STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

KENTWOOD PUBLIC SCHOOLS,
Public Employer–Respondent,

Case Nos. C03 E-110
-and- C03 E-120

KENT COUNTY EDUCATION ASSOCIATION/KENTWOOD EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Peter A. Patterson, Esq., for Respondent

White, Schneider, Young & Chiodini, P.C., by William F. Young Esq., for Charging Party

DECISION AND ORDER

On August 31, 2004, 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

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Dated: _____

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APPEARANCES:

Peter A. Patterson, Esq., for Respondent

White, Schneider, Young & Chiodini, P.C., by William F. Young 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 and 423.216, Administrative Law Judge Roy L. Roulhac heard this case for the Michigan Employment Relations Commission (MERC) in Lansing, Michigan on May 12, 2004. Based upon the record and post-hearing briefs filed by June 23, 2004, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charges:

This matter involves two unfair labor practice charges filed by the Charging Party in May 2003.[1] Kent County Education Association/Kentwood Education Association ("KEA") filed Case No. C03 E-110 on May 16. It alleges that Respondent (1) interfered, restrained and coerced Charging Party's members by threatening the current health insurance plan unless a new contract was settled by May 31; (2) refused to bargain in good faith by stating that a new contract must be settled by May 31, but refused to bargain until after a bond election on April 22, and then insisted that a new contract must include a "double freeze", i.e., no step increase and no percentage increase in wages; and (3) engaged in surface bargaining by: (a) making statements indicating a refusal to bargain early in the process; (b) presenting a "concept" for total compensation without providing any dollar value despite repeated requests for a more specific

[1] A third charge, C03 E-113, was withdrawn at the hearing as well as some allegations contained in Case Nos. C03 E-110 and C03 E-120 that Respondent interfered with the rights of Charging Party members to engage in protected activity in violation of Section 10(1)(a).

financial proposal; (c) adopting a firm bargaining position early in the process and showing no willingness to move from that position; (d) refusing to provide any specific financial information regarding it total financial compensation concept; (e) refusing to abide by tentative agreements on particular issues by agreeing on ground rules and then presenting additional ground rules, including one that had not been previously discussed; and (f) threatening to declare impasse prematurely by discussing/threatening impasse after only one and one-half bargaining sessions.

Case No. C03 E-120 was filed on May 29, 2003. As amended on September 19, it alleges that Respondent (1) presented a package proposal one hour before the end of bargaining on May 22, and demanded that it be accepted and ratified by May 27 or, alternatively, that Charging Party agree to an extension of the contract's lay off notice deadline and ratify the contract by June 9; (2) interfered with the administration of a labor organization by sending a threat to Charging Party's new teacher members and demanding acceptance and ratification of a package proposal by an arbitrarily chosen deadline; (3) abused the mediation process by presenting Charging Party with a previously typed fact finding petition at the end of the parties' August 20 mediation session; and (4) implemented a partial calendar for the 2003-04 school year although the parties were not at impasse and the imposed calendar differed from the calendar that the parties had seemingly agreed upon.[2]

Findings of Fact:

Charging Party is the exclusive bargaining representative for certified professional personnel employed by Respondent. Charging Party and Respondent were parties to a collective bargaining agreement that expired on August 31, 2003. Negotiation began on March 10, 2003, for a successor contract. However, the parties agreed to delay further bargaining until after an April 22 bond election.

During the March 10 session, the parties discussed ground rules that were proposed by Charging Party. On direct examination, Charging Party's principal witness, Michael Pickard, testified that he reached an agreement on ground rules with Respondent's Chief Negotiator Scott Palczewski, but at the next session on May 7, Palczewski presented new ground rules. According to Pickard, after a caucus "we just went without ground rules." On cross-examination, Pickard acknowledged that on March 10, the parties did not have any signed tentative agreement on ground rules. He testified after bargaining team member Sue Burt stated at the May 7 bargaining meeting that the parties had a gentlemen's agreement on ground rules, Palczewski shrugged his shoulders and presented some different ground rules that Charging Party did not agree with. He further testified that after a caucus he agreed to bargain without any ground rules. According to Pickard, despite the absence of ground rules, the parties were able to reach tentative agreements, albeit mainly on language issues, which were reduced to writing.

During the next session on May 7 meeting, Respondent also presented a total compensation package. According to Pickard, the proposal did not have any "percentages, numbers, anything with it at all… It was just speculation or this is out there that we'd like to move toward." According to Pickard, Charging Party repeatedly asked for numbers and

[2]At the hearing, Charging Party withdrew allegations in Case No. C03 E-120 that Respondent unlawfully interfered with its bargaining team.

percentages but never received a response. On cross-examination, Pickard noted that Respondent presented the total compensation proposal as a concept to discuss and solicited input from Charging Party of the amount of revenue that might be properly allocated to its bargaining unit.

The parties' next bargaining session was on May 12. Pickard testified that they mainly discussed language issues. According to Pickard, "that was the session, I believe, that the zero, zero, full MESSA [Michigan Education Special Services Association] with the no child left behind language and the total package deal…it was a total package situation; we had to take all the offer or none." Charging Party did not accept the proposal and, according to Pickard, Respondent's Chief Negotiator Dr. Scott Palczewski said that the parties were at impasse. The parties continued to bargain.

