STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

DEARBORN PUBLIC SCHOOLS,
Public Employer – Respondent,

Case No. C05 H-174

- and -

DEARBORN FEDERATION OF SCHOOL EMPLOYEES,
LOCAL 4750, AFT/MI, AFT, AFL-CIO,
Labor Organization – Charging Party.
_____/

APPEARANCES:

Beir Howlett, P.C., by Michael C. Gibbons, Esq., for the Public Employer

Mark H. Cousens, Esq., for the Labor Organization

DECISION AND ORDER

On November 21, 2005, Administrative Law Judge Roy L. Rouhlac (ALJ) issued his Decision and Recommended Order in the above matter finding that Charging Party, Dearborn Federation of School Employees Local 4750, AFT/MI, AFT, AFL-CIO, failed to allege facts establishing that Respondent, Dearborn Public Schools, violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e), by refusing to bargain over a change in pay dates. The ALJ concluded that Charging Party failed to demonstrate that it made a bargaining demand and recommended that the charge be dismissed on Summary Disposition.

The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On December 9, 2005, Charging Party filed timely exceptions to the ALJ's decision. After requesting and receiving an extension of time, Respondent filed a timely response to Charging Party's exceptions and timely cross-exceptions to the ALJ's Decision and Recommended Order on January 23, 2006.

In its exceptions, Charging Party contends that the ALJ erred in not finding that a letter stating that the matter was a "mandatory right of negotiation" was a demand to bargain over a mandatory subject. Charging Party asserts that this letter, coupled with the filing of the current charge, clearly demonstrated its desire for bargaining. Charging Party also argues that the pay schedule was not contractual and, therefore, not subject to the grievance process or arbitration.

In its cross-exceptions, Respondent argues that the ALJ erred by finding that the frequency of pay is a mandatory subject of bargaining. Respondent supports the ALJ's granting of its motion for summary judgment but contends that the ALJ erred by failing to dismiss the charge for lack of jurisdiction as the matter is "a mere contract dispute." Respondent also concurs with the ALJ's finding that Charging Party failed to demand bargaining over the change in pay frequency. For the reasons expressed below, we agree with the ALJ that the charge should be dismissed.

Factual Summary:

Charging Party represents a bargaining unit of all Respondent's full-time and regular part-time maintenance and operation, clerical, transportation, and food service employees. On July 6, 2005, Respondent announced that beginning in September, the pay date for bargaining unit members would be changed from five days after the end of the pay period to twelve days after the end of the pay period. On July 25, 2005, Charging Party sent a letter to Respondent's director of business services protesting the change and stating, "It is our belief that any change [sic] in which our members receive their pay is a mandatory right of negotiation."

Article IX, Section 9A of the parties' collective bargaining agreement provides, in pertinent part, "Present practices and procedures which affect employees of the bargaining unit, but which are not covered in this Agreement, will not be changed unless the Union is first consulted. The Employer has the right to change any practice or procedure, such action being subject to the Union's right to grieve." There is nothing in the agreement that specifically covers pay schedules.

Discussion and Conclusions of Law:

Both parties have moved for summary disposition on the charge alleging that Respondent violated PERA by unilaterally changing the pay date for bargaining unit members. Charging Party claims that it should be granted summary disposition because frequency of pay is a mandatory subject of bargaining. Respondent claims that the charge should be dismissed because the dispute involves a contract issue subject to the grievance process.

The ALJ concluded, and we agree, that frequency of pay is a mandatory subject of bargaining. *Children's Aid Society*, 1994 MERC Lab Op 323, 327. However, the ALJ found that Charging Party's statement to the effect that frequency of pay "is a mandatory right of negotiation" was not a bargaining demand. Consequently, the ALJ recommended dismissal of the charge because an employer is not obligated to bargain over a mandatory topic until or unless it receives a timely demand from the union, citing *Meridian Twp*, 1990 MERC Lab Op 153, aff'd unpublished opinion per curiam of the Court of Appeals, decided June 30, 1992 (Docket No. 130093); *United Teachers of Flint v Flint Sch Dist*, 158 Mich App 138 (1986); *Local 1586, SEIU v Village of Union City*, 135 Mich App 553 (1984).

We do not find it necessary to decide whether Charging Party made a proper bargaining demand. Having considered the terms of the parties' agreement to ascertain whether Respondent has breached its statutory duty to bargain, we find that the agreement covers the dispute. See *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 320-23 (1996). The right to change present practices is reserved to Respondent by the collective bargaining agreement, subject to Charging Party's right to grieve. The parties bargained over the right of Respondent to make changes to present practices, with the agreement that disputes would be submitted to the grievance procedure.

ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Beir Howlett, PC., By Michael C. Gibbons, Esq., for the Public Employer

Mark H. Cousens, Esq., for the Labor Organization

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

On August 16, 2005, Charging Party Dearborn Federation of School Employees, Local 4750, filed an unfair labor practice charge against Respondent Dearborn Public Schools. Charging Party claimed that Respondent violated Section 10(1)(e) of PERA by its July 6, 2005 announcement to its bargaining unit members that it intended to unilaterally change the "lag" time between pay periods and would implement a change in the pay dates.

