STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

COUNTY OF WAYNE,
Public Employer-Respondent,

Case No. C09 F-089

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25,
Labor Organization-Charging Party.
_____ /

APPEARANCES:

Deborah K. Blair-Krosnicki, Chief Labor Relations Analyst, for Respondent

Miller Cohen, P.L.C. by Bruce A. Miller and Robert D. Fetter, for Charging Party

DECISION AND ORDER

On April 16, 2010, Administrative Law Judge (ALJ) David Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent Wayne County (Employer), violated Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210. The ALJ concluded that Respondent repudiated its contractual obligation to Charging Party, American Federation of State, County and Municipal Employees, Council 25, (Union) by failing to make annual service adjustment payments beginning June 1, 2009 to members of the Union's non-supervisory and supervisory bargaining units. The ALJ reasoned that repudiation occurred based on the clear and explicit language of two memoranda of agreement; however, he found that the remedy for the violation was different for the two units. As to the non-supervisory unit, where no successor contract existed, the ALJ ordered payment of the annual service adjustments. Regarding the supervisory unit, the ALJ found that language contained in a successor collective bargaining agreement precluded the payment of annual service adjustments for the time period under dispute.

The ALJ's Decision and Recommended Order on Summary Disposition was served upon the interested parties in accordance with Section 16 of PERA. After requesting and receiving an extension of time, Respondent filed exceptions and supporting brief, along with a request for oral

argument on June 9, 2010. Charging Party filed a response to Respondent's exceptions, as well as cross exceptions to the ALJ's conclusions on July 19, 2010.

In its exceptions, Respondent argues that the ALJ improperly recommended summary disposition in Charging Party's favor by erroneously relying on a theory of contract repudiation and ignoring the assertion that the parties had reached impasse over the payment issue during subsequent contract negotiations. Respondent also alleges that the ALJ's conclusion is overbroad, disregards controlling MERC authority and denies Respondent's right to a hearing on the impasse issue.

In its response, Charging Party agrees with the ALJ's conclusions regarding the non-supervisory unit. In its cross exceptions, however, Charging Party asserts that the ALJ erred by concluding that language in the supervisory unit's successor agreement precluded the payment of annual service adjustments that became due prior to the execution of the successor contract. After careful consideration of the arguments made in Respondent's exceptions and supporting brief, as well as Charging Party's response and cross exceptions, we find the exceptions from both parties to be without merit. We also conclude that oral argument would not materially assist us in deciding this case and, therefore, deny Respondent's request for oral argument

Factual Summary

Unless otherwise indicated, we adopt the factual findings set forth in the ALJ's Decision and Recommended Order and will not repeat them, except where necessary. Charging Party and its affiliated locals represent approximately 1800 bargaining unit members employed by Respondent who work in various supervisory and nonsupervisory positions. Three locals comprise the "supervisory unit" of employees, while four locals comprise the "non-supervisory unit" of employees.

In early 2008, the parties were negotiating separate collective bargaining agreements for the two units covering the contract period from October 1, 2004 through September 30, 2008. During the pendency of these negotiations, Respondent and Charging Party entered into separate memoranda of agreement (MOAs) for each unit that provided in pertinent part-- "Effective June 1, 2009, and continued annually, eligible employees in the bargaining unit will receive a two percent (2%) annual service adjustment." (*Emphasis added*). On April 4, 2008 and July 31, 2008, respectively, the parties executed retroactive contracts for the supervisory and non-supervisory units. The MOAs were included in the contracts.

In January 2009, Respondent and Charging Party began negotiations on successor collective bargaining agreements for both units covering the contract term from October 1, 2008 through September 30, 2011. On October 3, 2009, the parties executed a successor agreement covering the supervisory bargaining unit only, which provided in pertinent part that "there will be no annual service adjustments during the 2008-2011 contract term." (*Emphasis added*). As of the close of the record before the ALJ, the parties had not reached a 2008-2011 successor agreement for the non-supervisory unit, and no annual service adjustments had been paid to any member of the supervisory or non-supervisory units.

