STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

WAYNE COUNTY COMMUNITY COLLEGE,
Public Employer-Respondent,

Case No. C04 L-311

-and-

WAYNE COUNTY COMMUNITY COLLEGE PROFESSIONAL AND ADMINISTRATIVE ASSOCIATION, MFT LOCAL 4467,
Labor Organization-Charging Party.

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APPEARANCES:

Floyd E. Allen & Associates, P.C., by Shaun P. Ayer, Esq., and Bellanca, Beattie & DeLisle, P.C., by James C. Zeeman Esq., for the Public Employer

Gillian H. Talwar, Esq., and Mark H. Cousens, Esq., for the Labor Organization

DECISION AND ORDER

On April 24, 2006, Administrative Law Judge Roy L. Rouhlac (ALJ) issued his Decision and Recommended Order in the above matter finding that Respondent, Wayne County Community College, violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by unilaterally eliminating one of three health care plan options. The ALJ held that the reduction in health care plans available to employees was substantial, had a significant impact on Charging Party's bargaining unit and constituted a repudiation of the collective bargaining agreement. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

On May 17, 2006, Respondent filed exceptions to the ALJ's Decision and Recommended Order. Respondent asserts that the ALJ erred in finding that the BCBS PPO[1]), one of the three health care plan options specified in the collective bargaining agreement, was significantly different from the BCBS Traditional plan[2], the health care plan that Respondent eliminated. Respondent contends that the ALJ also erred in concluding that there is not a good faith dispute as to the interpretation of the parties' agreement, that the unilateral action protested by Charging

[1] The Blue Cross/Blue Shield Community Blue PPO plan is referred to as the BCBS PPO.
[2] The Blue Cross/Blue Shield Plan (MVF-2 with Master Medical Option IV and Non-Deductible Prescription Drug Rider) plan is referred to as the BCBS Traditional plan

Party had a substantial and significant impact on the bargaining unit, and that Respondent violated PERA when it changed coverage options without bargaining. We find these exceptions to be without merit.

Factual Summary:

We adopt the facts as stated in the ALJ's Decision and Recommended Order and repeat them here only as needed. Charging Party and Respondent are parties to a collective bargaining agreement. Article XXIII, A.4.a of the contract provides:

> The Employer agrees to pay the necessary premiums to provide at the employee's option either the Metro Health Plan (Plus Program) or the Blue Cross/Blue Shield Plan (MVF-2 with Master Medical Option IV and Non-Deductible Prescription Drug Rider), or Blue Cross/Blue Shield Community Blue PPO or any other comparable plan for each full-time employee, spouse, and dependent children.

Respondent notified all BCBS Traditional plan subscribers that effective January 1, 2005, the BCBS Traditional plan would be eliminated and that during an open enrollment period, they must select a new plan – HAP[3] or BCBS PPO – or they would be enrolled in the BCBS PPO. The latter plan differs from the Traditional plan in several ways. Charging Party protested and demanded bargaining. After Respondent failed to reply, Charging Party filed an unfair labor practice charge on December 1, 2004.

Discussion and Conclusions of Law:

The relevant contract provision provides bargaining unit employees with three options: HAP, BCBS Traditional, BCBS PPO or any other comparable plan. Significantly, these plans are provided "at the employee's option." Respondent unilaterally withdrew one of the options available to employees, the BCBS Traditional plan, without bargaining and without offering "any other comparable plan." It simply reduced, from three to two, the number of options available to bargaining unit employees.

It is well-established that if a public employer takes unilateral action on a mandatory subject of bargaining before reaching an impasse in negotiations, the employer commits an unfair labor practice. *Local 1467, International Ass'n of Firefighters, AFL-CIO v Portage*, 134 Mich App 466, 472 (1984). We hold that Respondent's withdrawal of one health care plan option without bargaining was a violation of its obligation under 10(1)(e) of PERA.

We have considered all other arguments presented by Respondent and conclude that they would not change the result in this case.

[3] The Metro Health Plan is referred to as the HAP Plan.

