STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF GRAND RAPIDS,
Public Employer - Respondent,

Case No. C02 C-073

-and-

GRAND RAPIDS EMPLOYEES INDEPENDENT UNION,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Nantz, Litowich, Smith & Girard, P.C. by John H. Gretzinger, Esq., for Respondent

Kalniz, Iorio & Feldstein, by Ted Iorio, Esq., for Charging Party

DECISION AND ORDER

On September 18, 2003, Administrative Law Judge Roy L. Roulhac issued his 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

_____
Nora Lynch, Commission Chairman

_____
Harry Bishop, Commission Member

_____
Maris Stella Swift, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission on October 1, 2002 pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based upon the record and post-hearing briefs filed on November 27, 2002, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA.

The Unfair Labor Practice Charge:

On March 22, 2002, Charging Party Grand Rapids Independent Union filed an unfair labor practice charge against Respondent City of Grand Rapids alleging that Respondent violated Section 10(c) and (e) and Section 11 of PERA by the following conduct:

> On or about March 4th, 2002, the Respondent presented a proposal concerning the early retirement plan. On or about March 7th, 2002, the Charging Party, prior to 4:00 p.m. on March 7, 2002, agreed in writing to accept the City's proposal. The Respondent, after acceptance of the proposal by the Charging Party, has repudiated or otherwise withdrawn its proposal. By this and other conduct, the Respondent has engaged in bad faith bargaining and denied employees their rights as protected by PERA.

Findings of Fact:

Respondent City of Grand Rapids and Charging Party Grand Rapids Independent Union ("GREIU" or "Charging Party") are parties to a collective bargaining agreement that covered the period January 1, 1998 to December 31, 2001. Negotiations for a successor contract began in October 2001.

On February 14, 2002, Respondent delivered a copy of a proposed Early Retirement Incentive Plan (the "Plan" or "ERI Plan") to every union, including Charging Party, whose employees were potentially eligible to participate in the plan. The Plan was designed to address anticipated funding problems. The plan, as amended by the City Council, did not apply to union members unless an authorized representative advised Respondent, in writing on or before 4:00 p.m. on March 7, 2002, that: its provisions were acceptable; the union waived any bargaining obligation; and agreed not to file a grievance or lawsuit contesting the Plan.

Charging Party requested to bargain about the Plan and on February 28, 2002, sent Respondent the following proposal for consideration during a March 4, 2002, bargaining session:

1. Full insurance regardless of age.
2. Full retroactivity for employees who take Early Retirement Plan
3. $3,000 retirement incentive.
4. 25 and out for credit
5. Union reserves right to negotiate future Early Retirement Plans
6. Subject to final approval of contract.

Jim Turner, Charging Party's president and chief negotiator, testified that its proposal was tied in "with the contract in hopes that it was a little bit of leverage to get the contract done."

During the March 4 bargaining session, Respondent presented two proposals - one regarding the ongoing contract negotiations, and the following counter-proposal regarding the Plan:

> (Separate) City's Proposal on ERI Plan for 3/7/02 only
> The City offers the ERI Plan as proposed with the addition of health insurance for those persons retiring under the ERI who otherwise would not be eligible since they have not attained the age requirement.
> Offer expires 3/7/02 @ 4:00 pm.

According to Mary Beth Jelks, Respondent's labor relations manager and chief negotiator, she told Charging Party's bargaining team that Respondent presented a separate proposal because it was unlikely that an agreement would be reached on the entire contract considering the number of outstanding issues still on the table. She testified that she also told Charging Party that the original Plan, which did not include insurance, was still available until March 7 at 4:00 p.m.

During the same March 4, 2002 bargaining session, Charging Party presented the following counter-proposal that eliminated items 3, 4 and 5 from its initial proposal:

Early Retirement Plan
- subject to agreement on entire contract
- full insurance regardless of age
- full retroactivity for employees who take E.R.P.

Jelks testified that she informed Charging Party that Respondent accepted Charging Party's counter-proposal to tie the Plan, with insurance, to reaching agreement on the entire contract. According to Jelks, although she did not officially withdraw Respondent's March 4 counter-proposal, she said, "you've rejected our proposal. We're accepting your proposal, and we better get to work because it's tied to the whole agreement," and that the parties bargained until 5:30 p.m. that day.

