STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DECATUR PUBLIC SCHOOLS,
Public Employer-Respondent in Case Nos. C12 F-123 and C12 F-124,

-and-

VAN BUREN COUNTY EDUCATION ASSOCIATION,
Labor Organization-Charging Party in Case No. C12 F-123,

-and-

DECATUR EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION,
Labor Organization-Charging Party in Case No. C12 F-124.
_____/

APPEARANCES:

Thrun Law Firm, PC, by Joe D. Mosier, for Respondent

White, Schneider, Young & Chiodini, PC, by Jeffrey S. Donahue, for Charging Parties

DECISION AND ORDER

On December 20, 2012, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent Decatur Public Schools (Employer) did not make an unlawful unilateral change in terms and conditions of employment in violation of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. Charging Parties, Van Buren County Education Association and Decatur Educational Support Personnel Association (collectively the Unions), alleged that Respondent violated § 10(1)(a) and (e) and § 15b of PERA by imposing "hard caps" on the amount Respondent would pay for health insurance upon expiration of their respective collective bargaining agreements. The ALJ held that there is a duty to bargain over an employer's discretionary choice between hard caps and the 80% employer share option under 2011 PA 152, MCL 15.561-15.569, but the Employer has no obligation to secure agreement with the Unions before imposing the "hard caps" on the implementation deadline set by 2011 PA 152. Finding that the Union representing the support personnel bargaining unit did not allege that it made a timely demand for bargaining on this issue, the ALJ determined that the charge filed by Decatur Educational Support Personnel Association failed to state a claim upon which relief could be granted under PERA. The ALJ concluded that Respondent had not violated its duty to bargain in good faith under PERA and recommended that

the charges be dismissed. The Decision and Recommended Order was served on the interested parties in accordance with § 16 of PERA.

After requesting and receiving an extension of time in which to file their exceptions, Charging Parties filed exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions on February 13, 2013. Respondent requested and was granted an extension of time to file its response to the exceptions and, on March 15, 2013, Respondent filed cross exceptions to the ALJ's Decision and Recommended Order and a brief in support of the cross exceptions. Charging Parties filed their response to Respondent's cross exceptions on March 25, 2013.

In their exceptions, Charging Parties contend that the ALJ erred in concluding that: (1) 2011 PA 152 prevails over PERA and that PA 152 created a statutorily imposed impasse*;* (2) the parties were, upon expiration of their prior collective bargaining agreements, at a statutorily imposed impasse over health insurance cost sharing; and (3) the Employer was not obligated to accept the Union's argument that the Employer could have delayed implementation of the hard caps under PA 152 but could have avoided the penalties imposed by § 9 of that Act. In its cross exceptions, Respondent contends that the ALJ erred in concluding that the choice between the hard caps and the 80% employer share option under 2011 PA 152 is a mandatory subject of bargaining under PERA. In their response to Respondent's cross-exceptions, Charging Parties agree with the ALJ's finding that the Employer's choice between the hard caps and 80% employer share option under 2011 PA 152 is a mandatory subject of bargaining.

We have carefully reviewed the record including Charging Parties' exceptions and Respondent's cross exceptions. We find no merit in Charging Parties' exceptions, but agree with some of the arguments raised by Respondent's cross exceptions.

Factual Summary:

The facts in this case are not materially in dispute. The collective bargaining agreements between Respondent and each of the Charging Parties expired in June of 2012. However, the facts differ somewhat between the two bargaining units.

On or about May 9, 2012, Respondent sent a memorandum to members of the support unit, which is represented by Decatur Educational Support Personnel Association (DESPA), informing them that Respondent would implement the hard caps set forth in §3 of PA 152 on July 1, 2012. That memorandum and a June 12, 2012 memorandum notified support unit employees of the deductions that would be taken from their pay based on the hard caps. Both notices were given to support unit members prior to the commencement of negotiations for a successor collective bargaining agreement. Subsequently, Respondent implemented the hard caps on the support unit members' share of insurance costs as indicated in the May 9 and June 12 memoranda. Respondent and DESPA did not negotiate over the implementation of the hard caps or the deduction from employee paychecks prior to their implementation. DESPA did not demand bargaining on these issues.

The collective bargaining agreement between Respondent and the union representing the teachers unit also expired June 30, 2012. On May 14, 2012, Respondent sent a memorandum to the teachers' unit members, who are represented by Van Buren County Education Association (VBCEA), informing them that the Employer would implement the hard caps set forth in § 3 of PA 152 effective July 1, 2012. That notice also informed the teachers' unit members of the deductions that would be taken from their pay for health care costs. On May 18, 2012, VBCEA requested bargaining over cost sharing with respect to health care costs and Respondent's decision to use hard caps or the 80% employer share option under § 4 of PA 152. Respondent indicated that it would provide a response to the request at the first bargaining session, which was scheduled for May 22, 2012. Subsequently, the parties met and bargained over the issues, but did not reach agreement. Respondent implemented the hard caps on health care costs.

Although recognizing that the requirements of PA 152 would apply to the parties' sharing of health care costs after the contract expired, the parties made no agreement on the allocation of health care costs. On June 26, 2012, the Unions each filed charges asserting that Respondent violated its duty to bargain in good faith under PERA by imposing the "hard caps" on health care cost sharing set forth in 2011 PA 152.

Discussions and Conclusions of Law:

Public Act 152 of 2011, which became effective September 27, 2011, was enacted to limit public employers' expenditures for employee medical benefit plans. Section 3 of 2011 PA 152, MCL 15.563, sets specific dollar limits, referred to as "hard caps," on the amounts public employers can pay for employee medical benefit plans, commencing with medical benefit plan coverage years beginning on or after January 1, 2012. Upon majority vote of its governing body, a public employer may comply with the requirements of § 4 of PA 152 instead of § 3. Section 4, MCL 15.564, limits a public employer's share of healthcare costs to 80% of the total annual costs of all of the medical benefit plans it offers. Pursuant to § 5 of PA 152, MCL 15.565, §§ 3 and 4 do not apply where parties are covered by a collective bargaining agreement that was in effect prior to September 27, 2011, if that agreement is inconsistent with the terms of the Act. Section 5 also prohibits parties from entering into collective bargaining agreements after September 15, 2011, that contain terms inconsistent with the requirements of the Act. PA 152 provides sanctions for noncompliance. Public employers that fail to comply with the requirements of PA 152 are subject to a substantial financial penalty under § 9 of PA 152.

