STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

OAKLAND COMMUNITY COLLEGE,
Respondent-Public Employer,

Case No. C99 F-111

-and-

TEAMSTERS STATE, COUNTY, AND
MUNICIPAL WORKERS, LOCAL 214,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Dickinson, Wright, Moon, VanDusen & Freeman, PLLC, by Elizabeth Pezzetti, Esq., for the Public Employer

Rudell & O'Neill, P.C. by Wayne A. Rudell, Esq., for Charging Party-Labor Organization

DECISION AND ORDER

On November 16, 2000, Administrative Law Judge (ALJ) Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent Oakland Community College (OCC) failed to bargain in good faith in violation of Section 10(1)(e) of PERA. On December 11, 2000, Respondent filed timely exceptions to the Decision and Recommended Order of the ALJ and a request for oral argument.[1] Charging Party Teamsters State, County and Municipal Workers, Local 214, filed a timely brief in support of the Decision and Recommended Order of the ALJ on January 26, 2001.

The facts in this case were set forth fully in the Decision and Recommended Order and need not be repeated in detail here. Briefly, the evidence reveals a lengthy history of negotiations between the parties over the terms of an initial collective bargaining agreement covering a unit of approximately 114 full-time administrative and management employees of OCC. Bargaining commenced in February of 1996 and involved some 20 negotiations sessions. In May of 1998, this Commission appointed John Lyons as fact finder. While the parties were able to reach tentative agreements on numerous issues, 19 issues were ultimately submitted to the fact finder for consideration. On December 1, 1998, the fact finder issued a report listing the remaining issues and setting forth his recommendations, many of which represented a

[1] After reviewing the exceptions, we find that oral argument would not materially assist us in deciding this case. Therefore, Respondent's request for oral argument is hereby denied.

compromise of the parties' individual positions. With regard to several of the issues, the fact finder recommended that the parties conduct further negotiations.

On December 2, 1998, the day after the fact finder's report was submitted, the Employer sent a memo to all unit employees advising them that the fact finding process had been completed and that OCC planned on studying the report carefully. In the memo, Respondent indicated that it was prepared to "address the issue of wages by agreeing with the fact finder's recommendation . . . for the period covering 1996 through 1999." Respondent also expressed its intention to resume negotiations with the Union. The parties discussed the wage issue on December 8, 1998, and OCC confirmed its plans to implement the wage increase in a letter to the Union dated December 8, 1998. In that same letter, the Employer proposed that negotiations resume in January of 1999, and requested a list of possible meeting dates. The Employer implemented the wage adjustments on December 12, 1998.

On December 21, 1998, the Union notified Respondent that its membership had overwhelmingly voted to adopt the fact finder's recommendations, and that it considered those recommendations, together with the prior tentative agreements between the parties, to constitute a complete agreement. In a letter dated January 5, 1999, the Employer responded to the Union by indicating that while it was pleased with the fact finder's recommendations, further negotiations were required on various issues, including union dues, probationary period, cost sharing of benefits, wages and duration. The Employer also expressed its continuing opposition to the Union's proposals regarding reduction in force utilizing a bumping system based upon seniority and subjecting action taken under the Employer's planned realignment process to the grievance procedure.

Negotiations resumed on February 16, 1999. Although the parties briefly reviewed the fact finder's report, much of that bargaining session was devoted to a discussion of the wage adjustments implemented by the Employer. The parties scheduled another bargaining session for April 28, 1999, and agreed that the Union would prepare and submit to the Employer a comprehensive proposal regarding its post fact-finding position, and that the Employer would respond prior to the scheduled meeting. On April 8, 1999, the Union submitted its package proposal to the Employer and reiterated its understanding that the Employer would prepare a response in writing by the April 28 meeting. The Union's package proposal indicated agreement with most of the fact finder's recommendations and reflected numerous concessions. When the Union did not receive a proposal from the Employer by April 27, the Union contacted the Employer and canceled the scheduled bargaining session.

On May 7, 1999, the Employer hand delivered its package proposal to the Union at the conclusion of an unrelated Commission representation hearing. While some discussion took place at that time regarding remaining wage issues, the Union did not wish to negotiate further without the presence of its bargaining team. The Employer's May 7 proposal contained several items which were never presented to the fact finder, including issues such as wage adjustments by the Chancellor, mandated staff training, benefits, and duration of contract. The proposal also contained a change in the Employer's previously stated position concerning sabbatical leave, limiting such leave to administrators and excluding management employees.

The next bargaining session took place on June 14, 1999. At the beginning of that meeting, the Employer presented to the Union another package proposal of approximately 80 pages in length. The Employer indicated that the new proposal was intended to correct certain various mistakes in the prior package and to make certain modifications. The meeting lasted approximately two and one-half hours, with one-half hour of that time devoted to caucuses. When the Union expressed disappointment over the new proposal, the Employer declared it to be their last best offer. Union representative Kenneth Gonko responded by stating that he did not believe the parties were at impasse and that the Union was prepared to continue negotiations. The Employer's representatives requested that the Union notify OCC if their were any substantive changes in its position and then left the meeting. On June 16, 1999, the Employer sent a letter to the Union reiterating that the parties had reached impasse and that the College would implement its last best offer. Attached to that letter was a document entitled, "Wages and Working Conditions for Administrative/Management Staff" which represented most of the proposals set forth within OCC's last best offer, including items which were set forth in Respondents' package proposal but never submitted to the fact finder.

Discussion And Conclusions Of Law:

On exception, Respondent argues that the ALJ erred in finding that it unlawfully declared impasse on June 14, 1999. In support of this contention, Respondent relies upon the lengthy history of negotiations, including three meetings which occurred after the fact finder's report was issued on December 1, 1998. Respondent asserts that the lack of additional negotiating sessions following the conclusion of the fact finding process was primarily attributable to the Union's refusal to cooperate with OCC's attempts to resolve the dispute. Specifically, the Employer contends that Charging Party failed to supply dates for negotiations and repeatedly cancelled bargaining sessions which had been previously scheduled. In addition, Respondent argues that the ALJ erred in concluding that it unlawfully bypassed the bargaining agent with respect to its wage proposal. The Employer claims that it provided retroactive wage increases to its employees pursuant to the fact finder's recommendation, and that this action was undertaken with Charging Party's full knowledge and consent. Finally, Respondent takes exception to the ALJ's conclusion that it engaged in surface bargaining. The Employer characterizes this finding as an indication that the ALJ simply "did not like OCC's proposals."

