STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CHARTER TOWNSHIP OF FLINT,
Respondent – Public Employer,

Case No. C03 D-081
C03 F-134

-and-

TEAMSTERS LOCAL 214,
Charging Party – Labor Organization.

_____/

APPEARANCES:

Luce, Basil & Collins, Inc., Consultants to Management, by Thomas A. Basil, for the Respondent

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for the Charging Party

DECISION AND ORDER

On June 30, 2004, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in Case No. C03 D-081 finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charge and complaint as being without merit. In Case No. C03 F-134, Administrative Law Judge Roy L. Roulhac found that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

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

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Nino E. Green, Commission Member

Dated: _____

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Public Employer – Respondent,

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APPEARANCES:

Luce, Basil & Collins, Inc., Consultants to Management, by Thomas A. Basil, for Respondent

Rudell & O'Neill, P. C., by Wayne A. Rudell, Esq., for 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 423.210-217, this case was heard in Detroit, Michigan on February 5, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC). This proceeding was based upon an unfair labor practice charge filed against Respondent Charter Township of Flint by Charging Party Teamsters Local 214. Based upon the record and post-hearing briefs filed by April 8, 2004, I make the following findings of fact, conclusions of law and recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charges:

Charging Party filed two unfair labor practice charges against Respondent. The first, Case No. C03 D-081, filed on April 9, 2003, alleges that Respondent violated Sections 10(1)(a) and (e) of PERA by refusing to bargain over working hours. In its June 23, 2003 charge, Case No. C03 F-134, Charging Party claims that Respondent violated Sections 10(1)(a)(b) and (e) of PERA by insisting on tape recording an employee's termination grievance meeting.

Findings of Fact:

The relevant facts are undisputed in Case No. C03 D-081. Charging Party is the recognized

bargaining representative for communication operators employed by Respondent. Charging Party and Respondent are parties to a collective bargaining agreement that covers the period January 1, 2000 to December 31, 2004. Article XI of the agreement, Past Practice, reads:

> The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make proposals with respect to all proper subjects of collective bargaining and that all subjects have been discussed and negotiated upon, and the agreements contained in this Contract were arrived at after the free exercise of rights and opportunities. The parties further agree that the Township shall not be bound by past practice. Any rights the Union may assert must specifically be found within the collective bargaining agreement. The parties are free to negotiate during the life of this agreement on any subject.

On or about January 20, 2003, a vacancy occurred in a full-time bargaining unit position for the first time. Charging Party sent Respondent a letter requesting that the parties bargain over the "method whereby bargaining unit members are placed into full-time positions." During a February 28 bargaining session, Charging Party proposed to add a clause to Article 18, Hours of Work, of the agreement to provide that new or vacant full time positions be offered to bargaining unit members by seniority. The Employer rejected the proposal and the Union proposed that positions be filled by seniority if all qualifications between candidates were equal.

A few days later, the Employer, rather than providing a counter-proposal and a seniority list as promised on February 28, advised the Union that it had decided not to negotiate the assignment method because "there is already more than enough language in the agreement covering the subject of hours of work and how the hours are assigned." In a March 13, 2003 response, Charging Party wrote that the contract clearly states that there is an obligation to bargain over any topic during the course of the contract and asked if Respondent were also deciding not to participate in mediation and/or arbitration if the issue could not be resolved. In the meantime, the Employer filled the vacant position.

The facts in Case No. C03 F-134 are also undisputed. The parties' agreement contains a five-step grievance procedure that ends in binding arbitration. Step three provides for a meeting with the Township Supervisor if a grievance is not resolved at steps one or two. On or about June 4, 2003, the Employer refused to conduct a step-three grievance meeting unless the Union acceded to the Employer's request to tape record the meeting.[1]

Conclusions of Law:

Charging Party argues in Case No C03 D-081 that because the collective bargaining agreement is silent on a procedure to fill bargaining unit vacancies and the parties never addressed the issue, Respondent

[1]Attached to Respondent's post-hearing brief is a February 11, 2004 letter that it sent to Charging Party indicating that it would no longer insist on tape recording grievance meetings.

violated its duty to bargain by refusing to continue to bargain on a method for filling vacancies until impasse or an agreement was reached.