Case No. C12 F-124 Decatur Educational Support Personnel Association

In their exceptions, Charging Parties specifically except to the language in the ALJ's decision that states:

> The Charge by the Support Personnel in particular fails to state a claim as no timely demand to bargain over any specific health insurance issue was made or alleged in the Charge. In the absence of a demand to bargain, under these circumstances, there can be no viable claim of a failure or refusal to bargain. All parties were on notice since September of 2011, at least, of the July 2012 contract expiration date, and the fact that its expiration would trigger the statutory deadline

for reaching any possible agreement. The Support Unit did not timely seek bargaining over the question.

The key point in the ALJ's language quoted by Charging Parties is that DESPA did not demand bargaining over "any specific health insurance issue," which includes insurance cost sharing. Nowhere in DESPA's charge against Respondent does DESPA assert that it demanded bargaining over health insurance cost sharing. Moreover, in their statement of facts in the brief in support of their exceptions, Charging Parties failed to assert that DESPA made a demand to bargain over insurance cost sharing or any other specific health insurance issue. Further, Charging Parties have not argued that such a demand would have been futile or that Respondent's announcement that it would implement the hard caps under PA 152 constituted *a fait accompli*. See, e.g., *Southfield Pub Sch*, 25 MPER 38 (2011).

Under § 15(1) of PERA, a public employer has a duty to bargain in good faith over mandatory subjects of bargaining such as wages, hours, and other terms and conditions of employment and may not take unilateral action on mandatory subjects prior to reaching an impasse in negotiations. See *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). Where an employer has a duty to bargain, the employer is not required to initiate bargaining. The employer's duty to bargain under PERA is conditioned upon there being a demand for bargaining by the union. *SEIU Local 586 v Village of Union City*, 135 Mich App 553, 557; 355 NW2d 275, 276 (1984). See also *City of Dearborn*, 20 MPER 110 (2007).

In this case, Respondent notified both Unions of its plan to use the hard cap formula for insurance cost sharing. VBCEA demanded bargaining; DESPA did not. Therefore, Respondent had no duty to bargain with DESPA over its choice between the hard caps and the 80% employer share option for sharing health insurance costs.

Accordingly, we agree with the ALJ that the charge by DESPA fails to state a claim upon which relief can be granted under PERA and must be dismissed.

Case No. C12 F-123 Van Buren County Education Association

The charge by VBCEA raises significant issues of how PERA and PA 152 are to be read together. Under PERA, public employers and the unions representing their employees have a duty to bargain over terms and conditions of employment. That duty includes the duty to bargain over health care benefits and costs. *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n*, 458 Mich 540, 551; 581 NW2d 707, 713 (1998); *Houghton Lake Ed Ass'n v Houghton Lake Cmty Sch Bd of Ed*, 109 Mich App 1, 6; 310 NW2d 888, 890 (1981). However, PA 152 limits the parameters within which public employers must bargain over health care cost sharing. While PA 152 does not make health care cost sharing a prohibited subject of bargaining, it limits the total amount that public employers may pay for health care costs and subjects public employers who exceed that payment limit to financial penalties.

As Charging Parties point out in their brief in support of their exceptions, the Michigan Supreme Court has consistently held PERA to be the dominant law regulating public employee labor relations. See *Rockwell v Crestwood Sch Dist Bd of Ed*, 393 Mich 616, 629; 227 NW2d

736, 741 (1975). In Rockwell, the Court held: "The supremacy of the provisions of the PERA is predicated on the constitution (Const 1963, art 4, s 48) and the apparent legislative intent that the PERA be the governing law for public employee labor relations." *Rockwell* at 630. In *Detroit Bd of Ed v Parks*, 98 Mich App 22, 36, (1980), the Court of Appeals went on to say that because PERA is the dominant law regulating public employee labor relations it "therefore must supersede any other law in conflict with it." See also, *Local 1383 Int'l Ass'n of Fire Fighters v City of Warren*, 411 Mich 642, 648; 311 NW2d 702, 703 (1981). Respondent contends that PERA does not supersede PA 152 and points to *Irons v 61st Judicial Dist Court Employees Chapter of Local No 1645*, 139 Mich App 313, 321-22; 362 NW2d 262, 266 (1984), which held that PERA did not supersede MCL § 600.8602, which was enacted three years after PERA and governs the specific issue of the appointment of district court recorders. The *Irons* court also noted that the Supreme Court in, *In the Matter of the Petition for a Representation Election Among Supreme Court Staff Employees*, 406 Mich 647; 281 NW2d 299 (1979), held that the application of PERA to the courts would violate the constitutional mandate of separation of powers. Review of the *Irons* decision and the cases cited therein as exceptions to the rule that public employee labor relations are governed by PERA clearly indicates that those exceptions involve court employees.[1] Respondent also relies on *Irons* for the proposition that "where two statutes which encompass the same subject matter conflict, the later enacted statute controls." *Irons* at 321.

It is our role here to determine how PERA and Act 152 work together. The goal of statutory construction is to effectuate the Legislature's intent. *Casco Twp v Sec'y of State*, 472 Mich 566, 571, (2005). Every word of a statute should be given meaning and no word should be made nugatory. *Apsey v Mem'l Hosp*, 477 Mich 120, 127; 730 NW2d 695, 699 (2007); *People v Warren*, 462 Mich 415, 429 n. 24; 615 NW2d 691 (2000); *Baker v Gen Motors Corp*, 409 Mich 639, 665; 297 NW2d 387, 398 (1980). The rules of statutory construction tell us that a statute is enacted and is meant to be read as a whole. *Metropolitan Council 23, AFSCME* v *Oakland Co Prosecutor*, 409 Mich 299, 317-318 (1980). As such, any provision that is in dispute must be read in the light of the general purpose of the act. *Romeo Homes, Inc* v *Comm'r of Revenue*, 361 Mich 128, 135 (1960).

