STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

RIVER ROUGE, CITY OF,
Public Employer - Respondent,

Case No. C10 C-076

- and -

RIVER ROUGE FIRE FIGHTERS UNION, LOCAL 517,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Howard L. Shifman PC, by Howard Shifman, for the Respondent

Michael L. O'Hearon, PLC, by Michael L. O'Hearon, for the Charging Party

DECISION AND ORDER

On December 1, 2010, Administrative Law Judge Doyle O'Connor issued a Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF RIVER ROUGE,
Respondent-Public Employer,

-and- Case No. C10 C-076

RIVER ROUGE FIRE FIGHTERS ASSOCIATION, LOCAL 517,
Charging Party-Labor Organization.

_____/

APPEARANCES:

Michael L. O'Hearon, for Charging Party

Howard Shifman, for Respondent

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 assigned to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

On March 18, 2010, a Charge was filed in this matter by the River Rouge Fire Fighters Association, Local 517 (the Union) asserting that representatives of the City of Ecorse and the City of River Rouge (the Employer) had met and discussed the possible consolidation of the fire services of those two communities without first negotiating with the Union or with its sister Local, the Ecorse Fire Fighters Union, Local 684. It was not apparent how such discussions between two communities over whether or not to pursue such a consolidation of services would violate the duty to bargain with the respective Unions. The decision of whether or not to enter into a reorganization plan is not a mandatory subject of bargaining, although a duty to bargain may arise over the impact of an actual reorganization. See, *Royal Oak Twp*, 2001 MERC Lab Op 117,126. An order was issued directing the Charging Party to show cause why the Charge, on that issue, should not be dismissed without a hearing. That portion of the Charge was subsequently withdrawn.

Further, the Charge alleged that the City violated its bargaining obligations by entering into a consent agreement which gave to a financial review team certain authority over the City's finances. The Charge asserted that on February 3, 2010, the City presented a bargaining proposal to the Union without first obtaining the prior written approval of that proposal by a financial management review team apparently appointed by the Governor. The appointment of a financial management review team is a voluntary step which may be taken by a financially troubled municipality and is short of the involuntary appointment of an Emergency Financial Manager under MCL §141.1201 with more sweeping powers. The Charge did not explain how that alleged conduct violated PERA, and this portion of the Charge was also subject to the order to show cause.

Upon reviewing the Union's response to the order to show cause, and the Employer's reply, I determined that there did not appear to be any material disputes of fact and that the Charge did not appear to state a claim. The Union requested oral argument, which was held on September 28, 2010. After considering the arguments made by the parties in their briefs and on the record, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition in favor of the Respondent was appropriate pursuant to Commission Rule R 423.165 (1). See also *Detroit Public Schools*, 22 MPER 19 (2009) and *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a bench decision, finding that Charging Party had failed to state valid claims under PERA. The substantive portion of my findings of fact and conclusions of law are set forth below:[1]

> JUDGE O'CONNOR: I am prepared to rule on this matter.
>
> * * *
>
> The facts in this matter, the relevant facts, are not in dispute. The City of River Rouge entered into a Consent Agreement with the State which provided for a Financial Management Review Team and gave it certain authority.
>
> There was some debate about the extent of the authority of the Financial Management Review Team, and regardless of whether it is as Mr. Shifman has characterized it, it really places the City at risk of the imposition, the imminent imposition of an emergency financial manager if the City were to execute a collective bargaining agreement without prior approval of the Financial Management Review Team.
>
> Or, as Mr. O'Hearon describes it, and I presume from much of the argument, it really functionally requires that before the City Council executes a collective bargaining agreement, it seeks the review of the Financial Management Review Team which I think, in practical terms, looks

[1] The transcript excerpt reproduced herein contains typographical corrections and other minor edits for clarity purposes. The completed unedited transcript is maintained within the Commission case file.

very much like the power of the review team to veto or ratify as an additional layer or hurdle in the bargaining process.

Now, that is the background. It is undisputed the parties met and that the Employer's regular representative, Mr. Shifman, their labor counsel, advised the union that the City was prepared to bargain, that he had authority to bargain, that he believed he knew the parameters within which he could bargain.

Which is to say, as the Union characterized it, Mr. Shifman indicated to the union that he believed that if the Union accepted the proposal that Mr. Shifman was delivering, that the City Council and the Financial Management Review Team would both approve it or accept it. In fact, as the Union characterizes it, the response of the Employer's bargainer was that he "was sure" that the review team would approve it if the Union accepted it.

The dispute here is one of first impression. We don't have a lot of experience dealing with emergency financial managers, much less with the interim level of the Financial Management Review Team.

As Mr. Shifman has argued, the wisdom of Act 72 which created this process is not before me and would not properly be before me. We just accept it as fact.

The general obligation of the parties is to, as Mr. Shifman quotes one of my decisions in *Taylor Public Schools*, [22 MPER 29 (2009)]

> Part of the obligation to bargain in good faith is to send representatives to the table who in fact have authority to negotiate and reach agreement, albeit with such agreement subject to the ratification by a vote of the public body governing board. The mere failure of a party to ratify a tentative agreement is not a violation of the Act. [Internal citations excluded.] Nonetheless, the Commission anticipates each party is sending representatives to the table who not only have authority to negotiate but who will affirmatively support ratification of any tentative agreement reached.

