STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT HOUSING COMMISSION,
Public Employer – Respondent,

Case No. C05 E-104

-and-

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25,
and its LOCALS 23 and 2394,
Labor Organizations – Charging Parties.
_____/

APPEARANCES:

Keller Thoma, P.C., by Dennis B. DuBay, Esq., (on exceptions) and Angela Williams, Esq., for the Respondent

Jimmy A. Hearns, AFSCME Administrative Director, and Martens, Ice, Klass, Legghio & Israel, P.C., by Renate Klass, Esq., for the Charging Parties

DECISION AND ORDER

On February 28, 2007, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. On September 9, 2008, the Commission received a letter from Charging Parties indicating that the dispute underlying the charge had been settled and requesting that the charge be withdrawn. Charging Parties' request is hereby approved. This Decision and Order and the Decision and Recommended Order of the Administrative Law Judge will be published in accordance with Commission policy.

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: _____

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APPEARANCES:

Angela Williams, for the Respondent

Martens, Ice, Klass, Legghio & Israel, P.C., by Renate Klass, 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 December 8, 2005, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission (MERC). Based upon the entire record, including the transcript of hearing, exhibits and post-hearing briefs filed by the parties on or before March 15, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Procedural History:

The American Federation of State, County and Municipal Employees (AFSCME) Council 25, Local 23 is the exclusive bargaining representative for a unit of nonsupervisory employees of Respondent Detroit Housing Commission (DHC), as well as certain nonsupervisory employees of the City of Detroit. AFSCME Local 2394 represents a supervisory bargaining unit consisting of both DHC and City employees. At the time of hearing in this matter, the DHC had approximately 185-190 total employees, including more than 20 employees in the bargaining unit represented by Local 23 and approximately 7-8 employees in the unit represented by Local 2394.

On May 12, 2005, AFSCME Council 25 and its Local 23 filed an unfair labor practice (ULP) charge alleging that the DHC violated Sections 10(1)(a) and (e) of PERA by ordering the

president of Local 23 to return to work for the DHC and stop devoting himself to Union duties and responsibilities on a full-time basis. The charge further alleges that the DHC repudiated the contract by failing to pay step increases due to bargaining unit members. Respondent filed an answer to the charge on May 24, 2005. On October 14, 2005, AFSCME moved to amend the charge to add Local 2394 as a Charging Party in this matter. I granted the motion to amend in an order entered on November 9, 2005.

An evidentiary hearing was scheduled for October 4, 2005. On October 3, the DHC filed a motion for summary disposition asserting that the allegation concerning the local president is moot and that the charge should be dismissed because the Unions had failed to exhaust their contractual remedies by filing grievances regarding both allegations. The Unions filed a position statement on November 7, 2005, along with a cross-motion for summary disposition. The DHC filed its position statement and response to the Unions' cross-motion for summary disposition on December 5, 2005. On December 8, 2005, I denied both motions on the ground that there were outstanding issues of material fact which warranted resolution at an evidentiary hearing.

Findings of Fact:

I. Background

Prior to 1996, the Detroit Housing Department, as the DHC was then known, was a department of the City of Detroit and not itself a separate public employer under PERA. In June of 1996, the Legislature amended the housing facilities act, MCL 125.651 *et seq*., establishing housing commissions as distinct public bodies corporate with enumerated independent powers and authorities. Among the powers conferred on such commissions was the authority to employ and fix the compensation of their directors and other employees and to prescribe the duties of those persons. MCL 125.655(3).

In 1998, the mayor of the City of Detroit prepared a memorandum of understanding and related ordinances, seeking to establish the DHC as a separate entity. The City council rejected the proposals and employees of the DHC continued to be treated as City employees for all purposes and in all regards. Approximately three years later, the mayor presented another proposed ordinance to the City council to make the DHC an independent entity. Once again, the City council rejected the proposal and instead approved its own ordinance declaring that all present and future DHC employees would remain employees of the City.

Thereafter, the City, the City council, the DHC and AFSCME became embroiled in extensive and lengthy litigation over whether the 1996 amendment to the housing facilities act gave the City the power to divest itself of the DHC. Finally, in a decision issued on June 17, 2003, the state's Supreme Court held that the DHC did not need the approval of the City council to effectuate the separation because the housing facilities act, by operation of law, severed the employment relationship between the City and DHC employees. *AFSCME v City of Detroit*, 468 Mich 388 (2003).

