STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

COMMAND OFFICERS ASSOCIATION OF MICHIGAN
and NORTHVILLE COMMAND OFFICERS ASSOCIATION,
Labor Organization - Respondent,

-and- Case No. CU05 F-022

CITY OF NORTHVILLE,
Public Employer - Charging Party.
_____/

APPEARANCES:

Martha M. Champine, Esq., Assistant General Counsel, for the Respondent

Steven H. Schwartz & Associates, P.L.C., by Steven H. Schwartz, Esq., for the Charging Party

DECISION AND ORDER

On April 18, 2007, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above-entitled matter, finding that Respondents have engaged in and were engaging in certain unfair labor practices, and recommending that they 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 Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

COMMAND OFFICERS ASSOCIATION OF MICHIGAN
and NORTHVILLE COMMAND OFFICERS ASSOCIATION,
Respondent-Labor Organization,

Case No. CU05 F-022

-and-

CITY OF NORTHVILLE,
Charging Party-Public Employer.
_____/

APPEARANCES:

Martha M. Champine, Assistant General Counsel, for the Respondent

Steven H. Schwartz & Associates, by Steven H. Schwartz, for the 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, this case was heard at Detroit, Michigan on November 10, 2005, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits and post-hearing briefs filed by the parties on or before February 14, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The charge, which was filed by the City of Northville (Charging Party or the City) on June 9, 2005, alleges that the Command Officers Association of Michigan and the Northville Command Officers Association (Respondent or the Union) violated Section 10(3)(c) of PERA by refusing to sign a collective bargaining agreement which had been negotiated and signed by all of the members of the bargaining unit, and by requesting mediation after that contract had been ratified and implemented by City. Respondent asserts that the agreement was never ratified by the local membership and that there was no meeting of the minds with respect to the effective date of a negotiated increase in the pension multiplier.

Findings of Fact:

Respondent is the collective bargaining representative for a unit consisting of all full-time employees of the Northville Police Department above the rank of patrol officer and below the rank of captain, excluding the officer in charge of the department if the position of police chief is vacant. Patrol officers employed by the City are included within a separate bargaining unit represented by the Police Officers Association of Michigan (POAM). With respect to contract negotiations, Charging Party and Respondent traditionally wait for the patrol unit to settle its contract first and then use that document as a template for negotiating an agreement covering the command unit. The terms and conditions of employment for both units have, over the years, tended to be substantially similar.

The most recent collective bargaining agreement between Charging Party and Respondent expired on June 30, 2004. Under that agreement, each regular full-time employee was eligible for membership in a retiree benefit plan through the Michigan Municipal Employees Retirement System (MERS). In addition, the contract provided for health care coverage for both Medicare age eligible retirees and pre-Medicare retirees receiving pension benefits from the City's retirement plan.

Bargaining on a successor agreement for the command officers began on June 25, 2004. At that time, the unit was comprised of Respondent's president David Fendelet and members Mike Carlson, Dustin Krueger and Sue Hatch. Respondent's bargaining team consisted of Fendelet, Carlson and Hatch. Krueger and Union business agent Gary Pushee also attended parts or all of some of the bargaining sessions. Charging Party was represented at the bargaining table by city manager Gary Word, assistant city manager/finance director Nickie Bateson, police chief James Petres and, on occasion, city councilperson Jerry Mittman. At that session, the Union proposed an increase in the pension multiplier from 2.5 to 2.67 percent.

Effective December 31, 2004, Fendelet retired from employment with the City and Carlson took over as Union president. Shortly thereafter, the City and the POAM reached a tentative agreement for the patrol unit which included an increase in the prescription drug co-pay for retirees, as well as language stating that bargaining unit members who retire after July 1, 2004 shall have benefits identical to those Medicare-eligible employees who retire under subsequent collective bargaining agreements. The City and the POAM also agreed to increase the pension multiplier from 2.5 to 2.75 percent. Although the tentative agreement did not specify an effective date for the pension multiplier increase, the City and the POAM later agreed that the change would become effective February 1, 2005.

