**STATE OF MICHIGAN**
**EMPLOYMENT RELATIONS COMMISSION**
**LABOR RELATIONS DIVISION**

In the Matter of:

GENESEE COUNTY,
Public Employer-Respondent,

Case No. C12 H-159
-and- Docket No. 12-001402-MERC

AFSCME COUNCIL 25, LOCAL 916,
CHAPTERS 1, 2, 3, 4, 8, 9 AND 10,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Keller Thoma, P.C., by Richard W. Fanning, Jr., for Respondent

Kenneth J. Bailey, Staff Attorney, for Charging Party

## DECISION AND ORDER

On May 29, 2015, 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 either 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: July 16, 2015

**STATE OF MICHIGAN**
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**
**EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

GENESEE COUNTY,
Respondent-Public Employer,

Case No. C12 H-159
-and- Docket No. 12-001402-MERC

AFSCME COUNCIL 25, LOCAL 916,
CHAPTERS 1, 2, 3, 4, 8, 9 AND 10,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Keller Thoma, P.C., by Richard W. Fanning, Jr., for Respondent

Kenneth J. Bailey, Staff Attorney, for Charging Party

## DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

On August 20, 2012, AFSCME Council 25, Local 916, Chapters 1, 2, 3, 4, 8, 9 and 10, filed an unfair labor practice charge against Genesee County. 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) for the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission. Based on a stipulation of facts filed by the parties on July 21, 2014, I make the following findings of fact and conclusions of law.

The charge arises from Respondent's implementation of the requirements of the Publicly Funded Health Insurance Contribution Act, 2011 PA 152, MCL 15.561 *et seq*. (PA 152). Charging Party contends that the County violated PERA by deducting co-pays from the members of its bargaining unit prior to the expiration of the collective bargaining agreement.

The parties agreed that there were no material disputes of fact and that the matter could be decided on summary disposition. On July 21, 2014, the parties jointly submitted a stipulation of facts, along with five exhibits. On August 29, 2014, Respondent filed a motion for summary disposition in which it asserted that the charge should be dismissed because the allegations set forth by the Union constitute an issue of contract interpretation outside of the Commission's jurisdiction and because the Union has not established that the allegedly premature imposition of co-pays had a substantial impact on unit members. Charging Party filed a response to the motion for summary disposition on September 14, 2014.

Findings of Fact:

The following findings of fact are derived from the stipulated facts and exhibits filed by the parties. Charging Party is a collection of individual chapters of Michigan AFSCME Council 25, Local 916, which represent employees of Genesee County, including court supervisors, prosecuting attorney unit chiefs and other first line supervisors. Charging Party and Respondent were parties to a collective bargaining agreement which originally covered the period from September 29, 2005 to December 31, 2010. Pursuant to a Letter of Agreement entered into on March 16, 2009, the contract was extended through June 30, 2012.

Article XVIII of the now-expired collective bargaining agreement required Respondent to provide group hospitalization and medical insurance coverage to the members of Charging Party's bargaining unit. Pursuant to the agreement, the County was responsible for paying the full amount of an employee's monthly health insurance premium unless he or she selected a more expensive plan, in which case that employee was responsible for paying, through automatic payroll deduction, the amount by which the premium for such health insurance coverage exceeded the standard plan. The contract also contained a grievance arbitration procedure culminating in binding arbitration.

Where an employee contribution was required, the Employer withheld the employee's share of the contribution one month in advance. For example, an employee's share of the premium for health insurance coverage in July would be deducted from that employee's paycheck in the month of June. If the employee stopped working for the County, he or she was reimbursed for any premium contributions which had been made to cover the period after the employee's separation of employment; i.e., if an employee separated employment on June 30th, he or she would be reimbursed by Respondent for the amount attributed to the July coverage which had been deducted from the employee's paycheck in June. This practice had been in place since as early as 2004, was understood and agreed to by the parties and was never challenged by the Union in an unfair labor practice proceeding or via the contractual grievance process.

