STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF BAY CITY,
Public Employer-Respondent,

Case No. C06 F-151

-and-

UTILITY WORKERS OF AMERICA,
LOCAL 542,
Labor Organization-Charging Party.
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APPEARANCES:

Keller Thoma, P.C., by Richard W. Fanning, Jr. Esq., for the Respondent

Jeffrey D. Bakker, Region 4 Representative, Utility Workers of America, for the Charging Party

DECISION AND ORDER

On September 10, 2007, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent, City of Bay City, violated its duty to bargain by threatening to unilaterally implement changes in existing terms and conditions of employment during contract negotiations with Charging Party, the Utility Workers of America, Local 542. The ALJ found that Respondent violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by threatening to make proposed changes in the contributions paid by active employees and future retirees to their health care plans before the parties reached an impasse in their negotiations. The ALJ explained that while generally, an employer cannot isolate a single issue and declare impasse, it might be lawful for an employer, engaged in contract negotiations, to implement its offer on a single issue when the parties have reached impasse on it and immediate action is required. The ALJ concluded that Respondent failed to establish that impasse had been reached on the health care proposals and further failed to show that it was necessary to implement the proposed changes. The ALJ recommended that Respondent be ordered to cease and desist from threatening such changes. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

On November 2, 2007, after seeking and receiving an extension of time, Respondent filed exceptions to the ALJ's Decision and Recommended Order, a request for oral argument, and a

motion to reopen the record. In its exceptions, Respondent argues that the ALJ erred in finding it was unlawful for Respondent to threaten to impose the proposed changes unilaterally. Respondent contends the parties had reached impasse on the issue of health care and the need for immediate action made it lawful for it to implement its proposed changes. Further, Respondent asserts the ALJ's finding that the parties were not at impasse with respect to the negotiations, as a whole, is not supported by the record and legal authority. After reviewing Respondent's exceptions and brief, we find that oral argument would not materially assist us in deciding this case. Therefore, Respondent's request for oral argument is denied.

Finally, Respondent moves to reopen the record for the limited purpose of admitting the September 10, 2007 collective bargaining agreement ratified by the parties after the record was closed. It argues the dispute giving rise to this matter and the ALJ's Decision and Recommended Order are now moot, thus warranting dismissal of the unfair labor practice charge. Charging Party did not file a response to Respondent's exceptions or to Respondent's request to reopen the record. Respondent's motion to reopen the record, being unopposed, is hereby granted and the parties' collective bargaining agreement, effective during the period July 1, 2006 through June 30, 2009, is admitted.

Factual Summary:

We adopt the factual findings of the ALJ and repeat them only as necessary here.

Charging Party and Respondent were engaged in contract negotiations when the unfair labor practice charge was filed on June 27, 2006. Their collective bargaining agreement was to expire on June 30, 2006. Throughout negotiations for a successor agreement, Respondent had expressed its need for an increase in the health insurance premiums paid by bargaining unit employees. Respondent also proposed to eliminate retiree health insurance. Charging Party had rejected both proposals and had proposed alternative solutions.

In a June 14, 2006 letter to Charging Party, Respondent declared that the parties were at impasse and announced that it would implement its proposal to increase health care premiums for active employees and eliminate retiree health care coverage effective July 1, 2006. The parties held bargaining sessions on June 27 and 28. On June 29, 2006 Respondent notified Charging Party that it was voluntarily extending the parties' agreement and, by letter dated July 5, 2006, informed Charging Party that it would not be implementing its health care proposals. As of November 28, 2006, the date of the hearing in this matter, no agreement had been reached and Respondent had not implemented its June 14 proposals.

Discussion and Conclusions of Law:

When determining whether an exception on the grounds of mootness of an issue warrants dismissal of a case, the Commission has observed:

> The defense of mootness is not an uncommon one; frequently, in labor relations, the parties' underlying disputes are resolved before the legal issues can be joined and decided in the legal forum. However, we have held that, where the statutory

issues are of sufficient importance, resolution of the specific underlying dispute between the parties does not require granting a motion to dismiss for mootness, even if the employer voluntarily corrects its course of conduct.

Wayne State Univ, 1991 MERC Lab Op 496; 4 MPER 22082 (1991).

Here, the threat of implementation was withdrawn shortly after it was made; negotiations were not disrupted and, in fact, they continued until an agreement was reached on September 10, 2007. Although several employees retired in order to avoid the consequence of the threatened implementation, Charging Party did not request and the ALJ's Recommended Order does not provide a remedy for those individuals. The passage of time has diminished the significance of an order to cease and desist, and the posting of a notice might do more to rekindle tensions than to relieve them. Mootness, under these circumstances, warrants dismissal of the unfair labor practice charge.

ORDER

The unfair labor practice charge is hereby dismissed.

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:

Keller Thoma, P.C., by Richard W. Fanning, Jr. Esq., for the Respondent

Jeffrey D. Bakker, Region 4 representative, Utility Workers of America, for the 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 Lansing, Michigan on November 28, 2006, 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 February 2, 2007, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Utility Workers of America, Local 542, filed this charge against the City of Bay City on June 27, 2006. Charging Party represents a bargaining unit of about 150 nonsupervisory employees of Respondent, including clerks, custodians, parks maintenance employees, refuse collection workers, school crossing guards, and wastewater and water plant operators. In June 2006, the parties were negotiating a new collective bargaining agreement and also discussing financial incentives to induce unit employees to retire so that layoffs could be avoided. Charging Party alleges that on June 14, 2006, Respondent violated its duty to bargain in good faith by threatening to implement proposed changes in the contributions paid by active employees and future retirees to their health care plans. Charging Party maintains that the parties had not reached impasse at the time of Respondent's threat. It also asserts that Respondent's purpose was

to circumvent bargaining over retirement incentives by coercing eligible employees into retiring before the changes took effect.

Findings of Fact:

On April 3, 2006, the parties began negotiations for a collective bargaining agreement to replace their contract expiring on June 30, 2006. Charging Party's chief spokesman was Utility Workers' regional representative Jeff Bakker. Charging Party Local 542 president Ross Dean and chief steward Michael Davis were both members of Charging Party's bargaining team. Respondent's chief negotiator was management consultant William Borushko. At the first bargaining session, both parties presented offers containing between seventy-five and one hundred separate proposals. Respondent told Charging Party that two of its proposals were of prime importance. The first was a proposal to increase the bi-weekly contributions paid by unit employees toward their health insurance so that unit employees would no longer be paying less than employees in other bargaining units. The second was a proposal to eliminate health care coverage for retirees.

In April 2006, Respondent's employees were organized into three separate units represented by local unions affiliated with the Utility Workers, including Charging Party, and six bargaining units represented by other unions. Employees in all the non-Utility Workers units paid the same health insurance premiums. These premiums were about twice what employees represented by the Utility Workers paid. At the April 3 meeting, Respondent told Charging Party that it considered it absolutely essential to get the contribution rates for all units standardized at the level paid by employees in the non-Utility Workers' units. It said that these other employees, particularly employees in the police and fire departments, resented the fact that they paid higher premiums for what was essentially the same coverage. Charging Party's April 3 proposals included a decrease in the premium contribution, as well as decreases in insurance co-pays. It told Respondent that it would not agree to an increase in the premium paid by its members.

In April 2006, Respondent paid the entire cost of Blue Cross/Blue Shield health care for retirees in Charging Party's unit and their dependents. Respondent's contracts with its non-Utility Workers unions all required some sort of contribution from retirees in the form of premiums and/or co-pays. As noted above, on April 3, Respondent proposed to eliminate retiree health insurance for Charging Party's unit. Charging Party rejected this proposal.

The parties held bargaining sessions on April 4, 12, 13, 27 and 28. During the parties' discussion of economic issues, Respondent told Charging Party that it had a single pool of money available to pay wages and benefits and that how Charging Party wanted this money distributed was basically up to it. The parties reached tentative agreements on a number of issues at the April meetings, including increases in employees' tool and boot allowances. Major economic items, including wages, were not resolved. It was not clear whether the parties discussed health care premiums for active, i.e. not retired, employees at these meetings. Charging Party president Dean testified that Charging Party made a second proposal on this issue after April 3, although he could not recall the substance of this proposal or when it was made. Respondent chief negotiator Borushko testified that Respondent did not receive a proposal from Charging Party addressing premiums for active employees at any time between April 3 and June

14. I credit Borushko's testimony on this point. At one of these April bargaining sessions, Respondent told Charging Party that it would agree to continue to provide retiree health care benefits if retirees contributed something toward the cost. Charging Party rejected the idea. It argued that prior contracts constituted a promise to employees that they would not have to pay toward the cost of their health insurance after retirement.

On April 19, 2006, Respondent's city manager Robert Belleman sent Dean a formal notice that, because of its budget deficit, Respondent intended to eliminate bargaining unit positions and lay off unit employees effective July 1, 2006. In his letter to Dean, Belleman suggested that the parties meet to discuss the position eliminations and layoffs as soon as possible. Around this time, Respondent's city commission passed a resolution directing Respondent's administrators to investigate the possibility of buyouts to reduce the need for layoffs. Belleman wrote again to Dean on May 4. In this letter, Belleman pointed out that there were eighteen employees in Charging Party's bargaining unit who were eligible to retire and asked Charging Party to consider buyouts.

The parties did not meet again until their scheduled bargaining session on May 23. At this meeting, either Respondent or Charging Party suggested – according to Dean, Borushko referred to this as an "idea balloon" - that Respondent pay a lump-sum to unit employees who retired within a specific period. It is not clear whether either party mentioned a specific sum at that meeting. The parties met again on May 24, 25, 30 and 31, and June 1 and 8. During one of these meetings, Charging Party suggested that Respondent establish and fund retirement health savings accounts for employees. Respondent stated that it would consider the idea. Dean testified that Charging Party's purpose in proposing these savings accounts was to soften the impact on retirees of having to contribute toward their health care costs. However, Dean could not recall what Charging Party said during negotiations about the link between health care savings accounts and its position on retiree contributions toward their health care. According to Borushko, Charging Party said that these savings accounts would be a funding mechanism to help employees who in the future might retire with health care costs. Borushko testified that Charging Party never said that it would be willing to agree to retiree health care contributions in the current contract if Respondent agreed to a funding mechanism. I credit Borushko's testimony on this point.

On either May 23 or May 25, Respondent presented Charging Party with a second written proposal addressing retiree health care. The proposal read as follows:

> The City will provide fully paid Blue Cross/Blue Shield or equivalent healthcare coverage for eligible retirees and their dependents; with the exception that the prescription drug co-pays, and any other required co-pay and/or required deductibles shall remain equal to those in place at the time of their eligible retirement, until such time as they reach 65 years of age and are eligible for Medicare coverage. For any employee who retires after January 1, 2009, the prescription drug co-pays and any other required co-pays or deductibles shall be equal to those in place for current City employees. [1]

[1] On May 30, Respondent added the following sentence to its proposal, "For the purposes of healthcare benefit coverage, the term "eligible shall mean the same as "eligibility" for retirement under MERS benefit program B-4,

Respondent explained that it would continue to pay the full premium, without deductibles or co-pays, for all unit employees who retired during the term of any previous contract, including anyone who retired on or before July 1, 2006. Charging Party's response was that it would not agree to co-pays or contributions for retirees. Borushko testified that he told Charging Party that with this proposal, Respondent had reached "the end of the line on retiree health care" and that it did not have any more room to move. Although Dean testified that he did not remember Borushko making this statement, I credit Borushko's testimony on this point.

At the June 1 bargaining session, a representative of the Municipal Employees Retirement System (MERS) made a presentation to the parties on health care savings accounts offered by MERS. Charging Party had initially suggested that Respondent fund the accounts. After hearing the MERS presentation, it proposed that employees also contribute one half of one percent of their pay. The parties discussed issues relating to these savings accounts at this meeting. Charging Party also asked questions about Respondent's budgeting process and its current budget situation. Respondent told Charging Party that city manager Belleman was the best person to answer these questions and agreed to set up a meeting between him and Charging Party's bargaining team.

According to Dean, at the parties' next meeting on June 8, Charging Party proposed that the parties enter into a memorandum of understanding providing for payments of $5,000 per year for two years for employees who elected to retire within a specific window of time.[2] Respondent told Charging Party that it was unwilling to enter into any payout that extended beyond one year. It also said that any retirement incentive agreement was contingent on the parties' reaching a contract. Dean testified that the parties ended the meeting with the understanding that the Employer would respond to Charging Party's retirement incentive proposal. When asked why Charging Party expected a further response, Dean testified that Charging Party "might have" made a second retirement incentive proposal at this meeting, although he could not recall the specific terms of the proposal. Borushko testified that after Respondent rejected Charging Party's proposal for an incentive with a multi-year payout, it was waiting for Charging Party to present another proposal. I credit Borushko's testimony on this point.

Charging Party also proposed on June 8 that the parties agree to an extension of the contract beyond July 1. Respondent said that it was still hopeful that the parties could reach agreement before the end of June, but that it would consider an extension if the parties had not reached agreement by that time. The parties agreed to meet again in the last week of June.

Borushko testified that after the June 8 meeting, Respondent concluded that the parties had reached impasse on both the health care premium for active employees and on retiree health care insurance based on the fact that Charging Party had rejected all Respondent's proposals and had made no counterproposals. He testified that Respondent needed to bring Charging Party's bargaining unit into line with other bargaining units and begin receiving some level of

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FAC-3,V-10; F-50/25 or F25 or 60/10; or 20 years of service for defined contribution employees."

[2] Borushko testified that Charging Party presented its proposal in late May. He recalled that the proposal was to pay employees retiring in the current year a bonus upon their retirement and then smaller amounts over the next three years. I credit Dean's testimony regarding the details of Charging Party's proposal.

contributions toward health care from employees by the beginning of the fiscal year on July 1. On June 14, Borushko sent Dean the following letter:

> From the outset of negotiations to conclude a successor labor agreement, the City of Bay City has repeatedly stated its intention to arrive at a conclusion by the expiration of the current agreement covering the employees in your unit.
>
> Unfortunately, we have not been able to do so, in part due to the unavailability of representatives of your Union. As indicated to you by the City Manager in our first session, this negotiation is extremely vital to the long-term financial condition of the City. We reiterate our position taken in the first bargaining session that, if you and your representatives will make yourselves available, we believe there is still time to conclude these negotiations before July 1.
>
> You have indicated to us on several occasions that you are unwilling to sign any agreement that contains certain changes in the insurance provisions that we believe are absolutely necessary for the City. With that indication, and with the absence of any willingness to meet, we have no choice but to conclude that we are at impasse on at least several issues.
>
> Therefore, please be advised that, effective July 1, 2006, the City will implement the following changes in the health care provisions, which we have indicated to you represents the City's final offer on these issues.

Set out in the letter were Respondent's April 3 proposal to increase the health care premiums for active employees and its May proposal with respect to retiree health care.

Charging Party distributed copies of this letter to its membership. The proposed changes also became the subject of an article in a local newspaper. The Union responded by letter dated June 16. It denied that it had been unwilling to meet. The letter also stated:

> Though the Union has indicated that health care cost to retirees that are subject to radical change without a funding mechanism is not an acceptable situation, we have not indicated that issue is closed for further consideration. In fact we brought to the table the concept of utilizing retirement health savings accounts as a possible solution to this issue. During our last meetings you expressed interest in such a plan. The parties have also had a number of discussions concerning incentives for retirees and the city has not responded to our last proposal on this issue.
>
> It has been the City's position that all matters that impact economics (including retiree health care issues) are to be considered as a package and it is the City who has, very publicly, been in a state of flux with regard to its financial status. During the period of negotiation there have been numerous changes to the perceived financial situation of the City. We requested an explanation as to how these changes impact the City's initial budget concerns. You informed us that the only

> person who could address our questions was the City Manager. We requested a meeting with him to provide this information and have not been granted such a meeting. As we indicated to you this information is critical for us in the continuing negotiations.
>
> The budget was not approved until a meeting of the City Council on June 13, 2006 having undergone numerous and extensive changes. Your declaration of impasse came hand delivered on June 14, 2006. In light of the City's position that economic issues are a package it is puzzling why now you have separated one economic issue (health care co-pay) from the rest. It is not unnoticed that this issue directly and dramatically affects those who choose to postpone retirement beyond June 30, 2006 and the Union has a proposal that has not been responded to affecting this very group.

When Charging Party did not receive a response to its letter, it filed the instant unfair labor practice charge. On June 27, Belleman met with Charging Party's bargaining team and answered its questions regarding the budget. The parties also held bargaining sessions on both June 27 and June 28. These meetings were more adversarial than previous sessions had been, and there were heated exchanges between the parties. It is not clear from the record what substantive issues were discussed at these meetings, but there was no discussion of retirement incentives. At the June 27 meeting, Charging Party requested an extension of the contract for thirty days. Respondent refused. Near the end of the meeting on June 28, Respondent said that it would agree to an extension of the contract through July 19 if the Union agreed to meet on July 18 or 19. Charging Party refused, and again proposed a thirty day extension. The parties left the meeting without an agreement on an extension. However, Respondent told Charging Party that it would continue to honor the terms of the contract at least through July 19. On June 29, Borushko faxed Bakker a letter stating that Respondent was voluntarily extending the contract though July 19. In a subsequent letter dated July 5, Borushko told Bakker that Respondent was not going to implement its health care proposals at this time. He said that Respondent would "review its position from time to time as we deem appropriate."

As of the date of the hearing in November 2006, the parties had not reached agreement on a contract. However, between July and November 2006, the parties entered into more tentative agreements on individual contract provisions, including one establishing retirement health care savings accounts. The parties had not reached tentative agreements on retirement incentives, retiree health care, or the health care premiums to be paid by active employees. As of November 2006, Respondent had not implemented the changes it announced on June 14 and that had been scheduled to take effect on July 1.

On July 1, 2006, Respondent eliminated a number of bargaining unit positions. No member of Charging Party's unit was actually laid off, although several had to bump into lower paid classifications. Ten unit employees retired between June 21 and July 1, 2006. All but three submitted their applications before Respondent's June 14 announcement. One of the three was Michael Davis. Davis testified that after the Employer proposed to make retirees contribute to the cost of their health care, he asked MERS to estimate the amount of his pension if he retired on July 1 and if he waited two years to receive the maximum benefit. He testified that the

difference in the monthly payment was insignificant, and the fact that he would have to contribute to the costs of his health care if he retired after the changes were implemented was the deciding factor in his decision to retire in July 2006. [3]

Discussion and Conclusions of Law:

The Commission defines a bargaining impasse as the point at which the parties' positions have solidified and further bargaining would be useless. *Oakland Cmty College,* 2001 MERC Lab Op 272, 277; *Wayne County (Attorney Unit),* 1995 MERC Lab Op 199, 203; *City of Saginaw,* 1982 MERC Lab Op 727. In *Royal Motor Sales*, 329 NLRB 760, 762 (1999), and *Hi-Way Billboards*, 206 NLRB 22, 23 (1973), enforcement denied 500 F2d 181 (CA 5, 1974), the National Labor Relations Board (NLRB) explained impasse as follows:

> A genuine impasse in negotiations is synonymous with a deadlock: the parties have discussed a subject or subjects in good faith, and, despite their best efforts to achieve agreement with respect to such, neither party is willing to move from its respective position.

The determination of whether an impasse exists is made on a case-by-case basis, taking into account the totality of the circumstances and the entire conduct of the parties. *Flint Twp,* 1974 MERC Lab Op 152, 157. In determining whether the parties have reached a good faith impasse, the Commission looks at a number of factors. These include whether there has been a reasonable term of bargaining, whether the positions of the parties have become fixed, and whether both parties are aware of where their positions have solidified. The party asserting impasse bears the burden of establishing that impasse was reached. *Oakland Cmty College,* at 277. In *Taft Broadcasting Co*, 163 NLRB 475, 478 (1967), enfd sub nom *Television Artists AFTRA* v *NLRB*, 395 F2d 622 (CA DC, 1968), the NLRB stated:

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

I conclude that in this case the parties had not reached impasse in their contract negotiations on June 14, 2006, when Respondent announced its intention to implement its proposed health care changes. Between April 3 and June 8, the parties held twelve bargaining sessions and reached tentative agreements on a number of individual items. Throughout this period, Charging Party took an inflexible position on both health care proposals that Respondent had identified as critical to reaching agreement. By the end of May, Respondent had informed Charging Party that it had no further room to move on these issues. As the NLRB noted, disagreement over even one important issue may bring the parties' contract negotiations to an impasse. On June 14, however, the parties were still actively discussing at least two issues,

[3] Davis did not testify that he now wished to return to active employment, and Charging Party has not requested that the three employees who applied to retire after June 14 be allowed to return to work.

retirement incentives and health care savings accounts. They had not, insofar as the record discloses, completed their discussion of wages or other important economic issues or narrowed the issues remaining in dispute. The parties had not met with a mediator or even discussed doing so. Moreover, Respondent never presented Charging Party with a final contract offer. To the contrary, on June 8, at the parties' last bargaining session before June 14, Respondent expressed optimism that the parties could agree to a contract before July 1. In accord with this view, Respondent did not seek to cancel the bargaining sessions the parties had scheduled for June 27 and June 28, and, in fact, urged Charging Party to agree to more meetings after July 1. In short, the evidence does not support a finding that the parties were at impasse in their contract negotiations on June 14 because of their disagreement over the health care proposals.

When parties are engaged in negotiations for a collective-bargaining agreement, an employer's obligation to refrain from unilateral changes in terms and conditions of employment extends beyond the mere duty to provide notice and an opportunity to bargain about a particular subject matter; rather, it encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole. *In re Guard Publishing Co,* 339 NLRB 353, 354 (2003); *RBE Electronics of SD, Inc.*, 320 NLRB 80, 81 (1995); *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991), enfd 15 F3d 1087 (CA 9, 1994). When the parties are negotiating an entire contract, an employer cannot normally isolate a single issue and declare impasse on that issue. *Flint Twp,* at 157. However, the Commission has recognized that it may be appropriate for an employer engaged in contract negotiations to implement its offer on a single issue when the parties have reached impasse on that issue and immediate action is required. In *Wayne Co (Attorney Unit),* the Commission held that the employer lawfully implemented a proposed wage freeze during contract negotiations when the parties had reached impasse on that issue and the deadline for paying annual step increases was approaching. See also *University of Mich,* 1988 MERC Lab Op 204 (no exceptions) (employer was entitled to implement proposal that employees pick up a percentage of any increase in their health insurance premiums when the parties had reached impasse on this single issue and employer's insurance premiums were about to increase) and *Wolverine Cmty Schs,*1983 MERC Lab Op 655(no exceptions) (employer could lawfully implement proposed change in layoff notice provisions during contract negotiations when the parties had reach impasse on this issue and layoffs were imminent).

I find that Respondent did not establish that it was necessary to implement its proposed health care changes on July 1, 2006 as it threatened to do on June 14. Respondent contends that it needed to bring this unit into line with other city units and begin receiving some level of funding toward the City's retiree health care liability by the beginning of the fiscal year on July 1. The record indicates that Respondent was facing a budget deficit that it had to remedy by the beginning of the new fiscal year. However, in April, Respondent announced its plan to eliminate the deficit through layoffs and position eliminations. Respondent did not tell Charging Party that it was proposing changes in health care because of the deficit, or that its agreement to these changes would eliminate the need for layoffs. Rather, Respondent consistently emphasized the unfairness of Charging Party's unit receiving benefits that were so much better than those received by other units and the problems these disparities caused for it. Respondent was clearly anxious to eliminate these disparities, and reduce its unfunded liabilities for retiree health care, but July 1 was an arbitrary deadline set by Respondent for achieving these goals. As stated above, I find that the parties had not reached impasse on their contract on June 14, 2006. I

conclude that the record does not establish that Respondent needed to implement its health care proposals when it threatened to do so.

I find that Respondent violated its duty to bargain in good faith under Section 10(1) (e) by threatening on June 14, 2006 to unilaterally implement changes in existing terms and conditions of employment on July 1, 2006 when the parties had not reached impasse in their negotiations for a new collective bargaining agreement. Given this finding, I find it unnecessary to address whether Respondent's purpose was to circumvent bargaining over retirement incentives. Based on my findings of fact and conclusions of law in this case, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The City of Bay City, its officers and agents, is hereby ordered to:

1. Cease and desist from threatening to implement changes in employees' existing terms and conditions of employment, including the health care premiums paid by active employees and future retirees, without bargaining to impasse or agreement with the employees' collective bargaining agent, Utility Workers Union of America, Local 542.

2. Post copies of the attached notice to employees in conspicuous places on its premises, including all locations where notices to employees in this bargaining unit are customarily posted. Copies of the notice shall be signed by a representative of the City and shall remain posted for a period of thirty consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: ______________