Throughout the litigation, the City and the DHC repeatedly and consistently maintained that the DHC would recognize AFSCME as the exclusive bargaining representative of DHC employees and that it would honor the terms of the parties' existing contracts. For example, in their brief to the Court of Appeals, the DHC and the City asserted:

> [A]llowing the City to proceed with the separation of DHC will not irrevocably prejudice AFSCME's ability to bargain over the terms and conditions of employment of employees of the independent DHC. AFSCME employees will not be substantively affected. The City and the DHC are obliged, and intend, to honor the successor clause and the DHC has explicitly agreed to assume the terms of the AFSCME Agreements, and to provide comparable terms and conditions with regard to those few provisions that, through no fault of Defendants, cannot be implemented, until alternative terms have been negotiated. No jobs will be lost, no pay will [be] cut, no benefits will be diminished, and AFSCME will continue to represent the same number of employees it currently represents. (Emphasis in original.) (Citations omitted.)

II. Relevant Contract Provisions

The most recent supervisory and non-supervisory contracts between the City of Detroit and AFSCME cover the period July 1, 2001 to June 30, 2005. Each of the master agreements contain a "Successor Clause" which provides:

> This Agreement shall be binding upon the successors and assignees of the parties hereto, and no provisions, terms or obligations herein contained shall be affected, modified, altered or changed to the detriment of the other party in any respect whatsoever by the consolidation, merger, sale, transfer, lease, or assignment of either party hereto, or affected, modified, altered, or changed in any respect whatsoever by a change of any kind in the ownership or management of either party hereto of any separable, independent segment of either party hereto.

Both the supervisory and non-supervisory agreements also contain a grievance procedure for non-disciplinary disputes culminating in final and binding arbitration, and each provide for "automatic" step increases to be paid to both hourly and salaried employees on an annual or semi-annual basis.

A supplemental agreement to the non-supervisory contract extends union release time on a full-time basis to all of the local presidents covered by the agreement as of July 1, 2001, including the president of Charging Party Local 23. Specifically, the MOU states that the local presidents "shall be permitted to devote full time to their various Union duties and responsibilities." The MOU further provides that the presidents "shall work full time solely on matters pertaining to their respective local unions and the bona fide City of Detroit/AFSCME contract-servicing duties as prescribed to them by the AFSCME Council 25 President . . . ."

III. Separation of the DHC from the City

Following the issuance of the Supreme Court's 2003 decision finding the DHC to be an independent entity by operation of law, the DHC and the Unions had numerous discussions concerning the separation and its potential impact on DHC employees. During those discussions, the parties mutually agreed that certain terms and conditions set forth in the existing master agreements would have to be modified once the separation became effective. For example, the parties recognized that unless the City council decided to allow DHC employees to continue in the

City's health care and pension plans, the DHC would have to establish new benefit plans for its employees.

In June or July of 2004, Ollie Freeman, then personnel director of the DHC, contacted Jimmy Hearns, the AFSCME staff representative who has been assigned to Locals 23 and 2394 since about 1995. Freeman told Hearns that he wanted to know how to calculate the step increases due to members of the AFSCME bargaining units under the terms of the existing master agreements. Hearns explained the process to Freeman, who thanked him for the information. Around the same time, employees affected by the separation were given the option of becoming DHC employees or remaining employees of the City. The DHC formally declared itself to be a separate and independent employer effective August 1, 2004.

Following the effective date of separation, the DHC set up new health care and pension plans for its employees. Charging Parties decided to accept the new health care plan after concluding that it was substantially similar to the plan available to bargaining unit members under the existing contracts. The Unions also decided not to oppose the new DHC pension plan, which allowed its members to vest earlier than under the City's plan. In addition to these modifications, the DHC also changed from paper to electronic timekeeping and imposed a new uniform requirement on certain members of Local 2394. When AFSCME complained about the uniform requirement, the DHC agreed to reimburse members for the cost of the uniforms and the issue was resolved.

On September 10, 2004, the DHC's executive director, Cassandra Smith Gray, wrote a letter to AFSCME recognizing the Union as the bargaining agent for employees in Locals 23 and 2394 and acknowledging the successor clause in the existing contracts "to the extent required under Federal and State law" and inviting Charging Parties to begin negotiations on a new collective bargaining agreement. By this letter and its other actions throughout this process, the DHC assumed the contractual obligations of the City of Detroit and converted the collective bargaining agreements and supplemental agreements which originally bound the City and AFSCME into contracts between the DHC and AFSCME.

Around the same time, the parties met to discuss bargaining a new master agreement to replace the existing City contracts which were scheduled to expire on June 30, 2005. At those meetings, the DHC introduced labor relations consultant Huey Ferguson as the individual who was authorized to bargain on its behalf. Ferguson was hired by the DHC as a consultant in October of 2004 for the purpose of negotiating collective bargaining agreements for the DHC. At the time, Ferguson had worked in the labor relations field for 32 years, most recently as the labor relations director for Wayne County.

IV. Alleged Changes in Terms and Conditions of Employment

In May of 2005, Hearns received a telephone call from Robert Stokes, the president of AFSCME Local 23. Stokes indicated that he had been ordered by the DHC to give up his union release time and return to work for Respondent on a full-time basis. Hearns immediately contacted Ferguson and arranged a meeting between the parties for May 3, 2005. On that date, Ferguson told Hearns that Stokes would have to report to work full-time for the DHC and that he would no longer be allowed to devote all of his time to union responsibilities. Hearns asked Ferguson to put the issue on the bargaining table as a DHC proposal and urged him not to "upset the apple cart." In

addition, Hearns asserted to Ferguson that the DHC could not pick and chose which contract terms it would honor. Ferguson responded, "Sure we can. We're not even paying step increases."

Hearns and Stokes testified that prior to May of 2005, they were unaware that the DHC was not honoring the step increase provisions set forth in the existing agreements.[1] Local 2394 president Yolanda King testified that she did not become aware of the DHC's failure to pay step increases until October of 2005. In contrast, Ferguson asserted that Hearns first raised the issue of the DHC's failure to pay step increases at a bargaining session in the middle of November 2004, and that Stokes thereafter made additional inquiries to Ferguson concerning the status of the step increases. Hearns and Stokes emphatically denied Ferguson's testimony concerning the November 2004 meeting and its immediate aftermath, and I found the Union's witnesses to be credible with respect to this matter. In making this determination, I note that although Ferguson testified that there were approximately nine or ten other people at the November 2004 meeting, the DHC failed to call any other witnesses or introduce any documentary evidence to corroborate his testimony. I also doubt that an experienced union representative such as Hearns would have sat idly by for six months had he actually been aware of the DHC's complete failure to pay the required step increases. In fact, as set forth below, Hearns did take several substantive steps to remedy the DHC's alleged repudiation almost immediately following his May 3 meeting with Ferguson. Given that there is no other evidence in the record to suggest that Hearns, Stokes, King or any other AFSCME representative was aware of the DHC's nonpayment of wages before May of 2005, or that any bargaining unit member was aware of or complained to the Union about the step increases, I fully credit the account of the Union witnesses in this regard.

According to Ferguson, the decision to order Stoke to return to work full-time for the DHC was made by Respondent's director of administrative services, Girard Phillips. Following the May 3rd meeting between Ferguson and Hearns, Ferguson reported back to Phillips and conveyed Hearns' suggestion that the issue pertaining to Stokes should be tabled for discussion during bargaining on a new contract. Phillips refused to reconsider the directive, telling Ferguson that Stokes "had to go back to work." Thereafter, Ferguson wrote the following letter to AFSCME, dated May 11, 2005:

> This is a follow-up to our meeting of May 03, 2005, when it was indicated that Mr. Robert Stokes, Vermin Exterminator, must return to work on a full-time basis effective May 16, 2005.
>
> Subsequent to our meeting, I met with the Chief Administrative Officer (CAO) to review the Union's position as presented by you. Following the discussion with the CAO, the directive is still in effect. As stated at the above referenced meeting, the Detroit Housing Commission is not party to the Collective Bargaining Agreement negotiated between the City of Detroit and AFSCME, Local 23 or 2394. In addition, we are not bound by any agreement negotiated by the previous employer. Therefore, any agreement Mr. Stokes may have had with the City of Detroit has no affect [sic] with this Employer. Mr. Stokes is to report to his supervisor, Mr. Cornell Clarke or his representative at the beginning of his shift on Monday, May 16, 2005.

[1] At the time, Stokes was already at the highest step and, therefore, was not himself eligible for a step increase. In fact, the evidence suggests that only one or possibly two AFSCME-represented employees would have been eligible for a step increase during the period between August of 2004 and the middle of November of that year.

Following receipt of the letter from Ferguson, AFSCME Local 23 filed the instant charge, along with grievances concerning the DHC's failure pay step increases and its refusal to honor the union release time provision in the non-supervisory contract. In addition, the Union sought injunctive relief from the Wayne County Circuit Court pursuant to Section 16(h) of PERA, MCL 423.216(h). On May 18, 2005, Wayne County Circuit Court Judge Wendy Baxter issued a temporary restraining order enjoining the DHC from directing Stokes to cease devoting himself full time to union responsibilities and from directing that he report to work for the DHC. However, the court concluded that AFSCME had failed to demonstrate irreparable harm with respect to the nonpayment of step increases and refused to issue injunctive relief as to that portion of the complaint.

On May 24, 2005, Respondent filed an answer to the unfair labor practice charge. In its answer, the DHC alleged that it had been unaware of "the extent of the successor clause" in the existing contracts and the "promises to maintain the status quo" made by Respondent's former executive director. Although Respondent acknowledged that it had withdrawn the directive that Stokes return to work full-time for the DHC, it asserted that it "can no longer live [sic] comply with the terms and conditions of past agreements with Petitioner" because of budgetary constraints. Respondent did not assert a statute of limitations defense in its answer.

On June 21, 2005, Respondent, in an apparent retaliatory response to AFSCME's efforts to enforce its rights under PERA, notified Charging Parties in writing that if was determined through litigation that the DHC was bound by the terms and conditions of the contracts negotiated between the Unions and the City of Detroit, the DHC was, as of June 21, 2005, exercising its claimed right to terminate the agreements.

Following an October 3, 2005 prehearing conference before the undersigned, the parties met on October 20 in an attempt to resolve the issues set forth in the charge and for the purpose of negotiating a new contract. In attendance at that meeting were Hearns, Stokes, King, Freeman, DHC human resources director Mark Ulicny, and Respondent's attorney, Angela Williams. At the conclusion of the meeting, Ulicny handed Stokes a letter on DHC letterhead ordering him to report for work at the DHC effective October 24, 2005. The letter, which was dated October 20, 2005 and signed by Ulicny, specified that Stokes' work schedule would be "12 noon to 8:00 p.m. each workday, until further notice." Hearns immediately objected to the directive as being violative of the injunction issued by the circuit court and told the DHC's representatives that he would be contacting AFSCME's attorney, Renate Klass. Later that day, Klass sent an e-mail to Williams threatening that the Union would seek immediate relief from the circuit court if the DHC did not withdraw the order. On October 21, 2005, Patricia Baines-Lake, deputy director of the DHC rescinded the order issued by Ulicny the previous day, asserting that the human resources director was "acting independently" when he ordered Stokes to return to work.

At the hearing in this matter, Baines-Lake testified that she did not authorize Ulicny to order Stokes to return to work and that she first learned that the directive had been issued when she encountered Hearns in the parking lot following the conclusion of the October 20, 2005, meeting. Baines-Lake asserted that she immediately contacted Ulicny, who told her that the letter had merely been in a stack of papers he was carrying around at the time and that he "accidentally" gave it to Stokes. According to Baines-Lake, Ulicny indicated that the letter was "just something he was fooling around with" and that he "never meant to issue it to anyone." Ulicny himself did not testify

in this matter, and I draw a negative inference from the fact the DHC did not call him to appear as a witness. In any event, the scenario of events offered by Baines-Lake to explain the October 20th letter is so utterly implausible that I decline to give it any credence, nor do I believe, based upon her demeanor on the witness stand, that Baines-Lake herself actually accepted as true the account allegedly told to her by Ulicny. In making this finding, I also note the admission by Baines-Lake that she was aware of AFSCME's threat to take the matter to circuit court when she rescinded the directive to Stokes. I also draw a negative inference from the failure of Respondent to call Williams to testify regarding the events surrounding the October 20 meeting.

At the start of the hearing, the DHC stipulated that it recognizes AFSCME as the bargaining agent for employees in the supervisory and non-supervisory units described above, and that it is bound by the successor clause in the existing master agreements between the Unions and the City of Detroit. In addition, Respondent stipulated that it has not paid step increases to members of the AFSCME bargaining units since the separation became effective in August of 2004. Finally, Respondent stipulated that "Huey Ferguson of the Detroit Housing Commission" gave Hearns the May 11, 2005, letter directing Stokes return to full-time work at the DHC.

Discussion and Conclusions of Law:

Charging Parties contend that the DHC's directive that Stokes return to work, its letter renouncing the contracts, and its complete failure to pay step increases constitute a repudiation of the existing master agreements in violation of PERA. Respondent counters that these allegations constitute, at best, a breach of contract which should be resolved pursuant to the grievance procedure set forth in those same agreements. The DHC further asserts that the charge is time-barred because the Unions knew or should have known that step increases had not been paid to any of its members more than six months prior to the filing of the charge. With respect to the issue of union release time, Respondent contends that the directives issued to Stokes were not unlawful because both the DHC's labor relations consultant and its human resources director lacked actual authority to revoke or repudiate the contracts. Respondent further contends that the issue is moot because the directives have since been rescinded and because the DHC has exercised its right to terminate the agreement. Finally, Respondent asserts that the acceptance by Charging Parties of certain changes in benefits and working conditions constituted a novation so as to render the existing contracts null and void. I find none of Respondent's arguments persuasive.

First, I conclude that there is no merit to Respondent's contention that the allegations set forth in the charge are merely contract disputes which should be resolved through the grievance procedure. Although the Commission does not enforce collective bargaining agreements per se, it does have the authority to interpret contracts to determine whether an unfair labor practice has been committed. An alleged breach of contract will constitute a violation of PERA if a repudiation can be demonstrated. See e.g. *City of Detroit (Transp Dept)*, 1984 MERC Lab Op 937, aff'd 150 Mich App 605 (1985); *Jonesville Bd of Ed*, 1980 MERC Lab Op 891, 900-901. Repudiation exists when 1) the contract breach is substantial, and has a significant impact on the bargaining unit and 2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Comm Sch*, 1984 MERC Lab Op 894, 897. The Commission will find repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960.

As noted, Respondent now concedes that it is bound by the existing master agreements and

that it has an obligation to negotiate with Charging Parties as the exclusive bargaining representatives of its employees. In addition, Respondent admits that it has failed to pay step increases as required under the contracts since August of 2004, and that in May of 2005 its labor relations consultant ordered Stokes to return to work full-time for the DHC. Neither at hearing or in its post-hearing brief has Respondent alleged that the nonpayment of step increases and the failure to abide by the union release time provision was the result of any bona fide dispute over the meaning of the existing agreements, nor is there evidence in the record suggesting the existence of any good faith dispute over interpretation of the contracts. Clearly, the DHC's actions in connection with this matter constitute a significant breach of its obligations under the master agreements. Step increases have not been paid to bargaining unit members for a considerable period of time, and the local president has been ordered on two separate occasions to discontinue his duties as full-time union representative. Such actions can in no way be characterized as isolated or insubstantial. Thus, I conclude that Respondent, by these actions, has repudiated its agreements with Charging Parties in violation of Section 10(1)(e) of PERA.

The provision in the supplemental agreement guaranteeing release time to the AFSCME local presidents was expressly and voluntarily agreed to by the City of Detroit and, as described above, that obligation was later voluntarily assumed and, for a brief period time following the DHC's separation from the City, complied with by Respondent. The presumptive purpose of such release time is to promote stable labor relations between the parties by creating a mechanism for the prompt administration of labor disputes, for the policing of the contracts and for facilitating the process of the negotiation of new collective bargaining agreements. I find that by ordering the local president to give up his union release time in clear violation of the supplemental agreement and later, in direct contravention of a court order, Respondent has also unlawfully interfered with employees' protected rights in violation of Section 10(1)(a) of the Act.

