STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY AIRPORT AUTHORITY,
Public Employer-Respondent,

Case No. C14 C-035
-and- Docket No. 14-005150-MERC

AFSCME COUNCIL 25, LOCAL 953,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Nemeth Law, P.C., by Kellen Myers and Clifford L. Hammond, for Respondent

Shawntane Williams, Staff Attorney, for Charging Party

DECISION AND ORDER

On September 12, 2014, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: October 24, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Nemeth Law, P.C., by Kellen Myers and Clifford L. Hammond, for Respondent

Shawntane Williams, Staff Attorney, for Charging Party

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the pleadings and the transcript of the oral argument held on August 20, 2014, I make the following findings of fact and conclusions of law.

This case arises from an unfair labor practice charge filed on March 26, 2014 by AFSCME Council 25, Local 953 against the Wayne County Airport Authority. The charge alleges that the collective bargaining agreement between the parties required Respondent to pay each active employee a 1.5 percent wage increase effective October 1, 2013. According to the Union, Respondent failed or refused to pay the 1.5 percent wage increase to employees working in Executive Service Employee (ESE) positions and to employees who were at the maximum grade range on the date of the scheduled increase. In addition, the charge asserts that Respondent repudiated the contract by failing or refusing to pay a safety bonus to the ESEs.

On May 2, 2014, Respondent filed a motion for summary disposition asserting that the charge fails to state a claim under PERA because the allegations set forth therein constitute nothing more than a dispute over the meaning and interpretation of the parties' collective bargaining agreement. Respondent argues that under the terms of the agreement, employees who are at the maximum grade range are to be paid a bi-weekly bonus instead of the 1.5 percent

annual wage increase to which other active employees are eligible. Respondent further asserts that employees working as ESEs are not eligible for either the 1.5 percent wage increase or the safety bonus because those employees are not members of the bargaining unit as defined by the parties' contract. Charging Party filed a response to the motion on June 24, 2014.

Oral argument was held on August 20, 2014. After considering the extensive arguments made by counsel for both parties on the record, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition was appropriate pursuant to Commission Rule R 423.165 (1). See also *Detroit Public Schools*, 22 MPER 19 (2009) and *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a bench decision, finding that Charging Party had failed to state a valid claim under PERA. The substantive portion of my findings of fact and conclusions of law are set forth below:

> JUDGE PELTZ: The facts of this case are fairly straightforward. The parties have a collective bargaining agreement covering the years 2011 through 2015. That agreement was executed on October 1, 2013. Article 3 of the agreement contains a recognition clause [which] refers to Appendix A for a list of bargaining unit positions:
>
> > 3.01: Pursuant to, and in accordance with all applicable provisions of the Public Employment Relations Act (PERA), as amended, the Employer recognizes the Union as the sole and exclusive collective bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment as defined by the terms of this agreement for those employees included in the designated bargaining unit.
> >
> > 3.02: The bargaining unit shall consist of all employees of the Employer holding positions in classifications designated in Appendix A. New classes may be added thereto by agreement between the parties.
>
> Appendix A of the agreement which is entitled "Local 953" lists the titles for all bargaining unit positions, and the Union has conceded this morning that none of the Executive Service Employee positions are listed in Appendix A [and the Union has acknowledged that the ESEs are, in fact, not bargaining unit members].
>
> One other relevant provision with respect to the arguments being made, at least in the recognition clause, is Article 3.04, which deals specifically with Executive Service Employees. That provision states:
>
> > Executive service employees shall be entitled to all benefits as defined by this agreement except that, unless changed by

> agreement of the parties, they shall serve at the will of the Employer. Notwithstanding other provisions of the agreement, employees whose appointments are not renewed shall have the right to displace other positions in accordance with the seniority provisions of this Agreement.

