STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

VILLAGE OF LAKE ODESSA,
Respondent-Public Employer,

-and-

Case No. C98 I-194
(Compliance)

CHRISTIAN HANSON,
An Individual Charging Party.
_____/

APPEARANCES:

Dickinson Wright, PLLC, by Philip F. Wood, Esq., for Respondent

Patrick J. Delvin, Esq., for Charging Party

DECISION AND ORDER

On March 13, 2001, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above-entitled matter, recommending that Respondent take certain affirmative as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

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

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
ON COMPLIANCE

On March 10, 2000, I issued a Decision and Recommended Order in this matter finding that Respondent Village of Lake Odessa violated the Public Employment Relations Act by unlawfully discharging Charging Party Christian Hanson for his union activity. To remedy this violation, Respondent, among other things, was ordered to offer Charging Party immediate and full reinstatement and make him whole for any loss of pay he would have earned from the date of discrimination to the date a reinstatement offer was made, less interim earning, with interest at the statutory rate. Neither party filed exceptions to the Recommended Decision and Order and it became the final order of the Michigan Employment Relations Commission on April 28, 2000. *Village of Lake Odessa*, 2000 MERC Lab Op 123.

On January 8, 2001, Respondent filed a motion that stated that a dispute existed between the parties concerning compliance with the Commission's order. During a telephone conference call on January 19, 2001, the parties agreed that their dispute could be resolved without a formal proceeding as provided for in Rule 68(2) of the Commission's Rules and Regulations, R 423.468. The following issues were identified:

(1) Whether Charging Party is entitled to credit for 40 hours of vacation pay and 8 hours of personal leave, which he claims were unused when he was terminated in May, 1998?

(2) Whether Respondent is allowed to deduct $5,355 to

recover unemployment compensation benefits Charging Party received while he was terminated?

(3) Whether Charging Party is entitled to interest for any period after September 18, 2000, the date which interest was calculated, or any other additional interest?

(4) Whether Respondent is required to reissue a $19,780.52 check sent to Charging Party on December 19, 2000, and returned on December 28, 2000.

The parties agreed to file briefs by February 9 and participate in a telephone conference call on February 20. Respondent filed its brief on February 9. Charging Party did not file a brief or object to the background facts set forth in Respondent's brief.

Background:

Charging Party was terminated on May 1, 1998, and reinstated in April 2000. On June 19, 2000, Respondent sent a back pay calculation to Charging Party's attorney which calculated back pay from May 1, 1998, to the date Charging Party was reinstated in April 2000. The back pay was based on a 40-hour week for each week that Charging Party was terminated with interest until September 18, 2000. Deductions were made for interim earnings and unemployment compensation payments that Charging Party received while he was terminated. When Charging Party was reinstated, he was also credited with vacation and personal days for the year commencing March 1, 2000. Both the policy in effect when Charging Party was terminated and the collective bargaining agreement entered into between the parties in September 1998, provided that vacation and personal leave may not be accumulated from year to year. Vacation time and personal leave are earned and credited on March 1 of each year.

Charging Party did not respond to Respondent's June 19 letter, and two other letters were sent on July 25 and October 5, 2000. In October or November 2000, Charging Party raised the following several problems with Respondent's back pay calculations. He claimed that he should be credited with: 40 additional hours of vacation and 8 hours of personal time; overtime of $2,285.82, plus interest; unemployment compensation payments of $5,355, plus interest; and interest on the total award after September 18, 2000.

On December 19, 2000, Respondent transmitted a $19,780.58 check to Charging Party's attorney for him to transmit to Charging Party. The payment represented a gross payment of $40,248.82 ($37,963 in accrued back pay and benefits, $2,285.82 in overtime, plus interest to September 18, 2000), less withholding for taxes. In the letter of transmittal, Respondent advised Charging Party that the $506.62 adjustment for union dues was improper and that

amount, less withholdings, would be reimbursed. On December 28, 2000, Charging Party returned the check which Respondent has retained along with a check for $396.75 ($506.65 union dues adjustment less taxes), pending resolution of this matter.

Discussion and Conclusions:

Additional vacation and personal leave payments: Charging Party is not entitled to additional pay for vacation and personal leave. The back pay award calculated by Respondent was based on a 40-hour workweek for each week that Charging Party was terminated until he was reinstated. No deduction was made for time he would have been on vacation or off on personal leave. Moreover, when Charging Party was reinstated in May 2000, he was credited with vacation for the year commencing March 1, 2000, consistent with provisions in the parties' collective bargaining agreement.

Unemployment Compensation: The Commission, relying on *NLRB v Gullett Co.,* 340 US 361, 27 LRRM 2230 (1951), has consistently held that unemployment compensation may not be deducted from back pay awards. See *City of Detroit (Recreation Department),* 2000 MERC Lab Op 104, 109; *Center Line* Schools, 1988 MERC Lab Op 318, 335; *Isabella County (Sheriff)*, 1982 MERC Lab Op 675, 677; *Bloomingdale Bd of* Ed, 1977 MERC Lab Op 1105; Reeths *Puffer School Dist.,* 1977 MERC Lab Op 450, 454; *Patricia Stevens Finishing School*, 1971 MERC Lab Op 776; *Pennington* v *Whiting*, 370 Mich 590 (1963). Respondent has advanced no compelling reason why the Commission should exercise its discretion and permit it to deduct unemployment benefits to protect the State's interest in recouping the benefits, Respondent's interest in receiving proper credit for the reimbursement, and to prevent Charging Party from receiving a windfall. As noted by the Court in *Gullet*, unemployment payments are not made to discharge any liability or obligation of the employer, but to carry out a policy of social betterment for the benefit of the state. Thus, I conclude that Respondent is not entitled to deduct unemployment compensation benefits received by Charging Party from his back pay award.

Interest: It is well-established that interest on back pay awards is to be computed at the statutory rate, "to accrue commencing with the last day of each calendar quarter of the back pay period on the amount due and owing for each quarterly period and continuing until compliance with the Order is achieved." *Reeths Puffer Schools*, 1979 MERC Lab Op 37, citing *Bloomingdale Board of Ed,* 1977 MERC Lab Op 1105 and *Iris Plumbing and Heating Co*., 138 NLRB 716, 721, 51 LRRM 1122, 1125 (1962*).* See also *McKinney Poured Wall Co*, 1979 MERC Lab Op 921; *Center Line School* District, 1988 MERC Lab Op 318. I find, consistent with Commission precedent, that Respondent is required to pay interest on the $19,780.52, payment already tendered to Charging Party from September 18, the date the interest calculation ended, to December 19, 2000, the date the payment was transmitted to Charging Party. No claim of

accord and satisfaction, estoppel, or release has been advanced by Charging that would have precluded him from making use of the tendered funds and filing a compliance motion pursuant to Rule 68. I also find that Respondent is liable for interest on the $5,355 unemployment compensation payment and the $506.65 adjustment for union dues which was not included in the December 19, 2000, payment.

Check issued December 19, 2000: For the reasons set forth above, I find that Respondent is not required to reissue the $19,780.58 check that was transmitted to Charging Party on December 19, 2000.

Based on the foregoing, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that Respondent Village of Lake Odessa, its officers and agents, shall re-send the $19,780.58 check returned by Charging Party on December 28, 2000, and pay additional interest on that amount from September 18 to December 19, 2000; and pay Charging Party $5,861.65, the amount withheld for unemployment compensation benefits and union dues adjustment, plus interest until compliance is achieved.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____