**STATE OF MICHIGAN**
**EMPLOYMENT RELATIONS COMMISSION**
**LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT (DEP'T OF TRANSPORTATION),
Public Employer-Respondent,

Case No. C04 I-233

-and-

AMALGAMATED TRANSIT UNION, LOCAL 26,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Bruce A. Campbell, Esq., City of Detroit Law Department, for Respondent

Law Offices of Mark Cousens, by John E. Eaton, Esq., for Charging Party

**DECISION AND ORDER**

On November 16, 2005, Administrative Law Judge Julia C. Stern issued her 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

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (DEP'T OF TRANSPORTATION),
Public Employer-Respondent,

Case No. C04 I-233

-and-

AMALGAMATED TRANSIT UNION, LOCAL 26,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Bruce A. Campbell, Esq., City of Detroit Law Department, for Respondent

Law Offices of Mark Cousens, by John E. Eaton, 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, this case was heard at Detroit, Michigan on March 16, 2005, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by the Charging Party on May 19, 2005, I make the following findings of fact, conclusions of law, and recommended order.1

The Unfair Labor Practice Charge:

The Amalgamated Transit Union, Local 26, filed this charge against the City of Detroit on September 13, 2004. Charging Party represents a bargaining unit consisting of transit equipment operators (TEOs) employed by Respondent in its transportation department. On September 19, 2003, Charging Party's membership ratified a tentative contract settlement between the parties. Charging Party alleges that on and after March 2004, Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA by refusing to sign a contract reflecting the parties' agreement.

1 I did not consider Respondent's brief, which was untimely filed on June 8, 2005.

Facts:

The parties' most recent collective bargaining agreement expired on June 30, 2001. Negotiations for a new agreement began in July 2001 and continued until September 2003. Roger Cheek, Respondent's labor relations director, was Respondent's chief spokesperson in these negotiations. Henry Gaffney, Charging Party's current president, and Shyrl McCormick, its financial secretary/treasurer, were members of Charging Party's bargaining team. Throughout the negotiations, as the parties reached tentative agreement on an issue they also tentatively agreed to new contract language on that issue. Sometimes the parties initialed the new language, but more often they did not.

All TEOs are required by law to have a Commercial Driver's License (CDL) with a bus passenger (BP) endorsement. Before TEOs can acquire or renew their CDLs, they must pass a physical examination and obtain a medical card. The State of Michigan charges a fee for acquiring or renewing a CDL. Employees have the option of obtaining their medical card through their personal physician or at Respondent's clinic at the cost of thirty-five dollars.

Sometime during the 2001-2003 negotiations, Charging Party made a written proposal that Respondent pay fifty percent of the cost of the CDL license and fifty percent of the cost of the medical card. The proposal consisted of one sentence. Although the record is not entirely clear, this might have been the proposal Charging Party presented:

Section 41 Miscellaneous Benefits

> The City agrees to pay 50% for Driver's license and Medical card renewal starting after renewal of the contract.

Cheek and McCormick testified that Respondent agreed near the end of their negotiations to reimburse employees for their CDLs and medical cards. Cheek testified that Charging Party brought up the fact that other City unions were being reimbursed for the cost of their CDLs and he said that if the parties got a settlement, Charging Party could also have CDL reimbursement. Gaffney agreed with Cheek that Respondent agreed to CDL reimbursement as a way to sweeten its offer in a way that would not impact its negotiations with other unions. According to Cheek, he intended the CDL provision in Charging Party's contract to be patterned on the language in Respondent's other union contracts. Cheek testified that he said, "We'll give you the same kind of deal we have with the other guys." Cheek admitted, however, that Respondent did not propose contract language for the provision at the bargaining table, and did not specifically tell Charging Party's negotiators that he wanted to use language from other contracts.

The parties reached tentative agreement on an entire contract in early September 2003. On September 12, 2003, Respondent faxed a lengthy document to Charging Party consisting of individual contract clauses to which the parties had tentatively agreed. Each clause was on a separate page. Because the document was over thirty pages and Respondent's fax machine could not send this many pages at once, Respondent faxed the document in two parts. According to McCormick, who was present when the faxes

were received at Charging Party's office, the document included a page with the CDL language quoted above. Cheek denied faxing Charging Party any language relative to CDL reimbursement.

