STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

KALAMAZOO COUNTY,
Public Employer-Respondent,

Case No. C08 A-018

-and-

KALAMAZOO COUNTY SHERIFF'S DEPUTIES' ASSOCIATION,
Labor Organization-Charging Party.
____/

APPEARANCES:

Mika Meyers Beckett & Jones P.L.C., by John H. Gretzinger, for Respondent

Michael F. Ward, for Charging Party

DECISION AND ORDER

On August 20, 2009, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order finding that Respondent, Kalamazoo County (Employer), violated §10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by repudiating an agreement to pay periodic cost of living adjustments (COLA) to members of the bargaining unit represented by Charging Party, Kalamazoo County Sheriff's Deputies' Association (Union). The ALJ further found that Respondent had made an unlawful unilateral change in conditions of employment while the parties were in negotiations for a successor collective bargaining agreement and in the absence of a good faith impasse. In reaching his conclusion, the ALJ rejected numerous defenses presented by Respondent, including its argument that a unilateral change in the existing wage scheme cannot be remedied in an unfair labor practice proceeding if, as Respondent contends in this case, an Act 312 Petition had been filed prior to the change. The Decision and Recommended Order was served on the interested parties in accordance with §16 of PERA. On September 14, 2009, Respondent filed its exceptions to the ALJ's Decision and Recommended Order and a brief in support of its exceptions. Charging Party, after requesting and receiving an extension of time, filed its Brief in Support of Decision and Recommended Order of Administrative Law Judge on October 28, 2009.

Respondent lists thirty-two exceptions to the ALJ's Decision and Recommended

Order. In a separate brief in support of its exceptions, Respondent lists nine issues supported by eight arguments, but it is not apparent that these arguments support all thirty-two exceptions. It is not sufficient for a party "simply to announce a position or assert an error and then leave it up to [the tribunal adjudicating the matter] to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to either sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Therefore, to the extent, if any, that Respondent's exceptions are not addressed in its arguments, we will consider them to be abandoned.

Respondent argues that the ALJ incorrectly ruled that a unilateral change during bargaining is a *per se* unfair labor practice. Respondent further contends that the filing of an Act 312 Petition "as a matter of law" requires a finding that the parties are at impasse and that unilateral changes to employment occurring during Act 312 proceedings are not unfair labor practices. Respondent excepts to various findings by the ALJ and argues that he erred in construing the parties' previous agreements regarding quarterly COLA payments, mischaracterized the County's COLA proposal and incorrectly described the COLA provision as "binding and unambiguous." Respondent claims that the ALJ's failure to consolidate this matter with unfair labor practice charges filed by Respondent prevented it from presenting evidence of violations alleged to have been committed by Charging Party.

Charging Party Kalamazoo County Sheriff's Deputies' Association responds that the pendency of an Act 312 proceeding does not prevent the Commission from addressing and remedying PERA violations. It argues that Respondent failed to present proofs that the announcement of its refusal to adjust COLA occurred after Act 312 had been invoked. Charging Party also asserts that the ALJ correctly held that the unilateral change in COLA calculations in this case violates the duty to bargain and constitutes repudiation of a clear contractual obligation. Finally, Charging Party asserts that the remaining exceptions are frivolous and should be rejected.

The Commission has reviewed Respondent's exceptions and finds them to be without merit.

Factual Summary:

Charging Party represents a unit of sworn officers and other non-supervisory personnel employed in the Kalamazoo County Sheriff's Department. Since the mid-1970s, all of the agreements between Charging Party, Respondent, and the Kalamazoo County Sheriff have provided for quarterly cost of living adjustments to be rolled into base salary. The parties' most recent collective bargaining agreement was effective January 1, 2005, through December 31, 2007. That agreement, at Appendix B, provided for quarterly cost of living adjustments beginning on January 1, 2007, based on increases in the consumer price index, with a calendar year cap of five percent during 2007, and an annual cap of ten percent for quarterly payments scheduled to commence January 1,

2008. The language of Appendix B has remained essentially unchanged for almost three decades.

In April and July of 2007, Respondent failed to make cost of living adjustments. A grievance was filed and an arbitrator issued an arbitration award restoring the improperly withheld adjustments and directing Respondent to "calculate future quarterly cost of living adjustments" in keeping with his ruling.

During October 2007, the parties entered into negotiations over a successor to the 2005-2007 agreement. Charging Party proposed to suspend COLA payments beginning in January of 2008 in exchange for a four percent wage increase in each of three years with reinstatement of quarterly COLA increases as of January 1, 2011. Respondent proposed to eliminate COLA "with no payment on 1-1-2008." At some point in time, Respondent took the position that it would not make the COLA adjustment scheduled for January 1, 2008. The testimony is unclear as to whether this occurred before or after Charging Party filed a petition for Act 312 arbitration. The ALJ found that Respondent announced its intent to withhold the scheduled COLA increase before the Act 312 petition was filed in late December of 2007. Respondent contends that its announcement was made after the Act 312 petition was filed. For reasons discussed below, it is not necessary for us to resolve this conflict.

As to COLA calculations and payments made prior to 2007, the ALJ credited the testimony of Sergeant James DelaBarre who was a member of Charging Party's bargaining team from the bargaining of the 1988 contract through the most recent negotiations. DelaBarre's testimony was based on his personal knowledge, bargaining records, and his own payroll records. We accept the ALJ's credibility determination and credit DelaBarre's testimony as set forth below. See *City of Lansing (Bd of Water & Light)*, 20 MPER 33 (2007); *Saginaw Valley State Univ*, 19 MPER 36 (2006); *Bellaire Pub Sch*, 19 MPER 17 (2006).

As far back as 1988, each bargained agreement had an addendum that provided a method for calculating COLA adjustments as a continuing obligation following the expiration of the other terms of the agreement. According to DelaBarre, the purpose of the addendum was to ensure that bargaining unit members would continue to receive COLA adjustments in the event that negotiations for a successor agreement were not concluded before the current agreement expired.