We have defined impasse as the point at which positions of the parties have solidified and further bargaining would be useless. *Memphis Comm Schools*, 1999 MERC Lab Op 377, 386; *Wayne County (Attorney Unit),* 1995 MERC Lab Op 199. See also *City of Saginaw*, 1982 MERC Lab Op 727. The determination of whether impasse exists is made on a case-by-case basis, taking into account the totality of the circumstances and the entire conduct of the parties. *Flint Township*, 1974 MERC Lab Op 152, 156. In determining whether impasse exists, we look at a number of different factors, including whether there has been a reasonable term of bargaining, whether the positions of the parties have become fixed, and whether both parties are aware of where the positions have solidified. *Memphis Comm Schools*, *supra*. A finding of impasse depends upon the facts of each case and not on the declaration of either party. *St Ignace Area Schools,* 1983 MERC Lab Op 1042; *Munson Medical Center,* 1971 MERC Lab Op 1092. Where, as here, the fact finding procedure has been invoked, we have held that the parties must bargain in good faith for a reasonable time over the substance of the fact finder's report. See

AFSCME, Council 25 v. County of Wayne, 1985 MERC Lab Op 244**,** 248-251, supplementing 1984 MERC Lab Op 1142, aff'd 152 Mich App 87 (1986)**;** *County of Wayne*, 1988 MERC Lab Op 7; See also *Waldron Area Schools Bd of Ed*, 1997 MERC Lab Op 256; *City of Benton Harbor*, 1996 MERC Lab OP 399.

After examining the record in this case, including the transcripts and exhibits, we agree with the ALJ's conclusion that the parties were not at impasse when Respondent declared its intent to implement its last best offer on June 14, 1999. It is clear that the parties had not yet exhausted bargaining over the substance of the fact finder's report when impasse was declared. The initial package proposal submitted by the Employer introduced several new items which had never been submitted to the fact finder. Moreover, the only negotiating session at which the bargaining teams of both sides were present following submission of the fact finder's report and the exchange of package proposals was on June 14th, the very day that Respondent declared impasse. At the beginning of that meeting, which lasted only two and one-half hours, the Employer introduced a revised package proposal of approximately 80 pages in length. The record indicates that the parties caucused, but little meaningful discussion took place before the Employer's bargaining team walked out. Respondent's assignment of blame to the Union for the lack of additional negotiations following issuance of the fact finder's report does not convince us of the legality of its conduct in this case. Scheduling difficulties alone, even those attributable solely to one party, do not ordinarily justify the unilateral declaration of impasse.

It is also apparent from the record that both parties had not yet solidified their positions to the extent that further bargaining would be futile. Respondent bears the burden of establishing that impasse was reached to justify implementing its last offer. Simply declaring impasse and asserting the right to implement changes in mandatory subjects of bargaining is not sufficient. The Employer must prove that neither party, not just one, was willing to compromise. *NLRB vs. Powell Electric Mfg. Co,* 906 F2d 1007 (CA 5 1990); *Huck Mfg Co. vs. NLRB,* 693 F2d 1176, 1186 (CA 5 1982). Here, Charging Party did not agree with the Employer's declaration of impasse at the June 14 meeting, and it sought to continue negotiations. Prior to that date, the Union had made substantial concessions, agreeing to the Employer's proposal on management rights, subcontracting, long-term disability, worker's compensation and sabbatical leave. Respondent claims that there was little or no movement on certain key issues which the Union had characterized as "absolutes." We agree with the ALJ's determination that use of terms such as "absolutes" or "must haves" during negotiations is not indicative of an unequivocal rejection of a contrary proposal. *City of Saginaw, supra*. Thus, we conclude that the record supports a finding that the parties were not at impasse on June 14, 1999.

Next, Respondent argues that the ALJ's determination that it engaged in surface bargaining is erroneous because this finding was based upon her own dissatisfaction with OCC's bargaining proposals, as opposed to any legal principles governing labor negotiations under either PERA or the Labor Relations And Mediation Act (LMA), 1939 PA 176, as amended, 1965 PA 282, MCL 423.1. The Employer refers specifically to the ALJ's conclusion that its bargaining proposals did not "evidence a mind set open to compromise or a desire to reach an agreement." In addition, Respondent takes exception to the ALJ's determination that it was "seeking to deny the Union any effective voice in representing its employees and sought to retain almost total control over working conditions." The Employer further contends that there was no legal basis for the ALJ to find a bargaining violation on the ground that its proposal did not

recognize "traditional bargainable matters such as seniority, recall right after a layoff, or dues check off." According to Respondent, such findings are contrary to the express terms of Section 30 of LMA, MCL 423.30, which provides that the obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession."

Reading the Decision and Recommended Order in its entirety, it is clear that the ALJ's findings were merely intended as a reflection on Respondent's conduct throughout the course of negotiations, rather than an expression of personal disagreement with the specific content of the Employer's bargaining proposals. Moreover, we find no error with respect to the ALJ's examination of the contract proposed by OCC. In determining whether a party has violated its statutory duty to bargain in good faith, the totality of the party's conduct must be examined to determine "whether it has actively engaged in the bargaining process with an open mind and a sincere desire to reach an agreement." See e.g. *Unionville-Sebewaing Area Schools,* 1988 MERC Lab Op 86, 89 (quoting *Detroit Police Officers Ass'n v City of Detroit*, 391 Mich 44, 53-54 (1975)). Although we will not evaluate substantive terms of collective bargaining agreements or compel concessions, it is proper, under curtain circumstances, for this Commission to examine proposals and consider whether, on the basis of objective factors, bargaining demands constitute evidence of bad-faith bargaining. See e.g. *Flint Twp*, *supra* at 165. See also *Public Service of Oklahoma*, 334 NLRB No. 68 (2001); *Reichhold Chemicals (Reichhold II)*, 288 NLRB 69; 127 LRRM 1265 (1988), aff'd in pertinent part sub nom *Teamsters Local 515 v NLRB*, 906 F2d 719; 134 LRRM 2481 (DC Cir. 1990), cert denied 498 US 1053 (1991).

In the instant case, the evidence establishes that Respondent steadfastly insisted upon various proposals which would have effectively required the Union to forfeit its role as exclusive representative of the bargaining unit. For example, OCC made it clear to Charging Party that it was determined to secure a contract that would allow Respondent to unilaterally create employee participation committees to deal with the Employer concerning mandatory subjects of bargaining. Under this "realignment" plan, the Employer would have had no bargaining obligation with respect to decisions made by these committees, and such decisions would not be subject to the grievance process. Similarly, Respondent proposed a "reorganization plan" under which it would have unfettered discretion with respect to personnel actions, including filling of vacancies, new positions, or transfers, again with no recourse to the grievance procedure. The Employer also sought to include in the contract a provision authorizing its Chancellor to make wage adjustments at his sole discretion, and it insisted upon the inclusion of an extremely broad management rights clause within the contract. While there is a fine line between surface bargaining and "hard bargaining," we agree with the ALJ that the Employer proposals, taken in their entirety and viewed in the context of Respondent's conduct during negotiations, clearly evidence OCC's desire to avoid its statutory duty to bargain in good faith.