Statutory provisions pertaining to a specific subject matter must be construed together, and, if possible, harmonized. *Brady v Detroit*, 353 Mich 243, 248 (1958). Separate statutes that have a common purpose or relate to the same subject or class of persons or things, are considered *in pari materia*, and must be read together as though they are parts of the same law, even though the two statutes were enacted at different times and do not refer to each other. *Michigan N Ry Co v Auto-Owners Ins Co*, 176 Mich App 706, 709; 440 NW2d 108, 110 (1989); *State Bar of Michigan v Galloway* (1983) 124 Mich App 271; 335 NW2d 475, aff'd 422 Mich 188; 369 NW2d 839,. *County Road Ass'n of Michigan v Bd of State Canvassers*, 407 Mich 101, 119; 282 NW2d 774 (1979). Where statutes are *in pari materia*, we must presume that the Legislature is aware of and intends to legislate in harmony with existing law. Therefore, each statute must be given effect if that can reasonably be done. *Rochester Cmty Sch Bd of Ed v State Bd of Ed*, 104 Mich App 569, 578–579; 305 NW2d 541 (1981). However, where two statutes covering the

[1] On the question of PERA's applicability to court employees, see also *44th Circuit Court v Ingham County Employees Association/Public Employees Representative Association*, unpublished opinion per curiam of the Court of Appeals, issued November 1, 2011 (Docket No. 299447).

same subject matter conflict, the more specific statute controls. *Slater v Ann Arbor Pub Sch Bd of Educ*, 250 Mich App 419, 434-35; 648 NW2d 205, 214-15 (2002), citing *In re Brown*, 229 Mich App 496, 501; 582 NW2d 530 (1998). Moreover, a more specific statute enacted later must be treated as an exception to the older more general statute. *Sharp v Huron Valley Bd of Ed*, 112 Mich App 18, 21; 314 NW2d 785, 786 (1981). See also, *Manville v Bd of Governors of Wayne State Univ*, 85 Mich App 628, 636; 272 NW2d 162, 166 (1978).

In determining whether the Employer has a duty to bargain over insurance cost sharing choices under PA 152, the ALJ reasoned that PERA and PA 152 could be read *in pari materia*. We do not agree that PERA and PA 152 are to be read *in pari materia*. Although both statutes may have bearing on certain benefits provided by public employers to their employees as compensation, the commonality ends there. PERA sets forth the circumstances under which public employers must bargain with the representatives of their employees over compensation and other terms and conditions of employment. PA 152 specifically addresses public employers' costs for one type of compensation–health insurance–and sets limits on the amounts that public employers may pay. With the exception of granting an exemption to its requirements for public employers subject to collective bargaining agreements in effect when PA 152 was passed, PA 152 does not address collective bargaining. Its provisions are simply designed to limit the total amounts public employers may pay for health care costs. See House Fiscal Agency Legislative Analysis, Senate Bill 7 (as reported from Conference Committee), August 23, 2011, and Senate Fiscal Agency Analysis, Senate Bill 7 (Substitute H-6, Conference Report-1 as adopted by Conference Committee), August 24, 2011. PERA and PA 152 do not have a common purpose, nor do they relate to the same subject or matter.

In its cross exceptions, Respondent contends that the ALJ erred when he concluded that the Employer has a duty to bargain over the choice between the hard caps under § 3 and the 80% employer share under § 4 of PA 152. In addressing Respondent's cross exception on that issue, we must keep in mind the rules of statutory construction, which require us to give meaning to every word of the statute. *Apsey v Mem'l Hosp*, 477 Mich 120, 127; 730 NW2d 695, 699 (2007). Therefore, we look specifically at the language in §§ 3 and 4 of PA 152 discussing the "total amount" that a public employer may pay towards healthcare costs. The language in § 3 of PA 152 provides:

> [A] public employer that offers or contributes to a medical benefit plan for its employees or elected public officials *shall pay no more* of the annual costs or illustrative rate and any payments for reimbursement of co-pays, deductibles, or payments into health savings accounts, flexible spending accounts, or similar accounts used for health care costs, *than a total amount equal to $5,500.00 times the number of employees with single person coverage, $11,000.00 times the number of employees with individual and spouse coverage, plus $15,000.00 times the number of employees with family coverage,* for a medical benefit plan coverage year beginning on or after January 1, 2012. (Emphasis added.)

The language in § 4 of PA 152 states in relevant part:

> (1) *By a majority vote of its governing body*, a public employer, excluding this state, may elect to comply with this section for a medical benefit plan coverage year instead of the requirements in section 3. The designated state official may elect to comply with this section instead of section 3 as to medical benefit plans for state employees and state officers.
>
> (2) For medical benefit plan coverage years beginning on or after January 1, 2012, *a public employer shall pay not more than 80% of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials. . .* The public employer may allocate the employees' share of *total annual costs* of the medical benefit plans among the employees of the public employer as it sees fit. (Emphasis added.)

The ALJ concluded that case law under PERA providing that employers have a duty to bargain over insurance cost sharing did not conflict with the dictates of PA 152. We agree that PA 152 does not alter public employers' duty to bargain over insurance cost sharing. However, PA 152 does not govern the bargaining relationships between public employers and their employees or the labor organizations representing their employees. Instead, PA 152 sets limits on what public employers may pay for specific budgetary items and gives the employers the right to choose between the kinds of limits to which they will be subjected, that is hard caps under § 3 or the 80% employer share under § 4.

By basing the public employer's share of health care costs on the total amount to be paid for health care costs for all employees and public officials, PA 152 makes it clear that the public employer's costs are not determined by the amount the public employer pays for particular bargaining units or other groups of employees, but for all employees and public officials as a single group. Therefore, it is evident that the public employer must choose with respect to all of its employees and public officials whether it will use the hard caps under § 3 or the 80% employer share under § 4. Moreover, the fact that § 4 requires a majority vote of the public employer's governing body indicates that the choice between the hard caps and the 80% employer share is a policy choice to be made by the employer. Thus, while not expressly making this issue a prohibited subject of bargaining, it is clear the Legislature intended that the choice between the hard caps and the 80% employer share be left to the public employer.

