STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CHIPPEWA COUNTY,
Public Employer-Respondent in Case No. C04 F-145,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 25, LOCAL 946,
Labor Organization-Charging Party in Case. No. C04 F-145,
Incumbent Union in Case No. R04 D-058,

-and-

SUSAN SHUNK,
An Individual-Petitioner in Case No. R04 D-058.
_____/

APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., by John R. McGlinchey, Esq., for the Public Employer

Miller Cohen, P. C., by Richard G. Mack, Esq., for the Labor Organization

DECISION AND ORDER

On November 30, 2004, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order finding that Respondent Chippewa County violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e), by engaging in bad faith bargaining when it refused to act on a tentative agreement after a decertification petition was filed. He also recommended that the decertification petition be dismissed. The Decision and Recommended Order was served upon the parties in accordance with Section 16 of PERA. On December 27, 2004, Respondent filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support. We granted Charging Party an extension to file a response to Respondent's exceptions, which was timely filed on February 9, 2005.

In its exceptions, Respondent alleges that the ALJ erred in finding that the Employer violated PERA by suspending its vote on a tentative agreement for a successor contract when a decertification petition was pending before the Commission. Based on the reasons set forth below, we find that Respondent's exceptions have merit. Accordingly, we order that the decertification petition be processed.

Factual Summary:

Charging Party and Respondent were parties to a collective bargaining agreement that expired on December 31, 2003. The parties subsequently reached a two-page tentative agreement altering the prior contract, subject to ratification by both sides. Charging Party's membership voted to ratify the agreement, except for a provision regarding pensions, and Respondent was notified of the ratification on April 21, 2004. On April 30, Chippewa County Board of Health, pursuant to its usual practice, voted to submit the tentative agreement to the Chippewa County Board of Commissioners for a ratification vote at its regular May 10 meeting. On April 26, Petitioner Susan Shunk filed a decertification petition with the Commission. After receiving notice of the decertification petition on May 5, Respondent took no further action with respect to ratification of the tentative agreement.

Discussion and Conclusions of Law:

In its exceptions, Respondent asserts that the Commission should reverse the ALJ because the Employer lawfully declined to take further action on the parties' tentative agreement after receiving the decertification petition. We agree.

Section 14 of PERA bars a rival union's election petition or a decertification petition when the parties have entered into a legally enforceable agreement that has been adopted, enacted, approved, or otherwise ratified by a competent governing body. See *City of Grand Rapids*, 1968 MERC Lab Op 194, 199. In *City of Grand Rapids*, recognizing the unavoidable delay between the parties reaching a tentative agreement at the bargaining table and subsequent official action by a governing body, the Commission adopted the following rule:

> A complete written collective bargaining agreement made between and executed by, authorized representatives of a public employer and the exclusive bargaining agent of its employees will, for a period of up to thirty days thereafter, bar a rival union election petition or a decertification petition pending subsequent action on the agreement by the legislative body. A petition filed within the thirty day period will not be dismissed if the legislative body meets and votes to reject the proposed agreement or takes no action within the thirty day period. If the legislative body approves the collective bargaining agreement negotiated by its representative within the thirty day period, the petition will be dismissed.

The purpose of the rule is to temporarily protect a tentative agreement from rival union activity, striking a balance between employee freedom of choice and the stability of bargaining relationships. However, an election petition will not be dismissed if a governing body subsequently rejects or takes no action on the ratification of the tentative agreement within the thirty days, as occurred in this case.

As asserted by the Employer, we find that this case is also governed by *Family Service & Children's Aid of Jackson Co*, 1988 MERC Lab Op 128. In that case, the employer and the union reached a tentative agreement following the expiration of their previous collective bargaining agreement. One day before the employer's governing board was scheduled to vote on whether to ratify or reject the tentative agreement, a unit member filed a decertification petition. The board responded to the petition by tabling the ratification vote. The Commission concluded that the

tentative agreement, still subject to ratification by the employer's governing board, did not constitute a legally enforceable collective bargaining agreement and, therefore, did not act as a bar to the decertification petition. We reach the same conclusion here. We further note the absence of any bad faith on the part of Respondent. Respondent followed its normal procedure when the Chippewa County Board of Health voted to submit the tentative agreement to the Board of Commissioners for ratification.

