STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MAUD PRESTON PALENSKE MEMORIAL LIBRARY,
Public Employer-Respondent,

Case No. C12 K-223
-and- Docket No. 12-001856-MERC

AFSCME COUNCIL 25, LOCAL 2757.09 AND LOCAL 2757.10,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Dettman and Fette Law Office, by Jessica A. Fette, for Respondent

Kenneth J. Bailey, Staff Counsel, AFSCME Council 25, for Charging Party

DECISION AND ORDER

On April 11, 2013, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Motions for Summary Disposition pursuant to §§ 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217, finding that Respondent Maude Preston Palenske Memorial Library (Employer) repudiated the terms of its contract with Charging Party AFSCME Council 25 and its Affiliated Locals 2757.09 and 2757.10 (Union). The ALJ found that a letter given to Respondent by Charging Party's representative was not a clear and explicit notice of intent to terminate the collective bargaining agreement. The ALJ concluded that because the agreement remained in effect, Respondent repudiated the contract and violated its duty to bargain in good faith when it refused to process and arbitrate a grievance filed by Charging Party. The ALJ recommended that the Commission issue an order that Respondent cease and desist from repudiating its contractual obligations and that, upon demand, Respondent process grievances through the grievance procedure to arbitration, including the grievance at issue in this unfair labor practice charge.

The ALJ's Decision and Recommended Order was served on the parties in accordance with § 16 of PERA. Respondent filed exceptions and a brief in support of its exceptions on May 2, 2013. Charging Party did not file exceptions or a brief in support of the ALJ's Decision and Recommended Order.

In its exceptions, Respondent argues that the ALJ erred in finding that the collective bargaining agreement remained in effect on the date the grievance was filed. Respondent claims that the case relied upon by the ALJ to support her conclusion that the notice of intent to negotiate was too ambiguous to terminate the contract, *36th Dist Court v AFSCME Council 25, Local 917,* 295 Mich App 502 (2012), is distinguishable from this case and, therefore, cannot support the ALJ's finding.

We have carefully and thoroughly reviewed Respondent's exceptions and the entire record, and find the exceptions to be without merit.

Factual Summary:

We adopt the facts as found by the ALJ since this matter is being decided on Summary Disposition and repeat them here only as necessary. We agree with the ALJ that there are no material facts at issue.

The collective bargaining agreement governing the relationship between the parties during the period relevant to this matter had an expiration date of April 30, 2012. Article 34 of the contract states:

> The Agreement shall take effect July 1, 2011, and shall continue in full force and effect from said date until midnight on the 30th day of April 2012, and shall be automatically renewed from year to year thereafter, unless either party hereto gives the other party at least sixty (60) days' written notice, by certified or registered mail, before the end of the term of this Agreement or before the end of an anniversary date thereafter of its desire to terminate, modify, or change this Agreement.

On March 20, 2012, Charging Party sent a letter to Respondent stating in pertinent part:

> In accordance with the Duration Article of the existing Collective Bargaining Agreement, and on behalf of the above-referenced Union, we hereby serve notice that the Local Union wishes to engage in negotiations with the Employer or its authorized representatives.

The parties subsequently began bargaining. On April 18, 2012, they signed a document drafted by Charging Party entitled "Ground Rules" which state, in pertinent part:

> Why are we here? . . . The Union is here to negotiate with the Employer in good faith to reach an agreement which is acceptable to both. The Current Agreement will terminate in April 2012 and the parties are here by mutual agreement to seek the modification of, or changes to, the Collective Bargaining Agreement.
>
> If either party wishes to terminate the Agreement after the expiration they shall provide thirty (30) days written Notice.

On September 13, 2012, Respondent notified Charging Party that it would not agree to arbitrate or meet at step 2 on a grievance filed on August 23, 2012, because the contract had expired on April 30, 2012. The grievance was based on Respondent's elimination of the contractually-mandated Venetian Festival holiday which consisted of a two-day paid holiday during an annual city festival. When the city announced that the festival would not be held in 2012, Respondent posted a work schedule assigning employees to work on the dates the festival would have been held had it not been cancelled. Charging Party responded that the contract had automatically renewed for another year and Respondent's refusal to arbitrate the grievance was an unlawful repudiation of the contract.

