STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SCHOOLCRAFT COUNTY AND
THE SCHOOLCRAFT COUNTY SHERIFF,
Public Employers-Respondents,

Case No. C12 L-234

-and-

SCHOOLCRAFT COUNTY DEPUTY
SHERIFF'S ASSOCIATION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Cohl, Stoker & Toskey, P.C., by Bonnie G. Toskey, for the Respondents

Frank A. Guido, General Counsel, Police Officers Association of Michigan, for the Charging Party

DECISION AND ORDER

On May 14, 2013, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that Respondents, Schoolcraft County and the Schoolcraft County Sheriff, violated § 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(10)(a) and (e). The ALJ held that Respondents violated their duty to bargain in good faith by unilaterally deducting the entire amount of the increase in the cost of pension benefits from the paychecks of members of the bargaining unit represented by Charging Party, Schoolcraft County Deputy Sheriff's Association, after the expiration of the parties' collective bargaining agreement. This matter required the ALJ to interpret the provisions of 2011 PA 54 (Act 54), which amended PERA at § 423.215b, and prohibits increases in wages and benefits during the period between contract expiration and the commencement of a successor agreement. Act 54 also requires public employers to pass on to employees increases in the cost of insurance benefits that occur after contract expiration. The ALJ concluded that Act 54 did not permit Respondents to pass on the full increase in the cost of pension benefits to employees. The ALJ's Decision and Recommended Order was served on the interested parties in accordance with § 16 of PERA. On June 6, 2013, Respondents filed exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. On June 13, 2013, Charging Party filed a brief in support of the ALJ's Decision and Recommended Order.

In their exceptions, Respondents contend that the ALJ erred in concluding that Act 54 only requires public employers to pass on increases in the costs of insurance benefits that occur

between contract expiration and the commencement of a successor agreement, but does not apply to increases in the costs of providing pension benefits that take effect after contract expiration. Respondents further contend that the ALJ erred in concluding that the Employers violated the Public Employment Relations Act.

We have reviewed Respondents' exceptions and find that they do not have merit.

Factual Summary:

We agree with the ALJ that the facts in this case are not materially in dispute. We adopt the findings of fact as set forth in the ALJ's Decision and Recommended Order and will not repeat them here, except as necessary.

Charging Party and Respondents are parties to a collective bargaining agreement covering the terms and conditions of employment of a bargaining unit including deputy sheriffs. The collective bargaining agreement expired September 30, 2012. That agreement included language providing for a defined benefit pension plan through the Municipal Employees Retirement System (MERS). The terms of the agreement required the Employers to pay the full cost of the pension plan contributions unless the amount of the Employers' contribution to the pension plan reached 23% of payroll. In that event, the collective bargaining agreement provided that amounts in excess of 23% of payroll would be shared equally between the employees and the Employers up to a maximum employee contribution of 2%.

Before October 1, 2012, the amount that Respondents were required to contribute towards the pension benefits equaled 22.66% of payroll. Since the Employers' contribution was less than 23% of payroll, the employees had not been required to contribute towards the cost of their pension benefits. At some point prior to October 1, 2012, Respondents were notified by MERS that the contribution rate for the pension plan would increase to 24.69% of payroll. The pension plan and the benefits of that plan did not change.

Around November 20, 2012, Respondent Schoolcraft County sent a memo to members of the bargaining unit represented by Charging Party informing them that the Employers would begin deducting retirement contributions from their pay beginning with the December 7, 2012 payroll. The memo explained that the deduction was being made because the collective bargaining agreement had expired, a successor agreement had not been reached, and Act 54 made the employees responsible for the increase in the cost of the pension benefits. Attached to the memo was a list of the affected employees' names with columns indicating the amount of the contribution made on behalf of each employee under the old 22.66% rate; the amount of the contribution to be paid under the new 24.69% rate; and the amount of the difference between the two rates, which Respondent's memo indicated was owed to the County.

Charging Party grieved the announced deduction from employee wages. Respondent Schoolcraft County Sheriff granted the grievance at the first written step. However, Respondent Schoolcraft County denied the grievance at the third step. In denying the grievance, Schoolcraft County asserted that Act 54 prohibited the Employers from paying any increase in the costs of benefits that occurred after the expiration of the collective bargaining agreement. The County stressed that Act 54 is not "limited to health insurance premium costs but rather includes all fringe benefits and step increases."

