STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MACOMB COUNTY,
Respondent-Public Employer,

Case No. C03 B-025

-and-

MARVIN M. ZIMMER, II,
An Individual Charging Party.
_____/

APPEARANCES:

Macomb County Corporation Counsel, by James S. Meyerand, Esq., for the Public Employer

Marvin M.Zimmer, II, In Pro Se

DECISION AND ORDER

On August 26, 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 W. Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

On February 6, 2003, Charging Party Marvin M. Zimmer, II filed an unfair labor practice charge against Respondent Macomb County. The charge reads in pertinent part as follows:

> Parity [wage] adjustments were given to 41 of the 44 Assistant/Deputy Directors for the County (retro active to January 1, 2002) . . .I contacted the Division Director of Labor Relations, who's responsibility is contract negotiations, and was informed that the sole reason for the 3 positions non-consideration was that they were union positions and thus this matter could only be resolved through contract negotiations. I contacted my union representative who responded by taking a like position by not wishing to reopen the current contract.
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> * * *
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> To deny these adjustments to union members and not to deny the same because of non-union affiliation positions is purely discriminatory. Whether or not you belong to a union or not is no criteria for denial of parity adjustments given to others in this County with the same type of responsibilities. I also feel that if the County was determined to grant these adjustments and with the possession of such knowledge would have been more in keeping with fair labor practices had these adjustments been granted to all Assistant/Deputy Directors irregardless of union affiliation.

On July 9, 2003, Respondent filed a Motion for Summary Disposition. It asserts that Charging Party failed to state a claim for which relief can be granted because he is inappropriately asking this Commission to force the Respondent to commit an unfair labor practice by negotiating with him instead of his Union regarding a mandatory subject of bargaining.

Charging Party filed a response to the Motion on July 28, 2003. He contends that he never requested that Respondent or this Commission negotiate with him personally; only that management and the union jointly resolve this matter by providing union-represented assistant and deputy directors the same benefit package received by non-union assistant and deputy directors and a salary equal to 80% of directors' salary.

Facts:

Charging Party is employed by Respondent as an assistant director of equalization and is a union member. In September 2002, Respondent provided wage adjustments for approximately forty-one non-union assistant and director directors. Two deputy/assistant directors in Charging Party bargaining unit were not granted wage increases. Charging Party's union representative informed him that the wage increases for non-bargaining unit members did not violate the collective bargaining agreement and that the union did not wish to re-open the contract to negotiate a wage increase because it would open the door to other issues that it did not want to change.

Thereafter, Charging Party asked Respondent's Director of Labor Relations if his position could become a non-union position. In a January 24, 2003 letter, Charging Party was informed that the County recognized UAW Local 412 as the bargaining representative for his position and the issues of wages, benefits and other condition of employment must be negotiated with his bargaining representative.

Conclusions of Law:

Charging Party argues that it is discriminatory for the employer to deny union members the same wage and benefit adjustments granted to non-union members. Section 11 of the Public Employment Relations Act, MCL 423.201 *et. Seq.*, requires employers to deal only with a union selected by employees in a collective bargaining unit regarding their wages, hours or other conditions of employment. An employer violates its duty to bargain in good faith when it bypasses the employees' designated representative and negotiates directly with an employee. The violation is premised on the theory that direct bargaining between an employer and its employees seriously undermines the authority of the union. *Green Oaks Township*, 1998 MERC Lab Op 660,667; *City of Dearborn*, 1986 MERC Lab Op 538, 541. Respondent properly refused to honor Charging Party's request to grant him the same wage and benefit adjustments that were approved for non-bargaining unit members. Since Charging Party failed to state a claim for which relief can be granted under PERA, 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: _____