Discussion and Conclusions of Law

Repudiation versus Contract Expiration

Respondent argues that the MOAs placed in the respective 2004-2008 collective bargaining agreements expired with the agreements on September 30, 2008, thereby rendering the MOAs unenforceable and impossible to repudiate on June 1, 2009. We disagree. The respective MOAs expressly identify June 1, 2009 as the effective date for making payments of the annual service adjustments. We agree with the ALJ that this effective date clearly falls outside of the scheduled expiration date of the 2004-2008 agreements. The 2004-2008 contract negotiations were ongoing at the time that the parties executed the MOAs. The parties negotiated and executed the MOAs apart from and prior to the ratification of the 2004-2008 agreements, and the retroactive agreements incorporated the signed MOAs. Consequently, we reject the claim that the parties intended for the annual service payments outlined in the MOAs to expire with the retroactive agreements on September 30, 2008.

Repudiation versus Impasse

Respondent asserts the ALJ erred by finding that it repudiated the terms of the MOAs. Respondent alleges instead that it was not obligated to pay out the annual service adjustments beginning June 1, 2009 because the parties had reached impasse on the issue during negotiations of the 2008-2011 successor agreements. As indicated by the ALJ, this Commission has consistently held that repudiation exists where a party's actions extensively rewrites or disregards a written bargaining obligation (*Central Michigan Univ*, 1997 MERC Lab Op 501), so long as the alleged breach is substantial and does not involve a reasonable dispute on the agreement's interpretation or meaning. *Plymouth Canton Cmty Sch*, 1984 MERC Lab Op 894. Since Respondent has not raised contract interpretation as a defense to the Union's non-payment complaint, we need not discuss it here. Instead, we concur with the ALJ's conclusion that the terms of the two MOAs unequivocally provide that eligible employees in the covered bargaining units would begin receiving a two percent annual service adjustment effective June 1, 2009. Further, Respondent's refusal to implement the payments on June 1, 2009 caused a substantial impact on both units in light of the number of Charging Party's members denied the added income from the anticipated payments.

We also reject Respondent's impasse argument that relies on our decision in *Wayne County (Attorney Unit)*, 1995 MERC Lab Op 199, where we found that no unfair labor practice had occurred from an employer's refusal to implement a scheduled step increase pursuant to the terms of an expired contract. There, step increases were part of an expired collective bargaining agreement and the unfair labor practice charge alleged a breach of the employer's duty to bargain. In that case, the commission adopted the ALJ's conclusion that the employer justifiably declared impasse on the single issue of payment of the step increase in light of the parties' solidified positions on the wage issue, the county's financial exigency and the imminent threat of further financial hardship from the step increases. We recognized an exception to the rule that the *status quo* must be maintained during subsequent bargaining. Here, however, the

Respondent is not seeking relief from its obligation to maintain *status quo* during future bargaining. Rather, we are asked to relieve the Respondent from a contractual obligation to which it freely and voluntarily imposed on itself. While this Commission has discretion to determine the scope of "good faith" bargaining during negotiations, we lack authority to nullify contractual obligations simply because they have become onerous to one of the parties. We hold that since the two MOAs had no expiration dates, they survived the expiration of the 2004-2008 agreements. Neither party had a duty to bargain further on those provisions, nor could either party lawfully bargain to impasse over those provisions. Therefore, Respondent unlawfully repudiated its contractual obligation by failing to implement the two percent annual adjustments to Charging Party's members beginning June 1, 2009.

Waiver of Service Adjustment Payments to Supervisory Unit

As to the supervisory unit only, we agree with the reasoning and conclusions reached by the ALJ. On October 3, 2009, the parties entered into a successor collective bargaining agreement providing that no annual service adjustments will be paid out during the 2008-2011 term. This new agreement's term specifically runs from October 1, 2008 through September 30, 2011 and spans the June 1, 2009 effective date for implementing the annual service adjustments under the MOAs. We find that the parties voluntarily bargained and ratified language in their successor contract that supersedes and overrides the payment obligation under the MOA of the supervisory unit.