Discussion and Conclusions of Law:

Respondents contend that the ALJ erred in concluding that Act 54 does not permit the Employers to pass on increases in the costs of providing pension benefits that take effect after the expiration of the collective bargaining agreement. Respondents further contended that the ALJ erred in concluding that the Employers violated the Public Employment Relations Act. We disagree.

For the reasons stated by the ALJ, we find Respondents violated § 10(1)(a) and (e) of PERA when the Employers required employees to pay the full amount of the increase in the cost of the pension benefits. Pursuant to the parties' expired collective bargaining agreement, the employees are responsible for one-half of the 1.69% increase in the cost of pension benefits over the 23% for which the Employers are responsible. The Employers breached the terms of the collective bargaining agreement when they attempted to pass on the full increase to the employees rather than one-half of the 1.69% increase over the 23% for which the Employers are responsible. As explained by the ALJ, Respondents' assertion that their actions were required under Act 54 is without merit.

Act 54, which amended PERA at § 15b and became effective on June 8, 2011, provides:

> (1) Except as otherwise provided in this section, after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement. The prohibition in this subsection includes increases that would result from wage step increases. *Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits.*
> (2) Except as provided in subsection (3), the parties to a collective bargaining agreement shall not agree to, and an arbitration panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement.
> (3) For a collective bargaining agreement that expired before the effective date of this section, the requirements of this section apply to limit wages and benefits to the levels and amounts in effect on the effective date of this section.
> (4) As used in this section:
> (a) "Expiration date" means the expiration date set forth in a collective bargaining agreement without regard to any agreement of the parties to extend or honor the collective bargaining agreement during pending negotiations for a successor collective bargaining agreement.
> (b) *"Increased cost" in regard to insurance benefits means the difference in premiums or illustrated rates between the prior year and the current coverage year. The difference shall be calculated based on changes in*

> *cost by category of coverage and not on changes in individual employee marital or dependent status*. (Emphasis added.)

The italicized language in subsection 1 and subsection 4(b) addresses the responsibility for increases in the cost of maintaining insurance benefits that occur after the expiration of the collective bargaining agreement. That language makes it clear that a public employer shall pass on any increased cost of maintaining "health, dental, vision, prescription, or other insurance benefits" that occurs after the expiration of the collective bargaining agreement to its employees and may deduct those increased insurance costs from the employees' pay. That language in § 15b of PERA applies only to increases in insurance costs that occur after the expiration of the collective bargaining agreement, it does not apply to increases in the cost of maintaining other benefits.

On exceptions, Respondents argue:

> [T]he mandate in 2011 PA 54 that a public employer 'shall pay and provide… benefits at… **amounts** that are no greater than those in effect on the expiration date of the collective bargaining agreement' PROHIBITS [sic] a public employer from paying cost increases attributable to fringe benefits after the expiration of a collective bargaining agreement." (Emphasis and deletions in original.)

Respondents' interpretation of Act 54 confuses the prohibition in the first sentence of subsection 1 against paying wages and benefits at levels and amounts greater than those in effect on the contract expiration date with the language in the last two sentences of subsection 1, which requires the employer to pass on increases in the cost of maintaining insurance benefits to employees.

This Commission's interpretation of Act 54 is constrained by rules of statutory construction established by the courts. The goal of statutory construction is to effectuate the Legislature's intent. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156-157 (2011); *Casco Twp v Sec'y of State*, 472 Mich 566, 571, (2005). *Robertson v Daimler Chrysler Corp*, 465 Mich 732, 748 (2002). To do so, we must first review the statute's wording, which provides the most reliable evidence of the Act's intent. *Neal v Wilkes*, 470 Mich 661, 665 (2004); *Sun Valley Foods Co v Ward*, 460 Mich 230, 236 (1999). The rules of statutory construction tell us that, much like any literary composition, a statute is enacted and is meant to be read as a whole. *Metropolitan Council 23, AFSCME* v *Oakland Co (Prosecutor's Investigators)*, 409 Mich 299, 317-318 (1980). 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 (2007); *People v Warren*, 462 Mich 415, 429 n. 24, (2000); *Baker v Gen Motors Corp*, 409 Mich 639, 665 (1980). Where there is no statutory definition of the words used in the statute, those words and phrases must be given their plain and ordinary meaning. *Western Michigan Univ Bd of Control v State*, 455 Mich 531, 538-539 (1997); *Bingham v American Screw Products Co*, 398 Mich 546, 563 (1976). When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction that varies the plain meaning of the statute is neither necessary nor permitted. *Casco Twp v Sec'y of State*, 472 Mich 566, 571 (2005); *Sun Valley Foods Co v Ward*, 460 Mich 230, 236 (1999). Here, the statute clearly and unequivocally mandates that the requirement for employers to pass on cost increases after the expiration of a collective bargaining agreement only applies to

