STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SANILAC COUNTY COMMUNITY MENTAL HEALTH SERVICES,
Public Employer-Respondent,

Case No. C05 L-313

-and-

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 25,
AND ITS AFFILIATED LOCAL 1518,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Roumell, Lange and Cholak, PLC, by Karen D. Pugh, Esq., for the Respondent

Ben K. Frimpong, Esq., for the Charging Party

DECISION AND ORDER

On October 30, 2006, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated:_____

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Ben K. Frimpong, Esq., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, this case was heard at Detroit, Michigan on May 3, 2006, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on June 7, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The American Federation of State, County and Municipal Employees (AFSCME), Council 25, and its affiliated Local 1518, filed this charge against the Sanilac County Community Mental Health Services on December 27, 2005. The charge was amended on March 29, 2006. Charging Party represents a bargaining unit of non-supervisory employees of Respondent. The charge, as amended, alleges that Respondent violated Section 10(1)(e) of PERA by repudiating the parties' collective bargaining agreement, and unlawfully discriminated against bargaining unit member Nora Grambau in violation of Sections 10(1)(a) and (c), when it denied Grambau's request for a leave of absence to accept an appointed position with AFSCME Council 25 and subsequently terminated her.

Facts:

The Collective Bargaining Agreement

Article 36 of the parties' current collective bargaining agreement states:

(a). Leaves of absence for a period not to exceed one (1) year will be granted, in writing, without loss of seniority for:

1. Serving in any elected or appointed position, public or union;

2. Maternity/Paternity leave;

3. Illness leave (physical or mental);

4. Prolonged illness in immediate family;

5. Educational leave.

Such leave may be extended for like cause.

(b). Employees shall accrue seniority while on any leave of absence granted by the provisions of this agreement, and shall be returned to the position they held at the time the leave of absence was granted, or to a position to which his/her seniority entitled him/her.

(c). Members of the Union selected to attend a function of the Union shall be allowed time off without loss of time or pay to attend, not to exceed ten (10) days per year total for the agency.

Article 29 of the agreement provides:

An employee's seniority and employment shall terminate if:

. . .

4. An employee is absent from work for three (3) consecutive working days without advising the Employer of an acceptable reason for such absence.

. . .

6. An employee gives a false reason in requesting a leave of absence or engages in other employment during such leave of absence.

. . .

11. He/she accepts employment elsewhere after he/she is on a leave of absence, or if self-employed for the purpose of making a profit, after a leave of absence is granted; however, the Employer may waive this requirement.

The collective bargaining agreement also contains a grievance procedure ending in binding arbitration.

Nora Grambau's Leave of Absence Request

Nora Grambau was hired by Respondent on March 1, 1988. At the time of her termination in February 2006, she was employed as Respondent's only psychiatric hospital liaison. When an individual with a mental illness was hospitalized, it was Grambau's responsibility to link the individual to community resources allowing him or her to leave the hospital and return to the community. There is no dispute that Grambau was good at her job and a highly valued employee.

In 1996 or 1997, Grambau became a chapter chair for Local 1518. In this capacity, Grambau was involved in the processing of grievances and was also a member of Charging Party's bargaining team. Sometime thereafter, Grambau also became a member of Council 25's executive board. As a member of the Union's executive board, Grambau regularly requested time off under Article 36(c) of the contract to attend the board's meetings. Grambau submitted her requests in writing to Respondent's director, Roger Dean, and Dean approved her requests either in writing or by telephone. Eventually, Dean stopped responding and told Grambau that if she did not hear from him, she could assume that her request was granted. Between about 2003 and 2005, all of Grambau's requests for leave to attend the executive board's quarterly meetings were approved in this way.

In early December 2005, Grambau was approached by Council 25 and offered a one-year appointment as a Council 25 staff representative. Council 25 hires most, if not all, its staff representatives from bargaining units it represents. As it did with Grambau, Council 25 initially offers an individual a one-year appointment as a staff representative. At the end of that year, it evaluates the staff representative's performance. Based on that performance, Council 25 may offer the staff representative a permanent position, may extend his or her appointment for an additional year, or may terminate the appointment. Staff representatives hired for one-year appointments usually take a leave of absence from their employer pursuant to contract language. Grambau testified that when approached by Council 25 she assumed that she would be entitled to a leave of absence from her position with Respondent under Article 36(a)(1) of the contract.

On about December 13, 2005, Grambau gave Dean the following letter:

> Pursuant to Article 36 of the AFSCME contract, I am seeking a one-year leave of absence from my employment to accept a Union appointment.
>
> Per this article, my seniority and position remain in place during this leave time. At this time I am going to seek the entire one year period of time. However, this leave may be less should the duration of this appointment end prior to the one year leave period sought.
>
> I anticipate the leave to begin January 3, 2006. As we have discussed, I am not taking this leave as a result of any ill feelings toward the Agency and in fact I only have

> positive feelings about not only my position, but the Agency as a whole.1 It has been, and is, a great place to work. With this in mind, I don't want to leave the agency in a bad position. I understand that my leave creates an administrative headache. If there is some way to work it, I would be willing to continue as many tasks as possible in the evening or weekends at home. I don't know if this is something that the Agency would be interested in pursuing or not but the offer is there. It remains in my best interest to do whatever I can to assure the success of my position and the Agency. If I can be of any help, please let me know.

Dean did not respond to Grambau's December 13 memo. Grambau subsequently requested to take vacation time between December 21 and the date she was to begin her AFSCME position. On or about Grambau's last day of work, she phoned Dean to confirm that her leave had been granted. Later that day, she received a phone message from Dean stating that her request for a leave of absence had been denied.