Genesee County is subject to the terms of PA 152, which became effective on September 27, 2011. PA 152 was enacted to limit public employers' expenditures for employee medical benefit plans. Section 3 of PA 152, MCL 15.563, sets specific dollar limits, or a "hard cap," on the amounts a public employer can pay for employee medical benefit plans, commencing with the medical benefit plan year beginning on or after January 1, 2012. Pursuant to Section 4 of the Act, a public employer may, by a majority vote of its governing body, alternatively elect to comply with the limit on expenditures by paying no more than 80 percent of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials (the "80/20" option). However, neither Section 3 nor 4 apply where the parties are covered by a collective bargaining agreement or other contract that was in effect prior to the effective date of PA 152 if that agreement is inconsistent with the terms of the Act. Under such circumstances, the Act's cost-sharing obligations commence upon the expiration of the collective bargaining agreement or contract. MCL 15.565. Pursuant to MCL 15.569, failure to comply with the requirements of PA 152 subjects a public employer to severe financial penalties, including a ten percent reduction in potential payments received under 2011 PA 63, which created the Economic Vitality Incentive Program.

Respondent elected to comply with PA 152 by implementing the "hard cap" option set forth in Section 3, MCL 15.563. On June 8, 2012, the County issued a memorandum to the members of Charging Party's bargaining unit informing them that due to the expiration of their collective bargaining agreement on June 30, 2012, the requirements of PA 152 would apply and that the co-payments required under the Act would be withheld one month in advance. Specifically, the memorandum stated, in pertinent part:

> Co-payments for full time Employees as listed below will be deducted from the pay of each of you who is covered under BCBS and HealthPlus on a semi-monthly, post-tax basis beginning with the paycheck issued June 8, 2012.
>
> * * *
>
> The above deductions will be used to partially fund the payments to be made for benefit coverage as of the first day of the calendar month immediately following the month in which the deductions are made. In accordance with established practice, deductions will be refunded to an Employee who separates from employment prior to the month immediately following the month in which the deductions are made.

Following the issuance of the memorandum, Charging Party filed a grievance challenging Respondent's right to implement the deductions prior to the expiration of the collective bargaining agreement. The grievance was denied by Respondent and the County began withholding money from the paychecks of bargaining unit members for health insurance contributions beginning with the June 8, 2012, payroll.

Discussion and Conclusions of Law:

Charging Party argues that the County repudiated Article XVIII of the collective bargaining agreement by deducting co-pays from the members of its bargaining unit prior to the expiration of the collective bargaining agreement. According to the Union, there is no bona fide dispute over interpretation of the contract, as the agreement clearly and unambiguously requires the County to provide group hospitalization and medical insurance coverage to the members of Charging Party's bargaining unit at no cost, with the only exception being if an individual member selects a health insurance plan which is more expensive than the standard plan. The Union contends that there is nothing in the language of PA 152 which would authorize the deductions prior to the expiration of the contract.

Respondent asserts that because the collective bargaining agreement and the established past practice of the parties covers the matter of health insurance, including the process by which employees pay their share of the premium, this case presents an issue of contract interpretation which is outside the jurisdiction of the Commission, as evidenced by the fact that Charging Party filed a grievance challenging the County's implementation of employee co-pays. Respondent contends that its interpretation of the contract must stand since the Union failed to appeal the County's denial of the grievance. Additionally, the County argues that it had no duty to bargain over the implementation of employee contributions to health insurance since implementation of the PA 152 requirements is not a

mandatory subject of bargaining under the Commission's decision in *Decatur Public Schools*, 27 MPER 41 (2014), aff'd ___ Mich App ___ (2015).

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). The test generally applied to determine whether a matter is a mandatory subject of bargaining is whether it has an impact upon wages, hours, or conditions of employment, or settles an aspect of the employer-employee relationship. *Detroit v Council 25, AFSCME*, 118 Mich App 211 (1982), enf'g 1981 MERC Lab Op 297. The Commission and the courts have adopted a broad and an expansive interpretation of "wages, hours, and other terms and conditions of employment" under Section 15 of PERA. It is well established that the benefits, coverage, and administration of a health insurance plan are mandatory subjects of bargaining under the Act. See e.g., *Taylor Sch Dist*, 1976 MERC Lab Op 693; *Houghton Lake Ed Ass' n v Houghton Lake Bd of Ed*, 109 Mich App 1, 7 (1981).

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* 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*. 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. *Macomb County v AFSCME Council 25, Locals 411 and 893*, 494 Mich 65 (2013). 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.