increases in the cost of maintaining *insurance* benefits.

While the Legislature did not define the phrase "levels and amounts," we may rely on the definition of those terms found in a standard dictionary. *Halloran v Bhan*, 470 Mich 572, 578-579 (2004); *Shelby Twp v Dep't of Soc Serv*, 143 Mich App 294, 300 (1985). "Level" is defined as "relative position or rank on a scale; a relative degree, as of achievement, intensity, or concentration."[1] "Amount" is defined as "a number; a sum."[2] Therefore, in stating in the first sentence of subsection 1 of Act 54, "a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement," the Act limits the wages and benefits provided by a public employer after contract expiration to the levels and amounts being provided to employees on the date the contract expired. *Bedford Pub Sch*, 26 MPER 35 (2012). That sentence does not apply to the *cost* paid by the employer for the wages and benefits; it applies only to the levels and amounts of wages and benefits specified by the collective bargaining agreement that are to be provided to employees.

The language in the first sentence of subsection 1 prohibiting paying wages and benefits at levels and amounts greater than those in effect on the contract expiration date would, of course, prohibit Respondents from increasing the pension benefits for the employees between the expiration of the parties' collective bargaining agreement and the effective date of a successor agreement. There is nothing in the record to indicate that the pension benefits Respondents had contracted for through MERS changed after the date the collective bargaining agreement expired. Only the cost of maintaining those same benefits had increased. Act 54 has no language that would require or permit a public employer to pass on an increase in the cost of any benefit, other than insurance benefits, to employees at contract expiration. Here, the parties' collective bargaining agreement contained language determining how the cost of pension benefits would be shared. That language binds the parties between contract expiration and the point that the parties reach a new agreement, bargain to impasse, or receive an Act 312 award[3].

Section 15b of PERA was recently amended by 2014 PA 322, which was effective October 15, 2014. Act 322 changed subsection 4 of Act 54 to subsection 5 and inserted a new subsection 4. Subsection 4 of § 15b of PERA as added by Act 322 provides:

> (4) All of the following apply to a public employee eligible to submit labor disputes to compulsory arbitration under 1969 PA 312, MCL 423.231 to 423.247:
>
> (a) Subsection (1) does not prohibit wage or benefit increases, including step increases, expressly authorized under the expired collective bargaining agreement.
>
> (b) *The increase in employee costs for maintaining health, dental, vision, prescription, or other insurance benefits after the collective bargaining contract expiration date that the employee is required to bear under*

[1] See *The American Heritage College Dictionary, Third Ed.*, (2000).
[2] See *The American Heritage College Dictionary, Third Ed.*, (2000).
[3] Act 312, 1969 PA 312, as amended by 1976 PA 203, 1977 PA 303, and 2011 PA 116, MCL 423.231-247, provides for compulsory binding arbitration of unresolved contract disputes in municipal police and fire departments.

subsection (1) shall not cause the total employee costs for those benefits to exceed the amount of the employee's share under the publicly funded health insurance contribution act, 2011 PA 152, MCL 15.561 to 15.269. If the public employer is exempt from the limitations of that act, the total employee costs for those benefits shall not exceed the higher of the minimum required employee share under section 3 or 4 of the publicly funded health insurance contribution act, 2011 PA 152, MCL 15.563 and 15.264, calculated as if the public employer were subject to that act.

(c) Subsection (2) does not prohibit retroactive application of a wage or benefit increase if the increase is awarded in the decision of the arbitration panel under 1969 PA 312, MCL 423.231 to 423.247, or included in a negotiated bargaining agreement. (Emphasis added.)