Discussion and Conclusions of Law:

A party's refusal to arbitrate a grievance under an existing contract which contains an arbitration clause is a violation of its duty to bargain in good faith. *Hurley Hospital*, 1973 MERC Lab Op 584. Such a determination is not a finding that the grievance has merit or that it is arbitrable under the terms of the contract. Those issues are not within the jurisdiction of this Commission. As determined in *Hurley Hospital*, an employer's refusal to participate in the arbitration process for a grievance which is arguably arbitrable constitutes a repudiation of its agreement with the union. Accordingly, the employer violates its duty to bargain in good faith unless the contract clearly excludes the grievance from arbitration. See also *City of Ann Arbor*, 1993 MERC Lab Op 186; *Lake Co*, 22 MPER 59 (2009), aff'd *Lake Co and Lake Co Sheriff v POAM*, 24 MPER 5 (2011) (unpublished decision of the Michigan Court of Appeals).

Respondent argues that Charging Party's March 20, 2012 notice that it "wished to engage in negotiations" constituted a notice to terminate the agreement. While Charging Party's notice was sent less than sixty days before the automatic expiration of the agreement, in violation of the sixty-day requirement for a notice to terminate, Respondent asserts that by entering into negotiations with Charging Party, Respondent waived the sixty-day requirement. Therefore, according to Respondent, the contract terminated on April 30, 2012, and Respondent had no duty to arbitrate the August 23, 2012 grievance.

The ALJ rejected Respondent's argument and agreed with Charging Party that because neither party provided explicit written notice to terminate the contract at least sixty days prior to April 30, 2012, the agreement was automatically extended by one year as of March 1, 2012. The ALJ found that the March 20 letter stating that the union wished to negotiate was too ambiguous to serve as a notice to terminate. In so finding, the ALJ relied on *36th Dist Court v AFSCME Council 25, Local 917*, 295 Mich App 502; 815 NW2d 494 (2012). There, the employer argued, *inter alia*, that some grievances were not subject to an arbitration agreement because the collective bargaining agreement had terminated prior to the date the grievances arose. The duration clause of the contract in *36th Dist Court* stated:

> This Agreement shall continue in effect for consecutive yearly periods after June 30, 2006, unless notice is given, in writing, by either the Union or the Employer, to the other party at least ninety (90) days prior to June 30, 2006, or any anniversary date thereafter, of its desire to modify, amend or terminate this agreement.

> If such notice is given, the agreement shall be open to modification, amendment or termination, as such notice may indicate on June 30, 2006, or the subsequent anniversary date, as the case may be.

In the *36th Dist Court* case, the employer sent the union a letter with notification of the employer's intent to "modify, amend or terminate all or parts of the Labor Agreement." The letter was sent ninety days before June 30, 2006. The employer argued that the notice served to terminate the contract effective June 30, 2006. The union countered that the employer's notice did not terminate the agreement and the contract, therefore, automatically renewed for another year. The Court of Appeals agreed with the union and held that under the language of the duration clause, "[t]he 90-day notice of the 'desire to modify, amend, or terminate' the agreement is not itself effective as a modification, amendment, or termination of the CBA." *36th Dist Court* at 521.

More importantly, the Court held that the language in the March 1 letter was too ambiguous to serve as a notice to terminate. It stated that "[a] notice to terminate must be clear and explicit. . . . A notice of modification is not a notice of termination and does not affect termination of the contract," citing *Chattanooga Mailers Union Local No. 92 v Chattanooga News–Free Press Co*, 524 F2d 1305, 1312 (CA 6, 1975), overruled on other grounds, *Bacashihua v United States Postal Service*, 859 F2d 402, 404 (CA 6, 1988). The Court added that "[w]hen a party provides a notice that refers to an intent to both modify and terminate without specifying which one, 'the ambiguity of the notice destroys its effectiveness for any purpose . . .'", citing *Gen Electric Co v Int'l Union United Automobile, Aircraft & Agricultural Implement Workers of America (UAW–CIO)*, 93 Ohio App 139, 147 (1952). A party "could not terminate and modify the same contract at the same time by the same notice. . . . [in] attempting to do both, they [Defendant] did neither." *36th Dist Court* at 522. The Court held that because the employer's letter did not terminate the contract, "the contract automatically extended for one more year." *Id* at 523. The ALJ noted that in *36th Dist Court*, the notice was given by the party asserting that the contract had terminated and not, as here, by the party arguing that the contract had not terminated. However, she concluded that "nothing in the Court's opinion indicates that it would not apply the same standard to notices sent by the party asserting that the contract had automatically renewed." We agree.