Except on those few occasions when the parties negotiated a successor agreement before the expiration of their current agreement, each addendum resulted in the continuation of quarterly COLA calculations and the resulting increases in base pay after contract expiration. Upon agreement to a new wage schedule exceeding the increase provided by the COLA formula, the COLA adjustments were taken into account in calculating back pay. The payment of COLA adjustments based on the contractual addenda, after contract expiration, has been a practice that has continued for decades.

Discussion and Conclusions of Law:

The law is well-settled that under §15 of PERA, a public employer has a duty to bargain in good faith over mandatory subjects of bargaining and may not make unilateral changes to such mandatory subjects prior to reaching an impasse in negotiations. See *Detroit Police Officers Ass'n v Detroit,* 391 Mich 44, 54-55 (1974). A mandatory subject of bargaining is one that has a significant or material impact on wages, hours and other terms and conditions of employment or settles an aspect of the employer-employee relationship. *Detroit v Michigan Council 25, AFSCME*, 118 Mich App 211, 215; 324 NW2d 578, 580 (1982). Cost of living adjustments are mandatory subjects of bargaining. *Wayne Co Gov't Bar Ass'n v Wayne Co,* 169 Mich App 480,487; 426 NW2d 750 (1988); 1 MPER 19105; *Int'l Ass'n of Firefighters, Local 1467 AFL-CIO v City of Portage*, 134 Mich App 466, 472; 352 NW2d 284 (1984), lv den 422 Mich 924 (1985); *City of Saginaw*, 1982 MERC Lab Op 727, 730. Once a subject has been determined to be a mandatory subject of bargaining, the parties must bargain concerning the subject and neither party may take unilateral action on that subject unless the parties arrive at an impasse in their negotiations. *Central Michigan Univ Faculty Ass'n v Central Michigan Univ,* 404 Mich 268, 277 (1978).

Moreover, after contract expiration, a public employer has a duty to continue to apply the terms of mandatory subjects of bargaining in the expired contract until the parties reach agreement or impasse. *Wayne Co Gov't Bar Ass'n,* at 485; *AFSCME Council 25 v Wayne Co*, 152 Mich App 87, 93-94; 393 NW2d 889, 892 (1986). Failure to do so can be considered repudiation. Repudiation of a contract term that is a mandatory subject of bargaining is a violation of §10(1)(e) of PERA. Repudiation is not found where the alleged deviation from the contract terms merely stems from a bona fide dispute over the interpretation of the contract. *City of Detroit*, 22 MPER 11 (2009). See also *Plymouth-Canton Cmty Sch*, 1984 MERC Lab Op 894, 897. Instead, repudiation can be found where the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. See *Gibraltar Sch Dist*, 16 MPER 36 (2003); *Central Michigan Univ*, 1997 MERC Lab Op 501, 507. The Commission will not find repudiation on the basis of an insubstantial or isolated breach. *Crawford Co Bd of Comm'rs,* 1998 MERC Lab Op 17, 21.

Here, by contract addenda, periodic COLA adjustments were promised and paid in order to guarantee a certain level of pay beyond the expiration date of the collective bargaining agreements to which the addenda were attached. Respondent's claim that COLA payments were not intended to be made indefinitely contradicts unambiguous contractual language stating that COLA adjustments would be made "for years beginning with January 1, 2008." Respondent's failure to make COLA adjustments adversely affected the entire bargaining unit and was not the result of any bona fide dispute as to the meaning of the COLA provision language. Accordingly, Respondent's failure to make COLA adjustments on and after January 1, 2008, was an unlawful repudiation of the parties' agreement and violated §10(1)(e) of PERA.

Respondent's claim that the parties had reached an agreement to eliminate COLA is contrary to the evidence. The Union offered to freeze COLA for a limited period in exchange for specific pay increases. The Employer proposed to permanently eliminate COLA, without pay increases. The claim that this constitutes an agreement is without merit. In the alternative, Respondent asks us to find that the parties were at impasse. Impasse has been defined as the point at which the parties' positions have so solidified that further bargaining would be futile. *Oakland Cmty Coll*, 2001 MERC Lab Op 273, 277; 15 MPER 33006 (2001); *Wayne Co (Attorney Unit)*, 1995 MERC Lab Op 199, 203; *City of Saginaw*, 1982 MERC Lab Op 727, 729. The record contains no evidence to support a finding that the parties had reached a point where neither party was willing to compromise. We decline to find that the parties had reached impasse.

We also reject Respondent's claim that the ALJ's failure to consolidate this matter with unfair labor practice charges filed by Respondent prevented Respondent from presenting evidence of violations committed by Charging Party. The ALJ's ruling in this regard was a reasonable exercise of discretion that dealt with a non-evidentiary procedural matter. Respondent was not prevented from presenting relevant, material evidence of violations alleged to have been committed by Charging Party. However, no such evidence was offered.

While acknowledging that Act 312 may be invoked before the parties are at impasse, Respondent argues that the filing of an Act 312 petition is an admission that the parties are at impasse, citing *City of Flint*, 1993 MERC Lab Op 181. We take note that Act 312 petitions are often filed before impasse and contracts are often settled through negotiation, with or without mediation, while Act 312 petitions are pending. Historically, some Act 312 petitions have been filed for the sole purpose of barring an election challenging an incumbent union's majority status. See, e.g., *Brownstown Twp*, 19 MPER 71 (2006). The suggestion in *City of Flint* that the filing of an Act 312 petition is an admission of impasse is simply wrong. As the Court of Appeals noted in *Flint Professional Firefighters v City of Flint*, unpublished opinion per curiam of the Court of Appeals, issued June 17, 2004 (Docket Nos. 244953, 244961, 244985); 2004 WL 1366000 (2004), "simply because a dispute is submitted to compulsory arbitration does not automatically mean that the parties have reached an impasse."

