STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

LINCOLN CONSOLIDATED SCHOOLS,
Respondent-Public Employer,

Case No. C02 H-183

-and-

TEAMSTERS LOCAL 214,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Beier Howlett, P.C., by Michael C. Gibbons, Esq., for the Respondent

Rudell and O'Neill, P.C., by Kevin J. O'Neill, Esq., for the Charging Party

DECISION AND ORDER

On August 20, 2003, Administrative Law Judge Julia C. Stern issued her decision and Recommended Order in the above-entitled 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

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Nora Lynch, Commission Chair

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Maris Stella Swift, Commission Member

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Harry W. Bishop, Commission Member

Dated:_____

STATE OF MICHIGAN
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In the Matter of:

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Labor Organization-Charging Party.
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APPEARANCES:

Beier Howlett, P.C., .by Michael C. Gibbons, Esq., for the Respondent

Rudell and O'Neill, P.C., by Kevin J. O'Neill, 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 and 423.216, this case was heard at Detroit, Michigan on December 10, 2002, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Post-hearing briefs were filed by the parties on or before March 18, 2000.

The Charge and Overview of the Case:

The charge was filed by Teamsters Local 214 against the Lincoln Consolidated Schools on August 9, 2002. Charging Party represents a unit of school bus drivers and bus aides employed by Respondent. In July or August of each year, members of Charging Party's unit bid upon and secure bus routes for the upcoming school year. Charging Party alleges that on or about August 6, 2002, Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA by unilaterally implementing a change in this selection process. Specifically, Charging Party asserts that Respondent acted unlawfully by combining kindergarten bus runs with elementary and secondary runs into single routes, thereby eliminating its members' ability to select the shorter kindergarten runs separately. Because of this change, some members of the unit who had combined routes to work full-time were unable to put together a full-time schedule. Other drivers and

aides who had previously worked part-time were unable to find any route that did not conflict with their other commitments.

As originally filed, the charge also included allegations that Respondent coerced and intimidated employees and eroded Charging Party's representative status. However, during the hearing, Charging Party agreed that there was no evidence as to these latter allegations, and that the unilateral change was the sole issue to be litigated.

Charging Party asserts that the parties' contract, when read in the light of the past practice, requires separate kindergarten runs. Charging Party also contends that Respondent's proposal to delete certain contract language during the parties' negotiations for a new contract indicates that Respondent recognized this fact. Respondent maintains that the contract gave it the right to make the change, and that the instant dispute is only a dispute over interpretation of the contract language.

For reasons discussed below, I find that the issue of separate kindergarten runs was covered by the parties' contract. I also find that Charging Party did not establish that Respondent acted in bad faith when it eliminated separate kindergarten runs, that Respondent did not repudiate the contract by combining these runs with other runs, and that the dispute in this case was merely a bona fide contract interpretation dispute not involving a violation of PERA.

Findings of Fact:

Bus Route Selection and the Elimination of Separate Kindergarten Runs:

Charging Party has represented this unit since 1998. The unit was represented by another labor organization for at least 10 years before Charging Party became the bargaining representative. The most recent collective bargaining agreement between Charging Party and Respondent covered the term March 22, 1999, through June 30, 2002. On July 6, 2002, the parties executed a letter of understanding extending the contract on a day-to-day basis.

Article 30 of the contract, "Route Selection," reads as follows:

> A. Selection of Special Education and regular bus routes, secondary, elementary and kindergarten will be made by drivers, prior to each school year, according to seniority and classification. Drivers shall be provided with records of available routes for the selection process.
>
> B. Routes, direction of routes, and bus stops shall be established by the administration and no changes will be made without administration approval. The first day of route selection shall be the last Wednesday in July. If routes are not ready for selection, Wednesday of the following week will be used as the first day.

C. Employees who cannot be present must pre-arrange with the Transportation Supervisor or designee to select a route according to the employee's respective seniority. Drivers on a medical leave of absence which will terminate prior to December 1 shall be permitted to bid, or make arrangements for a bid, as prescribed above, in order to establish their annual assignment. If the driver does not return prior to December 1, their assignment will be put up for permanent bid.

D. Shuttle runs include daily runs to transport vocational education students to and from R.C.T.C. program. Regional Career Technical Center runs shall be selected as follows: For the purposes of route selection the 8:00 a.m. and 10:00 a.m. runs shall be chosen together. For the purposes of route selection the runs starting at approximately 11:00 a.m. and 1:30 p.m. shall be chosen together.

