STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE STATE UNIVERSITY,
Respondent-Public Employer,

Case No. C99 H-137

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
& MUNICIPAL EMPLOYEES, COUNCIL 25,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Bruce Gluski, Esq., for Respondent

Dennis Nauss, Staff Specialist, AFSCME Council 25, for Charging Party

DECISION AND ORDER

On August 15, 2000, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Maris Stella Swift, Commission Chair

_____
Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated: _____

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APPEARANCES:

Bruce Gluski, Esq., for the Respondent

Dennis Nauss, Staff Specialist, AFSCME Council 25, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), as amended, MCL 423.210 & 423.216; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on March 13, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings and the transcript of the hearing received on April 3, 2000, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The charge was filed on August 2, 1999, by the American Federation of State, County and Municipal Employees, Council 25, against Wayne State University. Charging Party, through its Local 1497, represents a bargaining unit of nonsupervisory employees of the Respondent. This unit includes custodians. Charging Party alleges that on June 9, 1997, the parties executed a written grievance settlement stating that certain cleaning duties would not be assigned to members of Charging Party's bargaining unit. Charging Party further alleges that commencing on or about May 1, 1999, Respondent repudiated this agreement and thereby violated its duty to bargain in good faith under Section 10(1)(e) of PERA.

Facts:

Approximately 25 buildings on the Wayne State University campus have break rooms or cafeterias where food is sold and/or consumed. Nine of these break rooms or cafeterias are specifically designated for student use. Many of the other break rooms are used principally by employees, although all the break rooms are unlocked and open to the public. Most of the break rooms and cafeterias have vending machines and microwave ovens. Some of the break rooms used principally by employees also have refrigerators. Custodians in Charging Party's unit are responsible for general cleaning in the break rooms and the eating areas of the cafeterias. However, historically employees who regularly use a particular break room clean the inside of the microwave and/or refrigerator in that break room. Custodians have not been responsible for cleaning the interiors of microwaves and refrigerators.

In late 1996 a newly-appointed assistant vice-president asked the custodial staff to begin cleaning the inside of a refrigerator in a break room in the University Services Building. The custodian who was given this assignment filed a grievance. The parties settled this grievance by the execution of a memorandum of understanding in June 1997. The memorandum read in pertinent part as follows:

> In accordance with the position taken during the Step 3 and Step 4 grievance hearings, the assignment to clean refrigerators and microwave ovens shall not be considered Local 1497 bargaining unit work. . . .
>
> In the event the Custodial Services Department is requested to provide cleaning services that include refrigerators, microwave ovens or other similar appliances, the Department shall perform those services at its discretion, but shall not utilize Local 1497 bargaining unit members for such assignments.

The manager of custodial services assumed that despite this memorandum custodians were to continue to clean the outside surfaces of appliances, including microwaves and refrigerators. She did not take any steps to clarify this matter with the custodial staff, but assumed from her inspections that custodians were still doing this work. The only indication in the record that all custodians were not performing this duty is the fact that after some custodians were told by their supervisor in April 1999 to do this work, they complained to Charging Party. In April 1999 a custodial supervisor in the Mott Center building distributed a memo to her staff regarding the cleaning of the break room in that building. The memo described what was to be cleaned each week, including "appliances - the outside surface only - this includes refrigerators, microwaves, toaster ovens, coffee machines, stoves, ovens, etc. . . . " Employees complained to Charging Party about this memo, and the dispute eventually ended up in Respondent's labor relations department. Charging Party took the position that the language of the 1996 memorandum clearly prohibited Respondent from assigning bargaining unit members to clean any part of a microwave oven or refrigerator. Respondent asserted that the only work covered by the memorandum was cleaning the inside of these appliances. The parties were unable to reach agreement, and the instant charge was filed.

Discussion and Conclusions of Law:

Charging Party argues that Respondent committed an unfair labor practice by repudiating the terms of a memorandum of understanding between the parties. The Commission most recently summarized the circumstances under which a contract breach may constitute a "repudiation" of the contract in *Crawford County Bd of Comm*, 1998 MERC Lab Op 17, 21:

> Repudiation exists when (1) the contract breach involved is substantial and has a significant impact upon the bargaining unit, and (2) no bona fide dispute over the interpretation of the language of the contract is involved. *St Clair Co Road Comm*, 1992 MERC Lab Op 316, 320; *Plymouth-Canton*, 1984 MERC Lab Op 894,897. Repudiation can be found only where the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Plymouth-Canton, supra*, at 321; *Redford Police Dept*, 1992 MERC Lab Op 49. We will not find a repudiation on the basis of an isolated or insubstantial breach. *Linden Comm Schools*, 1993 MERC Lab Op 763; *Oakland Co Sheriff's Dept*, 1983 MERC Lab Op 538.

I find that the facts in this case do not demonstrate a repudiation of the parties' agreement. First, I find that the alleged breach of the memorandum of understanding was not substantial and did not have a significant impact upon the bargaining unit. No member of Charging Party's unit was ordered to clean both the inside and the outside of a microwave or refrigerator. Moreover, scrubbing the outside of these appliances once a week constitutes only a tiny portion of the custodians' total duties. I also find that a bona fide dispute exists over the interpretation of the agreement. The memorandum states that members of Charging Party's unit shall not be assigned to clean refrigerators, microwave ovens, and "similar appliances." However, the memorandum also makes reference to the "position taken (by Charging Party) at Step 3 and Step 4 of the grievance." The subject of this grievance was a custodian's assignment to clean the inside as well as the outside of a refrigerator. I find that the language of the agreement, read as a whole, could be interpreted to permit Respondent to require custodians to clean the outside of appliances located in its break rooms. I find that Respondent has not demonstrated a complete disregard for the parties' agreement in this case. I also note, parenthetically, that Charging Party did not allege that Respondent unilaterally changed an existing term and condition of employment and did not present evidence of a clear and consistent practice with respect to the performance of these duties after the 1996 memorandum of understanding. I conclude in this case that Charging Party has not established that Respondent violated its statutory duty to bargain in good faith.

In accord with the findings of fact, discussion and conclusions of law above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____