Bargaining between Charging Party and Respondent resumed on February 23, 2005. On either that date, or at the next negotiation session on April 7, Word provided Respondent with a copy of the POAM contract. The parties then used that document as a template for the remainder of their negotiations. The POAM agreement was reviewed line by line, with the Union agreeing to various provisions as acceptable for inclusion in its contract. Among the provisions to which the command unit agreed in principle were a reduction in retiree health benefits and a .25 percent increase in the pension multiplier. At that time, the language under consideration was silent with respect to an effective date for the pension changes, and there was no discussion between the parties as to that issue on either February 23 or April 7. The issue of employee contribution to the pension plan was

temporarily set aside due to the discovery of inaccuracies in an actuarial report prepared by MERS. The City promised to obtain more up-to-date statistics from MERS prior to the next scheduled bargaining session.

In late February or early April of 2005, Charging Party contacted MERS and requested that a new actuarial report be prepared which would take into consideration the current composition of the command officer bargaining unit. Although MERS admitted to the City that the existing actuarial report was outdated by several years, it refused to update its calculations on the ground that the report was only intended to serve as a rough estimate. The City then notified the Union of its discussions with MERS, and the parties agreed to go forward with contract negotiations despite the lack of an updated actuarial report.

The next bargaining session between the parties occurred on April 14, 2005. On that date, the Union's bargaining team consisted of Pushee, Carlson, Hatch and, at times, Krueger. At the start of the session, Charging Party gave the Union a six page document entitled "Package Proposal" which included language that the City believed had been agreed to at the earlier sessions, along with proposals on issues about which there had yet been no agreement. With respect to pension benefits, Item 11 on the document provided, "Effective February 1, 2005, a 2.75% Multiplier for MERS DB Plan with 1.5% employee contribution for employees hired prior to 7/1/04." Neither Pushee nor Hatch read the City's package proposal word for word at that time. Rather, Hatch set the new proposal next to her notes from the prior bargaining session and merely attempted to ascertain whether all of the changes that the Union previously requested had been made.

The parties discussed at least some parts of the City's package proposal, including the "open items" portion of the document, and then caucused. When the negotiations reconvened, the City gave the Union a new document entitled "Tentative Agreement" which incorporated the issues discussed thus far that morning along with the items previously agreed upon. Reference to a February 1, 2005 effective date for the pension multiplier increase remained in the document. Once again, Pushee did not read the six-page document in its entirety. At the hearing in this matter, Pushee testified that the parties "would have been there a couple of days if [they] went through every word of it." Similarly, Hatch did not review the second package proposal word for word. Rather, she once again compared the tentative agreement to the prior package proposal in an attempt to identify which terms had been changed. The only issues raised by the Union at that time pertained to employee cell phone use and a wage increase for the senior police clerk.

Following a second caucus, the City gave Respondent yet another six page "Tentative Agreement" which the Union's bargaining team briefly reviewed. Once again, the proposed agreement specified a February 1, 2005, effective date for the pension multiplier increase. At that time, all of the members of the command unit, including Krueger, were present at the bargaining table. The parties made several minor changes to the proposed contract language and then, believing that an agreement had been reached, the members of both bargaining teams signed the document.

Prior contracts between the City and Respondent had been subject to ratification by both parties, and Pushee testified that it was his general practice when negotiating agreements to take the documents back to Respondent's headquarters for review by a member of the executive board, a research analyst or an attorney prior to seeking the approval of the unit members. However, this was

the first time in at least nine years that all of the members of the NCOA unit were present for the final negotiating session and signatories to the tentative agreement.

As the April 14 bargaining session was breaking up, Word informed the Union that he would present the agreement to the City Council for ratification the following week. He also made reference to the possibility of there being a separate ratification vote by the Union. Word testified that he asked Pushee directly whether ratification by the bargaining unit would be required for this agreement. According to Word, Pushee responded that such a vote would not be necessary because all of the members of the bargaining unit had already signed the agreement. Chief Petres also testified that Word specifically asked Pushee whether ratification by the bargaining unit would be necessary. According to Petres, "[T]he reaction was – in the room was almost as if it was a ludicrous question and he was told by Gary Pushee no, there was no need for a ratification vote." Similarly, Bateson testified that there was some "lighthearted" discussion about whether the agreement had been ratified and . . . "the answer [from the Union] was yes. It was almost as if it was a dumb question."