We reject Charging Party's contention that the annual service adjustments to the supervisory unit remained due for the time period from June 1, 2009 through October 2, 2009. Had the parties reasonably intended to honor the MOA payment obligation, they could have easily exempted the restriction from applying to any payments due and owing prior to the date of execution of the 2008-2011 successor agreement. We will not fashion an exemption that contradicts the plain language of the 2008-2011 successor agreement. However, while the 2008-2011 contract's language nullifies the payment of the annual service adjustments, it does not preclude the ALJ's conclusion that Respondent committed an unfair labor practice by repudiating terms of the supervisory unit's MOA between June 1, 2009 and October 2, 2009.

Finally, we have considered the remaining arguments submitted by the parties and conclude that they would not change the result in this case. We affirm the ALJ's factual findings and conclusions of law 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:

COUNTY OF WAYNE,
Respondent-Public Employer,

Case No. C09 F-089

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Deborah K. Blair, Chief Labor Relations Analyst, for Respondent

Miller Cohen, by Robert D. Fetter, for Charging Party

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On June 12, 2009, American Federation of State, County and Municipal Employees, Council 25 (AFSCME) filed an unfair labor practice charge against Wayne County. 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 David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the pleadings, the transcript of oral argument and the exhibits agreed to by the parties, I make the following findings of fact and conclusions of law.

The Unfair Labor Practice Charge and Background Matters:

The charge, as amended by AFSCME on June 29, 2009, alleges that Respondent repudiated agreements to pay its members an annual service adjustment beginning June 1, 2009. The parties initially appeared before the undersigned on October 6, 2009, at which time they entered a stipulation of facts into the record and agreed to the admission of two joint exhibits. Based upon the stipulated facts and exhibits, I concluded that there did not appear to be any dispute of material fact and that the matter was seemingly governed by existing case law which warranted a decision in Charging Party's favor. However, I afforded the parties the opportunity to file written briefs addressing whether summary disposition in favor of the Union was appropriate.

The parties filed briefs on or before November 16, 2009. Oral argument was held before the undersigned on March 4, 2010. At that time, the parties agreed to the admission of one additional exhibit. After reviewing the stipulation of facts and documentary evidence, and considering the arguments made by counsel, I concluded that this case involved a well-settled issue about which there were no legitimate issues of material fact and that a decision on summary disposition was appropriate. For the reasons set forth more fully below, the decision was issued from the bench.

Findings of Fact:

The following findings are derived from the stipulations and exhibits agreed to by the parties on October 6 and November 16 of 2009. Charging Party and its affiliated locals represent supervisory and nonsupervisory employees of Wayne County. The "nonsupervisory unit" consists of Locals 25, 101, 409 and 1659 and totals approximately 1,600 members, while the "supervisory unit" is comprised of approximately 200 employees organized within AFSCME Locals 1862, 2057 and 2926.

During the spring and summer of 2008, the parties were negotiating collective bargaining agreements to retroactively cover the preceding four-year period of 2004-2008 for both the supervisory and non-supervisory units. Those negotiations culminated in a retroactive contract for the supervisory unit which the parties executed on April 4, 2008. The parties executed a retroactive collective bargaining agreement for the non-supervisory unit on July 31, 2008.

While the 2004-2008 contract negotiations were still ongoing, the parties entered into memorandums of agreement on "annual service adjustments" for members of both units. The agreements were signed by the presidents of the various AFSCME locals and an AFSCME staff representative, and by the County's labor relations director. The memorandum of agreement covering the supervisory unit is dated March 14, 2008 and provides:

> Effective June 1, 2009, and continued annually, eligible employees will receive two percent (2%) annual service adjustments. To be eligible for an annual service adjustment, employees must be of record on the date of the service adjustment, below their grade maximum and have been in their current classification for at least one year on that date. Additionally, the following apply:
>
> A. Active employees with at least one (1) year of continuous permanent, full-time County service who have worked or been paid at least 1040 straight-time hours in the last 12 months, shall receive the annual service adjustment. Thereafter, June 1 will be the date for future annual service adjustments.
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> B. Employees who on June 1, 2009, and annually thereafter, are off the payroll, on leave without pay (except military leave and workers compensation leave), or on long-term disability leave, will not receive an annual service adjustment unless they have worked

> or been paid 1040 straight-time hours in the 12 months preceding June 1. If otherwise eligible, the adjustment shall be effective on the date they return to active employment.