Based upon *City of Flint*, 1993 MERC Lab Op 181, Respondent also argues that its refusal to pay COLA adjustments cannot be remedied as an unfair labor practice because it was announced after the Union filed for Act 312 arbitration. *City of Flint* held that the obligation under §13 of Act 312, MCL 423.243, to maintain conditions of employment during the pendency of an Act 312 proceeding deprives this Commission of jurisdiction to enforce §10 of PERA during the pendency of an Act 312 proceeding. Here, the ALJ found that because the alleged violation of PERA occurred before Charging Party filed its Act 312 petition, *City of Flint* did not apply. As we have already stated, the record is inconclusive as to when Respondent first announced its intent to withhold the January 1, 2008 COLA adjustment. However, for the reasons discussed below, we find that the issue of whether MERC has jurisdiction over an alleged unilateral change in a mandatory subject of bargaining is not dependent upon whether the change

was made during the pendency of an Act 312 proceeding. We agree with the ALJ that *City of Flint,* 1993 MERC Lab Op 181, is not controlling and, for the reasons discussed below, we decline to follow it under the circumstances presented here.

In *City of Flint*, the ALJ issued a Decision and Recommended Order that addressed an unfair labor practice charge brought under §§10 and 16 of PERA. The ALJ found that the employer's alleged unfair labor practice, a unilateral change of working conditions, occurred during the pendency of an Act 312 proceeding and was ostensibly a violation of §13 of Act 312, MCL 423.243, as well as a violation of PERA. He went on to reason: "The central question presented is whether MERC has jurisdiction to interpret and enforce §13 of Act 312." However, that was not the central question posed by the unfair labor practice charge in *City of Flint*, which alleged a violation of §10 of PERA. The central question was whether §13 of Act 312 deprives this Commission of jurisdiction to enforce §10 of PERA when compulsory arbitration under Act 312 has been invoked. Based on our review of appellate authority, we find that §13 of Act 312 does not affect this Commission's jurisdiction over a violation of §10 of PERA.

In its brief, Respondent correctly acknowledges that Act 312 supplements PERA, meaning that it adds something to the provisions of PERA. See *Detroit Fire Fighters Ass'n, IAFF Local 344 v City of Detroit*, 482 Mich 18, 29; 753 NW2d 579, 584 (2008). Consequently, we consider §13 of Act 312 as being in addition to, rather than a substitute for, §10 of PERA. As the Court of Appeals stated in *Jackson Fire Fighters Ass'n v City of Jackson*, 227 Mich App 520, 525-526; 575 NW2d 823, 826, (1998): "Act 312 was intended to supplement the PERA, not control it." In that case, the Court made it clear that "MERC-and not an Act 312 arbitration panel (citation omitted)-has authority to implement the PERA, and possesses exclusive jurisdiction over unfair labor practice charges." See also *Lamphere Sch v Lamphere Federation of Teachers,* 400 Mich 104, 118; 252 NW2d 818 (1977); *Rockwell v Crestwood Sch Dist Bd of Ed,* 393 Mich 616, 630; 227 NW2d 736 (1975). Further, the Court of Appeals held in *Flint Professional Firefighters v City of Flint*, unpublished opinion per curiam of the Court of Appeals, issued June 17, 2004 (Docket Nos. 244953, 244961, 244985); 2004 WL 1366000 (2004): "A disruption of the status quo under the PERA and Act 312 are separate causes of action. . . . Act 312 is merely supplemental to the PERA. MCL 423.244. "

An employer may make certain unilateral changes in working conditions without violating §10 of PERA once it has satisfied its bargaining obligation and the parties are at impasse. Such changes, after impasse, do not violate PERA. However, when a petition for compulsory arbitration is pending, §13 of Act 312 prohibits unilateral changes regardless of the status of bargaining. A unilateral change after impasse may violate §13 of Act 312 without violating §10 of PERA. Where, as here, an Act 312 petition has been filed and there is no evidence that the parties have reached impasse, a unilateral change in working conditions violates both Act 312 and PERA. In *City of Flint,* 1993 MERC Lab Op 181, the ALJ relied on *City of Jackson*, 1977 MERC Lab Op 402 (no exceptions) and *Meridian Twp*, 1986 MERC Lab Op 915, in suggesting that the remedies available under Act 312 were preferable as they may be more "expeditious" than the remedies available under PERA. Simply because a remedy may be more expeditious does not mean that we

should relinquish one of our core functions, which is to determine violations of §10 of PERA.

That this Commission is without authority to remedy violations of §13 of Act 312, does not deprive it of authority to remedy a unilateral change of a condition of employment that violates §10 of PERA when parties have not reached an impasse in bargaining. We hold that when there has been no bona fide impasse, a change that violates §10 of PERA may be remedied under §16, notwithstanding the pendency of an Act 312 proceeding. To the extent that prior decisions suggest otherwise, they are hereby overruled.

We have considered all other arguments submitted by the parties and conclude they would 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

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: ____________

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

In the Matter of:

KALAMAZOO COUNTY,
Public Employer-Respondent, Case No. C08 A-018

-and-

KALAMAZOO COUNTY SHERIFF'S DEPUTIES ASSOCIATION,
Labor Organization-Charging Party.
____/

Michael F. Ward, for the Labor Organization-Charging Party

John H. Gretzinger, for the Public Employer-Respondent

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 assigned to Administrative Law Judge (ALJ) Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge:

A charge was filed with the Commission by the Kalamazoo County Sheriff's Deputies Association (the Union) on January 25, 2008, alleging that Kalamazoo County (the Employer or the County) violated the Act by unilaterally altering a condition of employment during the bargaining process.[1] The charge asserted that the now-expired primary collective bargaining agreement between the parties provided for quarterly cost of living allowance (COLA) adjustments.[2] The charge further asserted that such adjustments were unilaterally terminated by the Employer while the parties were in negotiations over a successor agreement. [3]

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[1] The Charge initially named both Kalamazoo County and the Kalamazoo County Sheriff as Respondents. At hearing, the County's counsel moved for dismissal as to the Sheriff, on the assertion that the County had acted alone regarding this dispute, with the Union expressing no objection to the dismissal of the Sheriff. The caption has been amended to reflect only the one respondent, Kalamazoo County.

[2] The primary agreement expired by its terms on December 31, 2007, while, as more fully set forth below, an addendum to the contract had terms that expressly continued beyond that date.