In this case, the ALJ relied on *36th Dist Court* in finding that the notice of a desire to negotiate was too ambiguous to constitute a notice of termination. We agree that *36th Dist Court* governs this case. We further agree with the ALJ's conclusion that Charging Party's notice concerning a desire to negotiate did not equal notice to terminate the agreement. The ALJ noted that the notice did not contain the word "termination." It simply said that Charging Party "wishes to engage in negotiations." The ALJ concluded that, like the employer's notice in *36th Dist Court*, "Charging Party's notice . . . did not clearly state whether Charging Party's intent was to terminate the agreement or simply modify some of its terms." We agree.

The ALJ also noted that the "Ground Rules" document contained conflicting statements concerning whether the contract would terminate or automatically renew. Those conflicting statements, she concluded, could not be considered a clear and explicit notice to terminate, as

required by *36th Dist Court.* We agree with the ALJ that the conflicting statements in the "Ground Rules" do not meet the standard required in *36th Dist Court* to terminate an agreement. The ALJ was thus correct that the contract automatically renewed for another year and Respondent was, therefore, obligated to engage in the grievance process, up to and including arbitration.

Respondent claims in its exceptions that *36th Dist Court* is distinguishable for two reasons. First, the notice of intent to negotiate in this case specifically references the duration article of the agreement and the notice in *36th Dist Court* did not. This distinction is both irrelevant and unresponsive to the issue of whether a notice to terminate is clear and explicit. While in both cases, the collective bargaining agreements contained duration clauses, a notice of intent to negotiate, terminate or modify need not specifically mention the duration clause. *36th Dist Court* did not hold, or even discuss, whether a notice to modify, negotiate or terminate must include a reference to the duration article and we have found no case which so holds. Nor does Respondent cite any authority in support of its argument that *36th District Court* is distinguishable on such grounds.

Second, Respondent argues that *36th Dist Court* is distinguishable because in this case, Charging Party prepared a second document, entitled "Ground Rules" which asserted that the agreement would terminate in April 2012. According to Respondent, the Ground Rules document clearly demonstrates that Charging Party intended that the agreement would terminate rather than automatically renew.

In its opening paragraph, the Ground Rules document states that "[t]he Current Agreement will terminate in April 2012 …" However, in the same paragraph the document goes on to state that "[t]he parties are here by mutual agreement to seek the modification of, or changes to, the Collective Bargaining Agreement." In addition, the final sentence states that "[if] either party wishes to terminate the Agreement after the expiration they shall provide thirty (30) days written notice." Respondent, in its exceptions, states that "[t]he final sentence of the 'Ground Rules' document appears to conflict with the opening paragraph." We find that Respondent's concession that the Ground Rules language is conflicting negates Respondent's argument that the same document evidences a clear intent that Charging Party wished to terminate the agreement. As stated in *36th Dist Court*, and noted above, "[w]hen a party provides a notice that refers to an intent to both modify and terminate without specifying which one, 'the ambiguity of the notice destroys its effectiveness for any purpose.'"

In its exceptions, Respondent also argues that the final sentence of the Ground Rules ("If either party wishes to terminate the Agreement after the expiration they shall provide thirty (30) days written Notice.") could refer to either the Ground Rules document or the collective bargaining agreement. Respondent asserts that the Ground Rules document is therefore ambiguous and the ambiguity should be construed against Charging Party, the drafter of the document.[1] We find no ambiguity in Charging Party's use of "the Agreement" in the Ground Rules document. In prior communications Charging Party referred to the collective bargaining

[1] However, Respondent did not raise the issue of the application, validity or interpretation of the Ground Rules document in its Motion for Summary Disposition or in its Reply to Charging Party's Cross-Motion for Summary Disposition.

agreement as "the Agreement" and it is therefore apparent that the reference to "the Agreement" in the Ground Rules document was also a reference to the collective bargaining agreement.