In accordance with the foregoing conclusions of law, we find that the Employer did not unlawfully refuse to bargain in violation of Section 10(1)(e). We further find that the decertification petition should be processed in accordance with our usual procedures. We, therefore, issue the following Order:

ORDER

The unfair labor practice charge in Case No. C04 F-145 is hereby dismissed.

In Case No. R04 D-058, we find that a question concerning representation exists under Section 12 of PERA. Accordingly, we direct an election in the following unit:

> All regular full-time and regular part-time employees in the following classifications: acct. payable clerk, animal control officer, animal control officer and janitor, env. health sanitarian, env. health technician, FIA family support worker, HH billing clerk, HH clerk/typist/receptionist, HH LPN, HH & PRI duty aide, HH RN – non-case manager, hospice volunteer coordinator, janitor, payroll/personnel clerk, PH/EH billing clerk, PH clerk/typist/receptionist, PH nurses, PH technician, tobacco coalition/health ed. and vision technician.
>
> Excluding: employees represented by Teamsters, casual, substitutes, temporaries, and fee for service employees, confidential: PH secretary, EH secretary, HH/ADM secretary, HH supervisor, HH lead nurse, community health adm., PH supervisor, director of finance, MIS director, env. health director and office manager.

Pursuant to the attached Direction of Election, the employees named in the above unit shall vote as to whether or not they wish to be represented by the American Federation of State, County and Municipal Employees Council 25, Local 946.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CHIPPEWA COUNTY,
Public Employer-Respondent in Case No. C04 F-145,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 25, LOCAL 946,
Labor Organization-Charging Party in Case. No. C04 F-145,

-and-

SUSAN SHUNK,
An Individual-Petitioner in Case No. R04 D-058.
_____/

APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., by John R. McGlinchey, Esq., for the Public Employer

Miller Cohen, P. C., by Richard G. Mack, Esq., for the Labor Organization

RECOMMENDED DECISION AND
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 in Lansing, Michigan, on August 12, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC). Based on the record, including post-hearing briefs filed by October 11, 2004, I make the following findings of facts and conclusions of law.

The Petition and Unfair Labor Practice Charge:

Petitioner Susan Shunk filed a decertification petition on April 26, 2004, seeking an election to determine whether Charging Party, American Federation of State, County and Municipal Employees, Council 25, Local 946, should continue to represent certain Chippewa County employees working at the Chippewa County Health Department. On June 3, 2004, Charging Party filed an unfair labor practice charge alleging that Respondent Chippewa County violated PERA by bargaining in bad faith by refusing a

ratify a collective bargaining agreement; unlawfully interfered with the formation or administration of the local; and unlawfully assisted in employees decertification efforts.

Findings of Facts:

The facts are essentially undisputed. Charging Party is the exclusive bargaining representative for certain Chippewa County Health Department employees, including Petitioner Susan Shunk. Charging Party and Respondent were parties to a collective bargaining agreement that expired on December 31, 2003. On April 7, 2004, the parties reached a tentative agreement on a successor contract. Respondent's bargaining team consisted of County Controller Tim Dolehanty; the County Commissioners' personnel committee - Rita Dale, Earl Kay and Ted Postula; and its chief spokesperson and legal counsel, John R. McGlinchey. Staff Representative Zane Vinton was Charging Party's chief spokesperson. The two-page tentative agreement of changes to the parties' existing contract was dated and initialed by the chief spokespersons. The agreement was subject to ratification by each side. Upon Charging Party's notice to Respondent of its membership's ratification, it would be submitted to the Chippewa County Board of Commissioners. If each party ratified the tentative agreement, they would develop final contract language to incorporate into a successor agreement.

In an April 21 letter, Charging Party, among other things, notified Respondent that except for a provision concerning pensions, its members had ratified the agreement. On April 30, in accordance with Respondent's internal ratification process, the Chippewa County Board of Health, which includes Board of Commissioners' members Kay and Aaron, voted to submit it to the Board of Commissioners for ratification at its next scheduled monthly meeting on May 10. However, after May 5, when it received a copy of the decertification petition that Petitioner Shunk filed with the MERC on April 30, Respondent took no further action to ratify the tentative agreement.

Conclusions of Law:

Section 14 of PERA reads in pertinent part as follows:

> … An election shall not be directed in any bargaining unit or subdivision thereof where there is in force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration.