Cheryl Tutson, a member of Charging Party's bargaining team, testifying as a rebuttal witness, denied that Respondent made any changes in its position regarding its time-limited, separate counter-proposal at the March 4 meeting. She testified that it was her understanding after the March 4, 2000 bargaining session, that Respondent's counter-proposal could be accepted until 4:00 p.m. on March 7. However, when cross-examined Tutson was confused about whether Charging Party's March 4, 2002 counter-proposal conditioning agreement on the Plan to reaching agreement on the entire contract, was made before or after Respondent's March 4, 2002 time-limited, separate counter-proposal. She testified mistakenly that Charging Party made its March 4 counter-proposal before Respondent presented its March 4 separate counter-proposal.

The parties did not reach agreement on the entire contract during their March 7 bargaining session and discussed the Plan near the end of the meeting. According to Turner, as the GREIU was about to accept Respondent's March 4 ERI proposal, Ted Iorio, Charging Party's attorney, asked Jelks "if the insurance thing was there," and was told that, "Well, since you guys want to tie it to the contract, I guess not." According to Jelks, she told Charging Party that "the ERI plan, proposal that we had – that they had rejected and that we had tied to the contract, obviously was no longer existent, but that the City would continue to offer the original ERI Plan which did not include the health insurance and that they [Charging Party] had until 4:00 p.m. to accept or reject that."

Shortly after the March 7 bargaining session ended, Charging Party faxed Respondent its authorization to offer the ERI plan to its members. Charging Party added a paragraph providing for insurance for retiring employees who otherwise would not be eligible. A series of correspondence followed, including a March 7, 2002 letter from Respondent's labor relations director pointing out to Charging Party that since no agreement was reached on the entire contract, that only the offer without insurance was still available until 4:00 p.m.

Conclusions of Law:

Charging Party claims that on March 7, 2002, Respondent engaged in bad faith bargaining by withdrawing its March 4, 2002 early retirement proposal after it had been accepted. According to Charging Party, on March 4, 2002, Respondent presented a clear and explicit written proposal which provided that the early retirement incentive plan was separate from bargaining, and had to be

accepted by 4:00 p.m. on March 7. Charging Party claims that it had no reason to believe that Respondent's March 4 ERI proposal had been modified and could reasonably conclude that as long as the time constraints were complied with it could accept Respondent's proposal. According to Charging Party, Respondent's premature withdrawal of its offer violated its duty to bargain in good faith. I disagree.

The record supports a finding that Charging Party knew at the end of the March 4, 2002, bargaining session that Respondent had accepted its counter-proposal to condition agreement on the ERI plan to reaching agreement on the entire contract. I credit Jelks' testimony that on March 4, she informed Charging Party's bargaining team that Respondent accepted the Charging Party's counter-proposal to condition acceptance of the Plan on reaching agreement on the entire contract. I find Tutson's testimony to be unreliable, since she was confused about the timing of the parties' counter-proposals.

Moreover, I find that Jelks' testimony that Respondent accepted Charging Party's proposal to condition agreement on the Plan to concluding negotiation on the entire contract is supported by the testimony of Turner. He testified that at the end of the March 7, 2002 bargaining session, Charging Party's legal counsel asked "if the insurance thing was there," and was told by Jelks that "since you guys want to tie it to the contract, I guess not." Jelks testified credibly that she explained to Charging Party that it was obvious that Respondent's March 4 proposal was no longer on the table because Respondent had agreed to Charging Party's proposal to condition acceptance of the ERI Plan to reaching agreement on the entire contract, and therefore, Charging Party had until 4:00 p.m. to accept or reject the original Plan that did not include insurance.

I find that on March 7, 2002, prior to faxing its acceptance of Respondent's separate counter-proposal, Charging Party knew it was no longer viable. Thus, since the parties did not reach an agreement on the contract, Charging Party's claim that Respondent bargained in bad faith by withdrawing its March 4, 2002, early retirement proposal lacks merit and is not supported by the record.

Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

Recommended Order

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Roy L. Roulhac
Administrative Law Judge

Dated: _____