In conclusion, we agree with the ALJ that Charging Party's notice that it wished to negotiate is too ambiguous to constitute a clear and explicit intent to terminate the contract. We further agree with the ALJ that because there was no clear and explicit notice to terminate, the contract automatically renewed. The ALJ was correct that Respondent's refusal to arbitrate the grievance constituted a repudiation of an existing agreement, and Respondent, therefore, engaged in an unfair labor practice. Accordingly, we affirm the ALJ's decision and adopt her recommended order.

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

_____/s/_____
Edward D. Callaghan, Commission Chair

_____/s/_____
Robert S. LaBrant, Commission Member

_____/s/_____
Natalie P. Yaw, Commission Member

Dated: April 10, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

MAUD PRESTON PALENSKE MEMORIAL LIBRARY,
Public Employer-Respondent,

Case No. C12 K-223
Docket No. 12-001856-MERC

-and-

MICHIGAN COUNCIL 25, AFSCME, AND ITS AFFILIATED LOCALS 2757.09 AND 2757.10,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Dettman and Fette Law Office, by Jessica A. Fette, for Respondent

Kenneth J. Bailey, Staff Counsel, AFSCME Council 25, for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTIONS FOR SUMMARY DISPOSITION

On November 15, 2012, Michigan AFSCME Council 25 and its affiliated Locals 2757.09 and 2757.10 filed the above charge with the Michigan Employment Relations Commission (the Commission) against the Maud Preston Palenske Memorial Library alleging that Respondent violated §§10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(10) by refusing to arbitrate or meet at step 2 on a grievance. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern from the Michigan Administrative Hearing System.

On February 4, 2013, Respondent filed a motion for summary dismissal under Rules 165(2)(d) and (f) of the Commission's General Rules, 2002 AACS, R 423.165. On February 25, 2013, Charging Party filed a response and cross-motion for summary disposition. Respondent filed a response to the cross-motion on March 19, 2013. Based on facts set forth in the charge and pleadings and not in dispute, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Charging Party represents a bargaining unit of Respondent's employees. The most recent

collective bargaining agreement for this unit had a stated expiration date of midnight April 30, 2012. The agreement also contained an automatic renewal clause. On March 20, 2012, Charging Party staff representative Angela Tabor sent Respondent a letter indicating Charging Party's desire to negotiate, and shortly thereafter the parties began bargaining.

On or about September 13, 2012, Respondent notified Charging Party that it would not agree to arbitrate a grievance filed on August 23, 2012. Respondent asserted that it had no obligation to arbitrate the grievance, in part because the contract had expired on April 30, 2012. Charging Party asserts that the contract did not expire, but automatically renewed for an additional year pursuant to its terms. It alleges, therefore, that Respondent's refusal to arbitrate the grievance constituted an unlawful repudiation of the parties' existing collective bargaining agreement.

Facts:

Article 34 of the parties' most recent collective bargaining agreement, entitled "Duration," read as follows:

> The Agreement shall take effect July 1, 2011, and shall continue in full force and effect from said date until midnight on the 30th day of April 2012, and shall be automatically renewed from year to year thereafter, unless either party hereto gives the other party at least sixty (60) days' written notice, by certified or registered mail, before the end of the term of this Agreement or before the end of an anniversary date thereafter of its desire to terminate, modify, or change this Agreement.

This contract, in Article 17, also contained a grievance procedure leading to binding arbitration. Article 17, Section 4 stated that "a written grievance shall be submitted to the Director or his/her designee within ten (10) calendar days of the event giving rise to the grievance, or within ten (10) calendar days of the conclusion of an informal or special conference, if one has been held."

On March 20, 2012, Charging Party Staff Representative Angela Tabor sent Respondent Library Director Stephanie Masin a certified letter which read, in pertinent part, as follows:

> It was good talking to you yesterday. As promised, here is the reopener we discussed and some proposed dates.
>
> In accordance with the Duration Article of the existing Collective Bargaining Agreement, and on behalf of the above-referenced Union, we hereby serve notice that the Local Union wishes to engage in negotiations with the Employer or its authorized representatives.