During a May 22 session, Respondent presented another total compensation proposal. According to Pickard, Charging Party was told that the parties, "needed to have it [the contract] finalized, basically that day, because they [Respondent] were going to have to have a Board resolution on layoff notices," and gave Charging Party a May 27 deadline to accept the package proposal. Pickard testified that Respondent rejected Charging Party's offers to extend the deadline, although Charging Party explained to Respondent that because of the upcoming Memorial Day weekend it was impossible to present a proposal to its membership by the May 27. However, Charging Party's September 19 amended charge and the package proposal entered into the record as Joint Exhibit 8 both indicate, contrary to Pickard's testimony, that the proposal must be ratified by May 27, "or by letter of agreement extending the day for layoff notification through the date needed for ratification of the tentative agreement, but not later than June 9." According to Pickard, Respondent never informed Charging Party that if it would not continue to negotiate if the contract were not ratified by June 9.

In early August 2003, Respondent imposed a school calendar that, according to Pickard, did not match an agreement that he had reached with Palczewski in March. He explained that the imposed calendar "a straight rollover of last year's – the previous year's calendar." On direct examination, Pickard testified that in March 2003, he and Palczewski met "in a couple of side-bars and we pretty much plotted out what the calendar should look like and what we both seen [sic] as the obstacle in that. But the concept of the calendar was basically agreed [sic] between Dr. Palczewski and myself." However, on cross-examination, Pickard acknowledged that the parties had not reached agreement on a school calendar in March. He testified that when the parties held a mediation session in August 2003, the parties did not have a written tentative agreement on the school calendar and that still unresolved was the issue of whether teachers would work the last day of the school year.

During an August 20 mediation session, Respondent made an hour long presentation on budget news that it had received from the State. The parties caucused, exchanged proposals, met for forty to forty-five minutes and Respondent announced that it was filing for fact finding.[3]

[3] Respondent did not present any evidence after Charging Party rested.

Conclusions of Law:[4]

Charging Party first argues that Respondent's repudiation of ground rules at the onset of bargaining, coupled with its subsequent repudiation of the parties' agreement on the calendar, indicates that Respondent was not truly interested in reaching an agreement. This argument is not supported by the facts and requires little comment. Pickard, Charging Party own witness, testified that on May 7, after Charging Party disagreed with ground rules proposed by Respondent, he agreed to bargain without any ground rules. He also testified that the parties did not reach an agreement on the school calendar before Respondent imposed a partial calendar for the 2003-2004 school year. He admitted on cross-examination that as of August 20, the parties had not reached an agreement on whether teachers would work the last day of the school year.

Charging Party next contends that Respondent prematurely declared impasse. According to Charging Party, by declaring impasse after Charging Party rejected its May 12, "take it or leave it" proposal, Respondent expressed bad faith and its intention to speed through bargaining without any real intention of reaching an agreement. This assertion also lacks merit. The Commission has defined impasse as the point that the parties' positions have solidified and further bargaining would be futile. *Wayne County (Attorney Unit)*, 1995 MERC Lab Op 199, 203. The record indicates that although Respondent's Chief Negotiator said on May 12 that the parties were at impasse, the parties continued to bargain. A party's declaration of impasse, without more, does not demonstrate a lack of interest in reaching an agreement.

Charging Party also argues that Respondent violated PERA by failing to acknowledge its counter-proposal to extend the deadline to ratify a successor agreement and by demanding on May 22, an impossible time frame of May 27 for its members to ratify the contract. This assertion is also not supported by the facts. Charging Party's amended charge and the package proposal presented by the parties both indicate that Respondent stated that its proposal must be ratified by May 27, or alternatively, by June 9.

Charging Party contends that in early August, Respondent imposed a partial calendar for the 2003-2004 school year that differed from the calendar the parties had agreed upon in March. As noted above, Charging Party own witness acknowledged that the parties had not agreed upon a calendar in March. Even if an agreement had been reached, Respondent did not violate PERA by implementing a calendar that, as Pickard acknowledged, was "a straight rollover of last year's – the previous year's calendar." The Commission has found that the employer was not obligated to implement its most recent bargaining proposal when it decided that it needed to set the Christmas vacation schedule. Rather, the Commission held that the employer was entitled to follow the parties' past practice. *Waldron Area Schs*, 1996 MERC Lab Op 115. See also *Mason Co Eastern Schs*, 1993 MERC Lab Op 5, 15.

Finally, Charging Party claims that Respondent bargained in bad faith by failing to enter into the mediation process with an "open mind" and a "sincere desire" to attempt to reach agreement by announcing that it was filing for fact finding after spending 45 minutes discussing mediation proposals. Charging Party presented no evidence to demonstrate that Respondent was

[4]Only arguments raised by Charging Party in its post-hearing brief are discussed. I consider the remaining allegations set forth in the charges as having been abandoned.

not justified in filing a fact finding petition. In order to determine whether a party has circumvented its obligation to bargain and reach an agreement, the totality of the circumstances should be considered. *Warren Education Association*, 1977 MERC Lab Op 815. However, the sparse forty-one page record of testimony developed by Charging Party does not reveal whether during mediation either party was prepared to change or modify its position, or whether the parties were making progress in resolving any of their outstanding issues. I find, therefore, that Respondent did not violate its duty to bargain by filing for fact finding after discussing mediation proposal for forty-five minutes.

I have carefully considered all other arguments raised by the parties and conclude that they do not warrant a change in the result. Based on the above findings of fact and conclusion 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: _____