Charging Party filed a grievance on Grambau's behalf and the instant charge. Grambau began her position as AFSCME Council 25 staff representative on January 3, 2006. On January 24, Respondent sent Grambau a letter stating that since she had exhausted all of her vacation time, was not on an approved leave of absence, and had not returned to work, she had been terminated for absenteeism and unauthorized absence from duty during scheduled work hours.

Discussion and Conclusions of Law:

An employer generally satisfies its obligation to bargain over a mandatory subject of bargaining under Section 15 of PERA when it bargains with the union over the subject and memorializes the parties' agreement in a collective bargaining agreement. *Port Huron Ed Ass'n v Port Huron Area Sch Dist,* 452 Mich. 309, 317-318, (1996). Although the Commission has the authority to interpret a collective bargaining agreement to determine whether an unfair labor practice has been committed, it does not exercise jurisdiction over routine contract disputes. If the term or condition in dispute is "covered" by a provision in the collective bargaining agreement, and the parties have agreed to a grievance resolution procedure ending in binding arbitration, the details and enforceability of the provision are left to arbitration. *Port Huron,* at 321.

The Commission has held, however, that it will find a violation of a party's duty to bargain in good faith when the party's actions amount to a "repudiation" of the collective bargaining agreement. The Commission has defined repudiation as 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. It has held that in order for it to find repudiation: (1) the contract breach must be substantial, and have a significant impact on the bargaining unit, and (2) there must be no bona fide dispute over interpretation of the contract. *Gibraltar Sch Dist,* 16 MPER 36 (2003*); Plymouth-Canton Cmty Schs,* 1984 MERC Lab Op 894, 897.

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1 There was no testimony in record about this conversation, which evidently occurred between Dean and Grambau sometime before Grambau submitted her leave request.

Respondent asserts that Grambau was hired by AFSCME for a full-time job as a union negotiator. According to Respondent, Grambau was neither elected nor appointed to the position, but "accepted full time employment with that organization and receives all the compensation and benefits associated with that job." Therefore, according to Respondent, Grambau did not qualify for a leave of absence under Article 36(a0(1). Respondent also cites the provision in Article 29 giving Respondent the right to terminate an employee for engaging in other employment during a leave of absence. According to Respondent, it considers Grambau to be "a self-terminated employee" as it would consider any employee who took a new job in another organization.

Respondent's contractual arguments strike me as very weak. Nothing in the contract suggests to me that the appointed or elected positions referred to in Article 36(a)(1) must be part-time or unpaid. Moreover, the evidence here established that the union position Grambau accepted in December 2005 was not permanent and would not become so for at least a year. Were I charged with resolving the parties' contract dispute, I would also find that since the contract should be read as whole, Article 29(6) and (11) of the contract should be interpreted as excluding the "employment" covered by Article 36(a)(1). However, as discussed above, the Commission does not involve itself in disputes over contract interpretation. In those cases where the Commission has found employer repudiation, the employer' contractual defense has been either spurious or nonexistent. For example, in *Jonesville Bd of Ed,* 1980 MERC Lab Op 891, 900-901, the employer justified its decision to alter the contractual wage rate based on economic necessity and a management's rights clause that made no reference to wages. In *City of Detroit,* 1976 MERC Lab Op 652, the employer asserted that its need to implement an affirmative action plan to remedy past racial discrimination justified its refusal to follow clear language in the contract dealing with promotions. In *City of Detroit, Dep't of Transportation,* 1984 MERC Lab Op 937, *aff'd* 150 Mich App 605 (1985); and *Taylor Bd of Ed,* 1983 MERC Lab Op 77, the employers claimed only that they could no longer afford to fulfill their contractual obligations. See also *Eaton Co and Sheriff,* 17 MPER 82 (2004) (no exceptions); *Cass City Pub Schs,* 1982 MERC Lab Op 241 (no exceptions); *Howard Brisssette d/b/a/ The Golden Key,* 1967 MERC Lab Op 664 (no exceptions). Although I find Respondent's contractual arguments in this case unpersuasive, I cannot conclude that the Respondent acted in bad faith when it denied Grambau's request for a leave of absence based on these arguments. I find that the parties in this case have a contractual dispute, and that Charging Party has not demonstrated that Respondent repudiated their collective bargaining agreement. I conclude, therefore, that Respondent did not violate its duty to bargain in good faith under Section 10(1)(e) of the Act by denying Grambau's request for a leave of absence.

Charging Party also argues that Respondent unlawfully discriminated against Grambau in violation of Sections 10(1)(a) and (c) because its motive for denying her leave request was her support for and previous activities on behalf of Charging Party. I find that the evidence is not sufficient to support this conclusion. Grambau had a history of union activism dating back many years, and there was no indication of union animus or hostility toward Grambau's protected activities. Since there was no evidence of anyone else requesting a leave under Article 36(a)(1), there was nothing in the record to suggest that Respondent would have been more liberal in its interpretation of Article 36(a)(1) had another employee requested leave under this section. As Charging Party itself notes in its brief, Respondent did not want to Grambau to leave its employment because she was the only employee performing the duties of a psychiatric liaison. Finding a replacement for Grambau, particularly a temporary one, presented Respondent with "an

administrative headache." However, Respondent was not prohibited by PERA from denying Grambau's leave of absence request because it would have a hard time replacing her. I conclude that Charging Party has not demonstrated that Respondent denied Grambau's leave request or subsequently terminated her for reasons prohibited by Section 10(1)(c) of PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____