Like Bateson, Respondent's witnesses characterized the exchange between Word and Pushee concerning Union ratification as lighthearted in nature. Hatch testified "I took it in a joking, easy [manner] – Wow, geez, you're all here; this is just about the same as ratifying." Similarly, Pushee asserted at hearing, "[A]ll we did is kind of chuckle, I guess. I never took it serious." According to both Hatch and Pushee, no one from the Union's bargaining team responded directly to Word's comment, other than with a "giggle" or a "laugh." Although Hatch testified that it was in fact Respondent's intention at the time to review the language more carefully following the completion of the bargaining session and then conduct a ratification vote, there is no evidence that she or any other member of the Union's bargaining team actually conveyed that fact to the City's representatives. In fact, Pushee conceded at hearing that he only "assumed" that the City was aware of the Union's plan to hold a ratification vote.

Following the April 14 bargaining session, Hatch reviewed the signed document word for word for the first time. She realized that Fendelet would be subject to the reduction in health care benefits and yet, at the same time, he would be ineligible for the increased pension multiplier since he retired prior to February 1, 2005, the effective date set forth in the tentative agreement. She immediately notified Pushee of her concerns. The following day, April 15, Hatch met with Petres and told him that the Union was not going to "accept" the agreement and that the exclusion of Fendelet from the pension multiplier increase "was not right." At no point during the conversation, however, was the issue of Union ratification specifically discussed.

Pushee testified that he spoke to Word by telephone on April 15 and that he told the city manager that the Union had not intended for Fendelet to be subject to the higher prescription drug co-pays without receiving the corresponding benefit of an increase in the pension multiplier. Pushee asserted that he also told Word that he would have a difficult time getting the tentative agreement ratified by the unit members under such circumstances. Word's description of this phone call was somewhat different. Word asserted that he and Pushee discussed the changes to health care benefits in the new agreement and whether Fendelet was aware of what the parties had negotiated. According to Word, Pushee indicated that there "should not be an issue and that Dave should have understood that was the case . . . ." Word testified that Pushee did not indicate that Union

ratification was an issue during this conversation. Word indicated that he first learned of Respondent's position concerning Union ratification when he received a letter from the Union on April 26. That letter, as set forth in more detail below, does not refer to any earlier conversations between the parties regarding the necessity of Union ratification, and I credit Word's testimony as it pertains to this issue.

The City Council ratified the collective bargaining agreement in open session on April 18, 2005. Thereafter, Charging Party began implementing the terms of the agreement retroactive to July 1, 2004, including the payment of wage increases and a negotiated tuition reimbursement. In addition, the City Council authorized the submission of paperwork to MERS to facilitate the pension multiplier increase and an agreed-upon change in disability benefits. Fendelet received a check reflecting the retroactive wages he was owed for the six-month period during which he was employed by the Northville Police Department following expiration of the prior contract.1

On April 21, 2005, Fendelet came to Word's office to discuss the terms of the new contract. Fendelet complained to Word that he would be negatively impacted by the modifications to health care benefits and he proposed changing those terms as they applied to his situation. Word suggested that Fendelet raise the issue with the City Council and offered to help facilitate such a discussion. However, he cautioned Fendelet that he could not recommend the adoption of any settlement agreement because he felt the parties already "had a deal" on a new contract and that such a change after the fact would "not be proper." That same day, Word notified Pushee in writing that the City Council had ratified the tentative agreement at its April 18 meeting. In the letter, Word indicated that the City would "proceed to incorporate the negotiated items into a revised draft of the collective bargaining agreement" and forward a copy to the Union for review within ten days.