Article XVIII of the parties' contract required the County to provide group hospitalization and medical insurance coverage to the members of Charging Party's bargaining unit. Although the County was generally responsible for paying the full amount of an employee's monthly health insurance

premium, individual unit members were required to contribute to the cost of health insurance if they selected a more expensive plan. Under such circumstances, the employee was responsible for paying, through automatic payroll deduction, the amount by which the premium for such health insurance coverage exceeded the standard plan. Although the contract did not specify when such employee contributions would be deducted, there was an established practice pursuant to which the County withheld the employee's share one month in advance. The parties stipulated that this practice had been in existence since as early as 2004, was understood and agreed to by both the Union and the County and was never the subject of a grievance or administrative challenge. Under such circumstances, there can be no question that this was a mutually accepted past practice which became a term or condition of employment binding on the parties. See *Amalgamated Transit Union, Local 1564, AFL-CIO v Southeastern Mich Transp Auth*, 437 Mich 441, 454-455 (1991); *Mid-Michigan Ed Ass'n v St Charles Comm Sch*, 150 Mich App 763, 768 (1986), rev'd on other grounds *Port Huron, supra*.

PA 152, which was given effect on September 27, 2011, provides limits on the maximum amount that a public employer can contribute to medical benefit plans for its employees or elected public officials. Respondent elected to comply with PA 152 by implementing the "hard cap" option set forth in Section 3 of the Act, setting specific dollar limits for contributions to medical benefit plans for its employees. It is undisputed that Charging Party's members were required under PA 152 to begin making contributions to the cost of their health insurance beginning in July of 2012, immediately following the expiration of the collective bargaining agreement. There is also no dispute that Respondent implemented the automatic payroll deductions in June of 2012 and that such payments were applied to the cost of benefit coverage as of the first day of July of that year. To that end, Respondent agreed to refund premium contributions to any employee who separated from employment prior to July 1st. I find that Respondent's actions did not constitute a breach or repudiation of the collective bargaining agreement. To the contrary, the County's implementation of co-pays was entirely consistent with the parties' mutually agreed upon practice pursuant to which employee contributions to health insurance were collected one month in advance.

Even if the County's implementation of cost sharing under PA 152 was technically premature, I would not find a PERA violation on these facts. By its terms, the requirements of Sections 3 and 4 of PA 152 do not apply to an employee covered by a collective bargaining agreement or other contract that is inconsistent with the terms of the Act until that collective bargaining agreement or contract expires. MCL 15.565. Although the agreement between Charging Party and the County did not expire until June 30, 2012, the past practice when an employee contribution was required was for Respondent to withhold the employee's share of his or her health insurance premiums one month in advance. Facing a statutorily imposed deadline and the risk of substantial financial penalties pursuant to MCL 15.569, the County's decision to act in accordance with the parties' established practice was a reasonable interpretation of its contractual and statutory obligations and, therefore, did not constitute a violation of Section 10(1)(e) of PERA. Unfair labor practice charges arising from bargaining disputes are resolved on what is essentially a reasonableness analysis, because the duty in collective bargaining is not to bargain to perfection, or without error, or without arguable flaw, but rather it is to bargain in good faith. *City of Southfield*, 28 MPER 43 (2014); *Watersmeet Twp Sch Dist*, 28 MPER 36 (2014). 1

---

1 The folly of the argument set forth by Charging Party is apparent in the remedy requested by the Union. Charging Party seeks an order requiring the County to return the money it claims was prematurely deducted from the paychecks of its members in June of 2012. As noted, those funds were collected by the County to cover the costs of health coverage for the month of July and there is no dispute that employees were subject to the

I have carefully considered all other arguments set forth by the parties in this matter and conclude that they do not warrant a change in the result. Accordingly, I recommend that the Commission issue the order set forth below.

## RECOMMENDED ORDER

The unfair labor practice charge filed by AFSCME Council 25, Local 916, Chapters 1, 2, 3, 4, 8, 9 and 10 against Genesee County in Case No. C12 H-159; Docket No. 12-001402-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: May 29, 2015

---

requirements of PA 152 as of the beginning of that month. Thus, even if the Commission were to conclude that Respondent began deducting money from its employees' paychecks prematurely, the remedy requested by the Union could not be lawfully imposed since it would result in the County having paid the full cost of health insurance for the month of July and, therefore, conflict with the express requirements of PA 152.