On September 19, 2005, Respondent filed a motion for summary disposition alleging that this matter is nothing more than a contract dispute that is controlled by the parties' collective bargaining agreement. As such, according to Respondent, no PERA issue is presented and the Commission lacks jurisdiction.

In its October 7, 2005 response, Charging Party opposed Respondent's motion and filed a cross-motion for summary disposition. It claimed that because the collective bargaining agreement does not cover pay frequency and the Union had not waived its right to bargain over future changes, the Employer was obligated to bargain upon request. Therefore, Charging Party argues, the Commission should grant its summary disposition motion since Respondent violated its bargaining duty, has not presented an adequate defense to the charge and there is no controlling question of fact. On October 24, 2005, Respondent filed a response to Charging Party's motion.

Facts:

The facts are undisputed. Charging Party represents a bargaining unit of all of Respondent's full-time and regular part-time maintenance and operation, clerical, transportation and food service employees.

On July 6, 2005, Respondent sent a letter to members of Charging Party's bargaining unit informing them that beginning in September, the pay dates would be changed from five days after the end of the pay period to twelve days, in order to correct inefficiencies in the current payroll cycle. On July 25, 2005, Charging Party sent the following letter to Respondent's director of business services:

> The Dearborn Federation of School Employees' Executive Board has received and reviewed your proposed changes to the DFSE biweekly pay days.
>
> The Payment of Wages and Fringe Benefits Act, Public Act 390 of 1978, as amended, regulates the payment of hourly wages, salaries, commissions, certain fringe benefits (vacation pay, sick pay, etc.) as specified in written contracts or written policies. Also [sic]:
>
> 1. Requires that an employee receive wages earned on a regular basis: weekly, bi-weekly, bi-monthly or monthly.
> 2. All sums deducted shall be remitted to the Treasurer of the Union no later than the Tuesday after the previous pay check.
> 3. Union will lose one week of union dues.
>
> It is our belief that any change in which our members receive their pay is a mandatory right of negotiation.

In its August 2, 2005 response to Charging Party's letter, Respondent wrote:

> State law requires payment of wages within fourteen days of the pay ending date. Our change in pay dates complies with this requirement.
>
> We believe we are within our rights to change the pay date and are not violating any contract language.

Article IX, Section 9.A of the parties' collective agreement permits Respondent to change past practices after consulting with the Charging Party. Pertinent parts of Section 9.A read:

> Present practices and procedures which affect employees of the bargaining unit, but which are not covered in this Agreement, will not be changed unless the Union is first consulted. The Employer has the right to change

> any practice or procedure, such action being subject to the Union's right to grieve…

The agreement also contains a broad management rights clause concerning the management and administration of the school system, among other things. There is nothing in the agreement that specifically covers pay schedules.

Conclusions of Law:

In this case, both parties have made motions for summary disposition. Respondent alleges that the charge should be dismissed because the issue in dispute involves a mere contract dispute. Charging Party, on the other hand, claims that it should be granted summary disposition because it is undisputed that Respondent unilaterally modified pay dates and, despite a clear and unequivocal bargaining demand, refused to bargain in violation of Section 10(1)(e) of PERA.

I agree that the charge should be summarily dismissed, although for reasons other than those advanced by either party. I find nothing in the record to demonstrate that Charging Party ever made a bargaining demand. The frequency of pay is a mandatory subject of bargaining. *Children's Aid Society*, 1994 MERC Lab Op 323, 327. The courts and the Commission have repeatedly held than an employer is not obligated to bargain over a mandatory topic until or unless it receives a timely demand from the union. See *Charter Township of Meridian*, 1990 MERC Lab Op 153, aff'd unpublished opinion per curiam of the Court of Appeals, issued 6/30/1992 (Docket No. 130093); *United Teachers of Flint* v *Flint Sch Dst*, 158 Mich App 138 (1986); *SEIU Local 1586* v *Village of Union City*, 135 Mich App 533 (1984).

Although no specific format is required, the employer must know that a request to bargain is being made, and there must be a statement or action by the employer that constitutes a refusal to honor the request. *Michigan State Univ*, 1993 MERC Lab Op 53 at 63, citing *Clarkwood Corp*, 233 NLRB 1172, 1197. Although Charging Party claims that it made a bargaining demand, the record does not support this assertion. Charging Party's July 25, 2005 letter to Respondent only expresses its belief that any change in which its members receive their pay is "a mandatory right of negotiation." I find that this statement, without more, is not sufficient to constitute a demand to bargain. The Commission has held that a mere statement by a union that an issue is negotiable or a protest about an employer's action does not trigger an obligation to bargain. See *Genesee Co*, 1994 MERC Lab Op 122; *City of Grand Rapids*, 1994 MERC Lab Op 1159; *Michigan State Univ* 1993 MERC Lab Op 52. Since Charging Party did not make a bargaining demand, I find that summary dismissal is warranted. It is, therefore, unnecessary to address the other issues raised by the parties. I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: