STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Public Employer – Respondent,

Case No. C02 G-159

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25, AND ITS LOCAL 1695,
Labor Organization – Charging Parties.

_____/

APPEARANCES:

Barbara J. Johnson, Esq., Wayne County Labor Relations Division, for the Respondent

Miller Cohen, P.L.C., by Eric I. Frankie, Esq., for the Charging Parties

DECISION AND ORDER

On May 13, 2004, 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

_____
Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

_____
Maris Stella Swift, Commission Member

Dated: _____

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AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 25, AND
ITS LOCAL 1659,
Labor Organization-Charging Parties.
_____/

APPEARANCES:

Barbara J. Johnson, Esq., Wayne County Labor Relations Division, for the Respondent

Miller Cohen, P.L.C., by Eric I. Frankie, Esq., for the Charging Parties

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard at Detroit, Michigan on August 28, 2003, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before October 20, 2003, I make the following findings of fact, conclusions of law, and recommended order.

I. The Unfair Labor Practice Charge:

On July 16, 2003, the American Federation of State, County and Municipal Employees (AFSCME) Council 25, and its Local 1659 filed this charge against Wayne County. AFSCME Local 1659 represents a bargaining unit of nonsupervisory employees of Respondent, including court clerks working in the Third Judicial Circuit Court. As amended, the charge alleges that Respondent violated its duty to

bargain by repudiating a written agreement between the parties dated December 13, 2001. 1

II. Facts:

In 1996, the legislature reorganized the Wayne County court system. The court reorganization abolished Recorder's Court and transferred its functions, and the functions of the juvenile division of the Probate Court, to the Third Judicial Circuit Court. Before the reorganization, Respondent was the employer of court clerks working in the Circuit Court's civil division. These court clerks were part of Local 1659's bargaining unit. After the reorganization, Respondent also became the employer of docket coordinators working in the reorganized Court's criminal division, and juvenile court officer clerks working in the juvenile division. The docket coordinators had been and continued to be part of a bargaining unit represented by AFSCME Local 3309, and the juvenile court officer clerks were included in a bargaining unit represented by AFSCME Local 409. Although the court clerks, docket coordinators, and juvenile court officer clerks performed essentially the same work, Respondent did not immediately attempt to change the unit placement of any of these employees. Respondent also acknowledged that it was bound by the separate collective bargaining agreements covering these employees negotiated before the reorganization. Under the agreement negotiated between Local 3309 and their former employer, the State Judicial Council, docket coordinators in the criminal division received substantially higher wages than the court clerks represented by Local 1659 and the juvenile officer court clerks represented by Local 409.

In July 1999, Respondent gave the docket coordinators in the criminal division of the Circuit Court the title of court clerk and transferred them to the unit represented by Local 1659. Local 3309 filed an unfair labor practice charge (Case No. C99 E-094).2 Between July 1999 and November 2001, when the Commission ordered Respondent to return these clerks to Local 3309's unit, Local 1659 represented the court clerks in the criminal division. During this period, Local 1659 demanded that Respondent raise the wages of the civil division court clerks to eliminate or reduce the disparity between their pay and that of the criminal division clerks. On October 15, 1999, Respondent and Local 1659 entered into a letter of agreement. The parties agreed to change the pay grade of court clerks, including employees in both the civil and criminal divisions, from grade 17 to grade 15. The parties also agreed that 43 court clerks who had worked as court clerks in the Circuit Court before the reorganization would receive annual "special salary adjustments" in each of the next four years. The agreement stated:

> 2. Effective December 1, 1998, employees in the classification of Court Clerk in the Office of the Wayne County Clerk listed in Appendix A of this Agreement shall be entitled to receive up to a maximum of four (4) annual special salary adjustments which shall commence December 1, 1998 and end no later than December 1, 2001 as long as he/she remains in the classification.
>
> 3. The amount of the Special Salary Adjustment for each eligible Court Clerk referenced in Appendix A shall be determined by comparing the individual employee's salary and length

1 The charge, as amended also alleges that on or about January 1, 2002, Respondent unilaterally implemented a new wage scale for court clerks. As Charging Party presented no evidence on this allegation, I consider it to have been abandoned.
2 See *Wayne County*, 2001 MERC Lab Op 339.

of service in the classification of Court Clerk as of November 30, 1998 with the salary and length of service of a Court Clerk formerly employed by the State Judicial Council in the classification of Docket Coordinator as of November 30, 1998, 3 as reflected in both Appendix B of this Agreement as the proposal presented by the Union.

4. The amount calculated in paragraph 3 shall be divided into four (4) amounts to be received annually on December 1st of each year from 1998 to 2001 after the employee's annual increases have been calculated.