Lastly, Respondent argues that the ALJ erred in concluding that it unlawfully bypassed the bargaining agent with respect to its wage proposal. An employer violates its duty to bargain in good faith when it bypasses the designated representative and attempts to negotiate directly with employees. See e.g. *City of Dearborn*, 1986 MERC Lab Op 538, 541. In the instant case, however, the ALJ's finding that the Employer failed to bargain in good faith was not premised solely upon evidence that the Employer engaged in direct dealing with the Union. Rather, the determination that Respondent bypassed the bargaining agent was merely one factor upon which the ALJ relied in concluding that Respondent's conduct was inconsistent with a sincere desire to

reach an agreement. Moreover, Respondent's contention that its actions in this regard were undertaken with Charging Party's full knowledge and consent is disingenuous at best. While it is true that the parties discussed various details concerning the retroactive wage increase during the weeks prior to June 14, 1999, it is undisputed that the Employer first communicated its intent to implement a wage increase by sending a memo directly to employees on December 2, 1998, just one day after the fact finder's report was issued and several days prior to first discussing the matter with the Union. Under such circumstances, we agree with the ALJ that the Employer's actions in this regard appear to have been an effort to undermine the status and authority of the Union.

We have reviewed the remaining arguments set forth by Respondent in its exceptions and conclude that they do not warrant a change in the result of this case. For the reasons set forth above, we adopt the findings and conclusions of the ALJ and issue the following order.

ORDER

It is hereby ordered that Oakland Community College, its officers, agents, and assigns, shall:

1.Cease and desist from:

(a) Refusing to bargain collectively and in good faith concerning wages, hours, and working conditions with Teamsters Local 214 by bargaining with the Union in bad faith with no intention of entering into any final or binding collective bargaining agreement.

(b) Unilaterally imposing and changing terms and conditions of employment, in the absence of a lawful impasse.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them in Section 9 of PERA.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively and in good faith concerning wages, hours, and working conditions with the above named Union as the exclusive bargaining representative of administrative and management staff employees and embody in a signed agreement any understanding reached. The initial year of the Union's certification as the exclusive bargaining agent of the employees in the above unit will begin on the date the Respondent commences bargaining in good faith with the Union as such representative.

(b) Restore to the unit employees the terms and conditions of employment that were applicable prior to June 14, 1999, and continue them in effect until the parties reach either an agreement or a good-faith impasse in bargaining. Nothing herein shall require the rescission of benefits granted.

(c) Make whole the unit employees for any losses they may have suffered because of the unlawful imposition of and changes in terms and conditions on and after June 14, 1999.

(d) Post copies of the attached notice to employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted. Copies of this notice shall remain posted for 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

_____
Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Dated: _____

NOTICE TO EMPLOYEES

PURSUANT TO AN UNFAIR LABOR PRACTICE PROCEEDING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, AFTER A PUBLIC HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE IN WHICH OAKLAND COMMUNITY COLLEGE WAS FOUND TO HAVE VIOLATED THE PUBLIC EMPLOYMENT RELATIONS ACT OF THE STATE OF MICHIGAN, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse and fail to bargain collectively and in good faith concerning wages, hours, and working conditions, with Teamsters Local 214 as the exclusive representative of administrative and management staff employees.

WE WILL NOT unilaterally impose and change terms and conditions of employment in the absence of a lawful impasse.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 9 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive bargaining representative of administrative and management staff employees.

WE WILL restore to the unit employees the terms and conditions of employment that were applicable prior to June 14, 1999, and continue them in effect until the parties either reach an agreement or a good faith impasse in bargaining. This does not require the rescission of benefits granted.

WE WILL make whole unit employees for any losses they may have suffered because of our unlawful imposition of and changes in terms and conditions of employment on and after June 14, 1999, with interest.

By _____

Dated: _____

(This notice shall remain posted for a period of thirty (30) consecutive days and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, State of Michigan Plaza Building, 1200 Sixth Street, 14th Floor, Detroit, MI, (313) 256-3540.)

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

OAKLAND COMMUNITY COLLEGE,
Respondent-Employer

- and - Case No. C99 F-111

TEAMSTERS STATE, COUNTY, AND
MUNICIPAL WORKERS, LOCAL 214
Charging Party-Labor Organization
_____/

APPEARANCES:

Elizabeth Pezzetti, Atty, Dickinson, Wright, Moon, VanDusen & Freeman, PLLC, for the Employer

Wayne A. Rudell, Atty, Rudell & O'Neill, P.C.

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Detroit, Michigan, on September 28 and December 13, 1999, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on June 17, 1999, by the Teamsters State, County, and Municipal Workers, Local 214, alleging that Oakland Community College has violated Section 10 of PERA. Based upon the record, including briefs filed by the parties on or before March 21, 2000, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

Charging Party alleges that the Employer has engaged in bad faith, surface and regressive bargaining. According to Charging Party this is evidenced by the Employer's refusal to adopt any of the fact finder's recommendations; introducing new regressive proposals at the final bargaining session; and declaring at that June 14, 1999 session that since Charging Party would not agree to its package proposal that day, further bargaining would be futile and they were at impasse.

Facts:

Background:

Teamsters State, County and Municipal Employees, Local 214, represents a bargaining unit of approximately 114 full-time administrative and management staff employees of Oakland Community College. The parties have been engaged in collective bargaining for an initial contract since the certification of the Union in February of 1996 in Case No. R95 K-169.[2] They have had a difficult and discordant relationship from the beginning, as is evidenced by several unfair labor practice charges filed with the Commission.[3]

In early fall of 1997 attorney Kenneth Gonko became the chief spokesperson for the Union, heading a team of four to five members of the bargaining unit and Union business representative Sheryl Langdon. The Employer's chief spokesperson was attorney Elizabeth Pezzetti; also on the Employer's team was Ed Callaghan, Vice Chancellor for Human Resources and College Communications. At the time Gonko became spokesman, the parties had begun to participate in mediation and tentative agreements had been reached on a few boilerplate issues, such as recognition, policy of non-discrimination, work schedules, and holidays. Negotiations continued at a slow pace and on April 29, 1998, the parties jointly petitioned the Commission for fact finding.

Issues Prior to Fact Finding:

In the course of lengthy bargaining, which included approximately 13 mediation sessions, there were several focal areas of disagreement. As discussed further below, these included the Employer's "re-alignment" process and management rights; limitations on the grievance procedure and grievance arbitration; a probationary period for promoted or transferred employees; wages and wage schedules; cost-sharing of benefits; and procedures for layoff and recall.