[3] The Charge was later amended to allege that the Employer had violated the Act by refusing to comply with an arbitrator's award directing the Employer to correct its earlier underpayment of COLA, which occurred in 2007 during the term of then unexpired primary contract. That portion of the Charge was tentatively resolved on the day of hearing, with the parties agreeing to return to the arbitrator for clarification of the Employer's compliance obligations. The Union has not sought further hearing on that portion of the unfair labor practice charge.

Because the case law regulating such unilateral employer action is so well established, an order to show cause why an evidentiary hearing was necessary was issued on February 1, 2008, pursuant to Commission Rule 423.165. That rule allows for a pre-hearing dismissal of a charge, or for a ruling in favor of a charging party, where there is no genuine dispute as to a material fact. The Employer was directed to address the following factual issues, in accord with Commission rules and taking note of the case law provided in the order:

1. Did the collective bargaining agreement provide for quarterly COLA payments and were such payments unilaterally ended? If yes,
    a. Were the parties still engaged in the bargaining process regarding a successor agreement at the point in time when the payments were ended?
    b. What is the Employer's basis for unilaterally ending the COLA payments?
    c. What material facts, if any, are in dispute regarding this charge?

The County responded to the order, asserting multiple defenses and asserting that there were material disputes of fact which precluded resolution of the dispute without an evidentiary hearing.[4] The County asserted that there was a factual dispute as to whether the anticipated contractual quarterly COLA adjustments constituted periodic payments as described in prior Commission decisions. Additionally, the County claimed that there was a factual dispute as to whether the parties had agreed in bargaining that no COLA adjustments would be made beginning in January of 2008. Finally, the County asserted that there were fact questions as to whether the parties had reached a good faith impasse in bargaining, such that the County could lawfully change conditions of employment.[5]

This matter is one of several pending between the parties. In *Kalamazoo County Sheriff*, MERC Case No. C08 A-019 (October 15, 2008) (pending on exceptions), Judge Stern found that the Employer had unilaterally repudiated an otherwise enforceable substantive provision of its contract with the Union by which the parties had agreed to interest arbitration of disputes over future contract terms; however, Judge Stern denied relief on the finding that the precise provision repudiated by the Employer was related to a permissive subject of bargaining.[6] Also pending

[4] While that response was filed purportedly on behalf of both the County and the Sheriff, it became apparent that the attorney responding on behalf of the County lacked actual authority to respond on behalf of the Sheriff.

[5] The County made the impossibly inconsistent assertions, in the alternative, that the parties had agreed to the cessation of COLA in 2008, or that they were at impasse on the question. At the time of this assertion, an arbitrator had already found that the County had failed to properly calculate and pay COLA owed in 2007.

[6] In *Oakland Univ,* C08 K-241, (May 6, 2009) (pending on exceptions), in a similar circumstance, I differed with Judge Stern's analysis, finding that: "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.

before me is *Kalamazoo County Sheriff's Deputies Association*, MERC Case No. CU08 B-005, which is awaiting decision on summary disposition, and in which the Employer asserts that the deputies' Union unlawfully failed to bargain in good faith when the Union refused to implement a contractual settlement which the Employer had negotiated with the command officers union, which would have altered the deputies' pension plan. Additionally, the Employer filed, but did not pursue, a charge in Kalamazoo *County Sheriff's Deputies Association*, MERC Case No. CU08 C-015 in which it asserted that the Union had failed to bargain in good faith by engaging in supposed surface bargaining.[7] The parties, having failed to negotiate a successor contract, additionally have an Act 312 arbitration pending. Attendant to that arbitration proceeding, the parties are awaiting a decision in *Kalamazoo County,* UC08 E-016, in which post hearing briefs were filed in July 2009, with the primary question being whether the conditions of employment affecting several classifications of Sheriff's Department employees are subject to being determined by interest arbitration, either because they are covered by the compulsory arbitration provisions of Act 312 or by operation of the prior agreement of the parties.[8] The parties also litigated issues related to injunctive relief in the Ingham Circuit Court arising from the same failure to reach a successor collective bargaining agreement.

On the eve of the scheduled hearing in this case, the County brought a motion to dismiss the charge, to sever part of the charge, to consolidate the remainder of the charge with another pending matter, and to adjourn the entirety. The motion was denied and the matter was tried on May 6, 2008, with each party having a full opportunity to submit such proofs as it deemed appropriate. Both parties filed timely post-hearing briefs.

Findings of Fact:

The Kalamazoo Deputy Sheriff's Association has since the 1970s represented a unit that presently consists of approximately two hundred sworn officers and other non-supervisory personnel employed in the Kalamazoo Sheriff's Department. It has had a long and, until recent events, seemingly unremarkable relationship with both the County and the successive elected County Sheriffs.[9] The parties' most recent collective bargaining agreement was effective January 1, 2005, with its main provisions expiring December 31, 2007. All of the agreements between the parties since the mid 1970s provided for quarterly cost of living adjustments, which

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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)."

[7] An additional charge was filed in *Kalamazoo County*, C08 E-086 by the command officers union, asserting essentially the same allegation raised by the Employer in *Kalamazoo County Sheriff's Deputies Association,* MERC Case No. CU08 B-005. Like the Employer, the command officers union has not pursued its charge.

[8] That matter was pursued by the County over the express objections of the Sheriff.

[9] The most recent prior dispute litigated by these parties before MERC appears to be *Kalamazoo County and Sheriff*, 1992 MERC Lab Op 664.

were to be rolled into the base salary. The most recent contract, at Appendix B and with language essentially unchanged in nearly three decades, provided for quarterly cost of living adjustments to the salary schedule, beginning on January 1, 2007, based on increases in the consumer price index, with a cap of five percent (5%) per calendar year for increases coming due during 2007. That annual cap was to increase to ten percent (10%), for quarterly payments that were scheduled to commence January 1, 2008. The language of Appendix B provided that;

> The adjustment in the Cost of Living Allowance shall be made quarterly as of the first pay period beginning on or after each January 1, April 1, July 1 and October 1 and shall be based on the CPI-W Consumers Price Index . . .[and] shall be effective for any three (3) month period . . . and which shall be paid as an addition to the then-existing pay scale . . . The Cost of Living Adjustments in any one year shall not exceed five percent (5%) per year (January 1 to January 1) during the duration of this Agreement, except that for the years beginning with January 1, 2008, the C.O.L. increases granted in any one year shall not exceed ten (10%) per year . . . The cost of living adjustments shall resume with the January 2007 payment . . .