The memorandum of agreement covering the non-supervisory unit is dated July 18, 2008. That agreement states:

> Effective June 1, 2009, and continued annually, eligible employees in the bargaining unit will receive a two percent (2%) annual service adjustment. To be eligible for an annual service adjustment, employees must be of record (active) on the date of the service adjustment, below their grade maximum, and have been an active employee in their current classification for at least one (1) year on that date (June 1).

On August 18, 2009, the parties reached a tentative agreement on a successor contract for the supervisory unit covering the period 2008 to 2011. That agreement, which was executed by the parties on October 3, 2009, provides, "There will be no annual service adjustments during the 2008-2011 contract term." As of the date of oral argument in this matter, no contract had been reached for the non-supervisory unit.

Approximately 80 percent of the members of Charging Party's supervisory and non-supervisory bargaining units were eligible to receive annual service adjustments on June 1, 2009 pursuant to the terms of the memorandums of agreement. However, no payments were made on that date or at any time prior to the close of the record in this matter. Rather, the County claimed that it was not required to make such payments because the parties had bargained to impasse over the issue during the negotiations on successor collective bargaining agreements.

Discussions and Conclusions of Law:

After considering the briefs filed by the parties, as well as the arguments made by counsel on the record on March 4, 2010, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition was appropriate pursuant to Commission Rule R 423.165 (1). In the interest of judicial economy and to avoid unnecessary delay, I issued the following bench decision:

> JUDGE PELTZ: Under Commission Rule 423.165 where there is a properly stated charge and no genuine issue of material fact and instead merely a question of law, an administrative law judge acting for the Commission has the authority and obligation to issue a ruling on the merits of [the] dispute on summary disposition. *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriff's Ass'n*, 282 Mich App 266 (2009). In addition, see *Detroit Public Schools*, 22 MPER 19 (2009).
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> Under Section 15 of the Act, public employers and labor organizations have a duty to bargain in good faith over wages, hours, and other terms and conditions of employment. Such issues are mandatory subjects [of] bargaining.

See *Detroit Police Officers Association v [City of] Detroit*, 391 Mich 44 (1974). Terms and conditions of employment which are mandatory subjects of bargaining survive expiration of the contract by operation of . . . law during the bargaining process for a new contract. See, for example, *City of Detroit Transportation Department*, 1998 MERC Lab Op 100.

[I]t is well established that, for example, the payment of step increases is [a] mandatory subject [of] bargaining under PERA, and that the unilateral refusal of an employer to pay step increases, in accord with the terms of an expired or terminated contract prior to impasse, is an unfair labor practice. See *MESPA v Jackson Community College*, 187 Mich App 708 (1991). A party violates Section 10 (1)(e) of PERA if it unilaterally modifies a term or condition of employment, unless that party has fulfilled its statutory bargaining obligation or has been freed from it. *Port Huron Education Ass'n v Port Huron Area Sch Dist*, 452 Mich 309 (1996). A party can fulfill its obligation under the Act by bargaining about a subject and memorializing the resolution of that subject in the contract. Under such circumstances, the matter is considered covered by the agreement, as the Commission described in *St. Clair Intermediate Sch Dist*, 2000 MERC Lab Op 55. Once a public employer and a union have fulfilled [the duty to] bargain, the parties have a right to rely on the contract as the statement of their obligations on any topic covered by that agreement.