Respondent contends that it had no obligation to pay the step increases required under the master agreements or to comply with the union release time provision in the supplemental agreement because, on or about July 1, 2005, the DHC exercised its right under "Article 52" to terminate the agreements. First, neither party introduced "Article 52" into evidence in this matter. Even assuming, however, that either party had the right to terminate the contracts, such termination would not give the Employer the authority to make wholesale changes in mandatory terms and conditions of employment without first bargaining with AFSCME. Under Section 15 of PERA, a public employer has a duty to bargain in good faith with respect to mandatory subjects of bargaining, i.e., wages, hours and other terms and conditions of employment. MCL 423.215(1). It is well-established that this obligation to bargain in good faith continues after the *expiration or the termination* of the collective bargaining agreement. *Local 1467, IAFF v Portage*, 134 Mich App 466, 472-473 (1984); *Gibraltar School District*, 1995 MERC Lab Op 522, 528. The payment of step increases is a mandatory subject of bargaining under PERA, and the unilateral refusal of an employer to pay step increases in accord with the terms of an expired or terminated contract prior to impasse is an unfair labor practice. *Wayne County (Attorney Unit)*, 1995 MERC Lab Op 199, 202. Similarly, the Commission has held that union release time is a mandatory subject of bargaining. *Central Michigan Univ*, 1994 MERC Lab Op 527, 530-531, aff'd 217 Mich App 136 (1996).

Respondent asserts that the it should not be found to have violated PERA because Ferguson was merely a labor relations consultant to the DHC and was acting without the requisite authority of the Employer when, in May of 2005, he ordered Stokes to return to work and, contrary to the prior agreements by the DHC, asserted for the first time that Respondent was not bound by any of the terms of the existing collective bargaining agreements. According to Respondent, only the

DHC's executive director and its deputy director have "the authority to revoke or repudiate the contract[s]". I find this argument to be specious, at best. Ferguson testified that he was acting at the direction of Girard Phillips, the DHC's director of administrative services, when he ordered Stokes to return to work. Moreover, Ferguson was hired by Respondent to negotiate contracts on its behalf, and he was introduced to AFSCME officials in the fall of 2004 as the DHC's principal bargaining representative. The Union is not only entitled, it is in fact obliged, to accept the Employer's designation of its representatives. Clearly, Ferguson had both the apparent and actual authority to act on the DHC's behalf in communicating with the Union, and it is simply disingenuous for Respondent to suggest otherwise. Similarly, I find that Ulicny, as Respondent's director of human resources, had both the apparent and actual authority to order Stokes to return to work when, on behalf of the DHC, he issued that directive to AFSCME representatives in writing at the conclusion of the October 20, 2005 bargaining session.

Respondent's remaining arguments require little discussion. The concept of "novation" as asserted by the DHC has no relevance in this context.[2] Although an employer is prohibited under PERA from unilaterally modifying the terms and conditions of an existing contract, the parties are always free to voluntarily discuss and agree upon changes to the terms and conditions set forth in the collective bargaining agreement. See e.g. *St. Clair Intermediate Sch Dist v MEA*, 458 Mich 540, 564-566 (1998). This does not mean, however, that an agreement to modify a particular provision renders the remainder of the contract null and void, nor is there any evidence in the record even suggesting that Charging Parties' acquiescence to certain modifications constituted an agreement by AFSCME to forgo to all of its rights under the existing contracts. In fact, the record establishes that the parties both recognized prior to August of 2004 that certain terms and conditions set forth in the agreement, including healthcare and pension benefits, would likely no longer be enforceable or practicable following the separation and would have to be modified once the DHC began operating as an independent employer. Moreover, it should be noted that when AFSCME did object to one of the contract modifications proposed by Respondent, the parties engaged in collective bargaining over the change which led to a mutually agreed upon settlement of the issue, as is anticipated under PERA.

I also find no merit to Respondent's contention that AFSCME's allegation concerning the nonpayment of step increases is time-barred. Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The limitations period under PERA commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). Here, there is no credible evidence in the record that any bargaining unit member or AFSCME representative knew of the DHC's nonpayment of step increases more than six months prior to the filing of the charge on May 12, 2005.[3]

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[2] For the Commission to accept this novel defense would additionally and improperly require releasing the Employer from the assurances it made to AFSCME and the courts in the prior appellate proceedings.

[3] As described above I do not credit Ferguson's testimony that Hearns first raised the issue of nonpayment of step increases at a meeting with Respondent in November of 2004. Even if I had found Ferguson's testimony credible, however, it does not necessarily follow that the charge was untimely since the exact date upon which that meeting occurred is unclear from the record. Moreover, it is clear from the text of Ferguson's May 11, 2005, letter to AFSCME that even Ferguson, at that time, characterized the parties' May 3, 2005, meetings as being the first time that Respondent articulated its claim that it was not bound by the collective bargaining agreements.