Accordingly, we agree with Respondent's argument that the ALJ erred by finding that the choice between the hard caps and 80% employer share is a mandatory subject of bargaining. Public employers may bargain with the labor organizations representing their employees over the choice between the hard caps and the 80% employer share, but are not required to do so. Public employers continue to have the duty to bargain over health care benefits and the costs of such benefits to the extent that the costs of those benefits are within the parameters of the public employer's choice of the options provided by PA 152. However, the public employer's choice of the options under PA 152 is a policy decision to be made by the public employer.

Charging Parties contend that the ALJ erred in concluding that PA 152 created a statutorily imposed impasse and that the parties were, upon expiration of their prior collective bargaining agreements, at a statutorily imposed impasse over health insurance cost sharing. An

employer violates § 10(1)(e) when it takes unilateral action on a *mandatory subject of bargaining* before the parties reach impasse. *Int'l Ass'n of Firefighters Local 1467, AFL-CIO v Portage*, 134 Mich App 466, 473 (1984); *Detroit Police Officers Ass'n v Detroit*, 61 Mich App 487, 490 (1975), *lv den* 395 Mich 756 (1975). It is evident that the ALJ concluded that the parties were at a statutorily imposed impasse because he recognized that Respondent was required to comply with PA 152 at the point the parties' contract expired. Under appropriate circumstances, where parties are engaged in negotiations for a new contract, it may be lawful for an employer to implement its offer on a single issue when the parties have reached a deadlock on that issue and immediate action is required on that issue. See e.g., *Wayne Co (Attorney Unit)*, 1995 MERC Lab Op 199, 203. Inasmuch as the ALJ concluded that the choice between the hard caps and the 80% employer share was a mandatory subject of bargaining, he could only excuse Respondent's imposition of the hard caps by finding that the parties were at a statutorily imposed impasse in accordance with the reasoning applied in *Wayne Co*. However, the finding of a statutorily imposed impasse was unnecessary since the choice between the hard caps and 80% employer share is not a mandatory subject of bargaining. Since Respondent had no duty to bargain over its choice between the hard caps and the 80% employer share, Respondent was entitled to make its choice and determine the steps necessary to implement the cost sharing method it selected.

Here, the parties negotiated in an effort to reach a mutual agreement on the cost sharing issue prior to the statutorily imposed deadline of contract expiration. The Employer implemented the hard caps at contract expiration. Charging Parties contend that the Employer could have delayed implementation of the hard caps and engaged in further bargaining in reliance on their interpretation of § 5 of PA 152. That section provides in relevant part:

> If a collective bargaining agreement or other contract that is inconsistent with sections 3 and 4 is in effect for a group of employees of a public employer on the effective date of this act, the requirements of section 3 or 4 do not apply to that group of employees until the contract expires. A public employer's expenditures for medical benefit plans under a collective bargaining agreement or other contract described in this subsection shall be excluded from calculation of the public employer's maximum payment under section 4. The requirements of sections 3 and 4 apply to any extension or renewal of the contract.

Charging Parties point out that § 5 of PA 152 provides that the requirements of §§ 3 and 4 do not apply until the parties' collective-bargaining agreement expires. Thus, they contend that § 5 does not require the public employer to impose the hard caps or 80% employer share immediately upon the expiration of the collective bargaining agreement. Charging Parties contend that they and Respondent had ample time to bargain over these issues as the Employer would not be subject to the penalties of § 9 of PA 152 unless the Employer paid a larger share of the health care costs than permitted under § 3 or § 4. Nevertheless, we conclude that had the Employer elected to delay implementation of the hard caps under PA 152, the Employer would have risked violating PA 152 and may have been subject to the penalties of § 9. Section 9 states in relevant part:

> If a public employer fails to comply with this act, the public employer shall permit the state treasurer to reduce by 10% each economic vitality incentive

> program payment received under 2011 PA 63 and the department of education shall assess the public employer a penalty equal to 10% of each payment of any funds for which the public employer qualifies under the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772, *during the period that the public employer fails to comply with this act*. (Emphasis added.)

Inasmuch as it is up to the State Treasurer to enforce PA 152, we will not presume to determine how the above language should be interpreted. However, we note § 9 indicates that a public employer that fails to comply with PA 152 will be subject to penalties during the period of noncompliance. Based on that wording, we cannot conclude that a delay in the implementation of the hard caps for a period of time after the contract's expiration would not be viewed by the State Treasurer as a basis for imposition of the penalty even if the Employer subsequently complied.

Charging Parties contend that the ALJ erred in concluding that the Employer was not obligated to accept the Union's argument that the Employer could have delayed implementation of the hard caps under PA 152, yet avoided the penalties imposed by § 9 of that Act. Charging Parties argue that bargaining could have continued over whether the hard caps or the 80% employer share should be utilized. Although the Employer could have elected to delay implementation of the hard caps and continued to bargain over the choice between the hard caps and the 80% employer share, by so doing, the Employer would have assumed the risk that its actions would violate PA 152. In examining Charging Parties' exceptions on this point, the issue we must resolve is whether the Employer's failure to delay implementation of the hard caps to engage in further bargaining is a breach of its duty to bargain in good faith. That is, in reviewing Charging Parties' exception on this issue we must consider whether the Employer's decision to delay implementation of the hard caps on health care cost sharing is a decision that falls within the scope of mandatory subjects of bargaining.

Mandatory subjects of bargaining have a significant or material impact on wages, hours, and other terms and conditions of employment or settle an aspect of the employer-employee relationship. *Detroit v Michigan Council 25, AFSCME*, 118 Mich App 211, 215 (1982). On the other hand, those management decisions that are "fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security" are not mandatory subjects of bargaining. *Houghton Lake Ed Ass'n v Houghton Lake Cmty Sch, Bd of Ed*, 109 Mich App 1, 6; 310 NW2d 888, 890 (1981); *Nat'l Union of Police Officers Local 502-M, AFL-CIO v Bd of Comm'rs of Wayne Co*, 93 Mich App 76, 88; 286 NW2d 242, 247 (1979). In determining whether an issue is a mandatory subject of bargaining, we must keep in mind that unlike their private sector counterparts, public employees in Michigan are forbidden to strike. Accordingly, "Section 15 of PERA must be even more expansively construed than its NLRA counterpart in order to adequately protect public employees' rights." *Detroit Police Officers Ass'n v Detroit*, 61 Mich App 487, 491; 233 NW2d 49, 50-52 (1975).