Callaghan testified regarding the College's "re-alignment" process, also termed "Connecting Staff to Students." This system allowed students, or anyone interested in the operation of the college, to make suggestions for change, which would be submitted to the Chancellor's Council for possible adoption. Callaghan described the process as follows:

> About two years ago the college implemented a system called "Connecting Staff to Students." It is a bottom-up process where employees generate ideas and suggestions and recommendations to improve how the college

[2]A decertification petition for this unit was filed on May 5, 1998, in Case No. R98 E-62. In the election held on June 30, 1998, Teamsters Local 214 received a majority vote and a certification was issued by the Commission on July 13, 1998.

[3]See *Oakland Community College,* 1998 MERC Lab Op 34 (Case No. C96 F-125, filed 6/6/96); Case No. C96 H-195, filed against OCC by Teamsters 214 on 8/21/96, withdrawn 5/21/97; Case No. CU97 D-14, filed against Teamsters Local 214 by OCC on 4/30/97, inactive; and Case No. C97 G-154, filed against OCC by Teamsters 214 on 7/16/97, withdrawn 11/19/97.

> conducts its business with students, in terms of intaking information, advising students, its business operations. Every operation of the college became scrutinized based on this system, and the Connecting Staff to Students system has resulted and continues to result in recommendations of making changes from a process standpoint as well as a structural standpoint, organization structural standpoint.

The Employer's proposal concerning realignment is contained in Article 30, Administrative Changes:

> Section 1. The Union and the College affirm their commitment to fully contribute to and participate in those activities necessary to accomplish the goals of re-alignment (continuous quality improvement, total quality management, re-engineering, process redesign, project improvement planning) as established by the Board and Chancellor's Council.
>
> Section 2. Administrative reorganization, reclassification, reassignment or reduction of staff shall not be subject to the grievance procedure.

According to Callaghan, realignment was of great importance to the improvement of the College and the Employer did not want the Union to have any veto power over this process. The language of Section 2 above was also repeated in the Employer's proposal on Article 16, Reorganization, which gave total discretion over personnel actions such as filling of vacancies, new positions, or transfers to the Chancellor or his designee, with no recourse to the grievance procedure. The Employer also proposed a broad management rights clause, Article 3:

> The College retains the sole right to manage its affairs, including but not limited to, the right to plan, direct and control its operations; to determine and redetermine the location of its facilities; to decide and redecide the hours of its programs; to decide and redecide the types of services it shall provide, including the scheduling and means of providing such services, to study and/or introduce new or improved methods or facilities; to maintain order and efficiency in its departments and operations; to promulgate and repromulgate rules unilaterally or in conjunction with and consent of the Union; to hire, lay off, assign, transfer and promote employees; and to determine and redetermine the starting and quitting time, work schedules and the number of hours to be worked, the number and composition of the work force, and to determine and redetermine the qualifications of its employees, and all other rights and prerogatives including those exercised unilaterally in the past, subject only to clear and express restrictions on the exercise of these rights as provided in this Agreement.

The Union's chief objection to these proposals was the exclusion of any of these matters from the grievance procedure. With respect to the grievance procedure itself, the College proposed that for those matters which could be grieved, the Chancellor's decision at Step III would be final, except for suspensions without pay or termination from employment, which would be subject to binding arbitration. The Union did not agree to these limitations on the grievance procedure.

Another area of disagreement was the Employer's proposal on a probationary period. The Employer proposed that all newly hired, promoted, or transferred employees would be subject to a probationary period of 180 calendar days. During this period the Employer retained the sole right to terminate such employees with or without cause, and without recourse to the grievance procedure or a hearing. The Union did not object to a probationary period for new hires, but opposed the implementation of any probationary period for bargaining unit members promoted or transferred because it would leave bargaining unit employees without job protection and eliminated their ability to return to their former position.

With respect to wages, the Union proposed a 3% across the board increase for each contract year. The Union also proposed a step salary schedule to replace the quartile salary grade schedule and the establishment of a Classification Review Committee to meet and negotiate any perceived pay inequities. The Employer proposed a $1000 lump sum payment for 1996-97 and 1997-98, with a 2.5% increase for other contract years. The Employer wished to maintain the quartile system. Regarding benefits, the College proposed that any increase in premium costs for medical, dental and vision insurance on or after July 1, 1998 would be shared equally by the College and each bargaining unit member. The Employer also proposed a copay of $10 for office visits and $10 for prescriptions. The Union opposed cost sharing and wished to maintain the status quo, but took the position that if the rest of their package was accepted by the Employer, they would agree to cost sharing of benefits.

The parties also disagreed on procedures for layoff. The Employer did not feel that procedures were necessary since there had never been layoffs in the history of the College. The Employer's proposal on reduction in force provided that the Chancellor had complete discretion to reduce the number of bargaining unit members and make selections for retention. Layoff decisions would be exempt from the grievance procedure, and the language of its proposal repeated the phrase utilized in other articles that "administrative reorganization, reclassification, reassignment or reduction of staff, shall not be subject to the grievance procedure." In contrast, the Union made a detailed proposal with respect to procedures to be utilized should a reduction in force be necessary. Under its proposal, seniority would be considered for layoff and recall, and its proposal included procedures for bumping or transfer in lieu of layoff.

Fact Finding:

The Commission appointed attorney John Lyons as fact finder in May of 1998 and a number of pre-hearing conferences were scheduled. Initially 28 issues were submitted to fact finding. As a result of the pre-hearing meetings, several issues were agreed to and eliminated from fact finding. The resolved issues included leaves of absence, short term disability, tuition

reimbursement, identification badges, performance evaluation, union representation, and a just cause provision.

Fact finding hearings were conducted on September 14, September 17, October 7, and October 16, 1998. In its presentation to the fact finder, the Employer stressed its need for flexibility, and maintained that because the bargaining unit was comprised of management employees, traditional union benefits/rights would not be appropriate, for example, seniority, recall or bumping rights, or dues checkoff. The fact finder's report was issued on December 1, 1998. In his report Lyons listed the remaining issues and his recommendations:

Issue	Accepted Position of:
1. Management Rights - Article 3	Employer
2. No Lock-out, No Strike - Article 6	Union
3. Union Dues - Article 7	Union with modification
4. Subcontracting - Article 8	Employer
5. Probationary Period	Employer with modification
6. Reorganization - Article 16	Employer with modification
7. Reduction in Force - Article 17	Union
10. Long Term Disability - Article 21, Sec 6	Employer
11. Worker's Compensation - Article 21, Sec 7	Employer
12. Benefits - Article 22	Employer, negotiate further
16. Grievance Procedure - Article 27	Union
17. Administrative Changes - Article 30	Employer with modification
20. Appendix A - Classification Schedule	Employer
21. Appendix B - Wages	Employer, negotiate further
23. Duration	Union
24. Education/Sabbatical Leave	Employer
25. Seniority	Union
26. Layoff and Recall	Union
28. Vacancies/Transfers	Union

With respect to the articles on reorganization and administrative changes, the fact finder accepted the Employer's position, with the proviso that these matters would be subject to the grievance procedure.