I have carefully considered all other arguments asserted by Respondent, including its contention that Charging Parties' allegations are moot, and have determined that they do not warrant a change in the result. I find that Respondent's refusal to pay step increases due to bargaining unit members under the terms of the existing collective bargaining agreements constituted a violation of Section 10(1)(e) of PERA, and Respondent violated Sections 10(1)(a) and (e) of the Act when it ordered the president of Local 23 to return to work for the DHC and stop devoting himself full-time to Union duties and responsibilities. In so holding, I note that this case is particular troublesome in that the pattern of behavior by this Employer evidences a clear and willful rejection of not only its obligations to AFSCME under the contracts, but of its obligations and responsibilities under PERA as well.[4] For the reasons set forth above, I hereby recommend that the Commission issue the following order:

[4] Were it not for *Goolsby v City of Detroit*, 211 Mich App 214 (1995), which I believe was wrongly decided, I would follow the Commission's earlier decision in *Wayne-Westland Community Sch Dist*, 1987 MERC Lab Op 381, aff'd sub nom *Hunter v Wayne-Westland Community School District*, 174 Mich App 330 (1989), and award attorney fees and costs to Charging Parties as compensatory damages. The record establishes that high-level representatives of the DHC willfully engaged in a pattern of unlawful conduct in an attempt to evade Respondent's bargaining obligations, and that Respondent continued these actions even after the intervention of the circuit court. Under these circumstances, I conclude that awarding compensatory damages to the Unions is reasonably necessary to deter future unlawful conduct and to meaningfully effectuate the purposes of the Act. See *Police Officers Labor Council*, 1999 MERC Lab Op 196, 202.

RECOMMENDED ORDER

Respondent Detroit Housing Commission, its officers, agents and representatives, are hereby ordered to:

1. Cease and desist from denying the existence of, or otherwise repudiating, the terms and conditions set forth in the collective bargaining agreements and supplemental agreements which were initially entered into between the City of Detroit and AFSCME Council 25 and its Locals 23 and 2394, and which were subsequently adopted by the DHC and AFSCME, by refusing to pay bargaining unit members step increases to which they are entitled under the aforementioned agreements.

2. Cease and desist from denying the existence of, or otherwise repudiating the terms and conditions set forth in the aforementioned collective bargaining agreements and supplemental agreements and interfering with the rights of employees under Section 9 of PERA by ordering local president Robert Stokes, or his successor in office, to stop devoting himself full time to union responsibilities and from directing that he report to work full-time for the DHC.

3. Cease and desist from asserting that it has terminated the aforementioned collective bargaining agreements and supplemental agreements unless and until it has first restored the status quo and fully complied with this order and with its duty to bargain in good faith over the terms and conditions of a successor agreement with Charging Parties.

4. Make bargaining unit members whole for any loss of pay, plus interest at the statutory rate of five percent annum, computed quarterly, for the period of time in which they were denied step increases because of the unlawful activity of the Detroit Housing Commission, beginning in August of 2002, with the full method of calculation disclosed to Charging Parties prior to the payment thereof.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated:_____

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, DETROIT HOUSING COMMISSION, a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

WE WILL NOT deny the existence of, or otherwise repudiate, the terms and conditions set forth in the collective bargaining agreements and supplemental agreements which were initially entered into between the City of Detroit and AFSCME Council 25 and its Locals 23 and 2394, and which were subsequently adopted by the DHC and AFSCME, by refusing to pay bargaining unit members step increases to which they are entitled under the aforementioned agreements.

WE WILL NOT deny the existence of, or otherwise repudiate the terms and conditions set forth in the aforementioned collective bargaining agreements and supplemental agreements or interfere with the rights of employees under Section 9 of PERA by ordering local president Robert Stokes, or his successor in office, to stop devoting himself full time to union responsibilities and from directing that he report to work full-time for the DHC.

WE WILL NOT assert that we have terminated the aforementioned collective bargaining agreements and supplemental agreements unless and until we have first restored the status quo and fully complied with this order and with our duty to bargain in good faith over the terms and conditions of a successor agreement with Charging Parties.

WE WILL make bargaining unit members whole for any loss of pay, plus interest at the statutory rate of five percent annum, computed quarterly, for the period of time in which they were denied step increases because of the unlawful activity of the Detroit Housing Commission, beginning in August of 2002, with the full method of calculation disclosed to Charging Parties prior to the payment thereof.

ALL of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

DETROIT HOUSING COMMISSION

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 Building, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.