STATE OF MICHIGAN

COURT OF APPEALS

AFSCME COUNCIL 25, Charging Party-Appellant,	UNPUBLISHED October 30, 2007
v	No. 268846 MERC
CHIPPEWA COUNTY, Respondent-Appellee.	LC No. 04-000145

Before: Jansen, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

The Michigan Employment Relations Commission (MERC) ordered the dismissal of AFSCME Council 25's unfair labor practice charge against Chippewa County, and ordered that an employee's petition for decertification, which had been submitted following the parties' negotiation of a tentative agreement, be allowed to proceed to an election. AFSCME appeals as of right. We affirm in part, reverse in part, and remand.

The parties' collective bargaining agreement expired on December 31, 2003. The parties, through their designated representatives, reached a tentative collective bargaining agreement on April 7, 2004.[1] The two-page tentative agreement summarized the parties' changes to the expired contract, and was dated and initialed by the representatives for each party. The parties agreed that the tentative agreement had to be ratified first by AFSCME's membership, and next by the county's board of commissioners. Further, the parties agreed that, if ratified, the provisions of the tentative agreement would be formalized into a final contract.

AFSCME's membership ratified the tentative agreement, with the exception of a provision regarding payment of employee pension plan premiums. Pursuant to the county's internal ratification process, the county's board of health met to review the tentative agreement. The board of health voted to submit the tentative agreement to the county's board of commissioners for ratification at its next scheduled monthly meeting on May 10, 2004. However, on May 5, 2004, the county received a copy of a decertification petition that sought to change the union representation for county health department employees. In light of the

[1] The previous collective bargaining agreement expired on December 31, 2003.

decertification petition, the county concluded that it would be improper to continue with the ratification process.

AFSCME filed an unfair labor practice charge against the county, alleging that the county had refused to ratify the tentative agreement within 30 days of its execution in a show of bad faith bargaining, and as a purposeful attempt to assist the decertification effort. A hearing officer found that the MERC precedent barred a decertification petition from proceeding to election for a period of 30 days following the negotiation of a dated and signed tentative agreement between a union and the employer. Further, the hearing officer concluded that the MERC precedent established that the contract was formed at the bargaining table, without dependence on the parties' internal ratification procedures, and that ratification was not a condition precedent to a final contract. On appeal, however, the MERC held that the county did not violate its duty to bargain under § 10(1)(e) of the Public Employment Relations Act (PERA), MCL 423.210(1)(e), by failing to vote on the tentative agreement after the decertification petition was filed. The MERC stated that PERA barred a decertification petition or election for 30 days following the negotiation of an agreement if "the parties have entered into a legally enforceable agreement that has been adopted, enacted, approved, or otherwise ratified by a competent governing body." Because the parties' tentative agreement was subject to ratification by the county's governing board, the MERC concluded that it was not a legally enforceable collective bargaining agreement, and therefore was not a bar to a decertification petition.

AFSCME first argues that the MERC erred by finding that it was not an unfair labor practice for the county to fail to vote on whether to ratify the tentative agreement within 30 days following the negotiation of the tentative agreement. We disagree. MCL 423.210 states, in pertinent part, that "[i]t shall be unlawful for a public employer or an officer or agent of a public employer . . . (b) to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization . . . ; or (e) to refuse to bargain collectively with the representatives of its public employees, subject to the provisions of section 11." Citing *Teamsters State, County, and Municipal Workers, Local 214*, 1998 MERC Lab Op 72, AFSCME claims that defendant violated subsection (e) of the statute. In *Teamsters*, a six-week delay occurred between the negotiation of the tentative agreement and the date scheduled by the union to vote on ratification. After indicating that the amount of time allowed to lapse between a negotiation and a ratification vote is of less concern than a party's reasons for failing to conduct a vote in a timely manner, the MERC found in *Teamsters* that it was proper to consider the delay in scheduling the vote because the union's final assent to the agreement was conditioned on the ratification of its membership. The MERC concluded that the delay was unreasonable due to the union's failure to adequately justify it and its failure to schedule a second vote after the employer objected that too few members turned out for the first vote at which the proposal was rejected. the MERC found that there was evidence indicating that the union's representatives had intentionally and unreasonably stalled negotiations.

In *Teamsters*, the MERC noted that the parties' ratification procedures are not of particular concern because ratification is not governed or required by the law. However, MERC has held that "[i]t is well-established [sic] that the duty to bargain collectively requires that a party to negotiations act expeditiously and decisively to accept or reject a tentative agreement." *Teamsters, supra*, 1998 MERC Lab Op at 77, citing *Saginaw Intermediate School Dist*, 1981 MERC Lab Op 914. Thus, in the absence of evidence of unreasonable delay in scheduling a

ratification vote or taking other measures to approve a tentative agreement, it cannot be concluded that a party has engaged in bad faith bargaining by failing to vote on whether to ratify the tentative agreement within 30 days following the negotiation of the tentative agreement. *Id.*

Here, the MERC found that the county had not engaged in bad faith bargaining because there was no evidence that it had unreasonably delayed its vote on whether to approve agreement. The MERC noted that the county had scheduled a vote on the parties' tentative agreement in a timely manner, but that the county had concluded that it would be improper to proceed with the vote after receiving the decertification petition. The county consulted with legal counsel before making its decision, and the record indicates that the county would have proceeded with the ratification vote but for the decertification petition. Even if the county was mistaken in concluding that it could not proceed, the MERC did not err in finding that there was no evidence of bad faith in the failure to take a vote.

