

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT
(DEPARTMENT OF TRANSPORTATION),
Public Employer - Respondent,

Case No: C04 B-061

- and -

AMALGAMATED TRANSIT UNION, LOCAL 26,
Labor Organization - Charging Party.

APPEARANCES:

City of Detroit Law Department, by Bruce A. Campbell, Esq., for Respondent

Law Offices of Mark H. Cousens, by John E. Eaton, Esq., for Charging Party

DECISION AND ORDER

On August 24, 2005, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent City of Detroit did not violate Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(e). The ALJ found that Respondent had not repudiated its collective bargaining agreement with Charging Party Amalgamated Transit Union, Local 26, when it failed to implement step increases in a timely manner and delayed the implementation of a special wage adjustment due under the parties' 2003 contract. The ALJ determined, however, that Respondent violated its duty to bargain when it failed to provide Charging Party with relevant information concerning the delayed special wage adjustment.

The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order on September 16, 2005. Respondent did not file a response to the exceptions.

In its exceptions, Charging Party argues that the ALJ erred in finding that Respondent's delay in the implementation of a special wage adjustment and its repeated failure to timely implement wage step increases was not a repudiation of the parties' collective bargaining agreement. Charging Party contends that the ALJ erred in finding that the delays in implementing wage increases were due to Respondent's inability to

make prompt changes and were not a deliberate refusal. Charging Party expressly declined to file exceptions to the ALJ's conclusion that Respondent's failure to provide timely, accurate information in response to Charging Party's inquiries violates PERA. After a careful and thorough review of the record, we agree with the ALJ that the evidence does not establish a repudiation of the parties' collective bargaining agreement.

Factual Summary:

Charging Party represents a bargaining unit of transportation equipment operators (TEOs) employed by Respondent in its transportation department. The parties' contract provides step increases for TEOs upon completion of a designated number of months of service; increases are due after nine, eighteen, twenty-eight, thirty-seven, and forty-seven months of service. Respondent has no automated procedure for implementing these step increases. In order to implement an employee's step increase, someone from Respondent's payroll department must manually review the employee's payroll records to determine the employee's eligibility for the increase. There are 400 bargaining unit members for whom this task is performed periodically, and Respondent often gets behind in its paperwork. Respondent typically fails to implement step increases when due, waiting as much as eighteen months before granting the increase in some cases.

By November 2003, both Respondent and Charging Party had ratified a new contract covering the period July 1, 2001 to June 30, 2005. The contract included a one-time \$400 bonus for all bargaining unit members payable upon ratification by both parties; a two percent across-the-board wage increase effective July 1, 2003; and a "special wage adjustment" increasing the maximum hourly rate by \$.50 per hour effective on the date that Charging Party's membership ratified the agreement. TEO's received the two percent increase in their paychecks in November or December 2003 and the retroactive pay due for this increase shortly thereafter. Charging Party's members received the \$400 bonus in December 2003, the special wage adjustment by June 2004, and retroactive pay for the special wage adjustment by November 2004.

Discussion and Conclusions of Law:

Charging Party contends that Respondent's implementation of wage increases was dilatory to the point of repudiation of the contract. Respondent, on the other hand, denies the charge of repudiation and contends that it has diligently complied with its contractual obligations. The Commission has defined repudiation as an attempt to rewrite the contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *Crawford Co Bd of Comm'rs*, 1998 MERC Lab Op 17, 21; *Central Michigan Univ*, 1997 MERC Lab Op 501, 507.

Though we do not condone Respondent's actions in this case, we do not believe that they constitute a repudiation of the contract. Certainly, Respondent's repeated failures to promptly implement wage increases raise the question of whether Respondent was making a good faith attempt to comply with its contractual obligations. For example, in a previous case involving this employer, *City of Detroit*, 18 MPER 73 (2005), the

Commission held that the City's failure to complete its investigation of twelve back pay claims within two years time raised the question of whether the City's repeated promises to investigate the claims were merely designed to delay resolution and were a deliberate attempt to frustrate the grievance process.

Our close review of the record and circumstances in this case indicates that Respondent's limited staff and technical support, as well as the complexity of calculating individual step increases, hampered its ability to promptly and properly implement the wage increases. These difficulties and Respondent's eventual payment of the wage increases indicate that no repudiation of the contract occurred. Accordingly, we concur with the ALJ's conclusion that Respondent's actions did not constitute a breach of the duty to bargain.