Shortly thereafter, the parties began negotiations. On or about April 18, 2012, the parties signed a document drafted by Charging Party entitled "ground rules." The document read, in pertinent part, as follows:

> Why are we here?
>
> The Union is here to negotiate with the Employer in good faith to reach an agreement which is acceptable to both. The Current Agreement will terminate in April 2012 and the parties are here by mutual agreement to seek the modification of, or changes to, the Collective Bargaining Agreement.
>
> * * *
>
> 6. If either party wishes to terminate the Agreement after the expiration they shall provide thirty (30) days written notice.

Among the paid holidays provided employees by Article 23 of the collective bargaining agreement were "Venetian Festival Friday" and "Venetian Festival Saturday." For several decades prior to 2012, the City of St. Joseph annually hosted a city festival in July by that name. Due to crowds in downtown St. Joseph, where Respondent is located, Respondent closed for the festival. In the 2011-2012 contract, a provision was added to give employees holiday pay for the two days Respondent was closed. However, in September 2011, an announcement was made that the festival would not be held in 2012. On June 24, 2012, Respondent posted a work schedule for July that indicated that Respondent would be open, and employees assigned to work, on the dates the city festival had been held in previous years.

On August 23, 2012, Charging Party filed a grievance asserting that Respondent had violated the contract by eliminating the Venetian Festival paid holidays. On September 4, Respondent, through Masin, answered the grievance by stating, first, that it was untimely because not filed "within 10 calendar days of the event giving rise to the grievance" as provided in the grievance procedure. Second, Respondent stated that it did not believe it was obligated to compensate employees for holidays that no longer existed. Respondent, however, offered to give employees compensatory time off for the two days, on a one-time only basis. Tabor sent Respondent an email stating that the answer was unacceptable, and that Charging Party wanted to move the grievance to step 2 of the grievance procedure, which was a meeting with Respondent's Board. On September 13, Respondent's counsel, Jessica Fette, replied to Tabor's email. Fette reiterated Respondent's position that the grievance was untimely. She also told Tabor that since the issue being grieved arose after the contract expired, Respondent did not consider this an arbitrable issue and would not agree to arbitrate. Finally, Fette stated that although Respondent was not required to hold a step 2 meeting on the grievance since the contract had expired, it was willing to do so. On September 19, however, Fette sent Tabor another email stating that Respondent's Board had changed its mind about meeting on the grievance.

Discussion and Conclusions of Law:

A public employer in Michigan has no duty to arbitrate a grievance arising after the expiration of a collective bargaining agreement unless the dispute involves rights which accrued or vested during the term of the agreement. *Ottawa Co v Jaklinski*, 423 Mich 1 (1985); *Gibraltar*

School Dist v Gibraltar MESPA-Transportation, 443 Mich 326 (1993). However, the Commission has consistently held that a party's refusal to arbitrate a grievance under an existing contract with an arbitration clause is a violation of its duty to bargain in good faith unless the contract clearly and unmistakably excludes the grievance from arbitration. As the Commission noted in *Hurley Hospital*, 1973 MERC Lab Op 584, at 588, this is not a determination by the Commission that the grievance has merit or that it is arbitrable under the terms of the contract, as these are issues not properly before the Commission. Rather, it recognizes that an employer's refusal to participate in the arbitration process for a grievance which is arguably arbitrable constitutes a repudiation of its agreement with the union, and, therefore, violates its duty to bargain in good faith. See also *Ludington Area Schs*, 1976 MERC Lab Op 985; *City of Detroit (Police Dept)*, 1989 MERC Lab Op 331; and *Lake Co*, 22 MPER 59 (2009), aff'd in an unpublished decision of the Court of Appeals in *Lake Co and Lake Co Sheriff v POAM*, 24 MPER 5 (2011).