Here, we must compare the Employer's legitimate concerns over its management of public funds and its compliance with state law with the statutory duty to bargain over its employees' conditions of employment. Although Charging Parties contend that Respondent could have delayed implementation of the hard caps without being subject to the penalties under

PA 152, it is not clear that Charging Parties' assertion is correct. The Employer had no guarantee that delaying implementation would not jeopardize its ability to comply with PA 152 or subject it to the penalties therein. Charging Parties have shown no benefit that is likely to accrue to employees from the Employer accepting the substantial risk of delaying compliance with PA 152. On the other hand, the potential harm to the Employer that could result from delaying compliance is clear. Moreover, Charging Parties have presented no authority that might persuade us that a public employer has a duty to bargain over whether it should promptly comply with State law or over whether it can delay doing so. Accordingly, we find that the Employer's decision on whether to accept the risk that would result from delaying compliance with PA 152 is a policy choice within Respondent's managerial prerogative. Here, it was up to the Employer to determine the steps it was required to take to ensure compliance with PA 152. The Employer's choice not to delay implementation of the hard caps on health care costs is not a breach of its duty to bargain.

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. Accordingly, the Commission adopts the Order recommended by the ALJ for the reasons stated herein.

ORDER

The charges in this case are hereby dismissed for the reasons stated in this decision.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: January 21, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DECATUR PUBLIC SCHOOLS,
Respondent,

CORRECTED DECISION

-and- CONSOLIDATED CASES

VAN BUREN COUNTY EDUCATION ASSOCIATION,
Charging Party in Case No. C12 F-123; Docket No. 12-001178,

-and-

DECATUR EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION,
Charging Party in Case No. C12 F-124; Docket No. 12-001180.
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APPEARANCES:

Jeffrey S. Donahue, White, Schneider, Young & Chiodini, PC,
for Charging Parties

Joe D. Mosier, Thrun Law Firm, PC, for Respondent

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, MCL 423.201, *et seq*, as amended, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC). The following findings of fact, conclusions of law, and recommended order are based upon the entire record:

The Unfair Labor Practice Charge:

On June 29, 2012, two substantively identical Charges were filed in this matter, by the Van Buren County Education Association and Van Buren County Education Support Association (Unions or Charging Parties) asserting that the Decatur Public Schools (the Employer or Respondent) has violated its duty to bargain in good faith under PERA by imposing "hard caps" on health insurance

upon expiration of the collective bargaining agreement between the parties, as directed by the Legislature in 2011 PA 152.

On July 13, 2012, I issued an Order directing the Union to show cause why the charge should not be dismissed without an evidentiary hearing. In that Order, I noted that Commission Rule 423.165 allows for a pre-hearing dismissal of a charge where a charge fails to state a claim upon which relief could be granted. See, *Oakland County and Sheriff*, 20 MPER 63 (2007); aff'd 282 Mich App 266 (2009); aff'd 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986), *lv den* 428 Mich 856 (1987).

The July 13, 2012 Order further noted that, under Section 15 of PERA, the parties have a general duty to bargain in good faith over "wages, hours and other terms and conditions of employment." MCL 423.215(1). Section 3 of 2011 PA 152 mandates that public employers "shall pay no more" than a statutorily set dollar amount for health insurance during a "medical benefit plan coverage year beginning after January 1, 2012". Section 5(1) of that Act delays implementation where an existing collective bargaining agreement was in place when the Act was implemented and "until the contract expires". The Order recounted that the Charges each asserted that the Employer imposed the 'hard caps" after the two contracts expired on June 30, 2012. The Order indicated that the alleged conduct by the Employer described in the Charge would appear to be in compliance with, and indeed mandated by, 2011 PA 152.

In response to that Order to show cause why summary disposition should not be granted, both parties timely and fully briefed the dispute. The matter was set for oral argument.

Findings of Fact and Discussion and Conclusions of Law:

Counsel for both parties appeared for oral argument on the question of summary disposition on December 5, 2012. After considering the pleadings and extensive arguments by both counsel, 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. 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 bench opinion, with the substantive portion of my findings of fact and conclusions of law issued from the bench set forth below:[1]

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

JUDGE O'CONNOR:

Findings of Fact

I believe the matter is ripe for summary judgment, as there is no genuine dispute of any material fact that would preclude judgment on the present charges. The Legislature adopted 2011 PA 152, which was effective September of 2011, and had a requirement regarding certain changes in health insurance effective January of 2012, or under Section 5 of the statute, effective later upon the expiration of any preexisting collective bargaining agreement.

The parties did not begin bargaining until May of 2012, with a contract that expired in June of 2012. There was bargaining. [It was undisputed that as to the teacher's unit, bargaining over health care cost sharing had occurred, but no agreement was reached, while as to the support employees unit, it was undisputed that no demand to bargain had been made by the Union.] But at the point of contract expiration, there was not an agreement about what to do about health insurance. All parties were aware of the date on which the collective bargaining agreement was to expire, and aware of the statutory mandate. The Union, in its Charge, asked that the Commission find several things:

First, that PA 152 did not mandate the imposition of hard caps prior to the parties reaching a new collective bargaining agreement, or a good faith impasse in bargaining.

Second, the Union further asked that the Commission find that PA 152 did not nullify PERA's requirement that the parties bargain over mandatory subjects, including health insurance.

Third, the Union asked that the Commission find that the reference in Section 5 of PA 152 requiring that its mandate go into effect upon contract expiration is not a mandate that the changes be imposed immediately upon contract expiration, but rather that the cost shifting could be otherwise annualized [and implemented later].

Fourth, the Union argues that the Employer had a duty to bargain over whether to select hard caps versus the 80-20 split.

Fifth, the Union also asserts that the timing of the deductions from individual paychecks resulted in the Employer actually

deducting the cost of future benefits from prior earnings, which would be arguably improper under other statutes.