5. … In no event shall an employee's salary exceed the maximum of the grade.

Pursuant to this agreement, the salary of each court clerk listed in Appendix A on November 30, 1998 was compared to the November 30, 1998 salary of a court clerk with a similar seniority date who had formerly been classified as a docket coordinator. Appendix B was a chart showing the maximum salary adjustment for each court clerk listed in Appendix A. Each clerk's maximum salary adjustment was equal to one-fourth of the difference between his or her "comparison salary" and his or her actual salary on November 30, 1998.

A month earlier, on September 1, 1999, Respondent entered into an agreement with Local 1659 and Local 409 allowing it to change the title of the juvenile court officer clerks to court clerk. In this agreement, Respondent also recognized Local 409 as the bargaining agent for a separate unit of court clerks in the juvenile division, and agreed that this unit would be covered by the master contract between Respondent and its various AFSCME locals.

The September 1, 1999 agreement did not address the pay disparity between court clerks in the juvenile division and court clerks in the other divisions. In 2001, when Respondent and its AFSCME locals began negotiating separate local addenda to a new master contract between AFSCME Council 25 and Respondent, Local 409 demanded salary adjustments for its clerks. In September 2001, Local 409 filed a grievance demanding pay parity. Respondent agreed that the juvenile division clerks deserved salary adjustments, and Respondent and Local 409 agreed to hold the grievance in abeyance while they attempted to negotiate the amounts.

Sometime in the fall of 2001, Local 409 and Local 1659 agreed between themselves to transfer the juvenile division clerks to Local 1659's unit. To that end, the two locals gave Joyce Ivory, Local 409's committeeperson for the juvenile division clerks, authority to negotiate on behalf of both locals; Ivory later became a Local 1659 committeeperson. In early December 2001, Ivory met with representatives from Respondent's labor relations division, including labor relations analyst Mark Dukes, to discuss salary adjustments for the juvenile division clerks. On December 13, 2001, the parties executed a letter of agreement. The parties agreed to calculate the adjustments using the "same process" as used in the October 15, 1999 agreement. Ivory and Dukes disagree about whether the parties agreed to use November 30, 1998, the date in the October 15 agreement, as the date for comparing the salaries of the juvenile division

3 According to Respondent, November 30, 1998 was an arbitrary date agreed to by the parties.

clerks with those of the criminal division clerks. Ivory testified that Respondent agreed to give the juvenile division clerks "the same benefit that the 1659 court clerks received." To Ivory, this meant that the comparison date would be the same. Although Ivory did not testify that the parties specifically discussed the comparison date, she denied that Respondent ever mentioned using a date other than November 30, 1998. Dukes, however, testified that during their discussions Ivory stated that the comparison date should be November 30, 1998, and Respondent told Ivory that it did not agree. According to Dukes, the parties signed the settlement agreement discussed below knowing that they had not agreed on the comparison date. I do not believe that Ivory would have reacted as she did when the parties met after December 2001 if she had not believed that the parties had at least implicitly agreed to use the November 30, 1998 date. Therefore, I credit Ivory's testimony that Respondent did not tell her before she signed the December 13 agreement that it did not agree to use November 30, 1998 as the comparison date.

The December 13, 2001 agreement between Respondent, AFSCME Council 25, Local 1659 and Local 409 stated:

> Upon implementation of the legislatively mandated court reorganization, the wage rates for employees in the classification of COURT CLERK in the Office of the Wayne County clerk were reviewed at the request of the Union and the department. Following discussions and negotiations, the parties mutually agree to the following in the interest of peaceful and harmonious labor relations and in resolution of all outstanding Local 409 local issues, including those concerning the court clerk classification. Therefore, the parties agree to the following:
>
> 2. Effective January 1, 2002, employees in the AFSCME Local 409/Clerk's Unit will accrete to AFSCME Local 1659. In accordance with the agreement with the County and Michigan AFSCME Council 25, Local 409 waives all claims to representation.
>
> 4. The Labor Relations Division representatives, Michigan AFSCME Council 25 and Local 1659 will meet and execute a Special Salary Adjustment agreement that defines the amount of the wage adjustment each eligible court clerk from the Local 409/Clerk's unit will receive. <u>The same process described in the October 15, 1999 Local 1659 agreement will be used to determine who is qualified to receive the adjustment and the amount of the adjustment.</u> [Emphasis added]
>
> 5. This agreement settles all special salary adjustment issues for any bargaining unit, local union, classification or employee.