Articles 34.01 through 34.03 of the contract contain language regarding a wage increase and bonuses. I'm going to [quote] from the relevant provisions of that article:

> Article 34.01. It is agreed between the parties that all Authority employees represented by AFSCME, Local 953, shall continue to be paid under the Authority Graded Salary Plan. The maximum rate in each grade will be frozen through the life of the contract.
>
> Article 34.02. Effective on the following dates, active employees of record as of the date that the Authority CEO signs the collective bargaining agreement will receive the following designated increase in their base wage rate.
>
> Effective upon execution of the agreement 1.5%
>
> October 1, 2013. . . . . .1.5%
>
> October 1, 2014. . . . . .1.5%
>
> Article 34.03. Employees must be actively employed and members of the bargaining unit as of the date the contract is executed by the WCAA CEO to be eligible for said increase. Employees on an approved leave of absence will receive the increase as soon as practicable upon their return from said leave. Employees above the grade maximum within their grade range will be eligible to receive [the] increase reference[d] in 34.02 during the term of the collective bargaining agreement in the form of a bonus to be paid bi-weekly and which will not be included in AFC or base wage.
>
> Any amount the increase [sic] which would place an employee above maximum will be paid as this bonus and will not be included in AFC or base wage. Such bonus amounts will be eligible for contribution to deferred compensation plans and/or to defined contribution plans in accordance with such plans.

Article 34.13 [of the collective bargaining agreement] provides for certain safety bonuses. That section states:

> A. Beginning October 1, 2013 and each October 1 for the life of the contract, if the total number of recordable injuries for the fiscal year are the same or less than the number of recordable injuries for the 2011 fiscal year AND there [are] no lost time claims under the Worker Compensation Act during that same fiscal year, each employee in the bargaining unit will receive a bonus of $375.00.
>
> B. Beginning October 1st of 2013 and each October 1 for the life of the contract, if the annual cost of repair for the equipment and vehicle preventable accidents attributable to members of the bargaining unit does not exceed $10,000.00, then each employee in the bargaining unit will receive a bonus of $375.00.
>
> Eligibility for this bonus will terminate on September 30, 2015

It is undisputed that the safety levels set forth in Article 34.13 were satisfied for the fiscal year preceding October 1, 2013. It is also undisputed that the safety bonuses were not paid to the Executive Service Employees. It is undisputed that the wage increases and/or bonuses referenced in Section 34.02 of the agreement were not paid to the ESEs and it is undisputed that the wage increases referenced in Section 34.02 of the contract were not paid to employees above the maximum grade range within their grade. However, there is also no dispute that [employees above the maximum grade range within their grade] were paid the bi-weekly bonuses referenced in that agreement. And that concludes the Facts portion of the Decision and Recommended Order.

Under Section 15 of the Act, public employers and labor organizations have a duty to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. MCL 423.215(1); *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). A party violates PERA if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless that party has fulfilled its statutory obligation or has been freed from it. *Port Huron Education Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 317 (1996); *Detroit Bd of Education*, 2000 MERC Lab Op 375, 377. A party can fulfill its obligation under Section 15 of PERA by bargaining about a subject and memorializing the resolution of that subject in the collective bargaining agreement. Under such circumstances, the matter is "covered by" the agreement. *Port Huron* at 318; *St Clair Cnty ISD*, 2005 MERC Lab Op 55, 61-62. As the Michigan Supreme Court stated in *Port Huron, supra* at 327, "Once the employer has fulfilled its duty to bargain, it has a right to rely on the agreement as the statement of its obligations on any topic 'covered by' the agreement." At the same time, bargaining unit members have a right to rely upon the terms and conditions in the contract and to expect that they

will continue unchanged. *Detroit Bd of Ed, supra*. See also *Wayne Cnty Comm Coll*, 20 MPER 59 (2007).