Immediately following the fact finder's report, on December 2, 1998, the College sent a memo to employees regarding the administrative/management union negotiations. The memo stated in part:

> The fact finding is now complete and the fact-finder has issued his recommendations. We appreciate the hard work that went into the development of the report and we will study it carefully. Even so, we recognize it is ultimately the responsibility of the College and the Union to reach a fair and workable agreement. In the spirit of reaching this goal, we

> are prepared to address the issue of wages by agreeing with the fact finder's recommendation on wages for the period covering 1996 through 1999. This would mean a three percent increase on base salary for fiscal year 1996-1997, a three percent lump sum increase for fiscal year 1997-1998, and another three percent increase on base pay for fiscal year 1998-1999.

Attached to the memo was a document entitled Questions and Answers pertaining to the negotiations. The Employer indicated that it intended to review the fact finder's recommendations carefully and use them as a basis for resuming negotiations with the Union. In response to the question posed regarding unresolved issues, the College answered:

> The major unresolved issues concern economics and management practices. Our proposals acknowledge the need for flexibility and professionalism in the modern dynamic workplace. In contract (sic) the Union's position relies on antiquated and often inappropriate practices such as "bumping," and opposes the economically sound historical practice of subcontracting.

The Employer also stressed the importance of its "Realignment to Values" initiative, indicating that its proposal was flexible and designed to accommodate change. It also stated that to remain competitive, it was essential that "we not be shackled to outmoded practices and ideologies, including antiquated notions about employee relations."

On December 11, 1998, Pezzetti wrote the following letter to Gonko:

> As we discussed on December 8, 1998, the College was pleased with the Fact-Finder's Report and we believe that it provides a solid basis for further negotiation. As I also advised you, the College plans to agree to the Fact-Finder's proposal for the first three years' wages; that is, 3% on base salary in the 1996-97 contract year, a lump sum payment of 3% for the 1997-98 year and a 3% on base salary for the current year 1998-1999. It is our understanding that the Union agrees with the Fact-Finder's recommendation as to wages in light of statements attributed to Ms. Langdon in the December 3, 1998 edition of the Oakland Press. These payments will be provided to employees who are currently on active payroll. I have been informed that the College will make every effort to process the wage payments so that employees can receive them before the end of the year.
>
> Because the College is in the final weeks of its Fall semester, it would be difficult to meet to resume our negotiations before January. Please supply January dates at your earliest convenience.

On December 21, 1998, Joseph Valenti, President of Teamsters 214, wrote to Pezzetti informing her that the membership had overwhelmingly voted to adopt the fact finder's recommendation in its entirety and would shortly be advising the Employer with respect to the sabbatical leave, where there was a choice of two options. Valenti concluded as follows:

> The Fact Finder's Recommendations, combined with all other articles previously tentatively agreed to during negotiations, will therefore constitute a complete Agreement between the parties, and will bring closure to a long and costly negotiation process. Although many of the Fact Finder's recommendations are a compromise of the parties' individual positions, we believe that the combination of these documents constitutes a livable initial Agreement and that the adoption of said Agreement will serve to initiate a healing process between the Administrative/Management staff and the College.

Pezzetti responded to Valenti in a letter to Gonko dated January 5, 1999. She indicated that although the College was pleased with the fact finder's recommendations, they could not be adopted without further negotiations. She listed issues which would require further negotiations as including union dues, probationary period, cost sharing of benefits, wages, and duration. She also stated that the Employer could not agree to certain recommendations:

> Additionally, the College cannot agree to the Fact Finder's recommendation of the Union's proposal for reduction in force which includes a rigid bumping system based on classification seniority. The College remains convinced that this proposal would be detrimental to its goals of excellence in serving its students and efficient use of its revenues. Likewise, the Fact Finder's recommendation that the College's realignment process, which is an employee driven process, be subject to the grievance procedure would impede the College's goal of realignment as mandated by Board resolution.

Negotiations after Fact Finding:

The next bargaining session was set for February 16, 1999. The Employer had initiated the implementation of the retroactive wage adjustments on December 12, 1998, and much of that session was devoted to issues relating to whether the adjustments had been properly applied. According to Callaghan, the parties also "walked through" the fact finder's report at that meeting. Gonko testified that at that meeting or shortly thereafter it was agreed that the Union would prepare and submit to the Employer a comprehensive proposal containing its position after fact finding, and

that the Employer would do the same prior to the next bargaining session. This arrangement was reiterated in Gonko's April 8, 1999 letter to Pezzetti:

> Consistent with our discussions at the last negotiation session, enclosed please find two (2) copies of the Union's Package Proposal in the above matter. As Dr. Callaghan indicated during that session, the Employer will prepare a formal response to the Package Proposal. As we also discussed, the Union is prepared to meet on April 28, 1999 to resume negotiations. We would request that the Employer respond to our Package Proposal in writing by that time and that we be prepared to discuss both the Union's proposal and the Employer's response on April 28, 1999.

The Union's package proposal followed the order of the issues presented to the fact finder and indicated agreement with most of the fact finder's recommendations. Its proposal reflected several concessions, including agreeing to the Employer's proposal on management rights; language giving the College the right to subcontract any work; and the Employer's two-year limitation on benefits for long term disability and worker's compensation. The Union also agreed to the Employer's proposals on realignment and reorganization, provided these matters were subject to the grievance procedure. The Union did not agree to the quartile system proposed by the Employer and recommended by the fact finder and continued to press for a step system. The Union continued to object to the cost-sharing of benefits, but did propose an increase in prescription copay from the current $3 to $6, and an increase in doctor's visit copay from $5 to $10, to be effective July 1, 1999.

On April 27, when the Union had not received a package proposal from the Employer, Gonko contacted Pezzetti and indicated that the Union felt compelled to adjourn the April 28 bargaining session because the Union's bargaining team would not have sufficient time to review and analyze the Employer's proposals prior to negotiations. Pezzetti responded on April 29, expressing her disappointment that the session was canceled, and indicating that College team had not agreed to present a package proposal prior to the meeting:

> As you know, it has been our practice throughout negotiations to submit proposals across the table and not through the mail, and we were prepared to do so on the 28th. We prefer to do it that way, so that we can explain our positions and point out any changes to you.