The language added to § 15b by Act 322 provides further guidance on the Legislature's intent with respect to the interpretation of subsection 1 and subsection 4(b) of Act 54. In the light of the language in subsection 4(b) of Act 322 capping the increase in employee costs at "the amount of the employee's share under the publicly funded health insurance contribution act, 2011 PA 152," there can be no question that the language passing on increased costs to employees is limited to increases in insurance costs.

We have carefully examined all other issues raised by the parties and find they would not change the result. The ALJ's decision is affirmed.

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: November 24, 2014

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND **SCHOOLCRAFT COUNTY AND THE SCHOOLCRAFT COUNTY SHERIFF** TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally alter existing wages, hours, and terms and conditions of employment, in violation of our duty to bargain in good faith with the Schoolcraft County Deputy Sheriff's Association, by requiring members of this union's bargaining unit, effective October 1, 2012, to pay through automatic payroll deductions the entire amount of the increase in contributions required to maintain their existing pension benefits.

WE WILL restore the status quo in effect prior to our unlawful unilateral action by recalculating the employees' contributions in accord with the language in our expired collective bargaining agreement that requires employees to contribute 50% of the amount their pension contribution rate exceeds 23% of payroll, to a maximum employee contribution of 2%.

WE WILL notify the union and each individual member of the unit of the amount of his or her monthly pension contribution, as adjusted.

WE WILL, pending satisfaction of our obligation to bargain over the amount of the pension contribution, implement the adjusted contributions referred to in the paragraph above, and make each member of the unit whole for amounts deducted from his or her paycheck in excess of that allowed by the expired contract, including interest at the statutory interest rate of 5% per annum.

As a public employer under PERA, we are obligated to bargain in good faith with representatives selected by the majority of our employees with respect to rates of pay, wages, hours of employment, or other conditions of employment.

SCHOOLCRAFT COUNTY AND THE SCHOOLCRAFT COUNTY SHERIFF

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced, or covered by any material. Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510
Case No. C12 L-234

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

SCHOOLCRAFT COUNTY AND THE SCHOOLCRAFT COUNTY SHERIFF,
Public Employers-Respondents,

Case No. C12 L-234
Docket No. 12-001874-MERC

-and-

SCHOOLCRAFT COUNTY DEPUTY SHERIFF'S ASSOCIATION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Cohl, Stoker & Toskey, P.C., by Bonnie G. Toskey, for the Respondents

Frank A. Guido, General Counsel, Police Officers Association of Michigan, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On December 7, 2012, the Schoolcraft County Deputy Sheriff's Association filed the above charge with the Michigan Employment Relations Commission (the Commission) against Schoolcraft County and the Schoolcraft County Sheriff, co-employers of employees represented by the Charging Party, alleging that Respondents violated §§10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(10) by unilaterally deducting from employees' paychecks increases in the required contributions made on behalf of members of Charging Party's unit to their pension fund after October 1, 2012. Pursuant to Section 16 of PERA, the charge was assigned for hearing to Administrative Law Judge Julia C. Stern from the Michigan Administrative Hearing System.

The Unfair Labor Practice Charge:

On or about November 20, 2012, the Respondent County notified the nine members of Charging Party's bargaining unit that, because their collective bargaining agreement had expired, effective with the December 7, 2012 payroll Respondent would begin deducting retirement contributions from their paychecks. Charging Party alleges that these deductions constitute an unlawful unilateral change in the employees' compensation and violate the Respondents' duty to bargain in good faith under §10(1)(e) of PERA.

The charge asserted that the Respondent County maintained that the deductions were mandated by §15b of PERA, MCL 423.215. On December 20, 2012, pursuant to my authority under Rule 165 of the Commission's General Rules, 2002 AACS, R 423.165, I issued an order to Respondents to show cause why Respondents should not be found to have violated their duty to bargain in good faith since the deductions constituted a unilateral reduction in the wages of Charging Party's members and the parties had not bargained to impasse on this issue. On January 24, 2013, Respondents filed a position statement in response to my order in which it asserted that the deductions were authorized and mandated by §15b. By letter dated January 25, 2013, I invited Charging Party to respond to the position statement and to identify any material facts in dispute requiring an evidentiary hearing. On February 13, Charging Party filed a response, and on March 22, Respondents filed a reply to the response.