The Commission's role in disputes involving alleged contract breaches is limited. *Genesee Twp*, 23 MPER 90 (2010) (no exceptions). Where there is a collective bargaining agreement covering the subject matter of the dispute which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the contract controls and no PERA issue is present. Under such circumstances, the details and enforceability of the contract provisions covering the term or condition in dispute are left to arbitration. *Macomb County v AFSCME Council 25, Locals 411 and 893*, 494 Mich 65 (2013); *Port Huron Ed Ass'n v Port Huron* at 321. An alleged breach of contract will constitute a violation of PERA only if a repudiation can be demonstrated. See e.g. *City of Detroit (Transp Dept)*, 1984 MERC Lab Op 937, aff'd 150 Mich App 605 (1985); *Jonesville Bd of Ed*, 1980 MERC Lab Op 891, 900-901.

A finding of repudiation cannot be based on an insubstantial or isolated breach of contract. *Oakland Cnty Sheriff*, 1983 MERC Lab Op 538, 542. Repudiation exists when 1) the contract breach is substantial, and 2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Comm Sch*, 1984 MERC Lab Op 894, 897. The Commission will find a repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960.

In the instant case, the Employer has articulated a facially credible explanation in support of its claim of a contractual right to pay the employees above the grade maximum within their grade range only the increase referenced in 34.03, which is the bonus to be paid bi-weekly, and which is not included in the AFC or base wage. Although Section 34.02 indicates that active employees, as of the date the Authority CEO signs the agreement, are entitled to the 1.5 percent increases, it is clear under Section 34.03 that there is an exception for employees that are above the grade maximum. The key language, for purposes of my finding, is that the above grade maximum employees will be eligible to receive the increase referenced in 34.01 "*in the form of* a bonus to be paid bi-weekly" (emphasis supplied). This language indicates that the above max employees are to receive [additional compensation], just as all other active employees are to receive, but by using the term, "in the form of a bonus", there is at least a good faith argument here, at the very least, that the bi-weekly bonus referenced in Section 34.03 takes the place of the 1.5 percent increase for that particular class of employees.

Because there has been a reasonable, facially credible reading of Article 34 put forward by the Employer, there cannot, under established Commission

case law, be a finding of a repudiation in this case with respect to the alleged entitlement of the above grade maximum employees to both bonuses.

Moving on then to the Executive Service Employees. In its charge, the Union had asserted that the Executive Service Employees were entitled to the same bonuses that we were just speaking of, the 1.5 percent bonuses referenced in Section 34.02, because they were active employees at the time the contract was signed by the Authority CEO, and that those same employees were entitled to the safety bonuses provided [for] in Article 34.13.

The Union concedes that the Executive Service Employees are not members of the bargaining unit, but in the charge asserted they were, nonetheless, entitled to those bonuses by virtue of Section 3.04, the recognition clause, which states that Executive Service Employees "shall be entitled to all benefits as defined by this agreement." The Employer asserts once again that there is at the very least, a bona fide dispute over the interpretation of the contract because the bonuses set forth in both Sections 34.13 and 34.02 [are] applicable [only] to members of the bargaining unit, and the Employer asserts that the Executive Service Employees are not unit members.

The recognition clause clearly spells out which positions are in the unit. It references Appendix A. The Union has conceded that none of the Executive Service Employees are listed in Appendix A. The Union has further conceded today at oral argument that the Executive Service Employees are not bargaining unit members. Given that the two articles in question indicate specifically and explicitly that those bonuses are only available to bargaining unit members, I think, again, the Employer's interpretation of the contract is certainly reasonable and, in fact, with respect to the Executive Service Employees, counsel for the Union has conceded that the Employer's interpretation of the contract is reasonable. And again, for that reason, there can be no repudiation claim stated here as pertaining to the . . . Executive Service Employees.

For those reasons, I would recommend that the Commission issue an order dismissing the charge in this case in its entirety.[1]

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

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

ORDER

The unfair labor practice charge filed by AFSCME Council 25, Local 953 against the Wayne County Airport Authority in Case No. C14 C-035; Docket No. 14-005150-MERC, is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 12, 2014