

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

In the Matter of:

OAKLAND UNIVERSITY,
Public Employer-Respondent,

Case No. C08 K-241

-and-

OAKLAND UNIVERSITY CHAPTER,
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,
Labor Organization-Charging Party.

APPEARANCES:

Vercruysse, Murray & Calzone PC, by Daniel J. Bernard, Esq., for Respondent

Gregory, Moore, Jeakle, Heinen & Brooks, PC, by James M. Moore, Esq., for Charging Party

DECISION AND ORDER

On March 31, 2009, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Judgment in the above matter finding that Respondent, Oakland University (Employer or University), violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by repudiating a binding settlement agreement on an issue central to Respondent's relationship with Charging Party, Oakland University Chapter, American Association of University Professors (Union). The ALJ found that the University president and vice provost had the authority to bind the University to a routine grievance settlement as this; that such settlements are not routinely subject to ratification; and that there was a significant impact on the bargaining unit. He recommended that we order the University to cease and desist from repudiating or failing to comply with the terms of the settlement agreement and other relief. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. Respondent filed exceptions to the ALJ's Decision and Recommended Order on April 23, 2009. Charging Party filed a brief in support of the ALJ's Decision on May 4, 2009.

In its exceptions, Respondent argues that the ALJ erred in finding that it would have been unreasonable for Charging Party to expect that the settlement agreement would require a ratification vote from the University's Board of Trustees in order to be enforceable. Respondent asserts that the ALJ erred by finding that the University's president and vice provost had the

apparent authority to bind the University to a routine grievance settlement, arguing that the concept of “apparent authority” is inapplicable to public contracting. Respondent further claims that the ALJ erred by failing to address completely its argument that the settlement agreement is unenforceable per the Statute of Frauds, MCL 566.132. Finally, Respondent asserts that the ALJ erred in applying the theory of contract repudiation to the settlement agreement, and in determining that the alleged repudiation had a significant impact on the bargaining unit.

Charging Party counters in its brief in support that the ALJ properly concluded that the repudiation of a grievance settlement agreement may, and in this case did, constitute a PERA violation. We have considered Respondent’s exceptions and find them to be without merit.

Factual Summary:

We adopt the facts found by the ALJ, as summarized in his decision. We reiterate the facts only as necessary here.

In 1999, the parties voluntarily entered a settlement agreement regarding a grievance filed by Charging Party over an alleged violation of Article XXVIII of the parties’ collective bargaining agreement. In the settlement agreement the parties agreed to a certain interpretation of a particular contract section, with the express agreement that such interpretation would prevail unless and until the contract language was changed. Further, Respondent expressly waived certain defenses to any future grievances asserting a violation of Article XXVIII of the collective bargaining agreement. The settlement agreement was signed by the representatives of the Union and by the University president and its vice provost. No University representative advised Charging Party that any action by Respondent’s Board of Trustees was required to effectuate the terms of the settlement agreement. In October 2008, when responding to a grievance that again alleged a violation of the unchanged Article XXVIII, the Employer argued the same defenses that it had waived in 1999. At the time of the hearing before the ALJ, the parties had agreed to proceed to arbitration concerning the 2008 grievance, while, preserving the issue of the Employer’s right to assert the previously-waived defense.¹

Discussion and Conclusions of Law:

For the reasons set forth in great detail by the ALJ, we agree that repudiation of an agreement entered into to settle a grievance that was signed by the University’s president and vice provost constitutes contract repudiation in violation of Section 10(1)(e) of PERA. We agree with well-settled law that unilaterally repudiating a prior agreement is unlawful and it makes no difference whether that agreement is a full collective bargaining agreement, a letter of understanding or, simply, a grievance settlement as this. See *City of Roseville*, 23 MPER 55 (2010); *City of Detroit (Fire Dep’t)*, 18 MPER 39 (2005) (no exceptions); *Gibraltar Sch Dist Bd of Ed*, 1995 MERC Lab Op 522; 9 MPER 27001 (1995). To allow one party to renege on a lawful agreement would

¹ We agree with Charging Party, who argued in its brief in support of the ALJ’s Decision and Recommended Order (at p. 3) that any reference by the University to what occurred at the subsequent arbitration hearing is outside of the record in this case and will not be considered. This is especially so where the University has not filed a motion to reopen the record in accordance with Rule 166 of the General Rules of the Michigan Employment Relations Commission, 2002 AACCS, R 423.166.

negate the stability and reliability that is the goal of good faith bargaining. It is central to the stability of labor relations that such agreements be enforced, for if they can be unilaterally revoked, the stability and the possibility of future good faith bargaining is undermined. See, *Kalamazoo Co & Kalamazoo Co Sheriff*, 22 MPER 94 (2009).

In its exceptions, Respondent asserts that the ALJ erred in finding that it would have been unreasonable for the Union to expect that a grievance settlement as this must be submitted to the Board of Trustees for approval. The University contends that the original agreement signed by the parties in 1999 was not binding as it was never ratified by the University's Board of Trustees. However, this agreement was signed by two of the highest officers of the University and the Union was obligated to accept and to conclude that the representatives selected by the Employer had the authority to settle routine grievances on its behalf. See MCL 423.210 (3)(a)(ii). In their stipulated submission of facts, the parties agreed that no University representatives ever advised the Union that approval or other action by the Board of Trustees was necessary to effectuate settlement. There is nothing in the record that would allow us to conclude that from 1999 until 2008, the Employer had at any time determined that this, or any other routine grievance settlement entered into, was claimed to be unenforceable because it was not adopted by its Board of Trustees. For the stability of labor relations, a party must be able to rely on the apparent authority of those representatives entering into settlements on behalf of their principal. See e.g., *City of Detroit (Fire Dep't)*, 18 MPER 39 (2005) (no exceptions). We find, therefore, that the Union had the right to rely on the authority of the University president and its vice provost to enter into this grievance settlement agreement.

Respondent contends that the repudiation of the grievance settlement in question is insubstantial. The Commission will not find repudiation on the basis of an insubstantial or isolated breach. *Goodrich Area Sch*, 22 MPER 103 (2009); *Crawford Co Bd of Comm'rs*, 1998 MERC Lab Op 17, 21. We find no error in the ALJ's conclusion that repudiation of the settlement agreement had a significant impact on the bargaining unit and we agree with his rationale:

“[t]he suggestion that the issue in dispute was not of great significance to the unit simply, and boldly, ignores that the issue of compliance with the University constitutional processes was seen by both parties as sufficiently significant to craft language in the collective bargaining agreement protecting their respective rights and to also enter into a high-level settlement agreement further interpreting that contract language.”

Finally, we reject the University's argument that the 1999 grievance settlement agreement constituted a violation of the Statute of Frauds, MCL 566.132. The agreement was signed by the University president and vice provost, who had the apparent authority to enter into such an agreement making it fully enforceable.

We find, as did the ALJ, that there was no dispute over the agreement's interpretation and that the contract breach had a substantial impact on the bargaining unit. Finding as such, we conclude that the Employer violated PERA when it repudiated a binding settlement agreement.

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

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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

OAKLAND UNIVERSITY,
Public Employer- Respondent,

-and-

Case No. C08 K-241

OAKLAND UNIVERSITY CHAPTER,
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,
Labor Organization- Charging Party.

APPEARANCES:

Daniel J. Bernard, for the Respondent

James M. Moore, for the Charging Party

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON SUMMARY JUDGMENT**

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 March 11, 2009, before Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission(MERC). Based upon the entire record, including cross-motions for summary judgment, stipulations of fact, joint exhibits and argument of counsel, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On November 20, 2008, Oakland University Chapter of the American Association of University Professors (AAUP or Union) filed the charge in this matter, which asserted that Oakland University (the University or Employer) violated the Act by expressly repudiating a 1999 settlement agreement between the parties. In the 1999 agreement, the Employer agreed to waive certain specific defenses to any future grievances asserting a violation of contract Article XXVIII, while preserving other defenses. In October 2008, the Employer asserted that same earlier-waived defense in response to a grievance asserting a violation of the unchanged Article XXVIII. The underlying grievance is scheduled to be heard before an arbitrator on April 6, 2009, with the parties at odds over the legality of the Employer's assertion of the earlier-waived defense. The immediacy of the situation, the comprehensive stipulation of facts submitted by the parties, and the concurrence of the parties that no material facts were in dispute, led me to

conclude that the issuance of a bench decision with detailed findings of fact and conclusions of law set forth on the record, followed by issuance of less detailed written Decision and Recommended Order, would best serve the purposes of the Act and the immediate needs of the parties.

Findings of Fact:

My detailed findings of fact were issued from the bench, with those factual findings incorporated herein and serving as the basis for this Decision and Recommended Order.

In summary, I found it was undisputed that in 1999 the parties voluntarily entered into a settlement agreement arising from a particular grievance dispute. In that settlement agreement, signed by representatives of the Union and by the University's president and its vice-provost, the parties sought to and did provide an authoritative interpretation of a particular contract section, with the express agreement that such interpretation would prevail until and unless the contract language was changed. In the settlement agreement, the Employer expressly waived the future assertion of a position contrary to the terms of the settlement. In 2008, the Employer reasserted its earlier abandoned claim, contrary to the express terms of the settlement agreement, with no intervening change in circumstances. The Employer's reasserted procedural defense, if accepted by the arbitrator, would effectively preclude the arbitrator from reaching the merits of the pending 2008 grievance.

Discussion and Conclusions of Law:

It is conceded that the Employer reneged on the specific written 1999 agreement signed by its highest officers. The only question of law is whether that conduct constitutes the repudiation of an agreement, as that concept is defined by our prior case law, such that the Employer's conduct violates PERA.

The Employer's primary defense is that the original signed agreement is not binding on it, as the agreement was never ratified by the University's board of trustees. The Employer asserts that the Union acted at its own peril in accepting the assertion by the University president that he was authorized to enter into such agreements. The Employer further asserts that the document, which was a settlement agreement arising from a contractual grievance dispute, is not a "collective bargaining agreement" as that term is understood, and therefore, the University could freely and unilaterally revoke compliance without that revocation being held to be a repudiation of an agreement. The Employer asserts that there was a bona fide dispute over the contract language's enforceability, but not over the meaning of that language, and asserts that the renegeing on the agreement had no significant impact on the bargaining unit. As indicated on the record, I rejected each of those legal defenses.

As indicated on the record, I found that the University president and vice provost had the apparent authority in 1999 to bind the University to a routine grievance settlement. Further, under PERA the Union was obliged to accept as authoritative the representatives sent to the table by the Employer to adjust grievances. See, MCL 423.210(3)(ii). I further found that grievance settlements are not routinely subject to ratification, and that to conclude otherwise would cause a

significant disruption of the statutorily preferred system of voluntary resolution of disputes. The Employer acknowledges that it had not advised the Union at the time of the 1999 agreement that the settlement was subject to ratification and I find that it would have been unreasonable for the Union to expect that the settlement would require a ratification vote. Regardless, assuming that any right to ratify or reject existed, it is acknowledged that the University board of trustees never voted in 1999, or in the ensuing years, to ratify or to reject the settlement. There is a duty to promptly ratify or reject an agreement, such that a failure to do so not only violates the Act, but also gives rise to an enforceable agreement. See, *Washtenaw County Treasurer*, 21 MPER 27 (2008); *City of Pontiac*, 19 MPER 51 (2006); *Chippewa County*, 18 MPER 83 (2005); *City of Hamtramck*, 1975 MERC Lab Op 723. Even reasonable reliance on a misstatement as to the extent of an agent's authority can give rise to estoppel and an enforceable agreement. *City of Coldwater*, 1972 MERC Lab Op 362.

The unilateral repudiation of a prior agreement is equally unlawful, whether the agreement is a full collective bargaining agreement, a letter of understanding, or a grievance settlement. See, *Eaton County*, 17 MPER 82 (2004); *Wayne State Univ*, 2000 MERC Lab Op 274; *City of Detroit (AME)*, 17 MPER 44 (2004). There existed no *bona fide* dispute over the interpretation of the settlement language in question; rather, the Employer merely asserted the existence of a dispute as to the enforceability of the language, which I have addressed above.