ORDER

The Commission adopts as its Order the Order recommended by the ALJ.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated_____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Respondent–Public Employer,

Case No. C04 L-311

- and -

WAYNE COUNTY COMMUNITY COLLEGE PROFESSIONAL AND ADMINISTRATIVE ASSOCIATION, MFT LOCAL 4467,
Charging Party–Labor Organization.
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Gillian H. Talwar, Esq., Mark H. Cousens, Esq., for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was scheduled to be heard in Detroit, Michigan, on August 31, 2005, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. In lieu of a hearing, the parties stipulated to the facts and exhibits. Based on the record and the parties' post-hearing briefs filed by November 2, 2005, I make the following facts and conclusions of law.

The Unfair Labor Practice Charge:

On December 1, 2004, Charging Party Wayne County Community College Professional and Administrative Association, MFT Local 4467 filed the following unfair labor practice charge against Respondent Wayne County Community College District:

> Wayne County Community College unilaterally changed the medical benefits without bargaining the benefits or the impact of this change. The Union has a contract which states that medical benefits will be reopened for negotiation on 1/1/05. The Union has attempted in three letters to discuss this matter. The college has refused to respond to the Union's request.

Facts:

The facts are undisputed. Charging Party Wayne County Community College Professional and Administrative Association, MFT Local 4467, represents administrative and supervisory personnel employed by Respondent Wayne County Community College District. The parties' collective bargaining agreement, which contains a grievance procedure that ends in binding arbitration, covers the period July 1, 2003 to June 30, 2008. Article XXIII, A.4.a reads:

> The Employer agrees to pay the necessary premiums to provide at the employee's option either the Metro Health Plan (Plus Program) or the Blue Cross/Blue Shield Plan (MVF-2 with Master Medical Option IV and Non-Deductible Prescription Drug Rider), or Blue Cross/Blue Shield Community Blue PPO or any other comparable plan for each full-time employee, spouse, and dependent children.

The parties refer to the three health care plans as HAP, BCBS Traditional and BCBS PPO, respectively. The HAP and BCBS Traditional plans have been offered since at least 1977. The BCBS PPO was first added in 2001 and was included in the parties' 1998 to 2003 collective bargaining agreement. As of November 1, 2004, the number of all WCCD full-time employees and P&AA members enrolled in the three plans was as follows:

	All Full-time Employees	P&AA Members
HAP	88	20
BCBS Traditional	170	33
BCBS PPO	222	39

On October 27 and November 2, 2004, Respondent sent letters to all BCBS Traditional plan subscribers informing them that effective January 1, 2005, the BCBS Traditional plan would be eliminated. Subscribers were advised that during an open enrollment period from November 15, 2004 to December 3, 2004, they must select a new plan – HAP or BCBS PPO – or on January 1, 2005 they would be enrolled in the BCBS PPO. The PPO plans differs from the Traditional plan in several important ways. One significant difference is that the PPO plan includes a roster of "in network" health care providers. If a subscriber uses providers outside of the "network," certain preventive services are not covered and many services are only covered up to 80 percent after deductibles.

Between November 1 and November 14, 2004, Charging Party sent several e-mails to Respondent protesting the changes without to negotiations, requesting Respondent to cease and desist from making unilateral changes in health insurance and demanding to bargain. Respondent did not respond to any of Charging Party's e-mails.

Conclusions of Law:

Charging Party claims that Respondent repudiated the contract and violated its duty to bargain when it eliminated the BCBS Traditional plan as a health care option available to its members. Respondent argues that Article XXIII, A.4.a of the contract gives it the right to alter medical insurance coverage as long as change results in coverage that is no worse than the eliminated coverage. It contends that Charging Party's challenge to its decision to eliminate the

Traditional plan constitutes a bona fide, good faith dispute over the interpretation of the contract. Respondent further asserts that it has no duty to bargain because the subject matter of the dispute is covered by and contained in the contract. Moreover, according to Respondent, Charging Party has not filed a grievance although the contract contains a grievance procedure that ends in binding arbitration.