Charging Party condensed the fax into a single document. On September 19, Charging Party's membership ratified the document.

Cheek testified that sometime after September 19, Al Lewis, an employee of the labor relations division, reminded him that the parties had agreed to CDL reimbursement in their contract. According to Cheek, he then recalled the agreement and told Lewis to draft language for Charging Party's contract patterned on language in the other union contracts.

In early March 2004, Respondent sent Charging Party a complete draft contract for signature. Section 41(G) of this draft read as follows:

> For employees who are required by the City to have a Commercial Driver's License (CDL), the City will pay fifty percent (50%) of the renewal fee for their CDL and for their medical Card. Refund payments will not include any other fees or expenses associated with renewing a CDL. To be eligible for this reimbursement, employees must follow the procedures established by the department. This reimbursement in [sic] only for CDL renewals obtained after September 19, 2003.

On March 10, 2004, Charging Party sent Respondent a letter containing corrections to the draft agreement. Charging Party stated in its letter that the language in Section 41(G) should be replaced with the language in the document faxed to it on September 12, 2003. Respondent did not respond to this letter.

Discussion and Conclusions of Law:

The issue in this case is whether the parties reached a meeting of the minds on language for Article 41(G) of their contract. There is no dispute that the parties agreed at the bargaining table that Respondent would reimburse Charging Party's members fifty percent of the cost of renewing their CDL and fifty percent of the cost of their medical card. Respondent also admits that the CDL reimbursement language it inserted into its March draft final contract was never proposed at the bargaining table. Charging Party asserts that the parties agreed that Article 41(G) would read, in its entirety, as follows: "The City agrees to pay 50% for Driver's license and Medical card renewal starting after renewal of the contract." Respondent contends they did not have an agreement on language for this provision.

The Commission has held that a party cannot be required to execute or implement a contract where there has been no actual meeting of the minds. *Genesee Co (Seventh Judicial Circuit Court),* 1982 MERC Lab Op 84, 87. In determining whether there has been a meeting of the minds on a contract provision, the Commission looks to the expressed words of the parties and their actions. *Lakeville Comty Schs*, 1990 MERC Lab Op 56, 59, citing *Goldman v Century Ins Co,* 354 Mich 528 (1958). Generally, the issue arises when a dispute arises between the parties about the meaning of language in their tentative agreement after the parties have ratified the agreement, but before they have executed a final contract. The

Commission has found no meeting of the minds where the language in dispute is ambiguous, and the evidence indicates that the parties did not specifically agree on the meaning of this language during negotiations. *Buena Vista Schs*, 16 MPER 65 (2003); *City of Grandville*, 1999 MERC Lab Op 513; *City of Fraser*, 1977 MERC Lab Op 838. However, where the parties have ratified a contract containing an unambiguous provision, and there is no evidence of fraud or bad faith, a party cannot later repudiate that provision by claiming that it did not intend to agree to the provision and/or failed to read the tentative agreement carefully before ratifying it. *Lakeville Comty Schs*, at 60.

I conclude that the evidence does not support a finding that the parties reached a meeting of the minds on language for their CDL reimbursement provision. It was not the parties' negotiating practice to agree in substance to an issue without agreeing to specific contract language. However, the agreement to reimburse employees for their CDLs and medical cards came near the end of negotiations as a "sweetener" to close the deal. Moreover, the language to which Charging Party claims the parties agreed does not clearly express even what the parties admit was their agreement. For example, the language refers to a "driver's license," rather than a CDL. Finally, and most important, no one testified that the parties actually agreed to language for Article 41(G). I conclude that since the parties had agreed to the substance of a CDL reimbursement provision, but had not agreed to specific language, it is irrelevant whether Cheek's September 12 fax included a page referencing this agreement. I find that because the parties did not reach a meeting of the minds on language for Article 41(G) of their contract, Respondent was not required to sign a contract including the language Charging Party proposed. I also find that Respondent did not violate its duty to bargain in good faith by proposing new language for that article in the draft final agreement it sent to Charging Party in March 2004. 2

In accord with the findings of fact, discussion and conclusions of law above, I conclude that Respondent did not violate its duty to bargain in good faith under Section 10(1)(e) of PERA, and I recommend that the Commission issue the following order.

## RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____

2 Since the parties have not reached agreement on language for the CDL provision, Respondent is, of course, required to bargain about this issue.