employees with no precedential effect. None of these agreements had the significance or potential impact of the early retirement proposal.

Based on the above discussion, I find that the Charging Party has not established a refusal to bargain by the Employer in violation of Section 10(1)(e) of PERA. Although Respondent reached a tentative agreement with Local 352 in August of 2000, it did not demonstrate bad faith by its failure to implement the agreement absent City Council ratification. *City of Detroit (Water & Sewerage Dept)*, 1982 MERC Lab Op 1042. It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Nora Lynch
Administrative Law Judge

Dated: _____