Respondent argues that Tabor's March 20, 2012 notice to Respondent that it "wished to engage in negotiations" constituted a notice to terminate the 2011-2012 agreement under Article 34 of the agreement. Therefore, according to Respondent, the contract accordingly terminated on April 30, 2012. Although Tabor's letter was sent less than 60 days before the expiration date of the contract, Respondent asserts that it waived that deadline by agreeing to reopen negotiations. It maintains that Respondent had no obligation to arbitrate the grievance because there was no arbitration agreement in effect between the parties on the date that the alleged contract violation occurred.

Charging Party asserts that because neither party provided written notice at least 60 days prior to April 30, 2012, the agreement was automatically extended by one year as of March 1, 2012. In the alternative, it argues that the Tabor's March 20 letter was too ambiguous to serve as a notice to terminate. In support of this argument, it relies on *36th Dist Court v AFSCME Council 25, Local 917*, 295 Mich App 502 (2012). [2]

36th Dist Court involved an action brought by the employer court to vacate arbitration awards issued after the employer had been ordered by a trial court to arbitrate several grievances. One of the employer's arguments was that some of the grievances were not subject to an arbitration agreement because the collective bargaining agreement had terminated prior to the date the grievances arose. This duration clause of the contract read as follows:

> This Agreement shall continue in effect for consecutive yearly periods after June 30, 2006, unless notice is given, in writing, by either the Union or the Employer, to the other party at least ninety (90) days prior to June 30, 2006, or any anniversary date thereafter, of its desire to modify, amend or terminate this agreement.
>
> If such notice is given, the agreement shall be open to modification, amendment or termination, as such notice may indicate on June 30, 2006, or the subsequent anniversary date, as the case may be.

[2] I note that the Court's opinion in this case, which also involved the Charging Party, was issued on February 28, 2012, shortly before Tabor sent her letter.

On March 1, 2006, the employer sent the union a letter notifying it of the employer's intent to "modify, amend or terminate all or parts of the Labor Agreement." The employer later argued that this notice served to terminate the contract effective June 30, 2006, while the union asserted that the employer's notice did not terminate the agreement and that the contract automatically renewed for another year.

The Court of Appeals concluded that the issue of whether the contract had terminated was properly one for the courts, and not the arbitrator. However, the Court agreed with the union that the employer's March 1, 2006 notice did not serve to terminate the agreement. It held, first, that under the language of the duration clause, the 90-day notice of the desire to "modify, amend, or terminate the agreement" was not itself effective as a modification, amendment, or termination of the collective bargaining agreement. Rather, the Court reasoned, the second paragraph of the duration clause contemplated some additional action which the employer failed to take. The Court also held, however, that the language in the March 1 letter was too ambiguous in any case to serve as a notice to terminate. It stated, at 522-523:

> Furthermore, plaintiff's contention that the March 1 letter resulted in termination of the CBA ignores the ambiguity of the language in the letter. The letter referenced plaintiff's intent to "modify, amend or terminate all or parts of the Labor Agreement...." "A notice to terminate must be clear and explicit.... A notice of modification is not a notice of termination and does not affect termination of the contract." *Chattanooga Mailers Union Local No. 92 v. Chattanooga News–Free Press Co.*, 524 Fd 1305, 1312 (CA 6, 1975) (internal citations and quotation marks omitted), overruled on other grounds in *Bacashihua v. United States Postal Service*, 859 Fd 402, 404 (CA 6, 1988); see also *Office & Professional Employers Int'l Union, Local 42, AFL–CIO v. United Automobile, Aerospace & Agricultural Implement Workers of America, Westside Local No. 174, UAW*, 524 F2d 1316, 1317 (CA 6, 1975), and *Laborers Pension Trust Fund Detroit and Vicinity v. Interior Exterior Specialists Constr. Group, Inc.*, 479 F Supp 2d 674, 684 (ED Mich, 2007). When a party provides a notice that refers to an intent to both modify and terminate without specifying which one, "the ambiguity of the notice destroys its effectiveness for any purpose...." See *Gen Electric Co v. Int'l Union United Automobile, Aircraft & Agricultural Implement Workers of America (UAW–CIO)*, 93 Ohio App 139, 147 (1952). In *Gen. Electric*, a pre-printed notice form stated, "This is a 60–day notice to you that we propose to (modify) (terminate) our collective bargaining contract," with an unfulfilled directive to "(Strike out one)" (quotation marks omitted). *Id.* at 144. The Ohio Court of Appeals explained:
>
> > They could not terminate and modify the same contract at the same time by the same notice. However, it seems, according to the defendants' testimony and contention, they attempted by the notice served upon the plaintiff to do just that, but in attempting to do both, they did neither." [Id. at 147]
>
> In the present case, plaintiff's notice indicated an intent to "modify, amend or