It appears instead that the parties are involved in a contract dispute. Whether Respondent's delay in the implementation of wage increases constitutes a breach of the collective bargaining agreement is a matter to be decided through the contractual grievance procedure. An unfair labor practice proceeding is not the proper forum for the adjudication of a contract dispute. *Village of Romeo*, 2000 MERC Lab Op 296. Accordingly, the parties are left to their contractual remedies with respect to the delay in the implementation of the wage increases. Moreover, since no exceptions were filed with respect to the ALJ's finding that Respondent failed to provide sufficient information in response to Charging Party's request, we adopt the ALJ's Recommended Order in toto.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
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Case No. C04 B-061

-and-

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Labor Organization-Charging Party.

APPEARANCES:

Bruce A. Campbell, Esq., Senior Assistant Corporation Counsel, for Respondent

Law Offices of Mark H. Cousens, by John E. Eaton, Esq., for Charging Party

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, this case was heard at Detroit, Michigan on January 27, 2005, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before March 31, 2005, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Amalgamated Transit Union, Local 26, filed this charge against the City of Detroit on February 26, 2004 and amended it on August 16, 2004. Charging Party represents a bargaining unit of transportation equipment operators (TEOs) employed by Respondent in its transportation department. The charge, as amended, alleges that Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA by failing to implement a special wage adjustment due under the parties' collective bargaining agreement in a timely manner. It also alleges that Respondent has and is

continuing to repudiate its collective bargaining obligation by delaying implementation of step increases required by the contract.

Findings of Fact:

The parties' contract contains a salary scale with six steps. The hourly rate for each step below the top step is based on a percentage of the maximum rate. TEOs begin accruing months of service after they have completed their training and are "badged." After he is badged, a TEO accrues a month of service for every month in which he works at least eighteen days. Any month in which the TEO works less than eighteen days does not count as a qualifying month for step increase purposes. Step increases are given after nine, eighteen, twenty-eight, thirty-seven, and forty-seven months of service.

For years, Respondent has routinely failed to implement step increases when they are due. On the average, less than ten percent of step increases are implemented on time. Employees sometimes wait longer than eighteen months to receive a step increase that is due, and may receive more than one step increase in the same check. For example, one TEO was due to receive his first step increase in January 2003. He got no step increases until August 13, 2004, when he was moved directly from the first to the fourth step. Employees eventually are paid retroactively for their delayed step increases, but do not receive interest.

Donna Mihal, the director of operations for the transportation department, explained that Respondent's payroll system cannot be programmed to automatically implement step increases for Charging Party's unit because someone from payroll must manually review an employee's payroll records to verify that he or she has worked at least eighteen days in each month. Since there are about 400 TEOs still receiving step increases, this task takes time. Also, if the employee has non-qualifying months, the effective date of the step increase is moved forward and the employee's step increase is put on hold. As a result, step increase paperwork tends to pile up. In addition, the transportation department does not have a system for notifying payroll when TEOs are due for a step increase. Therefore, payroll often does not realize when it is time to review a TEO's payroll records. Finally, payroll did not process any step increases between September 2003 and about June 2004, when it finished implementing the wage increases due under the parties new contract, so that it would not have to go back and recalculate the step increases using the new rates.

In September 2003, Respondent and Charging Party reached a tentative agreement on a new contract covering the period July 1, 2001 to June 30, 2005. By November 2003, both Respondent's city council and Charging Party's membership had ratified this agreement.¹ The contract did not provide a wage increase for the first two years of the agreement. However, it included a one-time \$400 bonus for all unit members payable after both parties had ratified the agreement, a 2% across-the-board wage

¹ As of January 2005, the parties still had not executed a written contract because of disagreements over contract language.. However, there was no dispute over the wage provisions..

increase effective July 1, 2003, and another across-the-board increase effective July 1, 2004. It also provided for a \$.50 per hour increase in the maximum hourly rate effective the date that Charging Party's membership ratified the agreement. The contract referred to this wage increase as a "special wage adjustment." Because wages for all employees are based on a percentage of the maximum rate, all unit employees were to receive a special wage adjustment under the agreement.