On January 29 and February 6, 2002, Ivory met with representatives of Respondent to discuss the special salary adjustments for juvenile division clerks. Ivory testified that she expected Respondent to provide her with the maximum salary for the court clerks in Local 3309's bargaining unit on November 30, 1998. According to Ivory, since Local 3309 clerks reached the top of their salary scale after six years, and since nearly every court clerk in the juvenile division had more than six years seniority, knowing the maximum salary for Local 3309 clerks in 1998 would have allowed her to calculate the appropriate salary

adjustments for most of the juvenile division clerks. Instead of giving Ivory this information, Respondent gave her two charts. The first calculated the amount of the special salary adjustment that each juvenile division clerk should receive based on a comparison of his or her salary with that of a clerk in the criminal division as of January 1, 2002. The second chart matched juvenile division clerks with clerks in the civil division on January 1, 2002. Respondent told Ivory that it had used January 1, 2002 as the comparison date because, per the December 2001 agreement, that was the date the juvenile division clerks became part of Local 1659's bargaining unit. Ivory was angry. Ivory testified that, in her view, Respondent was attempting to "negotiate the maximum salaries" when that issue had already been settled by the December 2001 agreement.

Ivory and Respondent met for the third time on February 21, 2002. The president of Local 3309 also attended this meeting. Ivory was still expecting Respondent to provide her with the maximum salary for court clerks represented by Local 3309 on November 30, 1998.4 Instead, Respondent gave the Union representatives a sheet showing the current maximum salary for court clerks within Local 1659. According to Dukes, the president of Local 3309 had requested this information because the parties were also discussing moving the criminal division clerks from Local 3309's unit to the unit represented by Local 1659, and Local 3309's president wanted to see what the court clerks in his unit might be paid if he agreed to the move. The proposed transfer of the Local 3309 clerks to Local 1659 became the main topic at this meeting and the next meeting, held on April 2, 2002. Although the parties discussed the comparison date for the juvenile division clerks' salary adjustments, Respondent continued to insist on January 1, 2002, while Ivory maintained that the parties had already agreed to November 30, 1998.

Respondent did not meet with Ivory to discuss the salary adjustments again until April 2003. According to Respondent, this was, in part, because Local 1659's president was more concerned with working out the details of the transfer of the criminal division court clerks to his unit. In December 2002, Local 3309, Local 1659 and Respondent signed an agreement transferring these clerks to Local 1659's bargaining unit. Between April 2003 and the date of the hearing in July 2003, Respondent and Ivory met three times to discuss salary adjustments for the juvenile division clerks. The parties still had the same dispute over the comparison date. During the course of these meetings, Ivory proposed a series of different dates in 2000 and 2001. Respondent agreed to move the date back to December 1, 2001. However, it also sought, over Ivory's objection, to negotiate the settlement of another, unrelated contract dispute as part of the salary adjustment agreement.

As of the date of the hearing, the parties had not reached agreement on the terms of a special salary adjustment for the juvenile division court clerks, and these clerks had not received any adjustments to their pay to bring them into parity with the other court clerks.

III. Motion to Reopen the Record:

On November 26, 2003, Respondent made a motion to reopen the record pursuant to R 423.166

4 Respondent did provide Ivory with this information after Local 1659 specifically requested it in 2003.

to admit a tentative memorandum of agreement between the parties, dated October 20, 2003, providing for a salary adjustment for court clerks in the Circuit Court's juvenile division. Respondent also seeks to admit a letter to Respondent from Local 1659's president, dated November 20, 2003, notifying Respondent that its membership had refused to ratify this tentative agreement. Respondent asserts that these documents, which could not have been supplied at the hearing on August 28, 2003, demonstrate that Respondent has not repudiated its December 13, 2001 agreement to meet and execute a salary adjustment agreement. Charging Party responded to this motion on December 8, 2003 and January 8, 2004. For reasons discussed below, I conclude that the evidence that Respondent seeks to admit would not require a different result in this case.5 Therefore, I deny Respondent's motion to reopen the record.

IV. Discussion and Conclusions of Law:

A public employer violates its duty to bargain in good faith under PERA when it repudiates a written collective bargaining agreement. *Jonesville Bd. of Ed.*, 1980 MERC Lab Op 891, 900-01. Repudiation may be found where the actions of a party amount to a rewriting of the agreement, or demonstrate a complete disregard for the agreement as written. *Central Michigan Univ.*, 1997 MERC Lab Op 501, 507; *Twp. of Redford Police Dept.*, 1992 MERC Lab Op 49, 56 (no exceptions); *Linden C.S.*, 1993 MERC Lab Op 763, 772 (no exceptions). For the Commission to find repudiation, the breach of the agreement must be substantial and have a significant impact on the bargaining unit, and there must be no bona fide dispute over interpretation of the language of the agreement. *Gibraltar S.D.*, 2003 MERC Lab Op ____ (Case No. CU01 I-052, decided 6/30/03); Plymouth-*Canton C.S.*, 1984 MERC Lab Op 894, 897.