> terminate all or parts of the Labor Agreement...." The expression of an intent to modify the CBA is just as strong as the expression of an intent to terminate the agreement. Even disregarding the second paragraph of article 50, the notice is too ambiguous to be effective as a notice of intent to terminate the agreement.

The Court in *36th Dist Court* held that because the employer's March 1, 2006 letter in that case did not terminate the contract, the contract automatically extended for one more year. Consequently, all the grievances involved in the action before it were covered by an arbitration agreement.

The Supreme Court, in *36th Dist Court v AFSCME Council 25 Local 917*, 493 Mich 879 (2012), summarily reversed the Court of Appeals' refusal to reaffirm the arbitrator's award of back pay to the grievants in that case, but refused to hear the employer's appeal of the Court's other findings. Pursuant to MCR 7.215(J)(1), published decisions issued by a panel of the Court of Appeals on or after November 1, 1990, have binding precedential effect unless they are reversed or modified by the Supreme Court or a special panel of the Court of Appeals. See *Romain v Frankenmuth Mut Ins*, 483 Mich 18, 20 (2009); *City of Belleville*, 24 MPER 14 (2011). I conclude, therefore, that the Commission is bound by what I find to be the Court's conclusion that a notice to terminate a collective bargaining agreement pursuant to the agreement's duration clause must be clear and explicit. I note that although the notice in that case was given by the party asserting that the contract had terminated, nothing in the Court's opinion indicates that it would not apply the same standard to notices sent by the party asserting that the contract had automatically renewed.

I conclude that Tabor's March 20 letter was not a clear and explicit notice to Respondent of Charging Party's intent to terminate the agreement. First, Tabor's letter was sent less than 60 days before the end of the term of the agreement. Second, Tabor did not even use the word "termination" in her letter. The letter merely stated that Charging Party "wished to engage in negotiations" with Respondent, although it also referred to these negotiations as a "reopener." As was the case with the employer's notice in *36th Dist Court*, Charging Party's notice was ambiguous and did not clearly state whether Charging Party's intent was to terminate the agreement or simply modify some of its terms. The ground rules for negotiations to which the parties agreed in April 2012 also contained similarly conflicting statements about whether the contract would terminate or automatically renew after April 30, 2012. Although Respondent agreed to participate in negotiations which presumably had as their purpose at least the modification of the existing agreement, it does not assert that the parties explicitly agreed that the contract would terminate on April 30. I find that Tabor's March 20 letter did not serve as notice to terminate the contract. Therefore, I conclude, the parties' contract did not terminate at midnight on April 30, 2012 but remained in effect in July 2012.

I also find that, despite Respondent's argument that the grievance was untimely filed, Charging Party's August 23, 2012 grievance was not clearly and unmistakably excluded from arbitration by the terms of the contract. I find Respondent repudiated the terms of its contract with Charging Party, and violated its duty to bargain in good faith and §§10(1)(a) and (e) of PERA by refusing to arbitrate and/or process this grievance through the grievance procedure to arbitration. I recommend, therefore, that the Commission deny Respondent's motion for summary dismissal and grant Charging Party's motion, and that it issue the following order.

RECOMMENDED ORDER

Respondent Maud Preston Palenske Memorial Library, it officers and agents, are hereby ordered to:

1. Cease and desist from repudiating its obligation under its collective bargaining agreement with Michigan Council 25, AFSCME and its affiliated Locals 2757.09 and 2757.10 to arbitrate and to process grievances through the grievance procedure to arbitration upon Charging Party's demand.

2. Meet with Charging Party at the 2nd step of the grievance procedure regarding the grievance Charging Party filed on August 23, 2012 and, upon receiving a demand from the Charging Party, participate in the arbitration of this grievance.

3. Post the attached notice in conspicuous places on Respondent's premises, including all places where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: _____