In *Grand Rapids Health Department*, 1968 MERC Lab Op 194, the Commission created an exception to the general rule that a collective bargaining agreement must be "duly enacted" in order to serve as a bar under Section 14. The Commission stated:

> A complete written collective bargaining agreement made between and executed by the authorized representatives of a public employer and the exclusive bargaining agent of its employees will, for a period of up to 30 days thereafter, bar a rival union election petition or a decertification

> petition pending subsequent action on the agreement by the legislative body. A petition filed within the 30-day period will not be dismissed if the legislative body meets and votes to reject the proposed agreement or takes no action within the 30-day period. If the legislative body approves the collective bargaining agreement negotiated by its representative within the 30-day period, the petition will be dismissed.

The Commission extended this rule in *Lake Superior State College*, 1984 MERC Lab Op 301. It held that for contract bar purposes under Section 14, a tentative agreement, if complete and properly signed and dated, bars a rival petition for 30 days from the date of the tentative agreement, during which time the ratification process by both parties is taking place, unless it is clear from the tentative agreement that no contract is to come into existence until the ratification process is completed.

Respondent contends that it was justified in declining to take further action to ratify the tentative agreement after the decertification was received. It cites *Family Service and Children's Aid of Jackson* Co, 1988 MERC Lab Op 128, for the view that the Commission has consistently held that a decertification petition (or rival representation petition) filed prior to ratification of a tentative agreement can preclude further processing of the tentative agreement until the question concerning representation is resolved. I disagree.

Respondent grossly misreads *Family Service*. It involved an undated and unsigned tentative agreement that the union membership ratified, but that the employer tabled and did not vote on after a decertification petition was filed. The Commission found that the undated, unsigned tentative agreement that had not been ratified by the employer was not a legally enforceable agreement and did not serve as a bar to the decertification petition.[1] The Commission compared the contract asserted to be a bar by the union in *Family Service* to "incomplete agreements" that were found not to be contract bars in *Armada Sch Dst*, 1973 MERC Lab Op 221, 224-225 (draft agreement unsigned and undated); *Pontiac Twnsp*, 1982 MERC Lab Op 716, 718 (tentative agreement only partially ratified by employer); and *Washtenaw Co*, 1972 MERC Lab Op 794, 801 (undated and unsigned written agreement). See also *Mt. Morris Consolid. Schs*, 1990 MERC Lab Op 800 (verbal agreement), relied upon by Respondent in this case. The focus of all of these decisions was whether the tentative agreements were complete - written, dated and signed. If Respondent's view were adopted, the 30-day contract bar rule established in *Grand Rapids, supra*, would be meaningless.

Respondent also argues that the parties' tentative agreement does not bar the decertification petition because ratification was a condition precedent to a final contract. This assertion lacks merit. There is nothing in the tentative agreement that conditions a final contract on its ratification. See *Lake Superior*, supra. In rejecting an argument that

[1] *El-Gar Credit Union*, 1973 MERC Lab Op 652, 654 (notice given to reopen negotiations not a contract bar); *Gratiot Comm Hosp*, 1970 MERC Lab Op 252, 254-255 (oral agreement to extend expired contract not a contract bar; *cf Gratiot Comm Hosp*, 1972 MERC Lab Op 39, 42-43 (petition – petition barred by existing contract where parties agreed to and initialed sets of written proposal)

no contract could come into existence prior to "proper" ratification and reduction of the contract to writing, the ALJ in *Calhoun County*, 1980 MERC Lab Op 323, 331-333, observed:

> While it is clear that the parties could have expressly and voluntarily made ratification a condition precedent to entering into the contract they did not do so in this case. By all principles of contract law the contract between the parties was made at the bargaining table on July 6, and other than the usual internal ratification procedures of both parties there was no other condition set upon the execution of a final agreement. [citations omitted.]

Here too, the parties could have made ratification a condition precedent to entering into a final contract, but they did not. The tentative agreement entered into by the parties was initialed and dated, and ratification was only a condition subsequent to a valid agreement. It is noteworthy that by April 30, before the Respondent received the decertification petition, a majority of the Board of Commissioners, as members of the negotiating team and the Board of Health, had already agreed to the terms of the tentative agreement.