She indicated that the Employer would hand deliver its proposal to the Union on May 7, 1999, when the parties were scheduled to be at the Commission offices on another matter. Pezzetti also offered May dates for further negotiations. The Employer hand delivered its proposal on May 7 at the conclusion of a Commission representation hearing. Remaining pay issues were briefly discussed at that time but the Union did not wish to negotiate further without its bargaining team. In its May 7 package, the Employer did not accept or reject the Union's proposal, but presented its own complete package proposal which did not follow the order of the fact finder's

recommendations or the Union's proposal. The Employer's May 7 package included several items which had not been presented at fact finding. Added to Article 15, Professional Responsibilities, was a provision mandating a minimum of 40 hours of staff development training. Also included was a new provision that adjustments to individual members' wages may be made only by the Chancellor, and these adjustments would not be subject to the grievance procedure. Added to the provision on binding arbitration was language providing that the parties would utilize the Commission's list of arbitrators, with the Commission choosing an arbitrator if the parties were unable to agree. Although in fact finding the Employer had proposed the continuation of the policy of granting sabbatical leave to administrators and management employees, the May 7 proposal limited sabbatical leave to administrators. The Employer also proposed language extending the quartile system to the 2001-2002 academic year and tying the salary schedule for that year to student enrollment. The May 7 proposal left open the effective and termination dates of the contract.

The next bargaining session took place on June 14, 1999. The meeting was originally scheduled for the morning but because Gonko had car trouble it did not begin until 1 p.m. According to Callaghan, the meeting lasted approximately two and one half hours, with caucuses taking a half hour. Gonko estimated the meeting at one and one half hours. At the beginning of the meeting the Employer presented the Union with another package proposal of approximately 80 pages and indicated that it was intended to correct mistakes and make certain modifications. Up to that time no discussion had taken place regarding the Union's proposal or the Employer's previous May 7 proposal. Pezzetti indicated that the co-pays for prescriptions and office visits had been transposed in the previous document. There was also discussion regarding a change in effective date for cost sharing; the May 7 proposal utilized a July 1, 1999 date, the new proposal used July 1, 1998. The Employer explained that this was not really a change, they were simply using that increase as a base year. The Employer also indicated that although both documents indicated at the beginning of Article 22 that cost sharing involved medical, dental and vision, the Employer was only seeking cost sharing on medical insurance. After receiving the new proposal the Union team was concerned that other changes could have been made and caucused for approximately one half hour to review it.

There was also face to face discussion on June 14 regarding what Callaghan termed "roadblocks" to settlement: wages; cost-sharing; bumping; realignment/restructuring; and the grievance procedure. According to Callaghan, Gonko used the term "absolutes" when referring to the Union position on these issues. Callaghan testified that in his experience, unions would frequently say they "had to have" an item and then accept something else; he distinguished this situation from one in which the term "absolutes" was used, which he assumed meant no movement was possible. There was also some discussion regarding the new items, including employee training requirements and equity pay adjustments. Callahan acknowledged that there were housekeeping errors in both the May 7 and the June 14 proposals but testified that the proposals were "substantively" the same. When the Union representatives expressed their displeasure or disappointment with the Employer's proposal, they were told that it was the Employer's last best offer. Gonko testified that either Callaghan or Pezzetti stated that this is the last best offer, and not only are you required to accept this, as well as the fact finder's recommendations favorable to the Employer, but unless we have this document as it stands, we will not have an agreement. Gonko stated that the Union was prepared to continue negotiations and that he did not believe that the

parties were at impasse. The Employer's representatives responded that if there was any substantive change in the Union's position, they should let the Employer know. They then left the meeting.

On June 16, 1999, Pezzetti wrote to Gonko, reiterating that the parties had reached impasse and stating that the College would implement its last best offer, the package proposal presented to the Union on June 14, 1999, with the exception of the following provisions:

Article 5 - Past or Present Procedures or Practices
Article 6 - No Lockout, No Strike
Article 7 - Union Dues, Service Fee or Contribution
Article 9 - Probationary Period
Article 16 -Reorganization
Article 17 - Reduction in Force
Article 28 -Waiver
Article 29 -Termination/Modification
Article 31 -Union Representation

Pezzetti also enclosed a document entitled "Wages and Working Conditions for Administrative/Management Staff" which she stated represented the College's last best offer with those provisions deleted. Article 20 of this document continued to indicate that cost sharing would apply to dental and vision insurance as well as medical, and indicated a date of July 1998 as the starting date. Gonko wrote to Pezzetti on June 24, 1999, requesting clarification as to these issues, because this was a change from the Employer's last offer. Pezzetti responded that the implementation of cost sharing would begin on July 1, 1999, and that cost sharing would only apply to medical insurance.

Discussion and Conclusions:

Charging Party claims that the Employer failed to bargain in good faith by declaring impasse when little bargaining had taken place after fact finding, at a time when new proposals were on the table, and when the Union had made significant concessions and had indicated its desire to bargain further. Charging Party also alleges that the Employer essentially engaged in surface bargaining; this is evidenced by its proposals which sought complete control over personnel actions, reassignments, reduction of staff, transfers, retention of employees, wage adjustments, as well as the right to realign everything including jobs and wages without any method of grieving, arbitrating, or bargaining about them or their effects, and thereby intended to displace the Union from its representative role. The Employer maintains that OCC bargained in good faith for more than a reasonable time and that the parties' positions had hardened to the point where further negotiations would be futile; OCC therefore properly implemented its last best offer after declaring impasse.

An employer may unilaterally alter terms and conditions of employment when, after bargaining in good faith with the collective bargaining agent, an impasse has been reached. The Commission has defined impasse as the point at which the positions of the parties have solidified and further bargaining would be futile. *Wayne County (Attorney Unit),* 1995 MERC Lab Op

199,203. In *Flint Twp*, 1974 MERC Lab Op 152, 157, the Commission indicated that it would consider the totality of the circumstances and the whole conduct of the parties before making a determination of whether or not an impasse exists. A finding of impasse depends on the facts of each case and not on the declaration of either party. *St Ignace Area Schools,* 1983 MERC Lab Op 1042; *Munson Medical Center*, 1971 MERC Lab Op 1092. As the National Labor Relations Board stated in *Taft Broadcasting*, 163 NLRB 475, 64 LRRM 1386 (1967), *affd sub nom Television & Radio Artists v NLRB,* 395 F 2d 622, 67 LRRM 3032 (CA DC, 1968):

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations, are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

In the instant case, the Employer maintains that impasse was reached based on the lengthy term of bargaining, including three sessions after the fact finder's report; the fact that the parties' positions on key issues were fixed, with little or no movement; and its assessment that continuing bargaining would be futile. In the opinion of the undersigned, the Employer's position is not supported by the record. It is true that the parties engaged in lengthy bargaining. However time spent in bargaining is only one factor to be considered and does not necessarily bear on the productivity of negotiations. *Clinton Community Schools*, 1999 MERC Lab Op 1. A party may go through the formalities of negotiations without any intent to reach agreement. Here the extreme length of negotiations alone raises a suspicion in that regard. The parties had made some progress prior to fact finding, and in the pre-fact finding meetings, however the record reflects that very little bargaining took place after the fact finder's report.