E. Late runs and/or kindergarten runs shall be awarded to the applicant employees on the basis of classification and seniority. When that driver is not able to make the run, a substitute shall be selected from regular drivers, if available, on the basis of seniority.

F. Bus routes will be made up by the administration in accordance with acceptable standards, capacities and relevant law.

G. After the initial route selection in July, if a route is then vacated, the route must be posted to be bid on by lower seniority drivers. Higher seniority drivers who have had an opportunity to choose the route at route selection time shall be exempt from the bidding.

Before the beginning of each school year, the drivers and aides select the routes they will drive. While the procedures for route selection are set forth, in part, in Article 30, these procedures are supplemented by certain regular practices. Several witnesses described the procedures used to select routes. These procedures remained essentially unchanged from at least the late 1980s until 2002.

On a designated date, in July or early August, the bus drivers meet at a location on the Employer's premises. A group of tables is set up in a room. On these tables are documents describing each available bus route. The document indicates the starting time for the route and the time necessary to complete the route. Each table contains a different type of run. Before the 2002 selection, there were six tables. They were divided as follows:

Special Education

Kindergarten

Pre-Kindergarten

Aides

Four-hour run table (combined secondary and elementary school routes)

Center for Vocational and Technical Education

In some years, drivers were allowed to look over the routes before selection day. This did not occur in 2002.

On selection day, the drivers enter the room one at a time, in order of seniority. The Director of Transportation is there to answer questions and supervise the procedure. A driver passes from table to table, selecting a route or combination of routes. Each driver has 15 minutes to complete his or her selection. Drivers can work no more than 40 hours per week. Drivers who wish to work the maximum number of hours try to combine several routes, without overlapping hours or exceeding the 40-hour limit. Drivers who wish (or have to) work part-time try to select routes that do not conflict with their other commitments. When the driver is finished, he shows his routes to the Director of Transportation, who records them and admits the next driver to the room. Bus aides select their routes in the same manner.

The selection date for the 2002-2003 school year was August 6, 2002. When the drivers entered the selection room, they found that there were no tables for kindergarten or pre-kindergarten runs. Respondent had combined the kindergarten routes with the four-hour secondary and elementary routes to create a group of five and one-half hour runs.[1] Pre-kindergarten runs were combined with the Technical Center runs. Because they could no longer select the shorter kindergarten and pre-kindergarten runs separately, some drivers and aides who had previously been able to assemble a 40-hour workweek could no longer do so. Some senior drivers and aides who had worked part-time could not find a route that did not conflict with their other commitments.

By coincidence, representatives of both the Employer and the Union were on the Employer's premises for a bargaining session on August 6. Union members reported the change to their representatives. The Union representatives protested the change, without result. The drivers and aides made their selections based on what was available. Three days later, the Union filed this charge.

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[1] Mary Markgraff, Director of Transportation, and Albert Widner, Superintendent, testified as to the Employer's reasons for the change. According to Markgraff and Widner, the Employer had difficulty finding substitute drivers for the shorter runs. Substitute drivers were reluctant to accept runs that were only an hour or two in length. By combining runs, the Employer created a number of five and one-half hour routes which were more attractive to substitutes. In addition, under the older system, different drivers might drive the kindergarten or pre-kindergarten runs in the morning and in the afternoon. Under the new system, the same driver would likely have both runs. This also applied to the aides on these routes.

Proposed Changes to Article 30 in 2002:

On March 20, 2002, before the parties began negotiations for their new contract, they entered into a memorandum of understanding which settled several grievances. The memorandum of understanding included this paragraph:

> The following is a clarification of Article 30, Section E. When the driver of a late run/kindergarten run provides the Employer with less than one hour notice that they cannot do the run, then the Employer is authorized to get a substitute for that run from the available regular drivers to ensure a timely run. The Employer shall select the most senior person available but is not required to offer the work in strick [sic] seniority order. If one hour or more notice is provided, then the substitute for that run shall be from the regular drivers in seniority order.