The parties agree that the issue in this case is whether Respondents were permitted/required by §15b to make deductions from employees' paychecks to cover the entire cost of increases in contributions to their pension plan that went into effect on October 1. 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.

Facts:

Charging Party represents a bargaining unit that includes full-time deputy sheriffs employed by Respondents. The most recent collective bargaining agreement for this unit covered the period October 1, 2008 through September 30, 2012. Appendix A of this agreement set out the retirement benefits to be paid to unit employees under a defined benefit pension plan provided through the Municipal Employees Retirement System (MERS). Appendix A included the following language:

> The Employer will pay one hundred percent (100%) of the pension contributions.
>
> However, in the event that the Employer's mandatory contribution rate to the pension plan reaches 23% of payroll, amounts in excess of 23% shall be equally shared (50/50) between the employees and the Employer to a maximum employee contribution of 2%.

Prior to October 1, 2012, Respondents' mandatory contribution rate amounted to 22.66% of payroll. Accordingly, the deputies did not contribute to the cost of their pension benefits. When the parties' collective bargaining agreement expired on September 30, 2012, they had not reached a new agreement. Members of Charging Party's unit continued to be eligible for the same pension benefits upon their retirement before and after the expiration of the collective bargaining agreement.

Sometime in the fall of 2012, Respondents were notified by MERS that the contribution rate for the pension plan would increase effective October 1, 2012. With the increase in the rate, the contribution rate rose to 24.69% of payroll.

On November 20, 2012, Respondents sent members of Charging Party's unit the following memo:

> As you all know your contract expired on September 30, 2012 and has not been renewed. Because you are not under contract you are responsible for the percentage increases on your retirement as of October 2012, per Public Act 54 (see attached for your review).
>
> Attached also is a list of who owes and how much, this will be deducted from your check monthly. Please note December 7, 2012 payroll October and November amounts will be deducted [sic].

The memo was accompanied by a chart that listed, for each employee, the "old [monthly] amount – 22.66%," the "new [monthly] amount – 24.69%," and the difference between these two amounts, which was the monthly sum each employee would "owe the County."

On November 21, 2012, Charging Party filed a grievance demanding that the Respondents "cease and desist from any deduction of wages." The grievance was granted at the first written step by the Respondent Sheriff, but denied at the third step by the Respondent County on November 29, 2012. The County's written grievance answer stated:

> Pursuant to Public Act 54 of 2011 (see attached) a municipal employer **MAY NOT** pay any increased costs in benefits which occur following expiration of the contract. PA 54 is NOT limited to health insurance premium costs but rather includes all fringe benefits and step increases.
>
> ". . . a public employer shall pay and provide wages and benefits at levels and amounts that are not greater than those in effect on the expiration date of the collective bargaining agreement."
>
> Nowhere in PA 54 is "benefits" defined as being limited to health insurance. Had the Legislature intended that the cost of health insurance be the only fringe benefit subject of [sic] the Act, it would have so stated. [Emphasis in original].

Discussion and Conclusions of Law:

Under both the National Labor Relations Act (NLRA), 29 USC 150 et seq, and PERA, once a specific subject has been classified as a mandatory subject of bargaining, the parties are required to bargain concerning that subject. In addition, neither party may take unilateral action on the subject absent an impasse in negotiations. *NLRB v Wooster Division of Borg-Warner Corp*, 356 US 342, (1958); *NLRB v Katz*, 369 US 736 (1962); *Detroit Police Officers Ass'n v City of Detroit*, 391 Mich 44, 55 (1974). Wages, hours, and other terms and conditions of employment established by a collective bargaining agreement which are mandatory subjects of bargaining survive the expiration of the agreement by operation of law during the bargaining process. A public employer, therefore, has the obligation during the bargaining process to continue to apply those wages, hours, and other terms and conditions of employment until such

time as impasse is reached. *Local 1467, Intern Ass'n of Firefighters, AFL-CIO v City of Portage*, 134 Mich App 466, 472 (1984). Both pension benefits and health insurance benefits have been recognized as constituting mandatory subjects of bargaining under PERA. See *Detroit Police Officers Ass'n v City of Detroit*, at 63-64, (1974) (pension benefits); *St Clair Intermediate School Dist v Intermediate Educ Association/Michigan Educ Ass'n* 458 Mich 540, 551-552, (1998) (health insurance benefits). Accordingly, before the addition of §15b to PERA, a public employer violated its duty to bargain in good faith under PERA if it unilaterally increased or reduced wages or benefits, including pension benefits or health insurance benefits, after a collective bargaining agreement expired but prior to reaching a bargaining impasse.