Conclusions of Law

Under Section 15 of PERA, the parties have a general duty to bargain in good faith over wages, hours, and other terms and conditions of employment. Under 2011 PA 152, there is a new mandate that public employers "*shall pay no more*" than a statutorily set dollar amount [for employee health insurance]. Section 5.1 of PA 152 delays implementation of that mandate where an existing collective bargaining agreement was in place when the Act was implemented, and "until the contract expires."

Section 5 also mandates that collective bargaining agreements negotiated on or after September 15, 2011 be compliant with the statute. PA 152 did not amend PERA expressly, unlike when the Legislature adopted 2011 PA 54 where they did deal directly with PERA. Both PERA and PA 152 were enacted by the Legislature [with] both seemingly consistent with the express grant to the Legislature by Constitution Article 4, Section 48, of the authority to regulate labor disputes in the public sector.

I cannot fault in any way either party for the difficulties faced in seeking to comply with the legislative enactment of 2011 PA 152. There's an arguable conflict between the duties under that statute and the duty to bargain under PERA, which the Legislature did not expressly address. That same year, the Legislature also addressed health insurance cost increases for public employees in 2011 PA 54; however, in that enactment, the Legislature did directly address the impact on bargaining obligations by amending PERA, thereby providing direct guidance.

The Legislature did not provide direct guidance in 2011 PA 152, while mandating the implementation of cost shifting upon expiration of a collective bargaining agreement. During oral argument, we discussed and I raised questions regarding the fact that the Legislature set particular calendar deadlines, but also used terms related to an annualized cost of health insurance. Much of the Union's argument focuses on that; on juggling those two mandates by the Legislature.

Having said all of the above, I am nonetheless, and as argued by the Employer, obliged to attempt to reconcile the seeming conflict between the two statutes. I rely in part on the case law cited on page 17 of the Employer's brief. I find that the

two statutes and the obligations they create can be readily reconciled in this case. The duty to bargain over health insurance survives the passage of 2011 PA 152. The Legislature in passing 2011 PA 152 was clearly and immediately cognizant of the existence of bargaining obligations regarding health insurance, and addressed the bargaining question by delaying implementation of PA 152's obligations until any current collective bargaining agreement between the parties expired.

The Employer in this instance acknowledged its obligation to bargain, and supplied an affidavit to the effect that it has never refused to bargain with the Union, at least as to the teachers unit, over the question, including over the question of the selection between the options of hard caps versus 80-20. The parties have a duty to bargain under PERA in general only up to the point of a good faith impasse in bargaining. PERA doesn't define impasse. The Commission's case law defines impasse, and what it means is to be at a good faith impasse. And it may well be more art than science.

I find that here, 2011 PA 152 set the clock, in essence, on the bargaining obligation in a way similar to 2011 PA 54. I find contrary to the Union's argument, the Legislature set a deadline on bargaining, and that deadline was the expiration date of the preexisting contract.

In the absence of a negotiated deal to the contrary, upon contract expiration, 2011 PA 152's obligations kicked in. By analogy, at least, to prior MERC case law, this is not an unusual concept. The parties were, upon expiration of their prior collective bargaining agreements, at what amounted to a statutorily imposed impasse over health insurance cost sharing, as they did not then have an agreement. The Employer was both entitled and obliged at that point to take steps to comply with 2011 PA 152.

Notably Section 9 of PA 152 threatens significant potential financial penalties against an employer which fails to comply, and as structured, the penalties can be imposed monthly as to a school district, and potentially immediately. Further, Section 6 of PA 152 brackets the issue by creating the presumption that the Employer will make deductions from employee pay to cover the employee portion of the contributions.

I further find that 2011 PA 152 provides several options as to compliance by an employer. An employer making decisions as to a non-union work force under PA 152 can freely choose from

amongst the hard caps or the 80-02 split or the opt-out provision requiring a super majority of its governing body, which as the parties point out today, doesn't apply to school districts, but does apply to other public sector employers.

I find that the 2011 PA 152 and PERA statutory structures place a different obligation on an employer dealing with health insurance costs regarding a unionized work force, where there is a duty to bargain. Under Section 3, that's MCL 15.563, mandatory language is used, directing that an employer "*shall pay no more than*" the hard caps. I find that here, the Employer complied with that mandate, which appears to have been its only option, where as here, the parties had not reached a different agreement by the deadline.

Again, respecting an employer dealing with the unionized portion of its work force -- PA 152 next provides at Section 4 that an employer "may at its discretion" adopt the 80-20 option. To the extent that the alternative compliance, the 80-20 compliance, is an option of the employer, it is within the discretion of the employer as indicated in the statute, but it would appear that the selection would be subject to the duty to bargain under PERA, again, noting that the duty to bargain on this topic is subject to the PA 152 statutory deadline, and that the fall back mandatory alternative used is the imposition of hard caps in the absence of a negotiated agreement to the contrary.

While PA 152 under Section 3, 4, and 8 sets up three different alternatives for an employer's compliance with 152, and describes those as being within the discretion of the employer, the dichotomy I described above regarding the rights and obligations of a public employer, depending on whether the work force in question has an exclusive bargaining agent, is not unusual. There's a wide array of statutes which grant particular authority to public employers, including their right to hire and fire at will. Those statutory rights of employers remain in place as to non-unionized employees, but are subject to the duty to bargain under PERA as to any group of employees which selects an exclusive bargaining agent.

The most recent explication of that dichotomy involved the 36th District Court, where by statute, the chief judge had the express statutory power to appoint, reappoint, or not reappoint court bailiffs. The Supreme Court in a perfunctory order found, in essence, that the statutory authority of the judges was subordinate to a collective bargaining agreement negotiated under PERA; that

is, the judges have a free hand to appoint or not reappoint at will, absent a collective bargaining agreement, and the preexisting duty to bargain, to the contrary. See, *36th District Court v AFSCME*, Michigan Supreme Court Case No 145147, decision (October 31, 2012).