In *Wayne County,* 1985 MERC Lab Op 244, 250, *affd* 152 Mich App 87, 125 LRRM 2588 (1986), *lv den* 426 Mich 875 (1986), the Commission indicated that the parties must bargain for a reasonable time over the substance of a fact finder's report, and that in most cases a reasonable time is 60 days after the issuance of the report, providing the parties are bargaining in good faith. Despite the assertions of the Employer, there were not three meetings devoted to bargaining over the fact finder's report. The February meeting primarily involved a discussion of the implementation of the wage increase. On May 7, the Employer gave the Union its proposal but very little discussion took place. The June 14 meeting was the first time that the parties' package proposals were discussed. Because the Employer's proposals were lengthy, confusing, and contained errors, the parties caucused but little face to face discussion took place before the Employer walked out. In *City of Dearborn*, 1972 MERC Lab Op 749, 758, the Commission found that the City had not fulfilled its obligation to bargain about the fact finder's report and had engaged in surface bargaining:

> Although the City demonstrated a willingness to attend conferences and discuss the fact finder's report, it did not make a serious attempt to

> reconcile its differences with the union. Recall that the Union adopted or ratified the fact finder's report, thereby making a reasonable effort to compromise its impasse position. An employer which does . . .not make a serious attempt to meet the union part way, evidences a refusal to bargain, even though the Act does not require the employer to make a concession on any specific issue or to adopt any particular position with respect to an issue.

Despite the Employer proclaiming on several occasions that the fact finder's report provided a good basis for further discussion, it did not use the fact finder's suggested compromises in an attempt to reach agreement. Other than the summary in Pezzetti's January 5 letter, the Employer did not clarify for the Union at the bargaining table what part of his report was acceptable. The Employer did not directly relate its proposals to the fact finding issues or respond to the Union's proposal which was keyed to the fact finder's report. While PERA does not dictate how parties are to conduct their negotiations, the Employer's approach made communication more difficult and delayed negotiations, especially when its lengthy proposals contained errors. I find that the Employer did not meet its obligation to bargain over the substance of the fact finder's report.

The Employer also maintains that there was little movement on key issues. However, the record reflects that there was movement both prior to and after the fact finder's report, particularly by the Union. The Union made substantial concessions after the fact finding report and communicated these to the Employer. For example, they agreed to the employer's proposals on management rights, subcontracting, long term disability, worker's compensation, and sabbatical leave, and other employer proposals with some modification, such as making realignment subject to the grievance procedure. In contrast, the Employer did not appear willing to consider any of the compromises, even though Pezzetti's letter indicated only two areas in which the Employer totally rejected the fact finder's recommendations. The Employer did agree to the fact finder's recommendation on wages, however the manner in which it did so brings into question its good faith. Before communicating its change in position to the Union, the Employer sent a memo directly to employees announcing the wage increase in what appears to be an effort to diminish the Union's role in negotiations and undermine the status of the Union with employees. See *St. Clair Community College,* 1979 MERC Lab Op 541; *Hydrotherm, Inc.* 302 NLRB 990, 138 LRRM 1030 (1991).

In the opinion of the undersigned, the record does not support a finding of impasse on June 14. The parties had not exhausted bargaining over the fact finder's report. In addition, new items had been introduced in the Employer's May 7 proposal and little or no bargaining had taken place on these issues. These were not minor matters, but included language giving the Chancellor complete discretion in equity wage adjustments, a requirement of a minimum number of hours of staff development training, reducing the availability of sabbatical leave, and linking student enrollment with wages for the final year of the contract. Gonko expressed the Union's desire to bargain further on June 14, and stated his opinion that the parties were not at impasse. Callaghan's testimony that because Gonko designated certain items as "absolutes" meant no movement was possible is simply not convincing. The fact that parties in bargaining use terms such as "bottom line" or "must haves" does not indicate an unequivocal rejection of a contrary proposal. *City of*

Saginaw, 1982 MERC Lab Op 727; *Flint Twp*, 1974 MERC Lab Op 152, 156. In summary, I find that the record does not substantiate the Employer's position that the parties had reached impasse, and I therefore find that the Employer violated its bargaining duty by refusing to continue negotiations, and by implementing its last offer. *Munson Medical Center, supra; Edwardsburg Public Schools*, 1968 MERC Lab Op 927.

In response to the Union's charge of surface bargaining, the Employer maintains that even if its proposals were "harsh," the law does not prevent either party from proposing severe language. It is true that the parties may engage in hard bargaining, and a party does not violate PERA simply by making a proposal that the Union finds undesirable. However, it has been found that under certain circumstances, the content of bargaining proposals may be a factor in determining bad faith. *Flint Twp, supra,* at 165. In *Reichhold Chemicals (Reichhold II)*,288 NRLB 69, 127 LRRM 1265 (1988), *affd in pertinent part sub nom Teamsters Local 515 v NLRB,* 906 F2d 719, 134 LRRM 2481 (CA DC 1990), *cert den* 498 US 1053, the NLRB clarified that this does not mean a determination that particular proposals are either "acceptable" or "unacceptable" but whether a demand is clearly designed to frustrate agreement on a collective bargaining contract:

> ...the fundamental rights guaranteed employees by the Act–to act in concert, to organize, and to freely choose a bargaining agent–are meaningless if their employer can make a mockery of the duty to bargain by adhering to proposals which clearly demonstrate an intent not to reach an agreement with the employees' selected collective-bargaining agent. The Board will not have fulfilled its obligation to look at the whole picture of a party's conduct in negotiations if we have ignored what is often the central aspect of bargaining, i.e., the proposals advanced by the parties.

The Board has sustained a charge of surface bargaining in circumstances where employer proposals reflect an insistence on unilateral control over virtually all significant terms and conditions of employment, in effect stripping the union of any effective method of representing its members. For example, in *A-1 King Size Sandwiches,Inc.,* 265 NLRB 850, 112 LRRM 1360 (1982), *affd NLRB v A-1 King Size Sandwiches*, 732 F2d 872, 116 LRRM 2658 (CA 11 1984), *cert den* 468 US 1035 (1984), it was found that the employer had engaged in surface bargaining because its proposals, as they interrelated, revealed that the employer was insisting in retaining to itself total control over virtually every significant aspect of the employment relationship. In *A-1 King Size Sandwiches, Inc.,* the employer insisted on a broad management rights clause, which gave the company the absolute right to subcontract work, abolish jobs, transfer, discontinue, or assign any or all of its operations; provisions giving the employer unfettered control over discipline and discharge; proposals granting the employer total discretion over decisions regarding layoff and recall with no consideration of seniority; limited access to the grievance procedure making it essentially illusory; insistence on a no-strike clause with no equivalent concession; and rejection of dues checkoff.

