STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Public Employer-Respondent,

Case No. C10 B-034

-and-

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

APPEARANCES:

Cassandra Harmon Higgins, Esq., Michigan AFSCME Council 25, for Charging Party

DECISION AND ORDER

On July 15, 2010, Administrative Law Judge Doyle O'Connor 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

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Cassandra Harmon Higgins, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE 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 Doyle O'Connor, Administrative Law Judge with the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge, the Order to Show Cause, and Findings of Fact:

A Charge was filed with the Commission on February 4, 2010, by Michigan AFSCME Council 25 (the Union), alleging that Wayne County (the Employer) had violated its duty to bargain in good faith with the Union. The focus of the Charge was the failure of the parties to reach agreement on changes to a particular sub-section of their collective bargaining agreement related to subcontracting of work. The Charge asserted that the Employer proposed particular language; that the Union rejected that language by proposing alternative wording; that more than three months after the initial proposal was made by the Employer, the Union reversed itself and offered to accept the Employer's language; and that the Employer then withdrew its earlier proposal. The Union sought as relief a finding that the Employer failed to bargain in good faith and that the Commission order that "the agreement of the parties regarding subcontracting" be enforced.

An Order to show cause why that matter should not be dismissed for failure to state a claim was issued on February 17, 2010. Because the claims asserted in this Charge were intertwined with claims raised by AFSCME in its earlier filed Charge in Case No. C10 A-024-A, a consolidated timely response was filed on April 1, 2010, in that matter,

covering the claims in this Charge as well. A timely reply was filed by the Employer on May 26, 2010.

In the Order to Show Cause, Charging Party was expressly cautioned that if the Charge and response to the Order did not state valid claims, or if Charging Party did not timely respond to this Order, a decision recommending that the Charge be dismissed without a hearing would be issued. AFSCME did not request oral argument.

Discussion and Conclusions of Law:

Based on the Charge and on the response to the order to show cause, and accepting the facts as asserted in the Charge, the described course of conduct, standing alone, amounts to nothing more than ordinary bargaining, where one party proposed a solution and the other rejected it, only to belatedly seek to accept the original offer. The Act itself, while obliging the parties to bargain in good faith, expressly recognizes that there is no duty to agree to a particular proposal. See, MCL 423.215 (1). Further, to establish, or to even plead, a bargaining violation, including a claim of regressive bargaining, the totality of the circumstances must be examined and the mere alteration of a single proposal, even an arguably tentatively agreed upon piece of contract language, does not, standing alone, state a viable claim. *Waldron Area Schools*, 1997 MERC Lab Op 256; *Hart Public Schools*, 1989 MERC Lab Op 950.

It also remains unclear what purported agreement between the parties was sought to be enforced where the only exchange described in the Charge is related to a single proposed tentative agreement regarding one of a likely multitude of issues on which an agreement would need to be reached before the parties would have an enforceable contract. Additionally, the relief sought, i.e., the enforcement of a supposed agreement on a single condition of employment during ongoing contract negotiations, does not appear to be a form of relief ever ordered by the Commission or anticipated by the Act.

Finally, to the extent that any cognizable claim for relief may have been stated in this matter, it would be duplicative of claims pending in the already pending matter, Case No. C10 A-024-A, and, for this additional reason, the allegations in this case fail to state a claim upon which relief could be granted. Separate and related Orders are being simultaneously issued in the companion cases, C10 A-024-A and C10 D-094.

RECOMMENDED ORDER

The Charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: July 15, 2010