Respondent's final assertion also is without merit. It claims that the tentative agreement was incomplete because if it were ratified the parties still needed to develop precise contract language to include in a successor collective bargaining agreement. *City of Dearborn*, 1990 MERC Lab Op 449, is instructive. There, the union and the employer reached a tentative agreement and signed a two-page document outlining its terms. The tentative agreement was expressly subject to ratification by the union's membership, approval of the civil service commission and concurrence by the city council. After the union notified the employer that its membership had ratified the tentative agreement, a unit clarification petition was filed. Thereafter, the retyped collective bargaining agreement incorporating the terms of the tentative agreement was signed by the employer and the union, approval by the civil service commission and adopted by the city council. The Commission held that the tentative agreement, which was reduced to writing and signed by representative of both parties, was sufficient to bar the petition filed by a rival union during the interval between the tentative agreement and ratification. Similarly, the two-page dated and initialed tentative agreement in this case is a bar to the petition filed Petitioner Shunk.

Charging Party, citing *Royal Oak Township (Public Safety Dept)*, 1982 MERC Lab Op 874, urges the Commission to order Respondent to vote to ratify the tentative agreement within twenty-days of the Commission's order and to retroactively impose an interim agreement. I agree that a traditional bargaining order that simply requires Respondent to cease and desist and bargain in good faith would not effectuate the purposes of PERA. Here, despite long-standing Commission precedent to the contrary, Respondent unlawfully failed and/or refused to act to ratify the tentative agreement after the decertification petition was filed. I, therefore, conclude that Respondent should be required to put into effect the tentative agreement reached by the parties on April 7, 2004, schedule a vote to ratify the tentative agreement and if it is not ratified, continue the

tentative agreement in effect until the parties reach an agreement or bargain to impasse on a successor collective bargaining agreement.

I have carefully considered all other arguments raised by the parties, including Charging Party's claim that Respondent bargained in bad faith by not scheduling a vote on the tentative agreement for thirty-three days, and conclude that they either lack merit or would not warrant a change in the result. Based on the above findings of fact and conclusions of law, I find that the tentative agreement entered into by the parties on April 7, 2004, was a bar to the decertification petition filed on April 30, 2004. I also find that Respondent bargained in bad faith because it refused and/or failed to act on the tentative agreement after the decertification the petition was filed in violation of Section 10(1)(e) of PERA. I, therefore, recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is ordered that the decertification petition be dismissed and that Chippewa County, 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 AFSCME, Council 25, Local 946 and unlawfully refusing to take action to ratify tentative agreements.

2. In any other 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 AFSCME, Council 25, Local 946 as the exclusive bargaining representative of certain employees in the Chippewa County Health Department.

2. Make employees represented by AFSCME Council 25, Local 946, whole for losses they suffered as a result of Chippewa County's refusal to bargain in good faith, by reimbursing them for any benefits lost under the tentative agreement reached on April 7, 2004. The benefits shall be retroactive to May 10, 2004.

3. Within twenty days from the date of this order, Respondent shall vote to ratify the tentative agreement reached by the parties on April 7, 2004. If the tentative agreement is not ratified, it shall remain in effect

until a new agreement is reached or until an impasse occurs between the parties.

4. Post copies of the attached Notice to Employees in conspicuous places on its premises, including all locations where Notices to Employees 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: November 30, 2004

NOTICE TO EMPLOYEES

After a public hearing before an Administrative Law Judge of the MICHIGAN EMPLOYMENT RELATIONS COMMISSION, CHIPPEWA COUNTY 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 collectively and in good faith concerning wages, hours, and working conditions with AFSCME, Council 25, Local 946 and will not unlawfully refuse to take action to ratify tentative agreements.

WE WILL make employees represented by AFSCME Council 25, Local 946, whole for losses they suffered as a result of Chippewa County's refusal to bargain in good faith, by reimbursing them for any benefits lost under the tentative agreement reached on April 7, 2004. The benefits shall be retroactive to May 10, 2004.

WE WILL, within twenty days from the date of this order, vote to ratify the tentative agreement reached by the parties on April 7, 2004. If the tentative agreement is not ratified, it shall remain in effect until a new agreement is reached or until an impasse occurs between the parties.

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.

CHIPPEWA COUNTY

BY: _____

Title: _____

DATE: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P. O. Box 02988, Detroit, Michigan 48202, Telephone: (313) 456-3510.