STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF ALLEN PARK,
Public Employer - Respondent,

-and-

ALLEN PARK INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS LOCAL 1410,
Labor Organization - Charging Party.
_______________________________________/

Case No. C12 J-208
Docket No. 12-001763-MERC

APPEARANCES:

Tomkiw Enwright, PLC, by Andrey T. Tomkiw, and Howard L. Shifman, P. C., by Howard L. Shifman for Respondent

Logan, Huchla & Wycoff, P. C., by Charles E. Wycoff and Cassandra L. Booms, for Charging Party

DECISION AND ORDER

On February 20, 2013, Administrative Law Judge David M. Peltz issued a Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Robert S. LaBrant, Commission Member

Dated: ____________

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

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Respondent-Public Employer,

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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

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 Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the pleadings, briefs and the transcript of oral argument which was held on January 30, 2013 in Detroit Michigan, I make the following findings of fact and conclusions of law.

This case arises from an unfair labor practice charge filed on October 29, 2012, by the Allen Park International Association of Firefighters Local 1410. The charge alleges that the City of Allen Park violated Section 10(1)(e) of PERA by repudiating a contractual agreement to apply for and accept a Staffing for Adequate Fire and Emergency Response (SAFER) grant which would provide funding for the City's fire department. Attached to the charge was a motion for summary disposition in which the Union asserted that there were no material facts in dispute and that Charging Party was entitled to judgment as a matter of law.

In an order issued on November 16, 2012, I directed the Employer to file a position statement or other response to the charge. The Employer filed a response to the charge and

motion for summary disposition on December 28, 2012, asserting that the charge should be dismissed, in part, because the City acted consistent with the terms of the parties' agreement based upon its determination that acceptance of the SAFER grant would not be financially beneficial to the City.

On January 30, 2013, the parties appeared for oral argument before the undersigned. After considering the extensive arguments made by counsel for each party on the record, 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). See also *Detroit Public Schools,* 22 MPER 19 (2009) and *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a decision from the bench, finding that Charging Party had failed to state a valid claim under PERA. The substantive portion of my findings of fact and conclusions of law are set forth below:

Findings of Fact

> The parties were subject to a collective bargaining agreement which was in effect from July 1, 2008 to June 30, 2012. At some point, they entered into a memorandum of understanding which became effective on August 10, 2010 which extended the contract through June 30, 2013. There are several provisions [of that memorandum of understanding] that have been relied upon by the parties. The first is Paragraph 10, which states that, "Upon expiration of the provisions which expire on June 30th, 2011, the parties will revert back to the contract language in effect prior to this memorandum of understanding."
>
> On the next page [of the memorandum of understanding], there is a heading in bold that says, "Contract language changes that will carry through to the end of the contract, June 30th, 2013". Under that are several provisions, including Paragraph 7, which reads as follows:
>
> > The City agrees that it shall apply for a SAFER grant which may provide funding for displaced employees of the fire department. While the City agrees that it shall make application for said grant, upon notification that said SAFER grant may be awarded to the City of Allen Park, both the City and the Fire Fighters Union agree that if the SAFER grant is financially beneficial to the City, the City will accept the full grant or a lesser portion of the grant, and if the SAFER is not financially beneficial to the City, the City shall not be required to accept any portion of the grant.
>
> [I]t's undisputed that there was at least one application [for a SAFER grant] made by the City [and] at some point a grant was awarded, and there's no dispute that the City has not accepted that grant. The Union claims today that the City's failure to accept the grant constitutes a repudiation of the language of the memorandum of understanding.

I should note one other fact that the Union has relied upon before I move on, that on October 17, 2012 . . . the City, during a council meeting, voted to accept the [SAFER] grant upon the condition that the Union [agree to lower the contractual] minimum manning per shift requirement from seven to five. [The Union did not agree to that change.]

