STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SAGINAW COUNTY (PUBLIC HEALTH AND COMMISSION ON AGING DEPT)
Respondent-Public Employer

Case No. C02 F-135

-and-

SAGINAW COUNTY DEPARTMENT PUBLIC HEALTH EMPLOYEES UNION
Charging Party-Labor Organization

_____/

APPEARANCES:

Jensen, Smith, Gilbert & Borrello, P.C., by Stephen L. Borrello, Esq., for the Public Employer

Masud, Patterson, & Schutter, P.C., by Gary D. Patterson, Esq. and Elizabeth L. Peters, Esq. for the Labor Organization

DECISION AND ORDER

On July 31, 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 Chair

Maris Stella Swift, Commission Member

Harry W. Bishop, Commission Member

Dated: _____

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EMPLOYMENT RELATIONS COMMISSION
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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan on September 23, 2002, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 *et seq*. The proceeding was based upon an unfair labor practice charge filed on June 12, 2002, by Charging Party Saginaw County Department of Public Health Employees Union, a labor organization, against Respondent Saginaw County (Department of Public Health & Commission on Aging), a public employer. Based upon the record and post-hearing briefs filed by November 7, 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:

Charging Party's June 12, 2002 charge reads: The Employer has unilaterally implemented changes to the collective bargaining agreement in the absence of an agreement with the Union and/or impasse and with the Union's fact finding petition pending before MERC.

Findings of Fact:

The facts are essentially undisputed. The Union and the Employer were parties to a collective bargaining agreement that expired on September 30, 2001. Between September 10, 2001 and May 14, 2002, the parties engaged in fifteen bargaining sessions, the last two with a mediator, to reach a successor agreement. The major issue separating the parties involved increased co-pays for employee

health care premiums. After the mediator left the May 14, 2002 bargaining session, the County's attorney told the Union, "We're going to implement impasse." The Union's attorney replied, "We're going to fact finding."

The same day, the Saginaw County Board of Commissioners' Labor Relations Subcommittee on Appropriations approved a motion to recommend to the Board of Commissioners that the Employer's last best officer be implemented. A week later, on May 21, 2002, the Saginaw County Board of Commissioners approved the Subcommittee's recommendation. In the meantime, on May 15, 2002, the Union filed a fact finding petition with the Commission.

Conclusions of Law:

During the hearing and in its post-hearing brief, Charging Party maintains that Respondent committed an unfair labor practice and violated PERA because the County Board of Commissioners did not approve implementation of the impasse agreement until May 21, 2002, six days after the Union filed its fact finding petition.

In *AFSCME Council 25* v *Wayne County*, 152 Mich App 87, 97 (1986), *lv den* 426 Mich 875 (1986), *aff'g* 1984 MERC Lab Op 1142 and 1985 MERC LabOp 244, the Court approved the Commission's adoption of a rule prohibiting employers from implementing unilateral changes in mandatory bargaining after the initiation of mediation and fact finding. In *Village of Constantine*, 1991 MERC Lab Op 467, the Commission acknowledged that this rule might encourage a race between the union requesting fact finding and the employer attempting to implement a change.

Subsequently, the Commission has established rules for the "race." The Commission has found that a union's mere announcement of its intention to seek fact finding is not sufficient to block implementation of a final offer. Once impasse is reached, a union must formally file a petition *before* the employer announces it plans to implement its final officer. If an employer announces that impasse has been reached *before* the union files a petition, the employer must implement its final offer within a reasonable time. *Mecosta County Park Commission*, 2001 MERC Lab Op 28; *City of Detroit Water & Sewerage*, 1996 MERC Lab Op 318; *City of Highland* Park, 1993 MERC Lab Op 71. In this case, I find that the Union's May 15, 2002 petition, filed after the Employer's May 14, 2002 announcement that it was "going to implement impasse" does not operate as a bar to the Employer's implementation plans. I also conclude that the County Commission's May 21, 2002 vote to implement the final offer occurred within a reasonable time after impasse was announced.

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

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Roy L. Roulhac
Administrative Law Judge

Dated: _____