Word had a follow-up meeting with Fendelet and Carlson on April 26. At that time, Respondent presented Word with a memo formally notifying the City that the Union did not intend to ratify the April 14 tentative agreement. The memo stated, in pertinent part:

> As you know, member David Fendelet retired on December 31st, 2004 after 29 years and 9 months of dedicated service to the City and its citizens. When the NCOA membership signed the tentative agreement we were not aware of the serious negative impact it was going to have on David involving reduced retiree medical coverage he would be exposed to. When David retired he received the same medical benefits package as all of the other current retirees. If the current tentative agreement was ratified by us and became the collective bargaining agreement then only David would be negatively impacted, none of the other current retirees would receive the reduction.
>
> During the April 7th negotiations meeting the City made a proposal. Contents of this proposal involved fifteen issues, two of them being a reduction in medical benefits taking effect as of 7/01/2004 and an improvement in retirement benefits that would

1 Because that wage increase affected Fendelet's final average compensation, he also received a retroactive pension adjustment from MERS on or about August 29, 2005.

take effect as of 2/01/2005. The NCOA membership reviewed this proposal and inadvertently did not discuss it with David since it was our impression that there was nothing contained in the proposal that would make a negative impact on only him.

The April 26 memo, which was signed by all three bargaining unit members, as well as Pushee and Fendelet, included three proposals for modifying the agreement so as to ensure that Fendelet would either receive the increased pension multiplier or be made ineligible for the reduction in medical benefits. The Union promised to ratify the agreement as long as the City accepted one of its alternate proposals. A second memo presented to Word on that date by the Union requested that the City refrain from submitting the unit members' new health care enrollment forms to the respective medical carriers "until such time as we have ratified our contract."

On May 3, 2005, Word sent a letter to Pushee asserting that the April 14 tentative agreement was negotiated in good faith by both parties and that the City considered "the mutually ratified Tentative Agreement final, binding and valid during the period commencing July 1, 2004 through June 30, 2008." Pushee responded by letter dated May 6, 2005 in which he alleged that there had been no "meeting of the minds on the issues of pension and health care for Fendelet." On May 23, 2005, Respondent sent a written request for mediation to MERC identifying pension and health care benefits as the outstanding contract issues. On June 7, 2005, Word presented the Union with a final draft of the complete collective bargaining agreement and requested that the NCOA sign a copy of the document and return it to the City. When the Union refused to execute the agreement, the City filed the instant charge.

There was conflicting testimony at hearing concerning whether the parties ever specifically discussed the inclusion of language establishing an effective date for the pension multiplier increase during the April 14, 2005 bargaining session. Hatch testified that she did not recall there being any reference to the February 1, 2005, effective date during the final negotiation session or, for that matter, any detailed discussion of the other provisions in the City's package proposal. Hatch admitted, however, that she did not pay close attention to the pension issue during the negotiations because she was primarily focused on other matters which she believed affected her more directly, such as the wage increase. Pushee testified that he did not believe that the parties discussed every single item in the City's "Package Proposal" and that if Charging Party mentioned a February 1, 2005, effective date for the increase in the pension multiplier, he could not remember such a discussion.

In contrast, Bateson asserted that the City's bargaining team went over its package proposal item by item, as was its normal practice during contract negotiations, and that this discussion included reference to the effective date provision. Similarly, Word testified that he believed that the addition of the February 1, 2005, effective date was specifically mentioned at that meeting. Chief Petres asserted that Word not only referenced the effective date provision during the meeting, but that he also explained to the Union that the February 1st date was chosen for the purpose of maintaining consistency with the patrol unit contract. According to Petres, Word later emphasized to the Union that the inclusion of the effective date provision was one of only two changes to items previously agreed upon by the parties. Notably, Petres' testimony is corroborated by the handwritten notes which he took during the April 14 session. Toward the top of the first page, the notes state, "GW DISCUSS - #11 – 1.5 % EMP PAY [and] 2/1/05 BOTH CONSISTENT W/POA."

Below that, Petres wrote, "GP – ANY CHANGE TO ITEMS AGREED TO ON 4-7? ONLY #11 WITH DATE AND % OF CONTRIBUTION." Based upon these contemporaneous notes, as well as Petres' general demeanor on the witness stand, I credit the police chief's testimony and find that the City specifically called attention to the inclusion of the effective date language while bargaining with Respondent on April 14.