In April and July of 2007, in advance of the anticipated 2007 negotiations for a successor contract, the Employer failed to make the proper cost of living adjustments, which were required during the term of the 2005-2007 primary agreement. A contractual grievance was pursued, resulting in an arbitration hearing in December 2007 and an award by arbitrator Paul Glendon, finding in the Union's favor. In rejecting the Employer defenses to their failure to properly pay the 2007 COLA increases, Glendon held "As to the merits of those grievances, the Employer's counsel deserves high marks for creativity and ingenuity in argumentation, but the argument lacks factual and contractual support." Glendon ordered the restoration of the improperly withheld 2007 COLA adjustments to base salary, along with retroactive payments, and directed the Employer to "calculate future quarterly cost of living adjustments" in keeping with his ruling. The Employer's initial refusal to comply with that award resulted in the filing of the amended charge in this matter.[10]

During the pendency of the COLA grievance dispute, in October 2007, the parties entered into negotiations over a successor to the prior agreement, the main terms of which were to expire on December 31, 2007. The Union submitted proposals that would have suspended the anticipated COLA payments beginning in January of 2008 in exchange for a guaranteed four percent (4%) pay increase in each of three years. The Union proposal would then have reinstated the quarterly COLA increase obligation effective "January 1, 2011 and each quarter thereafter". The Employer's proposals of October and November of 2007 expressly recognized the upcoming obligation to make new COLA adjustments, but proposed to eliminate COLA, "with no payment on 1-1-2008." By the late November 2007 meeting of the bargaining teams, the Employer took the position that it would not make the COLA adjustment scheduled for January 2008, even if

[10] The Glendon award was submitted as an exhibit to the amended charge, which, as noted earlier, was resolved at hearing. In their respective briefs, both parties indicate that pursuant to the agreement reached in the ULP hearing, the parties returned to Glendon, who then issued a clarification or supplement to his earlier award, again directing continuing quarterly adjustments of COLA by the County, and that the County has apparently complied with the latter order as to the 2007 COLA adjustments to base hourly rates.

the arbitrator ruled in the Union's favor and would instead "appeal, appeal, appeal" rather than pay the COLA.[11] The Employer's announced intent to not implement the scheduled COLA increase was followed by the filing by the Union of a petition for interest arbitration in late December of 2007. The Employer's failure to make the scheduled COLA quarterly adjustments to salary beginning in January of 2008 (and continuing through the date of hearing), led to the January 25, 2008 filing of the charge in this matter.

There was no substantial evidentiary dispute as to the handling of COLA calculations and payments prior to 2007. Sergeant James DelaBarre was on the Union's bargaining team and participated in all rounds of bargaining beginning with those leading to the 1988 contract and through the most recent negotiations. DelaBarre provided evidence based on his personal knowledge, bargaining records, and his own payroll records.

An unusual but uniform aspect of the collective bargaining agreements, at least as far back as the 1988 agreement, was that each had an addendum which expressly provided the continuing obligation to pay, and method of calculating, COLA adjustments to base salary following the expiration of the other terms of the collective bargaining agreement. According to DelaBarre, the purpose of the addendum was to "guarantee" that each bargaining unit member would continue to receive COLA adjustments to their base hourly rate in the event that negotiations over a new contract were not concluded before the expiration date of the preceding primary agreement.

Upon the expiration of each primary contract, the addendum resulted in the continuation of quarterly COLA calculations and the resulting increases in base pay.[12] In those few circumstances when the parties reached agreement on the terms of a successor collective bargaining agreement before the expiration of the prior agreement, they also resolved the rate of pay increases under the new contract rather than relying on the COLA clause to determine the new wage rates. Where, as was typical, no agreement was reached on a successor contract before the expiration date of the preceding primary agreement, the Employer complied with the COLA clause and provided periodic increases to wages based on the change in the cost of living index. When agreement was reached on a new wage schedule after COLA adjustments mandated by the addendum had already been implemented, those adjustments were taken into account in calculating any back pay in those circumstances where the newly negotiated wage rate exceeded the rate increase provided by the COLA formula. Some of the contracts continued the quarterly COLA increases during the term of the primary agreement, such as in the final year of the 2005-2007 agreement, while others replaced COLA during the term of the primary agreement with fixed percentage wage increases.

DelaBarre's testimony, and Charging Party Exhibit 3, established that the norm for these parties was to continue the payment of COLA-based increases in salary after the expiration of the primary contracts, based on the contractual addendum, and that such practice continued for

[11] While all the witnesses agreed that the threat was made by a County representative at bargaining, there was disagreement among the witnesses as to whether that specific threat was first made in November 2007 or in January 2008 and over whether it was made by the County administrator or by the County's counsel.
[12] DelaBarre's testimony established that the pattern was followed from 1988 until the present dispute, while the Respondent's Exhibit 9 suggested a similar pattern for the years 1982-87.

decades. COLA adjustments were made each quarter until and unless the parties reached agreement on a new replacement wage scale. The increases were made, following expiration of the primary contract, in January of 1988. Following expiration of the next primary agreement, COLA adjustments were made, pursuant to the addendum, in January, April, July and October of 1990; January, April, July, and October of 1991, as well as January of 1992. The same practice was followed in January and April of 1993, with a new wage scale agreed upon by July of 1993. On the expiration of that primary contract, COLA was again calculated and added to the wage rate in January, April, July and October of 1994, as well as January of 1995, with a new contract reached in February of 1995. An Act 312 award of September 1997 was preceded by the calculation of COLA-based increases, premised on the same addendum language, for January, April, July, and October of 1996 and January, April, July and October of 1997. In 1998, only the January COLA calculation was implemented before a settlement was reached, while in 1999 the January and April calculations took place before the June 1999 settlement. In both 2000 and 2001, settlements were reached before any COLA adjustments came due. The next contract reopener came at the end of 2002 and was followed by COLA increases in January, April and July of 2003, followed by a settlement in November of 2003. The next contract expired in December of 2004 and was followed by COLA increases of January, April and July of 2005 with a settlement in September of 2005 which retained all prior COLA increases, provided for a set percentage increase in 2006, and the resumption of COLA based increases for the entirety of 2007, capped at five percent (5%), to be followed by COLA adjustments in 2007 capped at ten percent (10%). As noted above, the 2007 COLA payments were made under compulsion of an arbitrator's award and supplemental award.