Charging Party's membership ratified the tentative agreement on September 16, 2003. Sometime before November 2003, Respondent's city council approved the agreement. Within about two weeks after the city council's ratification, Respondent's labor relations division sent a memo to the payroll audit division of the finance department with the new wage tables asking them to implement the payroll changes required by the new contract.

Mihal explained that when payroll has to enter multiple wage changes for a bargaining unit into the payroll system, it does so one increase at a time. After it received the memo from labor relations, the payroll audit division entered the 2% across-the-board increase effective July 1, 2003 into the system. Because all the pay rates for everyone in the unit were being increased by the same percentage, Respondent's payroll system could be reprogrammed to do a "mass retro", i.e., to change all the rates at the same time. TEO's received the 2% increase in their paychecks in November or December 2003, and the retroactive pay due for this increase shortly thereafter.

Around the time the TEOs received their 2% increase, Charging Party began to inquire when its members would receive their special wage adjustments. Charging Party had conversations with numerous individuals in different departments, including the mayor's office, about the special wage adjustments. Each time, Respondent assured Charging Party that it intended to pay the special wage adjustments, and that payroll was "working on it." Respondent did not explain to Charging Party why the special wage adjustment was not paid at the same time as the 2% increase.

After Respondent had implemented the 2% increase and paid out the retroactive pay, it began processing the \$400 bonus. Charging Party's members received the bonus in their paychecks in December 2003. Under the contract, Charging Party's members are due a number of payments at the end of each calendar year. In December 2003, payroll employees calculated and paid out longevity and attendance bonuses and sent out CDL license reimbursement payments to employees in the bargaining unit. Payroll then began working on employee W-2 tax statements due at the end of January.

Payroll did not begin working on the special wage adjustment until February 2004. Since employees at different steps were to receive different percentage increases, Respondent's payroll system could not be programmed to enter all the rate changes at once.² Respondent first had to identify and confirm each TEO's correct wage step. A

² Within each step, employees are paid different rates depending on the work that they do. For example, TEOs are paid one rate for regular runs, another for late night runs, and a third for acting as an instructor. In addition, TEOs who work split shifts receive premium pay.

payroll clerk then had to manually enter all the correct new rates for an individual employee into the payroll system. This had to be done for each of the approximately 800 TEOs in the bargaining unit. After this step was completed, someone from payroll had to manually compute each employee's retroactive pay back to September 16, 2003.

Starting with employees at the top of the pay scale, individual TEOs began receiving their special wage adjustments around the end of February 2004. Most TEOs had received their special wage adjustment by June 2004. In that same month, employees at the top of the pay scale began receiving retroactive pay for the special wage adjustment. Most employees had received their retroactive pay by November 2004.

Discussion and Conclusions of Law:

The Commission does not enforce collective bargaining agreements, and, absent unusual circumstances, an employer's breach of contract is not unfair labor practice. *JO Mutch*, 1966 MERC Lab Op 314. However, an employer's refusal to comply with its contractual obligations may constitute a violation of its duty to bargain in good faith if circumstances show that the employer has repudiated the collective bargaining agreement and its collective bargaining obligations. See, e.g. *City of Detroit (Transportation Dep't)*, 1984 MERC Lab Op 937, *aff'd* 150 Mich App 605 (1985); *Wayne Co*, 1985 MERC Lab Op 1037; *Jonesville Bd of Ed*, 1980 MERC Lab Op 891; *The Golden Key*, 1967 MERC Lab Op 666. For the Commission to find repudiation, (1) the contract breach must be substantial and have a significant impact on the bargaining unit, and (2) there must be no bona fide dispute over interpretation of the contract. *Gibraltar Sch Dist*, 16 MPER 36 (2003); *Plymouth-Canton Community Schs*, 1984 MERC Lab Op 894, 897. The Commission has sometimes described repudiation as a rewriting of the collective bargaining agreement or refusal to acknowledge its existence. *Wayne Co Juvenile Detention Facility*, 1997 MERC Lab Op 108, 115; *Central Mich Univ*, 1997 MERC Lab Op 501, 507.