Discussion and Conclusions of Law:

Charging Party contends that the parties reached an express and clear tentative agreement on April 14, 2005, which was signed by each member of the bargaining unit and subsequently ratified and implemented by the City. According to Charging Party, the Union's refusal to execute the final written document memorializing the terms of the parties' April 14 settlement agreement constitutes a violation of the Union's bargaining obligation under Section 10(3)(c) of PERA. Respondent asserts that the document signed by the parties on April 14 was merely a tentative agreement, subject to further ratification by both the City Council and the Union in accordance with the past practice of the parties. Additionally, the Union contends that it had no obligation to execute the settlement agreement because there was never a meeting of the minds with respect to the issue of the effective date of the pension multiplier increase.

Under Sections 10(1)(e), 10(3)(c) and 15 of PERA, both public employers and labor organizations have a duty to bargain in good faith with respect to mandatory subjects of bargaining, i.e., wages, hours and other terms and conditions of employment. MCL 423.210; 423.215. One of the requirements of good faith collective bargaining under the Act is the expeditious and decisive acceptance or rejection of a tentative agreement. *City of Pontiac*, 19 MPER 51 (2006); *Teamsters Local 214*, 1998 MERC Lab Op 72. A contract is considered complete and binding upon the parties once it is reduced to writing and signed or, if required, upon ratification by the parties. *County of Washtenaw*, 19 MPER 14 (2006). For a public employer, a tentative agreement usually requires ratification by its governing body. *City of Pontiac*, *supra*; *North Dearborn Heights Sch Dist*, 1967 MERC Lab Op 673. Ratification by the union, however, is an internal matter. It is well-settled that PERA does not require a union to submit the terms of a contract to its membership for ratification or approval. *Lansing Sch Dist*, 1989 MERC Lab Op 218; *County of Calhoun*, 1980 MERC Lab Op 323. Moreover, a union may not deny the existence of an agreement by asserting a failure to comply with its own ratification procedures. *Redford Twp*, 1982 MERC Lab Op 1078; *East Detroit Fed of Teachers*, 1980 MERC Lab Op 840.

A party does not necessarily violate its duty to bargain in good faith by repudiating a tentative agreement prior to ratification. *Eau Claire Public Schools*, 1973 MERC Lab Op 184; *Genesee County Bd Comm*, 1982 MERC Lab Op 84. At the same time, the Commission has recognized that collective bargaining envisions an obligation on the part of those involved in the negotiation process to affirmatively support a contract to which they have tentatively agreed, and that a failure to do so may constitute an unfair labor practice. *City of Springfield*, 1999 MERC Lab Op 399, citing *City of Burbank*, 4 PERI 2048 (IL SLRB 1988) and *Town of Putnam Valley*, 17 PERB 3041 (NY 1984). For example, in *Village of Chesaning*, 1974 MERC Lab Op 580, aff'd 62 Mich App 157 (1975), the Commission held that where a majority of the employer's decision-making body participated in the final negotiation session in their official capacities and then clearly signified their approval of the tentative agreement reached at the bargaining table that same day, the

employer violated PERA by its subsequent failure to execute the agreement and its attorney's attempt to renegotiate portions thereof. See also the ALJ's decision in *Branch County Bd Comm*, 2002 MERC Lab Op 110, aff'd by the Commission but rev'd in part on other grounds, 260 Mich App 189 (2004).

In the instant case, there is no dispute that the past practice of the parties was for there to be ratification by both the City and Respondent prior to the execution of a final and binding contract. However, this was the first time in recent years that the entire command unit was present at the bargaining table when a tentative agreement was reached, and it is undisputed that each member of the bargaining unit signed the document codifying that agreement. Under such circumstances, it was reasonable for Charging Party to have assumed that a ratification vote by the Union would not be necessary. Moreover, Respondent never indicated during negotiations that agreements reached at the bargaining table were only tentative. In fact, Respondent took no action in this regard even after Word raised the issue of Union ratification at the close of the final bargaining session. Rather than responding to Word's remark by expressly indicating that further review of the agreement would be necessary, Respondent's bargaining team treated the comment by Charging Party's chief spokesperson as a "joke" and, according to the testimony of Pushee and Hatch, remained silent, but for a "giggle" or a "laugh." In contrast, Word specifically told the Union negotiators that approval by the City Council would be required prior to Charging Party's execution of the agreement.