DelaBarre testified credibly, and without contradiction, that there had been no agreement reached at any point in the several bargaining meetings of October and November of 2007 to suspend or waive the scheduled COLA increases that under the express terms of the contract addendum were to be made throughout 2008, subject to a 10% cap. The only evidence offered in support of the Employers' assertion that the parties had agreed to end COLA was the bare fact that the Employer had in November 2007 proposed in writing to eliminate COLA permanently, while the Union's written proposal had been to suspend specific COLA payments, of then uncertain amount, for a specific and limited period of time in express exchange for wage increases of a set percentage. Neither offer had been accepted by the other side.

No evidence was offered to support the Employer's theory that the payment of COLA after 1986 was based on a "mutual mistake of law". The agreement ending December 1987 had language in the addendum which referenced the then-uncertain state of the law regarding an employer's obligation to continue COLA payments after the expiration of an agreement. That language did not appear in any of the contracts subsequent to 1987 and no evidence was adduced to support the claim that somehow the parties made a "mutual mistake of law" in describing their obligations in 1986, nor was any evidenced offered to explain how such a supposed mistake in 1986 would have relevance to what the parties agreed to in contracts negotiated in the following decades.

In its opening statement, the Employer asserted an "impossibility" defense, arguing that the COLA for 2008 could not be calculated because the wage rate in 2007 was uncertain. No evidence was offered to support this argument.

Similarly, no evidence was offered to support the Employer's asserted defense that its January 2008 unilateral refusal to pay the scheduled COLA increases was somehow excused by an alleged earlier failure by the Union to bargain in good faith. The undisputed facts are that the parties met only three times in October and November 2007. Those meetings were preceded by the Employer's unilateral refusal to properly implement the scheduled 2007 COLA adjustments. Additionally, by the second or third bargaining session, the Employer announced that it intended to refuse to pay the scheduled 2008 COLA payments and that, even if ordered to do so, it would "appeal, appeal, appeal" that order rather than pay the contractually mandated increases.

Discussion and Conclusions of Law:

It is well established that in order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must not unilaterally change conditions of employment during the bargaining process. It is further well established that COLA wage adjustments of the sort involved in this matter constitute conditions of employment. The case law is clear that a unilateral change in COLA calculations upon expiration of a contract violates the duty to bargain. See, *Wayne County*, 1984 MERC Lab Op 17, aff'd *sub nom, AFSCME v Wayne County*, 140 Mich App 361 (1984), lv den 422 Mich 924 (1985); *Local 1464 IAFF v City of Portage*, 134 Mich 466 (1984); *Wayne County (Bar Association)*, 1987 MERC Lab Op 230; aff'd *Wayne County Bar Association v Wayne County*, 169 Mich App 480 (1988).

Here, the periodic COLA adjustments were contractually mandated and were intended by the parties to maintain a certain level of pay, regardless of inflation. The parties were cognizant of the possibility of not reaching agreement on successor contracts and expressly agreed, in each round of bargaining, to a contractual addendum which survived the expiration date of the primary agreements. The Employer's conclusory assertion, unsupported by any testimony, that the payments were "not intended to be made indefinitely to maintain purchasing power" cannot stand against contract language, to which the Employer agreed, that the COLA adjustments would be made "for years beginning with January 1, 2008" and would be premised on increases in the consumer price index, thereby obviously designed to provide stable purchasing power. The failure to make the COLA adjustments adversely affected the entire bargaining unit. The Employer's conduct was not done pursuant to any *bona fide* dispute as to the meaning of the contractual language, which was unambiguous and which had regardless been authoritatively interpreted by a grievance arbitrator prior to the hearing in this matter. *City of Detroit,* 1976 MERC Lab Op 652; *Jonesville Bd of Ed,* 1980 MERC Lab Op 891, 900-901; *Cass City Pub Schs*, 1982 MERC Lab Op 241; *City of Detroit, Dep't of Transportation,* 1984 MERC Lab Op 937, *aff'd* 150 Mich App 605 (1985), and *Taylor Bd of Ed,* 1983 MERC Lab Op 77. The failure of the Employer to comply with the contractual commitment to implement COLA adjustments following January 1, 2008, with only spurious excuses, was a repudiation of the parties agreement, such that a finding of a violation of §10(1)(e) is warranted.

In addition to finding that the Employer's conduct constituted a repudiation of a clear contractual obligation under Appendix B, I find that the COLA adjustments were intended by the parties to maintain stable pay during any contractual interregnum. No speculation as to the

parties' intent is required where, as here, there is an uninterrupted consistent application of the addendum language to maintain income levels despite inflation for two decades in each instance where the primary contract expired before a successor agreement was reached. Such quarterly COLA adjustments were made for periods as long as two full years while the parties continued negotiations over a successor primary agreement. COLA adjustments were consistently made after contract expiration such that they were, and remain, a legitimately anticipated income protection mechanism for members of the affected unit and, therefore, the COLA adjustments were a continuing condition of employment. I further find that the parties had not, and could not have, reached a good faith impasse prior to the Employer's unilateral acts, where the parties met only three times in October and November 2007, and particularly where those meetings were preceded by the Employer's unilateral refusal to properly pay the scheduled 2007 COLA payments. The Employer's unilateral change in the previously agreed upon method of calculating pay, following expiration of the 2005-2007 primary collective bargaining agreement, was an unlawful unilateral change in conditions of employment, such that a finding of a violation of §10(1)(e) is warranted. See, *Wayne County, supra*.

The Employer asserted several defenses, regarding which little or no effort was made to establish a factual record. The County human resources director, Jo Woods, was called as a witness by the County; however, her testimony, which was not based on personal knowledge, was limited to laying a foundation for an exhibit which consisted of a summary of an interpretation of prior collective bargaining agreements, when they were ratified or executed, and whether they appeared to require calculation and payment of COLA adjustments. On cross-examination it was disclosed that the exhibit had actually been prepared by the County's counsel and not by the witness. Regardless, her testimony and the exhibit neither contradicted, nor added to, the Union's proofs related to the parties' actual consistent handling of the COLA adjustments over the several decades.[13] Although Woods was a participant on the County's bargaining team, she was not questioned regarding the substantive events during the October-November, 2007 round of bargaining. The only other witness called by the County was Union president Mark Caley, who was seemingly called for the primary purpose of eliciting his testimony to contradict Woods' assertion that it was the County's counsel, rather than the County administrator, who had during bargaining threatened to "appeal, appeal, appeal" any order to pay the COLA adjustments. I find that the failure to attempt to adduce any competent evidence in support of its asserted defenses is in itself further evidence of the Employer's bad faith effort to evade its statutory obligations.

The offered defense that the parties actually reached agreement in the October-November 2007 negotiations to eliminate COLA was audaciously and insultingly specious. The Union offered to trade off COLA adjustments of necessarily uncertain amounts for specific pay increases, for a specified period, with COLA adjustments to then return. The Employer proposed the permanent elimination of COLA, without the pay increases requested by the Union. The entirety of this claim by the Employer rests on the fact that each proposal would have, if accepted, permanently or temporarily replaced COLA; however, the undisputed fact is that

[13] It remained uncontested that the date when a tentative agreement was reached was determinative regarding changes to the wage schedule, not the necessarily later dates of ratification or execution.

neither proposal was accepted. There is not even arguable merit to the assertion that two mutually rejected proposals constitutes an agreement.[14]

The Employer similarly argued that the COLA contractual language was the result of a "mutual mistake of law" supposedly made by the parties prior to 1987. The argument was based entirely on an after-the-fact reading of what the parties might have intended by language which appeared in the 1986 contract, but which did not appear in later contracts. No evidence was offered in support of the claim. Obligations based on contract language and pay practices which were agreed to and implemented over the course of several decades can hardly be escaped on the factually unsupported theory that a mistaken understanding of the law occurred some 20 years ago.

The Employer next asserts that its unilateral change in the existing wage scheme cannot be remedied via an unfair labor practice charge proceeding because, after the Employer announced in November of 2007 its refusal to pay the scheduled increases, the Union, in December 2007, filed for Act 312 arbitration over the terms of a successor agreement. The Employer relies on an entirely overbroad reading of *City of Flint,* 1993 MERC Lab Op 181, which held that enforcement of alleged violations of the obligation under Section 13 of Act 312 to maintain conditions of employment during the pendency of an Act 312 proceeding was best left to the arbitrator or the Courts. First of course, here the Employer announced its refusal to pay the upcoming 2008 COLA adjustments prior to the Union filing for Act 312 arbitration, and in fact, as found by the grievance arbitrator, the Employer had at that point already failed to properly pay the 2007 COLA adjustments. The violation of Section 10 of PERA was complete upon the Employer's announcement of the unilateral change in the salary schedule. The Employer's post hearing brief quotes, but ignores, the ALJ holding in Flint that ". . . *MERC retains jurisdiction over unfair labor practices committed before institution of Act 312 proceedings." City of Flint, supra* at 184.

Although the same conduct can constitute violations of Section 13 and Section 10, the Employer's argument ignores the significant distinction between a Section 13 and a Section 10 violation arising from an Employer's unilateral change in conditions of employment. Section 16 of PERA authorizes the Commission to find and remedy violations of Section 10 of PERA. An employer taking unilateral action on a mandatory subject of bargaining *before* the parties reach a good faith impasse in bargaining commits an unfair labor practice in violation of Section 10(1)(e) of PERA. *Detroit Police Officers Ass'n v Detroit,* 61 Mich App 487, 490 (1975), *lv den* 395 Mich 756 (1975); *Local 1467 IAFF v City of Portage*, 134 Mich App 466,473 (1984). Once the parties have reached good faith impasse, an employer is usually free under Section 10(1)(e) to take unilateral action on an issue as long as its action is consistent with its offer to the union. *Detroit Police Officers Ass'n v Detroit,* 391 Mich 44, 56, (1974). However, under the more

[14] As noted earlier, the Employer agues impossibly in the alternative, asserting that if no agreement had been reached to eliminate COLA, then the parties must have been at impasse. In addition to the fact that the Employer's Answer to the Charge did not assert that its conduct was excused based on the parties being at impasse, no proofs were offered to establish the existence of an impasse in bargaining arising from anything other than the Employer's unilateral refusal to make scheduled salary adjustments. The parties were not at a good faith impasse in bargaining when the Employer announced its unilateral refusal to pay scheduled increases. Regardless, the in-the-alternative argument here is as unpersuasive as a murder defendant's assertion that he killed in self-defense, or in the alternative, was out of town that day.

restrictive provisions of Section 13 of Act 312, an employer may not alter existing wages, hours of working conditions while an Act 312 proceeding is pending without the consent of the union, even *after* parties have reached a legitimate impasse. Neither Act 312 nor PERA authorizes the Commission to remedy violations of Section 13 of Act 312. Nonetheless, it remains a violation of Section 10 to unilaterally impose a change in conditions of employment unless the parties are without a contract and have legitimately reached a good faith impasse in bargaining.