[A]lthough the Commission doesn't enforce collective bargaining agreements, it does have the authority to interpret contracts where necessary to determine whether a party has repudiated its collective bargaining obligations. An alleged breach of contract will be considered [a] repudiation when (1) the contract breach is substantial and has significant impact on the bargaining unit and, (2) no bona fide dispute exists over interpretation of that contract. See, for example, *Plymouth Canton Community School District*, 1984 MERC Lab Op 894. The Commission will find repudiation only when the actions of a party amount to a re-writing of the contract or a complete disregard for the contract as written. See *Central Michigan University*, 1997 MERC Lab Op 501; *Cass City Public Schools*, 1980 MERC Lab Op 956.

[I]n the present dispute, the County has argued that there can be no repudiation here because the collective bargaining agreements [which were in effect when the memorandums of agreement were entered into] have expired. Now I'll make note that the principle of repudiation applies to any agreement, whether it be a collective bargaining agreement or a specific letter of understanding, whether contained within that agreement or elsewhere.

An agreement to grant a benefit after the expiration of a contract may be valid and enforceable even after the contract itself has expired. For example, in a slightly different context, the Commission has held that the payment of step increases, as I indicated, is a mandatory subject of bargaining under PERA, and that the unilateral refusal of an employer to pay step increases in accordance with

the terms of an expired or terminated contract prior to impasse is an unfair labor practice.

[T]here are several cases dealing with post-contract expiration obligations . . . beyond simply an obligation . . . to maintain a status quo; in other words [where there is] some specific contract language indicating an agreement by the parties that benefits would be paid or accrued following expiration of the contract. We've discussed some of these today during oral argument, the *Kalamazoo County* case which the parties had referenced. That case, Case No. C08A-018, *Kalamazoo County and Kalamazoo County Sheriff Deputies Ass'n.* It was a decision issued by Judge O'Connor on August 20th of 2009. And in that case there was a 2005 through 2007 contract which provided for quarterly cost of living or "COLA" adjustments to the salary schedule with the specified annual cap, which initially was five percent per calendar year.

Pursuant to that agreement, the annual cap was to increase to 10 percent for quarterly payments that were scheduled to commence January 1, 2008, after expiration of the contract. And, again, this is not a status quo case. This is where the contract itself made specific reference to events occurring post expiration. The parties then entered into negotiations on a new contract, with both sides proposing changes to the COLA provisions. During negotiations, the employer indicated it would not implement the scheduled January 1, 2008 increase, and the employer made good on that declaration and, in fact, failed to make any COLA adjustments through the date of the hearing.

[T]he ALJ . . . concluded that the parties had expressly agreed to the COLA provisions, which by their own terms survived the expiration date of the contract. In so holding, the ALJ rejected the employer's assertion, as unsupported by facts, that the payments were not intended to be made indefinitely. He found that the failure to make the COLA payments had a substantial effect on the unit, and that the employer's conduct had not been done pursuant to any bona fide dispute as to the meaning of the language, which he found to be unambiguous. For that reason, the ALJ concluded that the employer's failure to comply with its contractual commitment constituted a repudiation of the parties' agreement under Section 10 (1)(a) of the Act.

Another case recently issued, this one from July 9 of 2009, *City of Taylor and the Police Officers Association of Michigan (POAM)*, MERC Case No. C08F-110, a decision issued by ALJ Stern. In that case, the most recent contract between the parties which expired on June 30 of 2008, provided that, "Final average compensation shall not be subject to negotiation and/or Act 312 arbitration in any future contracts until February 1 of 2017." During bargaining on a new contract, the employer proposed various changes to pensions. The union objected to these proposals as violative of the pension moratorium language, and the employer responded by asserting that that moratorium was unenforceable.

[T]he ALJ found that the employer did not violate its duty to bargain by bringing its proposals to the table, even if the union had no obligation to bargain over them. And I think that point is important, that the union had no obligation to bargain over them. However, the ALJ went on to address the ongoing dispute over the validity and scope of the moratorium provision, which both parties wished to have resolved. The ALJ rejected the employer's argument that the moratorium was contrary to the purposes of PERA, including its goal of promoting good faith bargaining and the prompt resolution of labor disputes by preventing the parties from freely negotiating on a regular basis, especially given financial crisis.

[I]n *Ann Arbor Fire Fighters Local 1733*, 1990 MERC Lab Op 528, the Commission rejected the employer's argument that a 10-year waiver agreement should be declared invalid because it extended past the term of the contract [in] which it was included. In so holding, the Commission in that case noted that it was not the Commission's role to reform an agreement reached by the parties to a collective bargaining relationship or to alter the bargain that they had intentionally reached, even if this agreement has bad consequences for one of the parties.

[I]n the instant case, there is no dispute that the parties freely and voluntarily entered into these two memorandums of agreement which clearly and explicitly state that effective June 1st, 2009, eligible employees in the bargaining units will receive a two percent annual service adjustment. There is no language in those agreements indicating that this obligation was somehow dependent on something else occurring or not occurring. These agreements were signed by the Presidents of the various Locals and by representatives of the County.

At a minimum, according to the parties' estimate today, some 1,400 employees would have been due payment on June 1st of 2009. The failure of the County to make the required payments on June 1st of 2009 [has] an adverse, a clear adverse effect on a significant portion of the bargaining unit. The County's failure to make the payment was not done pursuant to any bona fide dispute as to the meaning of the two agreements that we've referenced, which appear to be unambiguous with respect to [that] obligation. [E]ven if it hadn't been 1,400 employees, I would say any across the board change . . . would per se have a substantial effect on a unit as a whole, this was clearly not an isolated incident effecting a single employee.

Now the County has argued today that what this agreement really was an agreement to cover the status quo period after expiration of the [2004-2008] contract, and that there was always going to be bargaining over whether the payments should be made or not [during the negotiations on successor contracts]. I don't think that argument can be made in good faith . . . . [Nor can] any argument . . . be made in good faith here that the principal of impasse would even apply where the County declared impasse before any payments were made which

were the subject of the memorandum of understanding or memorandum of agreements here.

You had parties voluntarily entering into an agreement for the payments to be made effective June 1st of 2009 with, again, no language . . . making that somehow equivocal, and prior to that date even arising, the County attempting to declare impasse and attempting to [avoid] its obligations pursuant to those agreements. Moreover, regardless of what might be -- what the Commission might find [with respect to] whether the parties were at impasse . . . I don't see that as relevant to this dispute. Again, the parties had already bargained over this issue, they reached a voluntary agreement. Therefore, there was no duty on the part of the Union to bargain further over the issue. And at the same time the County could not lawfully declare impasse upon its failure to secure from the union the modification of that agreement.

Now admittedly, the obligation to pay the annual service adjustments in this case is without an end date. The question of whether that obligation is binding on the parties past this first year, and if so for how long, may arise in the future. My decision today should not be interpreted in any way as a finding that the union has no obligation to bargain over the issue in perpetuity. The question presented here by this charge is solely whether Respondent repudiated its contractual obligation by failing to make a payment to Charging Party's members on June 1st of 2009. Again, given the clear and explicit language of the agreement between the parties, I find that such a repudiation has in fact occurred in this case.

Now I'll note, although we haven't heard much of this argument today or in the County's brief, there was an argument made initially in this case that the financial crisis which the County asserts provided a legal justification for the repudiation. And I think in recognition of the fact that such an argument has been shot down by the Commission numerous times, we have not heard again that assertion made today. But I will note that in *City of Detroit, Transp Dep't,* 1984 MERC Lab Op 937, *Jonesville Board of Ed*, 1980 MERC Lab Op 891, *Wayne County Board of Commissioners*, 1985 MERC Lab Op 1037, in all those cases the Commission has rejected the employer's attempt to justify its repudiation of contractual obligations based on the principle of economic necessity.

Now the remedy for the violations which occurred here with respect to the non-supervisory unit, I think it's clear and straightforward. The County will be ordered to (1) restore the payment of the annual service adjustment to all affected AFSCME bargaining unit members, [and] (2) to compensate and otherwise make whole any AFSCME unit members who lost income as a result of the County's repudiation of its obligation to make the service adjustment payments on June 1st of '09, together with statutory interest on all amounts owed, and [to] post [an] appropriate notice.

> [W]ith respect to the supervisory unit, the issue of the proper remedy is a bit more complicated. It's undisputed that the supervisory unit reached a tentative agreement on a new contract on August 18th of 2009. [The tentative agreement covering that unit] was executed by the parties on October 3rd of 2009. The union contends that members of the unit affected by the County's actions are entitled to relief from June 1 of 2009, the date that the payments were due, until October 3rd, 2009, the date of execution. And I disagree with that assertion.
>
> With respect to the issue of the annual service adjustments, the new agreement at Article 34, Section 6 states, as I indicated before, there will be no annual service adjustments during the 2008-2011 contract term. By this language, the supervisory unit I find has agreed to forego payment of the annual service adjustments during the life of the contract, which necessarily includes June 1st, 2009. The language is, in essence, a settlement of this dispute as to the supervisory unit, which precludes there being any back payments to Charging Party's members.
>
> To this end, I'll note that one of the fundamental principles of PERA is the encouragement of voluntary settlement of disputes and the incorporation of these settlements into written agreement. So in essence, the violation which I found with respect to the supervisory unit is a per se violation, but there's no effective remedy that can be ordered given the subsequent agreement reached. That concludes the discussions and conclusions of law in this case.[1]

Based on the findings of facts and conclusions of law set forth above, I hereby issue the following recommended order:

[1] The transcript excerpt reproduced herein contains minor typographical edits for clarity purposes. The completed unedited transcript is maintained within the Commission case file.

ORDER

Wayne County, its agents, officers and representatives are hereby ordered to:

1. Cease and desist from denying the existence of, or otherwise repudiating, the terms and conditions of employment set forth in the memorandum of agreement entered into between Wayne County and AFSCME Locals 1862, 2057 and 2926 on March 14, 2008, and in the memorandum of agreement entered into between the County and AFSCME Locals 25, 101, 409 and 1659 on July 18, 2008.

2. Cease and desist from refusing to pay eligible bargaining unit members in AFSCME Locals 25, 101, 409 and 1659 the annual service adjustment to which they are entitled under the aforementioned agreement effective June 1, 2009. No payments are being ordered as to the bargaining unit members in AFSCME Locals 1862, 2057 and 2926.

3. Make members of the bargaining units represented by AFSCME Locals 25, 101, 409 and 1659 whole for any loss of pay incurred as a result of the conduct described above, plus interest at the statutory rate, computed quarterly, with the full method of calculation, and actual individual calculations, disclosed to Charging Party prior to the payment thereof.

4. Post copies of the attached notice to employees in conspicuous places on the City's premises, including all locations where notices to employees are customarily posted. Copies of this notice shall remain posted for 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
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, the County of Wayne, 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 refuse to bargain in good faith with AFSCME Council 25 by denying the existence of, or otherwise repudiating, the terms and conditions of employment set forth in the memorandum of agreement entered into between Wayne County and AFSCME Locals 1862, 2057 and 2926 on March 14, 2008, and in the memorandum of agreement entered into between the County and AFSCME Locals 25, 101, 409 and 1659 on July 18, 2008.

WE WILL NOT refuse to pay eligible bargaining unit members in AFSCME Locals 25, 101, 409 and 1659 the annual service adjustment to which they are entitled under the aforementioned agreement effective June 1, 2009. We have not been ordered to pay the annual service adjustment to bargaining unit members in AFSCME Locals 1862, 2057 and 2926.

WE WILL upon request of the Union, bargain collectively and in good faith concerning wages, hours and working conditions.

WE WILL make members of the bargaining units represented by AFSCME Locals 25, 101, 409 and 1659 whole for any loss of pay incurred as a result of the conduct described above, plus interest at the statutory rate, computed quarterly, with the full method of calculation, and actual individual calculations, disclosed to Charging Party prior to the payment thereof.

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

COUNTY OF WAYNE

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place Building, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, MI 48202-2988. Telephone: (313) 456-3510.