STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

THIRD CIRCUIT COURT,
Public Employer-Respondent,

Case Nos. C08 J-230 &
C11 J-168

-and-

AFSCME COUNCIL 25,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Bruce A. Campbell, Assistant Corporation Counsel for Respondent

Miller Cohen, PLC by Richard G. Mack, Jr., for Charging Party

DECISION AND ORDER

On November 9, 2011, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Christine A. Derdarian, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

THIRD CIRCUIT COURT,
Respondent-Public Employer,

Case Nos. C08 J-230
& C11 J-168
Consolidated Cases

-and-

AFSCME COUNCIL 25,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Miller Cohen, PLC, by Richard Mack, for Charging Party

Bruce Campbell, for Respondent

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, these cases were assigned to Doyle O'Connor, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge and the Undisputed Facts:

On October 31, 2008, a Charge was filed in this matter asserting that the Third Circuit Court (the Employer) had bargained in bad faith and had threatened the unilateral implementation of changes to health care insurance. A hearing date of February 4, 2009 was set and was then adjourned without date at the request of Charging Party. On April 7, 2009, a First Amended Charge was filed which added an allegation of a failure to provide relevant requested information. The matter was set for hearing on August 6, 2009.

On June 3, 2009, a Second Amended Charge was filed which replaced the earlier charge with allegations that the Employer engaged in regressive bargaining in March and April of 2009. On June 18, 2009, a Third Amended Charge was filed which supplemented the Second Amended Charge with the assertion of a refusal to bargain related to events of June 16, 2009. On July 29, 2009, a Fourth Amended Charge was filed, adding allegations related to an information request regarding health care insurance

questions. The hearing was then adjourned, this time at the Employer's request, to September 24, 2009.

On September 24, 2009, the dispute was settled in part and further proceedings were adjourned without date by joint request. The parties proceeded through the statutory fact finding process. On June 3, 2010, the Union renewed its request that the ULP Charge be held in abeyance.

On August 19, 2010, a Fifth Amended Charge was filed asserting that after approximately five bargaining sessions subsequent to the release of the fact-finder's report, the Employer had unlawfully asserted that the parties were at an impasse in bargaining, again related to health care insurance, and that the Employer intended to impose changes in the health care insurance. The matter was then set for hearing on January 20, 2011, with that date adjourned due to the unavailability of the judge. The matter was rescheduled for hearing on June 9 and 10, 2011.

A pretrial conference was held on April 28, 2011, at the Employer's suggestion. The June 9, 2011, hearing date was later, at Charging Party's request, converted to a settlement conference in an effort to resolve the unfair labor practice charge and the underlying collective bargaining dispute. On June 10, 2011, after two days of protracted discussions under the judge's supervision, a tentative settlement was reached between the Employer, Third Circuit Court, and AFSCME, which included in its express terms the withdrawal of the pending ULP Charge.

Because Wayne County is the funding source for the Third Circuit Court, it has certain authority regarding the level of financing the Court will receive. Therefore, the County plays a role in the approval of the financial terms of a collective bargaining agreement. The County rejected the June 10th tentative agreement.

On July 8, 2011, the parties jointly sought the scheduling of yet another settlement conference, with Wayne County voluntarily agreeing to have its officials play a direct role in the settlement discussions. New trial dates were set beginning on October 3, 2011. A settlement conference was held on July 19, 2011, which did not result in resolution of the dispute.

Yet another settlement conference was scheduled, again at the joint request of the parties, for September 14, 2011. The parties were all cognizant of the significant adverse financial impact on employees, if a legislatively-set deadline was not met. The intervening adoption of 2011 PA 152 mandated a significant shift in health insurance costs onto employees if an executed collective bargaining agreement was not in place by the deadline set in that statute. The AFSCME bargaining team was physically present for that settlement conference, with counsel for all parties and the bargainers for the Court in their respective offices. The settlement discussions were conducted by phone, email, and fax with the direct involvement of the assigned ALJ.