The Commission has declared that it will not involve itself with contract interpretation except when there is a repudiation of the collective bargaining agreement. *Co of Oakland (Sheriff's Dep't*), 1983 MERC Lab Op 538. The Commission has found unlawful unilateral changes where the employer has committed substantial breaches of its contractual obligations tantamount to a renunciation of the collect bargaining agreement *City of Detroit, Dep't of Transportation*, 1984 MERC Lab Op 937, *aff'd* 150 Mich App 605 (1985); *City of Highland Park*, 1982 MERC Lab Op 75, 77; *Jonesville Bd of Ed*, 1980 MERC Lab Op 891. Repudiation exists only when (1) the contract breach is substantial and has a significant impact on the bargaining unit, and (2) no bona fide dispute over interpretation over the contract is involved. *Plymouth-Canton Cmty Sch*, 1984 MERC Lab Op 894, 897; *Twp of Redford Police Dep't*, 1994 MERC Lab Op 49, 56 (no exceptions); *Linden Cmty Sch*, 993 MERC Lab Op 763 (no exceptions).Repudiation has been described as a rewriting of the contract, or a complete disregard for the contract as written. *Gibraltar Custodial-Maintenance Ass'n*, 16 MPER 36 (2003); *Central MI Univ*, 1997 MERC Lab Op 501; *Redford Twp Bd of Ed*, 1992 MERC Lab Op 894.

I find no merit to any of Respondent's arguments. Contrary to its contention, the dispute does not involve a good faith, bona fide contract dispute. In clear and unambiguous terms, Article XXIII, A.4.a provides that Respondent will pay premiums to provide employees with three options: HAP, BCBS Traditional, BCBS PPO or a plan comparable to these. The parties' use of the word "or" in Article XXIII, A.4.a indicates their intent to give employees the ability to select one of these plans. The word "or" denotes an alternative, such as in "sink or swim," or "coffee or tea." If Respondent had offered an alternative plan, an argument could be made that a bona fide dispute exists over whether the replacement plan was "comparable" to the one eliminated. Here, however, Respondent simply excluded one of the employees' options without offering an alternative plan. Respondent has in effect erased the BCBS Traditional plan from the contract. I find, therefore, that Respondent acted with a complete disregard for the contract as written. Its conduct is clear evidence of a unilateral change and a violation of Respondent's obligation under PERA.

I also find that contract breach was substantial and had a significant impact on the bargaining unit. Bargaining unit members have a right to rely upon the terms and conditions set forth in the contract and to expect that they would continue unchanged. *Detroit Bd of Ed*, 2000 MERC Lab Op 375, 377. Universally, health care is one on the most important components of employees' fringe benefits packages. Respondent's unilateral elimination of the BCBS Traditional plan not only impacted the thirty-three bargaining unit members who were enrolled in the plan, but other members whose choices have been reduced. I conclude that Respondent violated Section 10(1)(e) of PERA when it eliminated the BCBS Traditional plan without reaching agreement of impasse with Charging Party.

I have carefully considered all other arguments advanced by the parties and conclude that they do not warrant a change in the result. Included is Charging Party's argument that

Respondent violated PERA by engaging in direct dealing with employees concerning a mandatory subject of bargaining. The allegation is not part of the charge and the charge has not been amended. Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

Recommended Order

Pursuant to Section 16(b) of the Public Employment Relations Act, Respondent Wayne County Community College District, its officers, agents and representatives, shall:

1. Cease and desist from repudiating the parties' collective bargaining agreement's health care plan options available to members of Wayne County Community College Professional and Administrative Association, MFT Local 4467, without reaching agreement or impasse with the Union.

2. Make the employees represented by Wayne County Community College Professional and Administrative Association, MT Local 4467 whole for losses they suffered because of its unilateral decision to eliminate the BCBS Traditional health care plan, with interest on the amount owed at the statutory rate of five percent per annum, computed quarterly.

3. Post the attached notice on Respondent's premises, in a place or places where notices to employees are customarily posted, for a period of thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____