AFSCME next argues that the MERC erred in ordering that an election on the decertification petition proceed. In this regard, it asserts that the MERC misinterpreted "the policies and intent" behind the 30-day contract bar rule by concluding that tentative agreements do not bar elections on decertification petitions for 30 days after the negotiation of such agreements. In *City of Grand Rapids (Health Dep't)*, 1968 MERC Lab Op 194, the MERC formulated the rule interpreting the contract bar set forth in § 14 of PERA, and later affirmed the rule in subsequent cases, including *Lake Superior State College*, 1984 MERC Lab Op 301. In *Lake Superior*, the MERC analyzed whether the rule applied to a situation where a union and the employer had reached a tentative agreement in the form of "handwritten or typed corrections on each page of the [expired] printed contract [.]" *Id*. at 302. Each correction was initialed and dated by a representative from each party, and it was agreed that each party would seek ratification of the tentative agreement by its members. *Id.* at 302-303. Before ratification, a rival union filed an election petition with the MERC, and the MERC had to decide whether the rule announced in *Grand Rapids* barred the election from going forward. *Id.* at 303. Quoting its *Grand Rapids* opinion, the MERC stated that

> "[i]t is apparent that the unavoidable delay . . . between tentative agreement by negotiators at the bargaining table and the convening of an official meeting . . . encourages disruptive rival union activity and consequent raids if the tentative agreement does not serve to bar an election. This is so because it encourages dissident groups of employees to make capital out of their asserted ability to negotiate [an] even better contract[,] . . . discourag[ing] reasonable settlements and responsible representation. [Thus,] the Board announces the following policy [to be] applied in implementing PERA section 14 for all petitions filed after the date of this order:
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> A complete written collective bargaining agreement made between and executed by authorized representatives of a public employer and the exclusive bargaining agent of its employees will, for a period up to 30 days thereafter, bar a rival union election petition or a decertification petition pending subsequent action on the agreement by the legislative body. A petition filed within the thirty-day period will not be dismissed if the legislative body meets and votes to reject the proposed agreement or takes no action within the thirty-day period. If the legislative body approves the collective bargaining agreement negotiated by its

> representative within the thirty-day period the petition will be dismissed." [*Lake Superior, supra*, 1984 MERC Lab Op at 303, quoting *Grand Rapids, supra*, 1968 MERC Lab Op at 199-200.]

Although both parties in *Lake Superior* ratified the tentative agreement *after* the petition had been filed, both ratifications occurred within 30 days following the negotiation. *Lake Superior, supra*, 1984 MERC Lab Op at 304. The MERC found that the parties had entered into a binding collective bargaining agreement at the time of the negotiation that was dated and initialed by both sides, distinguishing the situation from earlier cases where a party had claimed that an undated, unsigned agreement was binding, even though it was impossible to determine whether the 30-day rule of *Grand Rapids* was applicable to an undated agreement. *Id.* The MERC further stated that the parties had a valid agreement because

> the necessary ratification was only in the nature of a condition subsequent, and not a condition precedent, to a valid agreement. . . . Any other holding would render the 30-day grace period . . . a nullity, since the act of entering into a tentative agreement would as a practical matter have no meaning relative to the 30-day grace period. [*Id.* at 305.]

The MERC's decision in *Lake Superior* indicates that where the parties have signed and dated a tentative agreement, ratification is a condition subsequent to a valid agreement.[2] The tentative agreement in the present case was dated and initialed by representatives from each party. Thus, for a period up to 30 days after negotiation of the tentative agreement, a rival union decertification petition was barred pending subsequent action on the tentative agreement by the legislative body. The county's apparent belief that it was precluded from proceeding with a scheduled vote on the tentative agreement after the filing of the decertification petition within the 30-day period was erroneous.[3] Under these circumstances, the MERC erred by failing to enforce the 30-day contract bar in this case.

Plaintiff also argues that the period during which a tentative agreement is protected from attack by a rival union or dissatisfied employee's petition should be extended from 30 days to three years. The MERC's authority is derived from PERA. Any proposed changes to the statute would have to be raised before the Legislature. See *Detroit Police Officers Ass'n v Detroit*, 452 Mich 339, 350-351; 551 NW2d 349 (1996); *Westervelt v Natural Resources Comm*, 402 Mich 412, 428; 263 NW2d 564 (1978).

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[2] Cf., e.g., *Family Service & Children's Aid of Jackson Co*, 1 MPER 19044 (1988), wherein the tentative agreement was unsigned and undated.

[3] We note that MERC held in *Lake Superior* that "A petition filed within the thirty-day period will not be dismissed if the legislative body meets and votes to reject the proposed agreement *or takes no action within the thirty-day period*. (Emphasis added.) Thus, if the county fails to vote on the tentative agreement within the 30-day period, a decertification petition need not be dismissed. In this case, however, there is no indication that the county would have failed to vote on the tentative agreement had the decertification petition not been filed and had the county not believed that it was precluded from proceeding to a vote on the tentative agreement.

We remand to the MERC for entry of an order granting respondent's board of commissioners a 30-day period to take action on the original tentative agreement. If respondent's board of commissioners ratifies the agreement within that period, the agreement shall stand as the final agreement of the parties. However, if respondent's board of commissioners rejects the agreement within the 30-day period, or takes no action within the 30-day period, the decertification petition may proceed.

Affirmed in part, reversed in part, and remanded to the MERC for entry of an appropriate order consistent with this opinion. Jurisdiction is not retained.

/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey