STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SOUTHFIELD PUBLIC SCHOOLS,
Public Employer - Respondent,

Case No. C09 I-157

- and -

SOUTHFIELD MICHIGAN EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION (MESPA),
Labor Organization - Charging Party.
_____/

APPEARANCES:

Floyd E. Allen & Associates, by George D. Mesritz and Dandridge A. Floyd, for the Respondent

Lee & Correll, by Michael K. Lee and Erika P. Thorne, for the Charging Party

DECISION AND ORDER

On December 16, 2010, Administrative Law Judge Julia C. Stern issued a Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

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:

SOUTHFIELD PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C09 I-157

-and-

SOUTHFIELD MICHIGAN EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION (MESPA),
Labor Organization-Charging Party.
_____/

APPEARANCES:

Floyd Allen & Associates, by George D. Mesritz and Dandridge A. Floyd, for Respondent

Lee and Correll, by Michael K. Lee and Erika P. Thorne, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION FOR SUMMARY DISPOSITION

On September 10, 2009, the Southfield Michigan Educational Support Personnel Association (MESPA) filed the above unfair labor practice charge with the Michigan Employment Relations Commission against the Southfield Public Schools. The charge was amended on October 27, 2010. The charge, as amended, alleges that Respondent violated its duty to bargain under Sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Specifically, the charge alleges that: (1) on March 24, 2009, Respondent unilaterally rescinded April 13, 2009 as a paid holiday for Charging Party's members and designated Friday, May 22, 2009 as a holiday instead; (2) after March 31, 2009, Respondent refused to bargain over the change in the date of the holiday; and (3) Respondent refused to pay holiday pay to Charging Party's members who worked on April 13.

On March 2, 2010, Respondent filed a motion for summary dismissal of the charge "on the pleadings," i.e., without attaching affidavits. Respondent argued that the parties' dispute was merely a dispute over the interpretation of the parties' contract and, therefore, the charge did not allege a violation of PERA. Charging Party filed a response on March 16, 2010. It asserted that the charge stated a claim under PERA as it alleged that Respondent unilaterally altered a term and condition of employment and then refused to bargain over the issue. Charging Party attached to its response an affidavit signed by its president, Michael Graves, and other documentary evidence. On March 25,

2010, Respondent filed a supplemental motion. The motion included a copy of the parties' contract and an affidavit signed by Dandridge Floyd, Respondent's labor counsel. In the supplemental motion, Respondent asserted that except for the relief sought, there was no material dispute of fact and it was entitled to dismissal as a matter of law. On April 6, 2010, Charging Party filed a response to the supplemental motion. On April 19, Respondent filed a reply brief. On July 22, 2010, I issued an interim order in which I held that there were no material issues of fact with respect to the allegations one and two of the charge and that these allegations should be dismissed as a matter of law. I stated that I was unable to determine from the pleadings whether there was a material dispute of fact with respect to the third allegation, and scheduled an evidentiary hearing. Thereafter, Respondent filed a series of motions whose object was to get Charging Party to clarify the allegation in paragraph three. On October 27, 2010, Charging Party filed an amended charge which clarified the allegation, as set forth above.

Based on the facts set forth in Charging Party's pleadings, including the amended charge, and the arguments made by the parties, I make the following conclusions of law and recommend that the Commission issue the following order.

Facts:

Charging Party represents a bargaining unit of nonsupervisory support employees employed by Respondent, excluding secretaries. The parties' most recent collective bargaining agreement covered the 2006-2007 and 2007-2008 school years, and expired on August 11, 2008. In the spring of 2009, the parties were engaged in bargaining a successor to this agreement.

The parties' expired agreement did not include a school calendar. However, Article XXV, Section A of the expired contract provided that most unit employees would be paid for twelve or thirteen holidays, depending on whether they were twelve or ten month employees. Certain job classifications in the unit received no paid holidays. The paid holidays were listed in Section A and included the Monday after Easter.

Sections B and C of Article XXV read as follows:

> B. *Should any days designated in Section A of this Article be determined to be school days, then additional days when school is not in session shall be mutually agreed to and granted.*
>
> C. If any of the above holidays fall on Sunday, the following Monday shall be considered the holiday. If any of the above holidays fall on Saturday, the Friday preceding shall be considered the holiday. *If an employee works on one (1) of the above holidays, he/she will receive eight (8) hours holiday pay plus double time for the hours worked. Employees regularly working less than eight (8) hours per day will receive their holiday pay on their regular workday basis, plus double time for the hours worked.* Payment for double time for working on holidays shall be on the basis of when such work is performed not when it is initiated. [Emphasis added.]

The expired contract's overtime provision, Article XXIV(C), also stated that Respondent was required to pay double time for work performed on holidays in addition to the straight-time holiday pay provided for in the agreement.

In 2007, the Legislature amended the Michigan School Code to require all intermediate school districts, effective July 1, 2008, to adopt a common calendar for each school year for itself and all its constituent school districts. See MCL 380.1248a. The common calendar must identify the specific dates when school will not be in session for the winter holiday break and spring break. Beginning with the 2008-2009 school year, the board of each constituent school district must ensure that the district's school calendar complies with the common school calendar adopted by its intermediate school district. The statute created a limited exception for school districts that had existing collective bargaining agreements with one or more unions which contained complete school calendars:

> If a collective bargaining agreement that provides a complete school calendar is in effect for employees of a school district or intermediate school district as of the effective date of this section, and if that school calendar is not in compliance with the common school calendar adopted under subsection (1), then subsection (2) does not apply to that school district or intermediate school district until after the expiration of that contract.

As noted above, the parties' 2006-2008 contract did not include a complete school calendar. On or around July 1, 2008, Respondent's intermediate school district established a common calendar covering the next five school years. This calendar designated the week before Easter as the week that school would not be in session for spring break. For the 2008-2009 school year, the week of spring break was April 6 through April 10, 2009. Sometime during the 2008-2009 school year, Respondent's school board adopted this common calendar. Consistent with the designation of the week before Easter as the spring break week, Respondent reached an agreement with the union representing its teachers that school would be in session on the Monday after Easter in 2009.

Sometime during the 2008-2009 school year, Michael Graves, Charging Party's president, told Respondent that the parties needed to bargain over the change in the Easter Monday paid holiday. Respondent refused to bargain with Charging Party over this issue. On March 24, 2009, Respondent sent Graves a letter stating that since it had reached an agreement with the union representing the teachers that the Monday after Easter would be a school day, it was offering Friday, May 22, 2009 as the substitute paid holiday. The letter offered to meet with Charging Party to discuss the issue and Charging Party's position as to an alternate date.

On March 31, Charging Party sent Respondent this letter:

> We are in receipt of your letter dated March 27, 2009, regarding the change in the Easter Monday paid holiday as provided by Article XXV of the Master Agreement. Although we recognize the District's dilemma with school being scheduled that day

based on agreement with SEA,1 we do not believe the District can unilaterally change when that holiday can occur for Southfield-MESPA. Article XXV, Section B specifically states mutual agreement has to be reached on rescheduling the day.

On behalf of Southfield-MESPA, we are willing to make some accommodation to the District, provided Southfield-MESPA receives some accommodation in return. Specifically, we will be willing to look at rescheduling the day to Friday, May 22, 2009 for this year only. However, in turn for making this accommodation, we would request that thirty (30) days of paid Association leave (of which a maximum of ten (10) could be used by the MESPA President) be reinstated immediately. The overall issue of paid Association release days would be subject of negotiations and/or litigation.2

Please be advised that if the District continues to insist on all Southfield-MESPA employees being required to report and work on Monday, April 13, 2009, the provisions of Article XXV Section C and Article XXIV Section C-3 shall be applicable. Therefore, those employees who are eligible for the paid holiday should receive triple time for that day of work and those employees, such as latch-key and noon-aides, which are not eligible for the paid holiday, would receive double time. In addition, we would consult with our attorneys regarding an appropriate legal challenge to the imposition of the change in the contract without meeting the requirements for impasse under the Employee Labor Relations Act (PERA).

Respondent did not reply to the March 31 letter. School was in session on April 13, 2009, the Monday after Easter. Charging Party's members were required to work on that date and were paid their regular straight time rates for the time worked. They were not required to work on Friday, May 22, 2009. Except for employees in classifications not entitled to holiday pay, members of the unit were paid straight time holiday pay for May 22.

Discussion and Conclusions of Law:

Holiday pay, as part of employees' compensation, is a mandatory subject of bargaining under PERA. When a party negotiates a contract provision that fixes the parties' rights with respect to a mandatory subject of bargaining, it satisfies its obligation under PERA to bargain over that subject for the term of that agreement. *Port Huron Ed. Ass'n v Port Huron Area School Dist*, 452 Mich 309, 318 (1996). Once agreement is reached, both parties have a right to rely on the language of the agreement as the statement of their obligations on a topic "covered by" the agreement. If the term or condition in dispute is "covered" by the agreement, the details and enforceability of the provision are

1 The Southfield Education Association (SEA) is the bargaining agent for Respondent's teachers.
2 On or about September 23, 2008, Respondent announced that it was altering its existing practices with respect to union release time for Charging Party's bargaining unit. This action was the subject of a separate unfair labor practice charge (Case No. C09 B-017) which is currently pending on exceptions.

generally left to arbitration. *Port Huron*, at 321. The exception is where the facts support a finding that the employer has "repudiated" the contract. See, e.g., *Gibraltar Sch Dist*, 16 MPER 36 (2003).

The parties' collective bargaining agreement, including its arbitration provision, had expired when the instant dispute arose. However, wages, hours, and other terms and conditions of employment established by the contract which are mandatory subjects of bargaining survive the expiration of the contract by operation of law during the bargaining process. A public employer, therefore, has the obligation during the bargaining process to continue to apply those wages, hours, and other terms and conditions of employment until such time as impasse is reached. *Local 1467, Intern Ass'n of Firefighters, AFL-CIO v City of Portage,* 134 Mich App 466, 472 (1984). Neither party contends that the parties had reached impasse on the terms of a new contract when Respondent changed the date of the Easter Monday holiday. The issue raised by the first allegation, therefore, is whether Respondent violated its duty to maintain the status quo during the bargaining process by unilaterally rescinding Monday, April 13, 2009 as a paid holiday and designating Friday, May 22, 2009 as a holiday instead.

In the instant case, the Monday after Easter as a paid holiday was an established term and condition of employment under the parties' expired contract and their past practice. However, the parties had also agreed that if any of the established paid holidays became a school day, they would mutually select another date when school was not in session for the holiday. That is, the parties agreed that if the original date became a school day, they would select another date rather than either depriving Charging Party's members of a paid holiday or forcing Respondent to pay employees triple time because it required their services when school was in session. I find that the parties' obligations to maintain the status quo after contract expiration incorporated this agreement. I conclude, therefore, that when a day designated as a holiday became a school day, the parties were required by contract and practice to select an alternate date for the holiday.

In 2009, MCL 380.1248a required Respondent to follow the calendar adopted by the intermediate school district and designate the week before Easter, rather than the week after, as its spring break. Accordingly, the Monday after Easter became a school day. Consistent with the parties' agreement, Respondent proposed May 22 as the alternate date for the holiday. It also offered to discuss other dates. However, in its March 31, 2009 letter, Charging Party refused to agree to a new date unless Respondent made a concession on an unrelated subject, union release time. I conclude that because the parties' agreement and practice required the parties to select an alternate date, Respondent's only obligation under the status quo was to propose an alternate date and agree to discuss other dates. I also conclude that Respondent's designation of May 22 as the substitute holiday after Charging Party refused to discuss a different date was not a violation of its duty to maintain the status quo after the expiration of the contract. In addition, because May 22 was lawfully designated as a holiday in place of April 13, I find that Respondent did not have an obligation to pay straight time holiday pay plus overtime to the employees who worked on April 13, 2009. I conclude that Respondent did not violate its duty to bargain by its actions in this case. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Date: _____