I find that there was a significant impact on the bargaining unit. As in *Eaton County*, *supra*, the settlement agreement went to the core of the parties' future relationship and grievance handling. The suggestion that the issue in dispute was not of great significance to the unit simply, and boldly, ignores that the issue of compliance with University constitutional processes was seen by both parties as sufficiently significant to craft language in the collective bargaining agreement protecting their respective rights and to also enter into a high-level settlement agreement further interpreting that contract language.

The whole point of a repudiation-type charge such as this, is that for one party to renege on a prior agreement is destructive of the entire fabric of labor relations and the very premise of good faith bargaining—that is, that making compromises results in a binding agreement that gives each side stability. If such settlements can be unilaterally revoked, both stability and the possibility of productive future discussions are destroyed. While the original underlying dispute which preceded the 1999 settlement agreement was over a topic, University governance issues, which otherwise might have constituted a permissive subject of bargaining, once an agreement was reached, neither side had the latitude to unilaterally repudiate the bargain. Regardless, where permissive subjects of bargaining are intertwined in an agreement that also addresses mandatory subjects of bargaining, a repudiation of a part of the agreement by one party is necessarily a repudiation of the entire package. To find otherwise, would dismantle the balance of compromises reached by parties through good faith bargaining and would be destructive of the goal of voluntary resolution of labor disputes, which is the underpinning of government regulation of labor disputes. See, MCL 423.1, wherein the labor policy of the State is declared: “[T]he best interests of the people of this state are served by the prevention or prompt settlement of labor disputes. . . and that the voluntary mediation of such disputes under the guidance and supervision of a governmental agency” will best promote those interests. Further, to ignore the corrosive effect such conduct would have on future negotiations would be to fail to exercise what

the appellate courts have properly recognized as “MERC’s expertise and judgment in the area of labor relations.” *Port Huron Education Ass’n v Port Huron Area School District*, 452 Mich 309, 323 n18 (1996); *Oakland County v Oakland County Deputy Sheriffs Association*, ___ Mich App___ (CA #280075, Feb 3, 2009). *Cf.*, *Kalamazoo County Sheriff*, MERC Case No. C08 A-019 (October 15, 2008, on exceptions).

As set forth on the record, I find that the Employer violated the Act in repudiating an otherwise binding settlement on an issue central to the relationship of the parties. Accordingly, I hereby recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

OAKLAND UNIVERSITY, its officers, agents, and representatives shall:

1. Cease and desist from
 - a. Repudiating or failing to comply with the terms of the 1999 Settlement Agreement.
 - b. Asserting as a jurisdictional defense that grievances asserting claims of a failure to comply with University constitutional processes, brought under contract Article XXVIII, are not subject to the contractual grievance procedure as governance rather than contractual matters.

2. Take the following affirmative action necessary to effectuate the purposes of the Act
 - a. Expressly revoke the University’s repudiation of the 1999 Settlement Agreement.
 - b. Expressly withdraw that portion of the University’s grievance answer in the pending matter, which asserts that the Settlement Agreement is not binding and/or that the matter in dispute is not substantively subject to the grievance procedure.

3. Post the attached notice to employees in a conspicuous place at each Oakland University worksite, and post it prominently on any website maintained by Oakland University for employee access, for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O’Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, OAKLAND UNIVERSITY, 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

- a. Repudiate or fail to comply with the terms of the 1999 Settlement Agreement.
- b. Assert as a jurisdictional defense that grievances asserting claims of a failure to comply with University constitutional processes, brought under contract Article XXVIII, are not subject to the contractual grievance procedure as governance rather than contractual matters.

WE WILL

- a. Expressly revoke the University's repudiation of the 1999 Settlement Agreement.
- b. Expressly withdraw that portion of the University's grievance answer in the pending matter, which asserts that the Settlement Agreement is not binding and/or that the matter in dispute is not substantively subject to the grievance procedure.

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.

OAKLAND UNIVERSITY

By: _____

Title: _____

Date: _____

This notice must be posted for thirty (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, Detroit, MI 48202-2988. Telephone: (313) 456-3510.