A settlement was reached on September 14th and resulted in the execution that day of a new collective bargaining agreement between AFSCME and the Employer. The agreed upon terms in most respects mirrored those tentatively agreed to on June 10th. The one significant difference was that one financial benefit which had been in the June package, consisting of additional compensatory time for employees regarding which the County, as funding source, had apparently objected, was deleted from the September package. The withdrawal of the pending ULP Charge in C08 J-230 was part of the September package, as it had been in the June package. The September package also required the withdrawal of the Charge in a case then pending before ALJ Julia Stern in Case Number C09 J-204, related to the implementation of criminal background checks for court employees. The substantive terms of that agreement were:

> **This Settlement Agreement ("Agreement") outlines the substantive changes agreed to by the parties for a new collective bargaining agreement ("contract") covering the period of September 14, 2011 through September 13, 2012. In the absence of any further documentation, the settlement agreement shall constitute the collective bargaining agreement between the Third Judicial Circuit (the Court) and AFSCME Council 25 and Locals 1905 and 3309. Unless otherwise indicated, all terms and conditions become effective on the date the new contract is executed by the Chief Judge of the Third Judicial Circuit.**
>
> **I. EXISTING TENTATIVELY AGREED UPON ARTICLES / ISSUES:**
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> **All articles previously settled and tentatively agreed to subject to the provisions set forth below are hereby incorporated by reference (attached AFSCME Negotiations Status Report 05/13/11).**
>
> **II. OUTSTANDING ARTICLES / ISSUES:**
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> **Outstanding articles / issues are resolved as follows:**
>
> 1. **The CBA will be from September 14, 2011 through September 13, 2012 and would both expire and terminate on September 13, 2012.**
>
> 2. **The Union accepts the County health plan as set forth in the Court's last best offer with the understanding that the provisions found in Section 4 (2) which have been superseded by recent federal legislation, shall be redrafted to conform to such requirements (dependent children coverage).**
>
> 3. **The Employer shall permit the use of flex time for unit members consistent with operational needs. Such flex time is**

to be approved by the appropriate supervisor. If the flex time is not approved, the employee may appeal said decision to a six member committee which shall be composed of three AFSCME-selected persons, and three Employer-selected persons. The committee shall conduct a hearing concerning the request for flex time. A majority vote of the committee is required to overturn the decision of the supervisor who denied flex time. Flex time decisions are not subject to the grievance procedure.

4. **The parties agree not to bar any unresolved grievances from arbitration due to the previous CBA termination.**

5. **The Union shall dismiss with prejudice any unfair labor practice charges or other litigation currently filed against the Court or County relating to negotiation of this CBA, including but not limited to proceedings concerning the implementation of the CHBC and the Court's implementation of its last best offers after impasse. The Union agrees to the CHBC plan adopted by the Court and submitted to SCAO.**

6. **No Compensatory Time.**

7. **No Step Increases.**

8. **The Union shall execute the Memorandum of Understanding presented to them concerning the Court's Family-Juvenile Division's Status Offender's Unit.**

The resulting document was signed on September 14 by the chief judge of the Third Circuit Court as well as by its director of human resources and by representatives of AFSCME Council 25 and its Locals 3309 and 1905. The Employer confirmed by email message that the Union represented to the Employer that the agreement had been ratified by a vote of its membership.

On October 3, 2011, AFSCME filed a Charge form with a cover sheet indicating that it was an amended charge, but not indicating which of the several pending claims it sought to be amended. On October 4, 2011, AFSCME filed another copy of the same charge form, with both the cover sheet and the charge itself indicating that it was intended as a proposed amendment to the pending charge before ALJ O'Connor in Case Number C08 J-230. On October 5, 2011, AFSCME indicated that it had been it's intent that the allegations in the charge form be treated as a new charge. Consequently those new claims were assigned a new case number, C11 J-168, and were consolidated with the pending case C08 J-230.