Negotiations for the new contract began on June 4, 2002. The Employer presented its proposals for the modification of the contract on that date. These proposals included the deletion of Sections D and E of Article 30. The Employer went through all of its proposals at the June 4 meeting, explaining each proposal and its rationale. With respect to the deletion of Article 30(D) and (E), the Employer simply said that that the purpose of the proposal was to increase the efficiency and effectiveness of the bus routes. According to Employer Superintendent Albert Widner, Respondent's chief bargaining representative, the Employer had already decided to combine the kindergarten and pre-kindergarten runs with other runs for bidding purposes that summer. However, the Employer did not say anything to the Union about this decision at this meeting. Widner testified that the Employer believed that it already had the right to combine the runs under other subsections of Article 30 without any change in the contract language. According to Widner, the Employer wanted to delete subsection E of Article 30 only because it might appear to conflict with the March 20 memorandum of understanding.

The Union did not respond to the Employer's proposal to delete subsection D and E, either at the June 4 meeting or later. The parties had approximately five bargaining sessions before August 6, 2002. The parties did not discuss the Employer's proposed amendments to Article 30 at any of the meetings between June 4 and August 6. The parties did tentatively agree to add a new section, Section K, to Article 30. This new section was essentially identical to the portion of the March 20, 2002 memorandum of understanding quoted above.

Discussion and Conclusions of Law:

Charging Party asserts that Article 30 (D), which refers specifically to kindergarten runs, requires Respondent to maintain separate kindergarten runs for bidding purposes. It maintains that, to the extent the contract language is ambiguous, it should be interpreted in light of the parties' past practice. Respondent's principal argument that Article 30 (B), which states that it shall establish "routes," permitted it to combine the kindergarten runs

with other runs for bidding purposes. Respondent notes that nothing in Article 30 states explicitly that kindergarten runs must be available to be chosen separately.

In *Port Huron Area School District*, 452 Mich 309, 318, 321 (1996), the Supreme Court held that when an employer raises the contract as a defense to a claim that it has unilaterally altered terms and conditions of employment, the Commission must first determine whether the issue the union seeks to negotiate is "covered" by the collective bargaining agreement. If so, the employer has satisfied its obligation to bargain, and the details and enforceability of the provision are properly left to arbitration. By arguing that the Employer breached the contract by eliminating separate kindergarten runs, the Union in this case has effectively admitted that the contract covered this issue.

The Commission has held, however, that an employer's breach of contract may be evidence that the employer has repudiated the contract. The Commission has defined repudiation as an attempt to rewrite the contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *Central Michigan Univ.*, 1997 MERC Lab Op 501; *Redford Twp. Bd of Ed.*, 1992 MERC Lab Op 894. The Commission will not find repudiation where a bona fide dispute exists between the parties concerning the interpretation of the contract. *Village of Romeo,* 2000 MERC Lab Op 296, 298.

Charging Party disputes the Employer's claim that it relied in good faith on its interpretation of Article 30. According to Charging Party, the Employer's June 4, 2002 proposal to delete Article 30 (D) from their successor agreement was an implicit recognition that it did not have the right under the existing contract language to eliminate separate kindergarten runs. Respondent Superintendent Widner denied that the Employer proposed to eliminate Article 30(D) so that it could eliminate separate kindergarten runs. As noted above, Widner testified that Respondent believed it had the right under Article 30(B) to combine runs and, on June 4, had already decided to eliminate separate kindergarten runs. According to Widner, Respondent sought to delete Article 30(D) out of concern that it might appear to conflict with the parties' March 20, 2002 letter of understanding, which the parties later agreed to incorporate into the contract as Article 30(K). Widner's account is not consistent with the Union's testimony that the rationale that Respondent gave for deleting Article 30(D) on June 4 was "efficiency." On the other hand, after June 4, Respondent agreed to add new contract language, Article 30(K), which, like Article 30(D), arguably presumes the existence of separate kindergarten runs. On the evidence as a whole, I conclude that there is insufficient evidence to find that Respondent eliminated separate kindergarten runs without a good faith belief that it had the right to take this action under the existing contract.

In sum, I find that Charging Party did not establish that Respondent acted in bad faith or repudiated the parties' existing contract when it eliminated separate kindergarten runs for bidding purposes on August 6, 2002. I conclude that the parties have a bona fide dispute over the interpretation of the language of Article 30 of their agreement. In these circumstances, the case presents no unfair labor practice issue; the parties must resolve their dispute through the contractual grievance procedure or renegotiate the disputed

language. For the above reasons, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____