Charging Party argues that Respondent has and is continuing to repudiate the contract by failing to implement pay step increases on time. There is no dispute about when employees are entitled to step increases under the contract. However, step increases present practical problems for Respondent's payroll employees. Respondent's payroll system cannot be programmed to automatically implement step increases because employees must work at least eighteen days within a month for that month to count toward their step increases. An actual person must review the employee's payroll records to verify that the employee has enough qualifying months before the employee's step increase can be entered into the system. There may be steps that Respondent might take to improve the efficiency of its payroll system. However, I find that Respondent has not deliberately refused to implement step increases in a timely fashion. I conclude that Respondent has not repudiated its contract with Charging Party or its collective bargaining obligations by failing to pay step increases on time.

Charging Party also maintains that Respondent repudiated the contract's implied promise to pay the special wage adjustments within a reasonable time after the parties

ratified the agreement. According to Charging Party, the very long delay here – four to eight months before employees’ special wage adjustments were implemented, and eight months to almost a year before they received their retroactive pay – amounted to a renunciation of Respondent’s collective bargaining obligation.

In *Ingham Co*, 1989 MERC Lab Op 21, the Commission refused to find that an employer repudiated its collective bargaining agreements by its delay in implementing wage increases due under those agreements. In that case, both parties ratified tentative agreements for two units in August, but employees did not receive the wage increases due under these agreements until October 31, or their retroactive pay until December 12. The employer’s witnesses testified that the employer could not complete all the work necessary to implement these increases before that date because the retroactivity provision required recomputation of a number of items, and because the employer’s payroll and data processing departments were also working on other end-of-the-year business. The Commission concluded that the record established that employer did not deliberately delay implementing the increases. It also noted that the parties did not have an explicit agreement as to when the increases would be paid, and it rejected the charging party’s argument that the contract contained an implied agreement that the increases would be paid within a reasonable time.

As in *Ingham*, Respondent here never refused to pay the wage adjustment, and, as in that case, the parties had no explicit agreement as to when it would be paid. I also find that Respondent did not deliberately delay implementing the special wage adjustment. I find that Respondent established that the delay was caused by the problem the way the wage adjustment was structured presented for payroll, and from the fact that its payroll staff had to implement a number of other payroll changes before the special wage adjustment. I conclude that in these circumstances Respondent’s delay in implementing the special wage adjustment did not evidence a repudiation of the parties’ contract or Respondent’s collective bargaining obligation.

I find, however, that Respondent unlawfully refused to provide Charging Party with an explanation of why the special wage adjustment was delayed. After November 2003 Charging Party made repeated inquiries about the wage adjustment. Respondent replied only that it “was working on it.” Respondent has an obligation to provide Charging Party with requested information that is relevant to collective bargaining and the policing of the contract. See, e.g., *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387. I conclude that this obligation required Respondent to provide Charging Party, within a reasonable time after Charging Party asked, with information about why the wage adjustment was delayed, including why the wage adjustment presented problems for payroll, what actions Respondent was taking to implement the wage adjustment, and when Respondent expected the wage adjustment to be paid. I conclude that by failing to provide Charging Party with this information within a reasonable time after it requested it in the fall of 2003, Respondent violated its duty to bargain in good faith under Section 10(1)(e) of PERA.

In sum, based on the findings of fact and discussion above, I conclude that Respondent has not repudiated its contract with Charging Party or its collective bargaining obligations by failing to implement step increases on time or by the delay in the implementation of the special wage adjustment due under the parties' 2003 contract. I find, however, that Respondent violated its duty to bargain in good faith by failing to provide Charging Party with information about the delayed special wage adjustment. In accord with these conclusions, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondent City of Detroit, its officers and agents, are hereby ordered to:

1. Cease and desist from failing or refusing to provide the Amalgamated Transit Union, Local 26, with information relevant to collective bargaining and the administration of its contract.
2. Provide the above union, in a timely fashion, with all information it requests relevant to delays in the implementation of wage increases under the contract.
3. Post the attached notice to employees on Respondent's premises, including all places where notices to employees are customarily posted, for a period of thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing, the Michigan Employment Relations Commission has found the **City of Detroit** to have committed an unfair labor practice in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL cease and desist from failing or refusing to provide the Amalgamated Transit Union, Local 26, with information relevant to collective bargaining and the administration of its contract.

WE WILL provide the above union, in a timely fashion, with all information it requests relevant to delays in the implementation of wage increases under the contract.

CITY OF DETROIT

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.

Case No. C04 B-061