In similar circumstances, involving the interplay of express statutorily discretionary rights of an employer, nonetheless subject to the duty to bargain under PERA, the similar outcome was reached in cases such as *Irons v 61st District Court*, [139 Mich App 313 (1984)] and *St. Clair County Prosecutor v AFSCME, [425 Mich 204 (1986)].*

For a similar interplay, there are multiple cases involving county sheriffs, which have held that sheriffs and counties are joint or co-employers of deputy sheriffs. But a sheriff may be bound by a collective bargaining agreement, which requires ordinary just cause for the termination of an employee under PERA, while the sheriff nonetheless and regardless of PERA, retains the exclusive constitutional right to delegate or to not delegate law enforcement powers to a particular deputy. He may not be able to fire him, but he doesn't have to give him a gun or a badge, with the outcome being the deputy may be protected against discharge, but the sheriff may refuse to grant a reinstated deputy police powers. [See, e.g., MCL 51.70; *Nat'l Union of Police Officers v Wayne County*, 93 Mich App 76 (1979)]

Another example is the interplay of the PERA prohibition on retaliatory terminations and a public school employer's otherwise exclusive right to determine layoffs of non-instructional personnel, coupled with the statutory prohibition on bargaining over layoff-related issues as to non-instructional personnel. In *Southfield Schools*, 24 MPER 10 (2012), the Commission nonetheless reviewed on its merits a claim that particular non-instructional personnel were targeted for layoffs, by the subcontracting of their work, in alleged retaliation for earlier protected activity by those employees.

In each of the above examples, there were legislative grants of discretionary authority to an employer which [authority] nonetheless had to be reconciled with arguably conflicting obligations under PERA, with those legislative grants of authority sometimes arising in the context of amendments to PERA, and sometimes from statutes not directly related to the bargaining obligation.

Counsel today discussed several cases which have attempted to analyze PERA in its relationship to other statutes by the courts finding one statute to be a statute of general application, and the other to being the more specific statute. It seems that whichever statute prevailed was [perceived] to be the more specific, and how you analyze the general versus specific can be outcome determinative. The Union's analysis today argued that in the cases where the courts have found a more specific statute to prevail over PERA, the Legislature had focused on subsets of employers.

The same can be said here, where public sector employers were treated in several different ways, depending on which subset of employer was involved. General public employers have three options for compliance with PA 152; School employers only have two. The penalties vary and it is recognized in Section 9 that the mechanism for the penalties vary depending on the employer. And as I have found, within those subsets, there are two further subsets. And those are employers who are dealing with an exclusive bargaining agent, and employers who are not dealing with an exclusive bargaining agent, and that also affects the options and the mechanisms for implementing those options under 2011 PA 152.

Here, the legislative enactment was focused on health insurance costs. And while the Legislature perhaps didn't provide the clearest possible guidance, the Legislature clearly did take into account the bargaining obligations which bound that subset of employers who had an existing collective bargaining relationship with a Union by altering the statutory deadlines as to those employers.

The new statute concerns itself with health insurance. PERA also concerns itself with conditions of employment, including the nature and cost of health insurance provided to employees. As the two statutes have overlapping purposes, they must be read in *pari materia*, and both statutes must be given effect to the fullest extent possible. See, *AFSCME v McKeever*, 62 Mich App 689 (1975), *Lincoln Park Detention Officers v Lincoln Park,* 76 Mich App 358 (1977).

Similarly, PERA and the Teacher Tenure Act had to be reconciled in unionized schools. See *Rockwell v Crestwood*, 393 Mich 616 (1975), with the specific obligations of PERA in the *Rockwell* case predominating over the general obligations under the Teacher Tenure Act. For related disputes and outcomes, see

Wayne County Civil Service v Wayne County, 384 Mich 363 (1971); *Pontiac Police v Pontiac*, 397 Mich 674 (1976).

Having considered the arguments of counsel and the briefs, I find that the way to give both statutes full effect is to recognize that all covered public employers must comply with 2011 PA 152. Further, that those who have a bargaining obligation must meet that bargaining obligation as traditionally analyzed under PERA, but that regardless, the deadline for implementation set by the Legislature must be met.

Now, the traditional bargaining obligation under PERA, and unfair labor practice charges raising such bargaining disputes, are resolved on what is essentially a reasonableness analysis, because the duty in collective bargaining is to "*bargain in good faith*", not to bargain to perfection, or without error, or without arguable flaw. It is to bargain in good faith. And here, the parties were faced with statutory penalties that could be imposed on the employer, and a statutory deadline mandated by the Legislature.

While the Union articulates a reasonable argument by which the employer might have avoided those penalties, the mere existence of a potential and uncertain escape from those penalties was not something that the employer had to opt for. Good faith does not, I find, require that the Employer have taken that significant financial risk of arguably violating the statutory deadline. The failure of the Employer to make that leap of faith at the Union's behest, I don't think could constitute a failure to bargain in good faith.

I also find, as supported by the Employer's unopposed affidavit, that the parties did bargain at least as to the teachers' unit, [with the Employer expressly accepting the Union's proposal] to add a new health insurance option for employees, which was presumably more attractive under the current hard caps regimen. As noted above, the Employer has acknowledged that it believes it has a duty to bargain over these issues. The Union and the Employer do not fully agree on the parameters of that duty.

I do find that under the circumstances presented in the current Charges, the parties have a continuing duty to bargain. The Employer has imposed hard caps. The parties have apparently [agreed] to add a new insurance plan. The parties continue in the bargaining process, as represented by counsel today. The parties could reach an agreement to switch from hard caps to an 80-20 option. It might be complicated at this stage, but possible. Any

such switch would still have to comply with the overall mandate of PA 152.

Alternatively, the parties could have, perhaps could still, reach an agreement that, as an example, all employees would pay exactly the same dollar amount for health insurance coverage, regardless of whether they had a single person, two person, or family coverage, as long as in aggregate the demands of PA 152 were met. Because the demands of PA 152 are annualized and they are aggregated, it is not based on individual employee costs, [and] the parties could choose to go lighter on some classes of employees and heavier on others.

[The Union] argued that the parties could have bargained or should have bargained over the number of paychecks out of which deductions would be made. That is a bargainable issue. It might ease the burden on some employees and it seemingly could be done under PA 152, again, as long as the Employer accomplished compliance with the statutorily mandated cap [and deadline].