Discussion and Conclusions of Law

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 under MCL 423.215(1). See also *Detroit Police Officers Assn v Detroit*, 391 Mich 44 (1974). A party violates PERA if, before bargaining, it unilaterally alters or modifies a term or condition of employment unless that party has fulfilled its statutory obligations or has been freed from them. *Port Huron Ed Assn v Port Huron Area Sch Dist*, 452 Mich 309. A party can fulfill its obligations under Section 15 of PERA by bargaining about a subject and memorializing the resolution of that subject in an agreement. Under such circumstances, the matter is covered by the agreement. *Port Huron*. As the Michigan Supreme Court stated in *Port Huron*, "Once the employer has fulfilled its obligation to bargain or duty to bargain, it has a right to rely on the agreement as a statement of its obligations on any topic covered by the agreement," end quote. Similarly, unit members have a right to rely upon the terms and conditions in the contract and to expect that they will continue unchanged. *Detroit Bd of Ed*, 2000 MERC Lab Op 375; *Wayne County Comm Coll*, 20 MPER 59 (2007).

Although the Commission does not enforce agreements, *per se*, it does have the authority to interpret the terms of an agreement, where necessary, to determine whether a party has repudiated its collective bargaining obligations. An alleged breach of contract will constitute a violation of PERA only if a repudiation can be demonstrated. See *City of Detroit Transp Dept*, 1984 MERC Lab Op 937, affirmed 150 Mich App 605 (1985).

Repudiation exists when, one, the contract breach is substantial and has a substantial impact on the bargaining unit, and two, no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Comm Sch*, 1984 MERC Lab Op 894. The Commission will find a repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501; *Cass City Pub Sch*, 1980 MERC Lab Op 956.

I find in this case that at a minimum, the parties have a bona fide dispute concerning the meaning and applicability of Paragraph 7 of the memorandum of understanding. [T]he agreement relied upon by the Union does not bind the City to accept any [SAFER] grant that is awarded. There was limitation language put

in the provision which indicates that the grant must only be accepted if its financially beneficial to the City, and even then, the City has no obligation to take the full amount; they can take part of it.

So there was a limitation put right within the agreement, and the City has made the argument that that provision gives city council . . . the authority to make the determination as to whether . . . the grant would be financially beneficial, and that they've decided that, in fact, it would not be beneficial. The Union has made the argument that on its face, the grant would be beneficial to the City, and has asserted that there are individuals within City government that have agreed with that conclusion. Both of those [arguments] could be considered, at least in part, reasonable interpretations of the [requirements of the memorandum of understanding]. A bona fide argument could be made from both parties' perspectives. Certainly that's why we're here. That's why I gave long and careful consideration to the arguments of the parties. But the mere fact that the City has put forth a reasonable interpretation of that provision really ends this dispute from the perspective of the Commission, because it means there is a bona fide dispute over the meaning of that language.

I'll also add that [even] if you assume that the City's discretion is even narrower than it appears, what the Union is really asking the Commission to do is to agree with [the Union’s] assertion that the grant itself is objectively financially beneficial to the City, and that's not the type of interpretation that the Commission is going to involve itself in. That is an inherently subjective determination. It's an interpretation of what "financially beneficial" means. That term is not defined in the parties' agreement, and no one has indicated that there is any other document which would define that language. This is a classic question for arbitration. An arbitrator should decide what that language means and whether the grant itself was financially beneficial to the City as referenced in the agreement. Obviously, had the Union wished to completely bind the City's hands, it could have insisted on language requiring the City to take the grant if it was approved, period. That's not what occurred here.

I would also add that what is or is not financially beneficial to the City is the type of decision that is typically part of the classic core managerial function of a city . . . . But at a minimum, it's a question for a grievance arbitrator to decide.

I'll also note, with respect to the Union's claim that the City somehow accepted the grant, but did so only conditionally, the City has asserted, without there being any indication that the Union could dispute this contention, that the grant provisions had substantial restrictions or limitations on the City's flexibility with respect to staffing and other matters for two years following the grant's acceptance. Therefore, the fact that the City may have . . . attempted to get some concessions from the Union prior to accepting the grant would not in any way, in my opinion, establish that the City violated PERA in seeking those concessions.

If anything, it only supports the Respondent's case that the grant, as is, with nothing else changed, would not be financially beneficial to the City.

[A]ll grants, to the extent that they provide money, are to some extent financially beneficial. But that's clearly not what the parties were speaking about when they entered into this agreement. There were limitations. And what those limitations were, the scope of those limitations, and the underlying issue of whether the grant was financially beneficial, those are questions that an arbitrator must resolve. [The City's refusal to accept the SAFER grant does not constitute a] repudiation. There's been no wholesale disregard for the language of the memorandum of understanding which would establish a repudiation for purposes of PERA.[1]

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

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

____
David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 14, 2013

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