The new Charge asserts that the Employer violated sections 10(1)(a), (c), (d) & (e) of PERA. It is alleged that the Employer:

- forced AFSCME to bargain over the withdrawal of the pending bargaining related ULP charges in exchange for attaining a signed contract;
- retaliated against AFSCME because AFSCME had filed the prior ULP charges;
- discriminated against AFSCME for instituting proceedings under the Act;
- forced bargaining over the topic of the withdrawal of the prior ULP charges which is asserted to be a prohibited subject of bargaining;
- that by all of the above, the Employer bargained in bad faith;
- and that, the Employer "illegally" exploited a pending change in state law which would have mandated a shift in heath insurance costs in the absence of an executed bargaining agreement.

The Charge acknowledges that the parties executed an otherwise binding contract on September 14th, which included the agreement to dismiss the pending ULP charges. While a bargaining violation is asserted, an order requiring bargaining was not sought by AFSCME. Rather, the relief sought was the reformation of the collective bargaining agreement by the deletion of the portion requiring the withdrawal of the prior ULPs, while retaining all other portions of the contract intact. Alternatively, it was proposed that MERC ignore the settlement and proceed to trial on the two prior ULP charges.

Pursuant to R 423.165(2)(d), the Charging Party was ordered to show cause why the Charge in C08 J-230, as well as the new Charge, C11 J-168 arising from the settlement of the prior Charge, should not be dismissed for failure to state claims upon which relief could be granted and as barred by a prior settlement.

The matter was set for oral argument on November 8, 2011. The Union's request to adjourn that argument without date was denied. The parties and counsel appeared for oral argument as scheduled on November 8, 2011. At oral argument, the Charging Party's counsel tendered a written withdrawal with prejudice of the pending Charges in C09 J-204[1] and C08 J-230, as well as withdrawal of the proposed new Charge in C11 J-168. Counsel for the Respondent accepted the written withdrawal of the Charges.

Discussion and Conclusions of Law:

As noted on the record on November 9, 2011, the preamble to the Labor Relations and Mediation Act, at MCL 423.1, reminds all that:

> It is the public policy of this state that the best interests of the people of this state are served by the prevention or prompt resolution of labor disputes. . . regardless of the merits of the controversy . . . and that

[1] The Charge in Case C09 J-204 is pending before ALJ Stern, to whom a copy of the written withdrawal and this Decision and Recommended Order has been transmitted.

> the voluntary resolution of such disputes under the guidance and supervision of a government agency will tend to promote permanent industrial peace . . ..

Consistent with that statutory mandate, the Commission held in *Lakeview Schools*, 1990 MERC Lab Op 56, that:

> [F]inality of contract is a basic principle of collective bargaining. Provisions of . . . [an] agreement cannot be lightly set aside without jeopardizing this principle and undermining the purposes of collective bargaining.

The Commission made a similar finding when enforcing compliance with an agreement entered into by parties, and later reneged upon by one, in *Kalamazoo County*, 22 MPER 94 (2009), holding that:

> If we were to ignore the damaging effect that [the] repudiation of [the prior settlement] would have on the parties' collective bargaining relationship and their future negotiations, we would fail to exercise what the appellate courts have properly recognized as "MERC's specialized expertise and judgment in the area of labor relations". *Port Huron Educa Ass'n v Port Huron Area Schls*, 452 Mich 309, 323 n 18 (1996); *Oakland co v Oakland Co Deputy Sheriff's Ass'n*, 282 Mich App 266; *lv den'd* 483 Mich 1133 (2009).

Based on the uncontested facts, consistent with the statutory mandate, and premised on the rationales offered in the cases cited herein, I find that the proposed withdrawal of claims is appropriate, as it is consistent with the prior binding settlement by the parties. I further find that enforcement of the latest withdrawal, with prejudice, will aid in fostering future productive labor relations dispute resolution between these two parties. For these reasons I issue the following:

RECOMMENDED ORDER

The unfair labor practice charges in these consolidated cases, Case Nos. C08 J-230 and C11 J-168, are dismissed in their entirety, with prejudice.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 9, 2011