Charging Parties maintain that Respondent has repudiated their December 13, 2001 agreement by subsequently refusing to execute a salary adjustment agreement. According to Charging Parties, Respondent's refusal to comply with the December 13 agreement has had a significant impact on the juvenile division clerks in Local 1659's bargaining unit who still have not received parity with their counterparts in other divisions of the Circuit Court. Moreover, according to Charging Parties, the parties have no bona fide dispute over the interpretation of their December 13, 2001 agreement. The December 13, 2001 agreement states, "The same process described in the October 15, 1999 Local 1659 agreement will be used to determine who is qualified to receive the adjustment and the amount of the adjustment." According to Charging Parties, this language is unambiguous. According to Charging Parties, the only possible interpretation of this sentence is that the date used to compare the salaries of juvenile division clerks for purposes of calculating their adjustments will be the date, November 30, 1998, in the 1999 agreement. Charging Parties assert that all that was left for the parties to do after that agreement was reached was to obtain the 1998 maximum salary rates for the clerks, calculate the amounts due the juvenile division clerks based on a comparison of their 1998 salaries with those of the other clerks, and execute an agreement setting out the salary adjustment each clerk would receive each year for the next four years. Charging Parties maintain that Respondent demonstrated its bad faith by failing to provide Ivory with the necessary salary information, insisting on using a different comparison date, insisting that grievances that had nothing to

5 Under R 423.166(1)(c), a motion to reopen the record will be granted only upon a showing that the additional evidence, if adduced and credited, would require a different result.

do with pay parity be made part of the agreement, and failing to take any action to provide wage parity for the juvenile division clerks despite agreeing that it would do so.

Respondent denies that it repudiated the December 13, 2001 agreement. Respondent's position is that using the "same process" used in the 1999 agreement to calculate the salary adjustments for the juvenile division clerks means pairing each juvenile division clerk with a clerk in another division with the same seniority, calculating the difference between their salaries, and dividing the difference into four parts to be paid annually over four years. It disagrees with Charging Parties that using the "same process" means using the same comparison date. According to Respondent, although the parties signed the December 13, 2001 agreement, they had not yet agreed on the date to be used for comparison purposes. Respondent maintains that although the parties have met repeatedly, and have moved from their original positions, they simply have not been able to reach agreement on a comparison date. For that reason, according to Respondent, the parties have not been able to execute a salary adjustment agreement.

As noted in my findings of fact, I credit Ivory's testimony that Respondent did not tell her, before the parties signed the December 13, 2001 agreement, that it did not agree to use November 30, 1998 as the comparison date. However, I find that Respondent's position that it did not agree to use the same comparison date when it agreed to use the "same process" was not so unreasonable that its subsequent insistence on a different date constituted a repudiation of that agreement. As discussed above, "repudiation" occurs when one party demonstrates a complete disregard of the parties' agreement and, by extension, their collective bargaining relationship. "Repudiation" requires a finding that one party has acted in bad faith. If the parties have a bona fide dispute over the meaning of their agreement, this dispute should be resolved by the means agreed to by the parties for resolving contract interpretation disputes, or by collective bargaining.

I also conclude that Respondent did not demonstrate its bad faith by failing in early 2002 to provide Local 1659 with the maximum salary for the criminal division clerks in November 1998, or by attempting in 2003 to bring unrelated contract dispute issues into the negotiations over the salary adjustments. Respondent did not give Local 1659 the 1998 salary information when the parties began meeting in January 2002 because, according to Respondent's position, this information was not relevant. After Local 1659 specifically requested this information, Respondent provided it. Respondent did not attempt to introduce other issues into the negotiations until 2003, after it was clear that neither party would be able to persuade the other to agree to its proposed comparison date and both parties had moved from their initial positions. Respondent's actions were consistent with its claim that it was simply trying to negotiate unresolved issues. Finally, I find that Respondent did not demonstrate bad faith by refusing to execute a salary adjustment agreement with terms to which it had not agreed.

For reasons set forth above, I conclude that Respondent did not repudiate its December 13, 2001 agreement to meet with Local 1659, reach agreement on salary adjustments for the juvenile division court clerks, and execute a written document embodying this agreement. In accord with the above findings of fact, discussion, and conclusions of law, I conclude that Respondent did not violate its duty to bargain under Section 10(1)(e) of PERA. 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: _____