Applying the above analysis to this dispute, I find the following.

1. There is no duty under PERA for an employer to propose or demand bargaining over how it would comply with the PA 152 mandate of health insurance cost shifting upon expiration of a preexisting collective bargaining agreement where both parties were aware of the statutory mandate and the ensuing deadline. And to the extent that the charges before me assert otherwise, I find they fail to state viable claims.

2. There is no obligation for an employer to secure agreement with the Union prior to taking steps to comply with PA 152 by imposing the statutorily mandated hard caps upon contract expiration, and to the extent that the charges before me assert otherwise, they fail to state viable claims. [It is implicit in this finding that in the absence of agreement between the parties and as argued at least in the alternative by the Employer, the statutory fallback mandate is the hard caps, rather than the permissive 80-20 split alternative. . . Based on the structure of PA 152, which uses mandatory language in paragraph 3 and then provides that permissive alternative, and in keeping with my analysis as to all the other permissive alternatives that collateral statutes offer employers where there is a duty to bargain over the selection between those permissive alternatives, I find that under PA 152, the Employer had no alternative, upon reaching what I found to be the deadline, but to

impose the hard caps based on PA 152's mandate that they shall pay no more than that.]

3. There is a duty under PERA to maintain conditions of employment as to health insurance issues upon expiration of a collective bargaining agreement, with that duty excused only to the extent necessary to implement those changes required by PA 152.[2]

4. There is a duty to bargain in general over the nature of health insurance options, notwithstanding the passage of PA 152.

5. There is a duty by an employer to bargain in good faith, where a timely demand is made, regarding the mechanism by which PA 152's mandate would be accomplished.

6. As with any other unilateral change in conditions of employment which an employer may lawfully make under PERA at the point of a lawful impasse, where changes are implemented pursuant to PA 152 because of the deadline being reached, there continues to be a duty to bargain over health insurance issues.

7. The Charge by the Support Personnel in particular fails to state a claim as no timely demand to bargain over any specific health insurance issue was made or alleged in the Charge. In the absence of a demand to bargain, under these circumstances, there can be no viable claim of a failure or refusal to bargain. All parties were on notice since September of 2011, at least, of the July 2012 contract expiration date, and the fact that its expiration would trigger the statutory deadline for reaching any possible agreement. The Support Unit did not timely seek bargaining over the question.

8. While by both parties' account, the timing of the demand to bargain over the health insurance issue by the teachers unit was made so late in the process that there was likely little realistic opportunity to bargain, the Charge by the teachers unit on its face stated an arguable claim that the Employer refused to bargain over health care related issues; however, the Charge cannot otherwise survive summary judgment. Of most significance on the question of summary disposition, the Employer affidavit is unopposed, and establishes that:

a. The Employer did bargain with the teachers regarding health insurance issues;

[2] This sentence was corrected from the original version of the Decision to remove an ambiguity.

b. The Employer and the teachers [agreed] on an insurance modification seemingly relevant to the PA 152 issues;
c. The Employer has acknowledged its ongoing duty to bargain over health insurance issues, and by affidavit denies that it ever refused to bargain over the hard caps versus the 80-20 issue; and
d. It is undisputed that no agreement was reached prior to the expiration of the contract and the resulting statutory deadline for the implementation of cost shifting on health insurance.

9. I find that the allegation regarding arguably improper deductions from earlier earned wages to finance future health insurance coverage does not state a claim under PERA, notwithstanding that the Charge quoted a footnote from one of my earlier decisions. Regardless of whether those deductions were proper, for example, under Michigan's Payment of Wages Act, the making of them does not constitute an unlawful unilateral change, a refusal to bargain, or the repudiation of terms of the collective bargaining agreement, where the deductions were made in an effort at compliance with a new statutory mandate, and where PA 152 at Section 6 expressly anticipates such deductions. Which is not to say that an employer could not get it wrong under Section 6 in terms of how they deducted, how much they deducted, and that it might violate something, but I am finding that [arguably improper deductions alone do not support] a claim as to a violation of PERA.

[*Upon issuing the bench opinion, I invited counsel to request clarification, and in response to their inquiries, I made the following additional findings:]*

At paragraph 2, I found that there is no obligation to secure prior agreement with the Union before imposing the statutorily mandated hard caps. As part of that finding, it is my finding that -- assuming bargaining is requested by the Union [in a timely fashion] -- there is a duty to bargain over an Employer's discretionary choice between hard caps and the 80-20 option.

As part of that finding, it is my finding that the hard caps are the statutory fallback, as argued by this Employer, that the statute mandates the hard caps in the absence of a discretionary decision to select another statutory option. If the parties can't reach agreement, and the Employer is faced with a deadline, the Employer must implement the hard caps.

[*In response to a further request for clarification of whether the decision to go to the 80-20 option or stay with hard caps would still be subject to the duty to bargain, I then added:*]

Well, it may be *dicta*, [as to the resolution of the present dispute] but I think that if there was a duty to bargain, there remains a duty to bargain. And whether there is any practical ability to turn back the clock and switch from one thing to another is a different question than whether there would be a duty to discuss it.

A better example, perhaps, would be, the parties stumble their way to the deadline and don't have an agreement. The Employer imposes the hard caps, and the bargaining unit says, "Oh, that's a bigger number that we're paying now. We want to propose a different health insurance plan that would be cheaper." I think the parties would have a duty to bargain over that, or any other discretionary possibility under PERA or PA 152. But, again, it's like any other impasse.

The new *status quo* has become the presumptively proper *status quo*, and the parties can and should discuss any potentially viable options to that *status quo*. But if you have reached the deadline without an agreement, you are at a good faith impasse, and the Employer imposes. And the Legislature has told them on this narrow topic what to impose.

For the above reasons, I will be issuing a written decision incorporating the findings I placed on the record today, and recommending the dismissal of both Charges as to the events occurring prior to the filing of the Charges.

Conclusion:

I have carefully considered all other arguments asserted by the parties in this matter and have determined that they do not warrant a change in the result. For the reasons set forth above, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated: December 20, 2012