Even after the conclusion of the April 14, 2005, bargaining session, Respondent did not immediately indicate to the City that ratification by members of the bargaining unit was required or that execution of the agreement by the Union was in question. Although Hatch had a meeting with Petres the following day during which she expressed her dissatisfaction with the tentative agreement as it applied to Fendelet, she did not expressly refer to a Union "ratification" vote or otherwise put the City on notice that Respondent did not consider there to be an agreement. Rather, she merely indicated that she felt the contract was "unfair" and that Union would "not accept it." That same day, Pushee told Word that the reduction in retiree health care benefits would not be an issue and that he believed Fendelet would understand the situation. It was not until April 26, almost two weeks after the final negotiation session, that Respondent informed the City that Union would not ratify the tentative agreement. By that time, the City Council had already ratified the contract and had begun to implement its terms. Under these circumstances, I find that Respondent is estopped from denying the existence of an agreement based upon a purported failure to ratify. See e.g. *City of Battle Creek*, 1994 MERC Lab Op 440 (the employer was found to have bargained in bad faith by refusing to sign a settlement agreement where its bargaining agent never suggested during negotiations that his proposals or subsequent verbal agreements were subject to further ratification).

I also reject the Union's contention that there was no meeting of the minds with respect to the February 1, 2005, effective date for the increase in the pension multiplier. As the Commission recognized in *Lakeville Comm Sch*, 1990 MERC Lab Op 56, 61, "[F]inality of contract is a basic principle of collective bargaining. Provisions of a ratified agreement cannot be lightly set aside without jeopardizing this principle and undermining the purpose of collective bargaining." Where a contract provision in dispute is unambiguous and there in 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 agreement carefully before ratifying it." *City of Detroit (Dept of Transp),*

19 MPER 3 (2006) (no exceptions), citing *Lakeville Comm Sch, supra* at 60. See also *Buena Vista Sch*, 16 MPER 65 (2004). A party will be excused from executing or implementing a contract only when there has been no actual meeting of the minds. *Genesee Co (Seventh Judicial Circuit Ct)*, 1982 MERC Lab Op 84, 87. The Commission has found no meeting of the minds where the parties reach a tentative agreement containing ambiguous language and the evidence establishes that the parties did not specifically agree on the meaning of this language during negotiations. *Buena Vista Sch, supra*. The standard for determining whether there was a meeting of the minds is an objective one, focusing on the express words of the parties and their acts. *Lakeville, supra* at 59 citing *Goldman v Century Insur Co*, 354 Mich 528 (1959).

Tuscola County Medical Care Facility, 2001 MERC Lab Op 110 (no exceptions) is instructive on this issue. In *Tuscola*, the ALJ held that the union committed an unfair labor practice by refusing to sign a tentative agreement. The unit contained only three active employees, all of whom were in attendance at the final bargaining session. On that date, the employer gave its final offer to the union, specifically noting that there were items in the handwritten proposal which had not been previously discussed. The union's staff representative put the final offer in a packet or in his pocket and continued working from an earlier employer proposal. After caucusing, the staff representative indicated to the employer that it would agree to the offer provided that the wage increase took immediate effect. Since all of the unit members were present, the agreement was immediately ratified and the employer put it into effect as promised. The employer's board ratified the agreement a few days later. While the final contract document was being drafted, the staff representative contacted the employer to question whether the implemented wages were correct. The employer responded by asserting that the wage rates were identical to the final offer presented to the union in writing and ratified by the parties. The union refused to sign the contract, instead suggesting that the parties return to the bargaining table to clarify the matter.

In finding no merit to the union's contention that the parties made a mutual mistake regarding wages when they reached the tentative agreement, the ALJ held:

> The staff representative's use of the typed second proposal of the Employer to record any changes, rather than deal with the handwritten third and final proposals may be understandable, but any mistake in doing so cannot be laid at the feet of the Employer. The final offer that laid out the contract wage schedule is clear on its face, and the Union's failure to refer to it in the final decision making on a tentative agreement was not caused by any failure or obfuscation on the Employer's part. In fact, the record establishes that the Employer took great care to explain the terms of the final wage offer to the staff representative at their last meeting. It is not the responsibility of the Employer to monitor the document being used by the Union representative to record an offer, especially where it has already been put into writing.
>
> * * *
>
> The Union, not the Employer, made the mistake in the wage rates presented to the membership. Therefore, the contract as drafted by the Employer must be executed by the Union. Although the employees may have been misinformed when they

> ratified the contract, it was not due to any action or inaction on the part of the Employer. [B]oth parties have an equal burden to clarify the terms and meaning of a contract before it is ratified, and the failure of one party to do so does not excuse it from adhering to the bargain made by its agent.