In *Local 1467, Intern Ass'n of Firefighters v City of Portage,* the Court of Appeals held that a policy or practice of making periodic adjustments to the wages of employees to adjust for increases in the cost of living could become an existing term of employment which survived the expiration of the contract. Thereafter, in *Detroit Pub Schs (Bus Drivers & Site Mgmt Units),* 1984 MERC Lab Op 579 and *Jackson Cmty College,* 1989 MERC Lab Op 913, aff'd 187 Mich App 708 (1991), the Commission held that a salary grid upon which employees were paid increments based on educational attainment or years of service was also an existing term of employment which could not be altered or repudiated short of impasse or agreement.

In 2011 PA 54, the Legislature amended PERA to add the following §15(b):

> (1) Except as otherwise provided in this section, after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, *a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement.* The prohibition in this subsection includes increases that would result from wage step increases. *Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits.* [Emphasis added.]
>
> (2) Except as provided in subsection (3), the parties to a collective bargaining agreement shall not agree to, and an arbitration panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement.
>
> (3) For a collective bargaining agreement that expired before the effective date of this section, the requirements of this section apply to limit wages and benefits to the levels and amounts in effect on the effective date of this section.
>
> (4) As used in this section:
>
> (a) "Expiration date" means the expiration date set forth in a collective bargaining agreement without regard to any agreement of the parties to extend or honor the

> collective bargaining agreement during pending negotiations for a successor collective bargaining agreement.
>
> (b) "Increased cost" in regard to insurance benefits means the difference in premiums or illustrated rates between the prior year and the current coverage year. The difference shall be calculated based on changes in cost by category of coverage and not on changes in individual employee marital or dependent status.

The obligations of a public employer, as set forth in the first paragraphs of this discussion section, were well established in the law when the Legislature amended PERA to add §15(b). As both parties acknowledge, the issue presented by this case is whether the first sentence of §15b(1) permitted/required Respondents to pass along to employees the increases in the contributions required for their pension plan that took effect on October 1, 2012.

One of the arguments made by Charging Party in this case is that the cost of their retirement contribution is not a "benefit" within the meaning of the first sentence of §15b(1) to active employees because they do not receive a pension benefit until they retire. Respondents take issue with this claim, and I agree that it is without merit. Pension benefits have long been recognized as a mandatory subject of bargaining because they constitute a present promise to active employees to pay them a future benefit upon their retirement. The "cost" of these benefits is, of course, the amount of the contribution which the employer and/or employees are required to pay to the pension fund to maintain these future benefits. Section 15b(1) does not expressly limit the term "benefits," as used in the first sentence, to the health or "other insurance benefits" which are the subject of the third sentence of that section. I note that neither party in this case asserts that pension benefits constitute "insurance" benefits as that term is used in the third sentence.

Respondents' position statement, however, includes this statement:

> The Michigan Legislature clearly intended that the Public Employer's labor costs be "frozen" upon expiration of a collective bargaining agreement. This includes the costs of *all* benefits, whether they are insurance-related or not. [Emphasis in original.

That is, Respondents assert that it was the Legislature's clear intent to prevent any increase in labor costs during a hiatus between collective bargaining agreements. In support of this interpretation of the statute, Respondents have attached to their pleadings a copy of a legislative analysis of House Bill 4152, which was an early version of what became §15b. The analysis describes the bill, in pertinent part, as a bill to "require that wage and benefit levels be 'frozen' during contracting negotiations." In the body of the analysis, the bill is described again as requiring that "wage levels and benefit levels be 'frozen' during contract negotiations," and prohibiting school officials from making newly negotiated wage and benefit levels retroactive. Nowhere in this legislative analysis is the bill described as freezing all the employer's labor costs until the parties reach a new agreement. The analysis explains the effect on public employers of requiring them to pay automatic step wage increases after the expiration of the contract in the current economic climate. It also cites testimony in committee hearings as to the deleterious

effect on these employers of the requirement that they bear the increasing costs of maintaining employees' existing health care coverage while bargaining a new contract, including comments by employers stating that these requirements create little incentive for unions to come to agreement on a new contract. However, the analysis does not mention retirement contributions, even though, as Respondents point out, a defined benefit pension is a significant fringe benefit.