Similarly, in *Prentice-Hall, Inc.,*290 NLRB 646, 129 LRRM 1053 (1988), the NLRB affirmed its ALJ's finding that the employer engaged in bad-faith bargaining when the combination

of employer proposals, including a broad management rights clause, ineffective grievance and arbitration procedures, and prohibitions against strikes, rendered substantial portions of the contract virtually unenforceable. The NLRB stated as follows:

> ...Respondent's demands for sweeping waivers–viewed in the light of what it was offering in exchange–simply are not the behavior of an employer who is trying to achieve a collective bargaining agreement.

The Employer justifies its stringent proposals by its asserted need for flexibility to remain competitive as an institution and maintain professionalism, seeming to imply that the scope of bargaining under PERA is limited in an institution of higher learning. Such an argument has been rejected by the Michigan Supreme Court. In *Central Michigan Univ*, 404 Mich 268 (1978), the Court found that the scope of collective bargaining in higher education would be limited only if the subject matter falls clearly within the educational sphere. It rejected the Employer's argument that an evaluation program for teaching effectiveness was a matter of educational policy and found that elements, procedures, and criteria involving evaluations for purpose of reappointment, retention and promotion were clearly matters within the employment sphere, crucial to the employment relationship.

Admittedly a determination of when a party exceeds lawful hard bargaining and instead demonstrates bad faith is difficult; however, I conclude that the Employer's proposals, considered in totality, do not evidence a mind set open to compromise or a desire to reach an agreement. An examination of the Employer's proposals here, as they interrelate, demonstrates that the Employer was seeking to deny the union any effective voice in representing employees and sought to retain almost total control over working conditions. There was no recognition of traditional bargainable matters such as seniority, recall rights after a layoff, or dues checkoff. The management rights clause, combined with the Employer's vague and indefinite proposal on "realignment" and its provision on reorganization, gave the Employer complete control over all personnel actions including reorganization, reclassifications, and reassignments with no right to grieve these matters. In addition, the Employer's proposals included the unrestricted right to subcontract, layoff employees, and determine merit increases. Under the Employer's proposals, the ability to grieve employer action was severely limited, and for actions subject to the grievance procedure, only discharges or suspensions without pay could advance to arbitration. Promoted or transferred employees were required to serve a new probationary period which left them totally unprotected, subject to termination for any reason with no ability to grieve or return to their previous position. I find that the combination of all of these proposals demonstrates bad faith by undermining the Union's role in representing employees and denying the Union any effective voice in jointly determining terms and conditions of employment. *Prentice Hall, supra*.

In summary, I find that the record as a whole evidences the Employer's desire to avoid its statutory duty to bargain in good faith. The Employer failed to engage in meaningful bargaining over the fact finder's report; declared impasse when the parties were clearly not at impasse; bypassed the bargaining agent with its wage proposal; and engaged in surface bargaining, seeking through its proposals to ensure that the Union had virtually no role in representing

employees. When all of these factors are considered, along with the Employer's refusal to make any meaningful concessions after the Union had repeatedly done so, I find that Respondent's actions were inconsistent with a sincere desire to reach an agreement and violated Section 10(1)(e) of PERA. *City of Springfield,* 1999 MERC Lab Op 399; *Bethea Baptist Home,* 310 NLRB 156, 143 LRRM 1340 (1993); *Western Summit Flexible Packaging,* 310 NLRB 45, 142 LRRM 1210 (1993). It is therefore recommended that the Commission issue the order set forth below, which includes a make whole remedy for any losses incurred by employees because of the Employer's unlawful action. Charging Party's request for attorney fees is denied pursuant to *Goolsby v City of Detroit*, 211 Mich App 214 (1995); but see *POLC,* 1999 MERC Lab Op 196, 202.

RECOMMENDED ORDER

It is hereby ordered that Oakland Community College, its officers, agents, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively and in good faith concerning wages, hours, and working conditions with Teamsters Local 214 by bargaining with the Union in bad faith with no intention of entering into any final or binding collective bargaining agreement.

(b) Unilaterally imposing and changing terms and conditions of employment, in the absence of a lawful impasse.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them in Section 9 of PERA.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively and in good faith concerning wages, hours, and working conditions with the above named Union as the exclusive bargaining representative of administrative and management staff employees and embody in a signed agreement any understanding reached. The initial year of the Union's certification as the exclusive bargaining agent of the employees in the above unit will begin on the date the Respondent commences bargaining in good faith with the Union as such representative.

(b) Restore to the unit employees the terms and conditions of employment that were applicable prior to June 14, 1999, and continue them in effect until the parties reach either an agreement or a good-faith impasse in bargaining. Nothing herein shall require the recission of benefits granted.

(c) Make whole the unit employees for any losses they may have suffered because of the unlawful imposition of and changes in terms and conditions on and after June 14, 1999.

(d) Post copies of the attached notice to employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted. Copies of this notice shall remain posted for 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

DATED: _____

NOTICE TO EMPLOYEES

PURSUANT TO AN UNFAIR LABOR PRACTICE PROCEEDING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, AFTER A PUBLIC HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE IN WHICH OAKLAND COMMUNITY COLLEGE WAS FOUND TO HAVE VIOLATED THE PUBLIC EMPLOYMENT RELATIONS ACT OF THE STATE OF MICHIGAN, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse and fail to bargain collectively and in good faith concerning wages, hours, and working conditions, with Teamsters Local 214 as the exclusive representative of administrative and management staff employees.

WE WILL NOT unilaterally impose and change terms and conditions of employment in the absence of a lawful impasse.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 9 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive bargaining representative of administrative and management staff employees.

WE WILL restore to the unit employees the terms and conditions of employment that were applicable prior to June 14, 1999, and continue them in effect until the parties either reach an agreement or a good faith impasse in bargaining. This does not require the recission of benefits granted.

WE WILL make whole unit employees for any losses they may have suffered because of our unlawful imposition of and changes in terms and conditions of employment on and after June 14, 1999, with interest.

By

Dated :

(This notice shall remain posted for a period of thirty (30) consecutive days and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, State of Michigan Plaza Building, 1200 Sixth, 14th Floor, Detroit, MI, (313) 256-3540.)