Tuscola, supra at 115-116 (citations omitted). See also *Saginaw County Sheriff, supra* (doctrines of mutual mistake and no meeting of the minds found not to apply where the union was aware of the existence of a health proposal but failed to recognize the significance of that provision); *Port Austin Pub Sch*, 1977 MERC Lab Op 974 (no mutual mistake where the union entered into and ratified a contract that it later discovered worked to the disadvantage of three bargaining unit members).

In the instant case, the parties agreed to a 2.75 percent increase in the pension multiplier at a bargaining session prior to April 14. At the start of the final session, the City presented Respondent with a six page package proposal that included the following provision: "Effective February 1, 2005, a 2.75% Multiplier for MERS DB Plan with 1.5% employee contribution for employees hired prior to 7/1/04." Respondent does not contend that this language, which was also part of every subsequent proposal exchanged between the parties, was in any way unclear or ambiguous. To the contrary, the Union specifically asserts in its post-hearing brief that the effective date provision clearly excluded Fendelet from the pension enhancement. The fact that the members of Respondent's bargaining team did not read the proposals carefully prior to entering into the tentative agreement is not sufficient to justify removal of the effective date provision from the contract.

In any event, the record further establishes that the City explicitly referenced the February 1 effective date at the start of the final bargaining session and then once again called attention to that language later that morning. In fact, it should be noted that Respondent did not immediately assert that the parties had not reached an agreement following the April 14 bargaining session. In its April 26, 2005, letter to the City, the Union claimed only that it had "inadvertently" failed to discuss the pension proposal with Fendelet and that it was "not aware of the serious negative impact it was going to have on [him]" when it signed the agreement. I find that the tentative agreement accurately reflects the terms of settlement as mutually understood by the respective bargaining teams on April 14, and that any mistake which may have occurred is attributable solely to Respondent in failing to recognize the significance of the February 1, 2005, effective date.

Although this decision may have an unfortunate effect on the former Union president, the record does not justify Respondent's refusal to execute the tentative agreement entered into and signed by the parties on April 14, 2005. As discussed by the ALJ in *Port Austin Pub Sch*, 1977 MERC Lab Op 974, 982-983:

> The fact that a resulting collective bargaining agreement may at times work a hardship on some employees does not mean the Commission can change or reform the contract to correct the resulting inequity. See [*Howell Pub Sch*, 1976 MERC Lab Op 229], *County of Kalamazoo*, 1977 MERC Lab Op 414, and *Saginaw County Bd of Health*, 1976 MERC Lab Op 183.

* * *

> I find no unfair labor practice on the part of the Employer by its adhering strictly to the terms of the contracts as negotiated and ratified by the parties. Whether deliberate or not, the Employer is entitled to attempt to make benefits under the collective bargaining agreement uniform for all employees in the bargaining unit, and the burden, I find, is on the Union to secure in the contract any special benefits or status for specific employees that differ from the general benefits negotiated with the Employer.

I have carefully considered the remaining arguments of the parties and conclude that they do not warrant a change in the outcome of the decision. For the foregoing reasons, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The Command Officers Association of Michigan and the Northville Command Officers Association, their officers, agents, representatives, successors and assigns, are hereby ordered to:

A. Cease and desist from:

(1) Refusing to bargain in good faith with the City of Northville by failing and refusing to execute the collective bargaining agreement reached by the parties on April 14, 2005.

(2) In any other manner refusing to bargain in good faith in violation of Sections 10(3)(c) and 11 of PERA in the bargaining unit comprised of all full-time employees of the Northville Police Department above the rank of patrol officer and below the rank of captain, excluding the officer in charge of the department if the position of police chief is vacant.

B. Upon request, execute a written agreement which sets forth the wages, hours and working conditions agreed to by the parties on April 14, 2005.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated:_____