I find no merit to Charging Party's argument. It is an elementary principle of labor law that a contract ends bargaining. *MEA-NEA v St Charles Schs*, 150 Mich App 763 (1986); *Co of Montcalm*, 1989 MERC Lab Op 132. Moreover, either party has the right to refuse to discuss or agree to a midterm modification of the contract and reject a request to bargain over a modification of a collective bargaining agreement before it expires. *St Clair Intermediate Sch District v Intermediate Education Association*, 458 Mich 540, 565-66 (1999). I find that the clause in the parties' contract specifying that they were free to negotiate during the life of the contract does not require either party to accede to a bargaining demand. Respondent did not resurrect its bargaining obligation by initially agreeing to bargain with Charging Party on February 28, 2003 and did not violate PERA by refusing to continue bargaining thereafter. I, therefore, recommend that the Commission issue the order set forth below in Case No. C03 D-081.

Charging Party contends in Case No. C03 F-134 that Respondent violated PERA by insisting on tape recording a third-step grievance meeting. I agree. The Commission, following precedent under the National Labor Relations Act (NLRA), 29 USC 150-159, has long held that a party violates PERA by insisting to impasse on recording contract negotiation sessions. The rationale for finding a violation in this context is that tape recording of bargaining sessions is a "threshold matter" unrelated to the obligation to bargain in good faith regarding wages, hours, and other conditions of employment and, thus, constitutes a permissive subject of bargaining. See *Kenowa Public Schools*, 1980 MERC Lab Op 967 (no exceptions); and *Carrollton Twp (Dep't of Pub Works*), 1983 MERC Lab Op 346 (no exceptions). Moreover, as observed by the ALJ in *Carrollton Twp*, permitting the use of a recording device in a negotiating session could have a chilling effect on the willingness of the parties to express themselves freely and may "seriously impair smooth functioning of the collective bargaining process." 1983 MERC Lab Op at 351-352.

The National Labor Relations Board (NLRB) has extended this line of analysis to meetings conducted pursuant to the parties' contractual grievance process. *Pennsylvania Telephone Guild*, 211 NLRB 501; 120 LRRM 1257 (1985) enf'd 799 F2d 82; 123 LRRM 2214 (CA 2 1986). The NLRB held that grievance meetings are an integral part of the bargaining process and, therefore, subject to the same requirement of good faith bargaining as contract negotiations. I find that absent a meaningful distinction between contract negotiation sessions and grievance meetings, tape recording of grievance meetings is also a permissive subject of bargaining. I conclude, therefore, that Respondent violated PERA by insisting on tape recording a grievance meeting. Cf. *Wayne County Community College*, 2003 MERC Lab Op ____ (issued March 25, 2003, no exceptions).

Pursuant to the above findings of facts and conclusions of law, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge in Case No. C03 D-081 is dismissed.

In Case No. C03 F-134, it is ordered that the Charter Township of Flint, its officers, agents, representatives and successors shall:

A. Cease and desist from:

1. Refusing to bargain collectively and in good faith concerning wages, hours and working conditions with Teamsters Local 214 by insisting on tape recording grievance meetings.

2. In any manner, interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them in Section 9 of PERA.

B. Take the following affirmative action to effectuate the policies of PERA and to remedy the unfair labor practices:

1. Upon request, bargain collectively and in good faith concerning wages, hours and working conditions with Teamsters Local 214 as the exclusive bargaining representative of communication operators.

2. Post copies of the attached Notice to Employees in conspicuous places on its premises, including all locations where employee notices are customarily posted for thirty consecutive days. The Notice shall not be altered, defaced or covered with any other material.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Roy L. Roulhac
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before an Administrative Law Judge of the MICHIGAN EMPLOYMENT RELATIONS COMMISSION, the CHARTER TOWNSHIP OF FLINT was found to have committed unfair labor practices in violation of the MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). Based upon an ORDER of the COMMISSION, WE HEREBY NOTIFY OUR EMPLOYEES that:

> WE WILL NOT refuse to bargain with the collective bargaining representative, TEAMSTER LOCAL 214, of our communication operators by insisting on tape recording grievance hearings.
>
> WE WILL, upon request, recognize and bargain in good faith with TEAMSTERS LOCAL 214 concerning wages, hours and working conditions of communication operators.

All of our employees are free to engage in lawful, concerted activity through representatives of their own choice for the purpose of collective bargaining or other mutual aid or protection as provided by Section 9 of the Public Employment Relations Act.

CHARTER TOWNSHIP OF FLINT

_____

DATE: _____