Now, as I indicated in my earlier letter of July, it is well settled that parties are not required to clothe bargaining teams with the authority to enter into binding agreements without a further ratification process. I cited *Farwell Schools*, 1985 MERC Labor Op 948. The very concept of ratification implies that principals have the right to reject tentative agreements, although they must do so in good faith, citing *City of*

Hamtramck, 1975 MERC Lab Op 723 and *Genesee County*, 1982 MERC Lab Op 84.

Again, taking the analysis of what the Consent Agreement does in its worst-case scenario, and that is that it creates a two-step ratification process for the Employer with the first step being the City Council and the second step being the Financial Management Review Team, I find it no different in substance than some of the examples I posited of a Mayor or sub-committee of the City Council serving as the negotiating team with any proposed deal still subject to a full Council ratification.

I also functionally find it no different than some unions which premise ratification on first a vote at the local union level and then a vote or a decision at a regional or national level. Such a two-step ratification method by labor unions is prohibited in a very narrow field--the Legislature which has the authority to make such prohibitions -- prohibited multi-level ratification only by unions and only in the public school setting.

I think that where the Legislature has gone to the trouble of rewriting a portion of PERA to prohibit a particular tactic and has limited that prohibition to one sector, I am obliged to follow that limitation. They have chosen only to limit two-stage ratification on the union side of the table in the public school setting.

The Union has argued that, or suggests that, the employer who is going to have a two-stage system of ratification, that there is a duty to bargain over that, and I don't find that. I think that both parties, absent the special rule as to schools, have the right to their own ratification system.

A City Council, as far as PERA is concerned, could give all authority to a Mayor to simply negotiate a contract and ratify it. A City Council could give authority to a sub-committee, a finance committee of the City Council, to ratify an agreement and set up a structure where only if that sub-committee were tied would the whole City Council vote on it, as far as PERA is concerned.

Just as a union can have a majority vote, a two-thirds vote, a three-quarters vote, a regional body authorization, an international union veto of ratification, the key. . . is [the Decision in] *City of Pontiac* 1992 MERC Lab Op at 245. There are actually two related decisions. This was the Commission decision. The Commission split in this case where a City Charter provided that ratification of the contract was by the City Council and the Charter allowed the Mayor to veto. The fact situation was that an outgoing Mayor liked the collective bargaining agreement, the City Council ratified it. The incoming Mayor vetoed it. The Commission split two to one with Tanzman dissenting and with Bixler, who had been the ALJ in the case,

serving as the deciding vote on the Commission. It was an unusual circumstance. However, there was a two-to-one vote finding that such a process was proper, with the finding being that the union knew or should have known that there was essentially a two-stage ratification process.

Commission decisions are binding particularly where, as this one was, they are affirmed by the Court of Appeals, albeit an unpublished decision in 1995. But additionally, I disagree with Tanzman's dissent. I greatly respect him, and I greatly respect several of his dissents, but this one I actually disagree with for the reason that I have already given, which is that I think that each party is entitled to its own internal structure, whatever it might be. Both parties are entitled to know what they are dealing with on the other side of the table, and I think that is important, and I don't think that is in dispute here.

I think that there could well be a charge arise if there was a secret covenant withheld from the other party, and you go through a whole bargaining process of a years'-long struggle with compromise and give and take, and then out of the bag pops an entity that you were unaware of.

But those aren't the facts here, and I don't think there is a question of adequate notice here. Both sides knew exactly what they were dealing with just as the Commission presumed in the *Pontiac* case, that both sides knew or should have known. Here, I don't think there is any factual issue but that both parties knew what they were dealing with.

The argument that because the Financial Management Review Team has a role to play in the approval of a tentative agreement, the argument that that requires, in order to show good faith on the part of the employer bargainer, that each proposal be vetted by the Financial Management Review Team prior to it being brought to the table I think turns the bargaining process on its head. The bargaining process requires that the parties send agents with a reasonable degree of authority to the table who can engage in the give and take of bargaining, the trade-offs, the compromises, the fine tuning of positions.

I think that the suggestion that whether it is the Financial Management Review Team or City Council should give its absolute complete approval to a package before it is put on the table would deter bargaining rather than encourage bargaining. The whole point of the Public Employment Relations Act is to encourage the bargaining process.

I find that, on the facts as acknowledged by both sides, it is merely speculative to suggest that the Employer's bargaining agent who appeared at the table did not have authority. The Union has argued that it shouldn't have

to go through the bargaining process wondering if the person on the other side of the table had authority. I find that unpersuasive.

The case law is clear. Each party must bargain with and is entitled to rely on the authority of the agent that the other side sends to the table. We have had cases, like I believe *Farwell Schools*, where an agent came to the table, purported to have authority, and then repeatedly reached tentative agreements that were rejected by the principal. That set of facts could establish that the agent in fact didn't have authority and that there was not bargaining in good faith, but the mere suspicion that could occur cannot possibly establish that it did occur or would occur.

I think I may have already covered this, but I do find that there is no duty on the part of either side to bargain over the ratification process it chooses to have on its own side of the table.

I would also like to put on the record, as I think I started out saying, that we do these bench opinions in the interest of getting the parties a quick decision. I felt in this case in particular where bargaining seemingly has ground to a halt as a result of this dispute, that it would be best to get you a decision quicker rather than later so the parties can both assess their respective positions in light of my recommended decision.

Based on the findings of facts and conclusions of law set forth above, I recommend that the Commission issue the following order:

ORDER

The unfair labor practice charge in Case No. C10 C-076 is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____, 2010