The most important evidence of legislative intent, however, is the language of the statute itself. The first sentence of §15b(1) states that a public employer shall *pay and provide wages and benefits at levels and amounts* that are no greater than those in effect on the expiration date of the collective bargaining agreement. The term "cost" is not used in this sentence. In this case, neither the "level" of pension benefits to which Charging Party's bargaining unit members are entitled upon retirement, nor the "amount" of these benefits they will receive when they retire increased on October 1, 2012. What did increase on this date was the cost of providing them with the same "levels and amounts" of pension benefits. Of course, the fact that public employers were required to bear the increased costs of maintaining the same "levels and amounts" of employees' insurance benefits while attempting to bargain a new contract was clearly one of the reasons for §15b. However, the Legislature addressed this problem separately in the last two sentences of §15b(1), including giving public employers the unambiguous right to deduct money from employees' paychecks to cover the increased costs of maintaining employees' existing insurance benefits. I conclude that while the first sentence of §15b(1) prohibits parties from agreeing to increase fringe benefits during the hiatus period between contracts, it does not prohibit a public employer from absorbing increases in the cost of maintaining existing fringe benefits, including pension benefits, that take effect after the expiration of a collective bargaining agreement. While the third sentence of §15b(1) prohibits a public employer from absorbing cost increases associated with a particular category of fringe benefit – insurance benefits – the third sentence cannot be read to encompass all fringe benefits or pension benefits. Finally, I find that nothing in §15b authorizes a public employer to deduct money from its employees' paychecks to cover increases in the cost of their fringe benefits other than the "insurance benefits" mentioned in the third sentence of §15b(1).

I conclude that §15b did not mandate that Respondents require Charging Party's bargaining unit to bear the increased costs of their existing pension benefits occurring after the expiration of the parties' collective bargaining agreement. Because §15b did not authorize Respondents to pass along to employees the increases in the cost of their existing pension benefits occurring after the parties' contract expired, I conclude that Respondents violated their duty to bargain in good faith by unilaterally deducting the entire amount of the increases from the paychecks of Charging Party's members.

Here, the parties' expired contract provided that employees would begin contributing to the costs of their pension benefits after these costs exceeded 23% of payroll. The October 1, 2012 increase in the contribution rate raised these costs to 24.69% of payroll. Charging Party concedes in its response to Respondents' position statement that Respondents were entitled, after the October 1, 2012 rate increase, to require Charging Party's members to make contributions to their pension costs in accord with the agreement set out in the contract. That is, Respondents could lawfully have begun deducting one-half of the 1.69% by which contributions exceeded 23% of payroll after October 1, 2012. Accordingly, I recommend that the Commission issue the

following order in this case.

RECOMMENDED ORDER

Respondents Schoolcraft County and Schoolcraft County Sheriff, its officers and agents, are hereby ordered to:

1. Cease and desist from unilaterally altering existing wages, hours, and terms and conditions of employment, in violation of their duty to bargain in good faith with Charging Party Schoolcraft County Deputy Sheriff's Association, by requiring members of Charging Party's bargaining unit, effective October 1, 2012, to pay through automatic payroll deductions the entire amount of the increase in contributions required to maintain their existing pension benefits.

2. Take the following affirmative action to effectuate the purposes of the Act:

   a. Restore the status quo in effect prior to the above unlawful unilateral action by recalculating the employees' contributions in accord with language in the parties' expired collective bargaining agreement that requires employees to contribute 50% of the amount their pension contribution rate exceeds 23% of payroll, to a maximum employee contribution of 2%.

   b. Notify Charging Party and each individual unit member of the amount of his or her monthly pension contribution, as adjusted.

   c. Pending satisfaction of Respondents' duty to bargain over the amount of the pension contribution, implement the adjusted contributions referred to in the paragraph above, and make each member of the unit whole for amounts deducted from his or her paycheck in excess of that allowed by the expired contract, including interest at the statutory interest rate of 5% per annum,

   d. Post the attached notice in conspicuous places on Respondents' premises, including all places where notices to members of Charging Party's bargaining unit are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: _____