Moreover, the filing of a petition for Act 312 arbitration cannot grant *carte blanche* to either party to violate PERA with impunity. Such a filing does not deprive the Commission of jurisdiction to hear an otherwise valid unfair labor practice charge under §10 asserting a repudiation of an existing agreement or a unilateral change imposed in the absence of a legitimate good faith impasse in bargaining. [15]

Conclusion

This case, and the multiple cases collateral to this portion of the dispute, arose from the County's ill-conceived, and seemingly deliberate, scheme to unlawfully disrupt its otherwise long-standing productive bargaining relationship with its deputy sheriffs.[16] The dispute began with the County refusing to implement contractually promised COLA adjustments and continued with the County repudiating a significant provision of the collective bargaining agreement regarding the agreed upon method of resolving future bargaining issues, all accomplished over the objections of the co-employer County Sheriff. The County's conduct was intended to, and did, avoid its good faith bargaining obligations under the Act. I find that the Employer violated §10 of the Act in repudiating an otherwise binding and unambiguous agreement on the issue of wages, which is central to the relationship of the parties, and that, regardless, the failure to continue payment of COLA under the facts of this case was a separate violation of the §10 duty to maintain existing conditions of employment absent a good faith impasse in bargaining.[17] Rather than complying with its statutory duty to bargain in good faith with the representative of its employees, I find that the Employer engaged in a series of profoundly provocative steps, each intended to preclude the parties from reaching agreement. For the reasons stated above, I recommend that the Commission issue the following order and relief.

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[15] To the extent that *City of Flint, supra*, can be read more broadly, it is wrongly decided. The suggestion that the Commission is automatically deprived of jurisdiction over a §10 violation merely by the filing of an Act 312 petition, where either the Union or the Employer can file such a petition, places in the hands of a wrong-doer the power to restrict the Commission's ability to enforce the Act. An Employer which has violated §10, or plans to do so, could insulate its conduct from review by filing an Act 312 petition itself or, as here, by announcing an intended course of adverse action which is virtually guaranteed to provoke the Union into filing the Act 312 petition.

[16] Contrary to Arbitrator Glendon's sarcastic quip, I am disinclined to give "high marks for creativity" where arguments are advanced by counsel without factual or legal support, and instead, were it not for the contrary holding in *Goolsby v Detroit*, 211 Mich App 214 (1995), I would in this instance follow the Commission's earlier decision in *Wayne-Westland Community School District,* 1987 MERC Lab Op 381, aff'd, *Hunter v Wayne-Westland Community School District,* 174 Mich App 330 (1989), and award to the opposing party compensatory damages arising as a result of the interposing of frivolous defenses. See also, *Police Officers Labor Council,* 1999 MERC Lab Op 196, 202, 209; *Michigan State University*, 16 MPER 52 (2003).

[17] To the extent that other arguments were advanced by the parties and are not specifically addressed above, I find that the arguments were unpersuasive or would otherwise have not altered the outcome.

RECOMMENDED ORDER

Kalamazoo County, its officers, agents, and representatives shall:

1. Cease and desist from:

a. Refusing to bargain in good faith with the Kalamazoo County Sheriff's Deputies Association.
b. Repudiating the terms of agreements reached with the Kalamazoo County Sheriff's Deputies Association.
c. Failing to properly calculate and implement COLA adjustments as described in the collective bargaining agreement with the Kalamazoo County Sheriff's Deputies Association.
d. Unilaterally altering existing conditions of employment, including the proper calculation and implementation of ongoing quarterly COLA adjustments for members of the Kalamazoo County Sheriff's Deputies Association bargaining unit.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

a. Bargain upon demand regarding all mandatory subjects of bargaining with the Kalamazoo County Sheriff's Deputies Association.
b. Comply with the terms of agreements reached with the Kalamazoo County Sheriff's Deputies Association.
c. Properly calculate and implement ongoing COLA adjustments, with the baseline and calculation methodology as interpreted by the Glendon awards, commencing with the improperly withheld adjustments which were scheduled to be calculated and implemented effective January 1, 2008, and continuing quarterly thereafter.
d. Make whole all individual Kalamazoo County Sheriff's Deputies Association bargaining unit members for all wages which were underpaid as a result of the failure to make COLA adjustments which were scheduled to be calculated and implemented effective January 1, 2008, and quarterly thereafter, together with statutory interest upon all compensatory backpay, with interest accruing as of the date each withheld adjustment should have been calculated and implemented.

3. Post the attached notice to employees in a conspicuous place in each workplace to which Kalamazoo County Sheriff's Deputies Association bargaining unit employees are assigned, for a period of thirty (30) consecutive days; simultaneously distribute the notice via email to all employees of the Kalamazoo County Sheriff's Department; and in addition prominently post the notice for a period of thirty (30) consecutive days on any Kalamazoo County website to which Sheriff's Department employees regularly have access as a part of their employment.

4. Mail a copy of this notice to each employee in the Kalamazoo County Sheriff's Deputies Association bargaining unit.[18]

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: August 20, 2009

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[18] Where a violation is pervasive, and particularly where the workforce is dispersed amongst several work locations, and where as here frequently are assigned to work in the field, a mailed notice is appropriate in addition to the traditional workplace posting. See, Detroit Public Schools, ____MPER__ (2009, C07 H-200).

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, **KALAMAZOO COUNTY**, 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. Refuse to bargain in good faith with the Kalamazoo County Sheriff's Deputies Association.
b. Repudiate the terms of agreements reached with the Kalamazoo County Sheriff's Deputies Association.
c. Fail to properly calculate and implement COLA adjustments as described in the collective bargaining agreement with the Kalamazoo County Sheriff's Deputies Association.
d. Unilaterally alter existing conditions of employment, including the proper calculation and implementation of ongoing quarterly COLA adjustments for members of the Kalamazoo County Sheriff's Deputies Association bargaining unit.

WE WILL

a. Bargain upon demand regarding all mandatory subjects of bargaining with the Kalamazoo County Sheriff's Deputies Association.
b. Comply with the terms of agreements reached with the Kalamazoo County Sheriff's Deputies Association.
c. Properly calculate and implement ongoing COLA adjustments, with the baseline and calculation methodology as interpreted by the Glendon awards, commencing with the improperly withheld adjustments which were scheduled to be implemented effective January 1, 2008, and continuing quarterly thereafter.
d. Make whole all individual Kalamazoo County Sheriff's Deputies Association bargaining unit members for all COLA adjustments which were scheduled to be calculated and implemented effective January 1, 2008, and quarterly thereafter, together with statutory interest accruing as each adjustment became due.

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.

KALAMAZOO COUNTY

By: ____________________

Date:_____________ Title: ____________________

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.