STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Public Employer-Respondent,

MERC Case No. C14 G-079A

-and-

AFSCME COUNCIL 25, LOCAL 3317,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Wayne County Assistant Corporation Counsel, Bruce Campbell, and The Mike Cox Law Firm, PLLC, by Michael A. Cox and Joseph P. Furton, Jr., for Respondent

Jamil Akhtar, for Charging Party

DECISION AND ORDER

On September 10, 2018, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order[1] 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: November 2, 2018

[1] MAHS Hearing Docket No. 15-037169

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

WAYNE COUNTY,
Respondent-Public Employer, Case No. C14 G-079A
Docket No: 15-037169-MERC

-and-

AFSCME COUNCIL 25, LOCAL 3317,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Wayne County Assistant Corporation Counsel, Bruce Campbell, and The Mike Cox Law Firm, PLLC, by Michael A. Cox and Joseph P. Furton, Jr., for the Respondent-Public Employer

Jamil Akhtar, for the Charging Party-Labor Organization

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 and 423.216, the above captioned case was assigned to Administrative Law Judge, Travis Calderwood of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission). Based upon the entire record, including the transcripts of hearings held on June 12, 2017, and October 2 and 3, 2017, the exhibits admitted into the record and post hearing briefs, I make the following findings of fact, conclusions of law and recommended order.[2]

Procedural History:

On July 14, 2014, AFSCME Council 25, Local 3317 ("Charging Party" or the "Union"), filed an unfair labor practice charge against Wayne County ("Respondent" or "County"), Case No. C14 G-079; Docket No. 14-015819-MERC, in which it claimed that the County had engaged in bad faith bargaining during the parties' negotiations over a collective bargaining agreement to succeed the one that was set to expire on September 30, 2014. [3]

On May 6, 2015, Charging Party filed a motion seeking to amend its charge in Case No.

2 The parties stipulated that exhibits entered into during this proceeding's hearing as well as the hearings for related cases C16 B-015 and C16 K-126 may be considered in total, where relevant, for each of the individual cases.
3 I issued my decision and recommended order in Case No. C14 G-079 on May 31, 2017. The Commission adopted that decision, with no exceptions filed, on August 11, 2017. See *Wayne County*, 31 MPER 17 (2017) (no exceptions).

C14 G-079; Docket No. 14-015819-MERC, to include allegations of regressive bargaining. During the evidentiary hearing held on May 14, 2015, for Case No. C14 G-079, I directed that the proposed amended charges filed by the Union on May 6, 2015, be accepted and bifurcated. The bifurcated charge was docketed as Case No. C14 G-079A; Docket No. 15-037169-MERC.[4] At the close of the hearing, I directed that post-hearing briefs in C14 G-079 be filed by the parties on or before July 30, 2015.

On June 23, 2015, Respondent filed a motion seeking summary dismissal of Case No. C14 G-079A.[5] Charging Party filed its response on July 14, 2015. Oral argument, ordered at the request of the parties, was set for July 28, 2015.

On July 22, 2015, Governor Snyder declared that a local government financial emergency existed in Wayne County pursuant to the Local Financial Stability and Choice Act, 2012 PA 436 (PA 436).

Prior to the start of the July 28, 2015, oral argument in Case Nos. C14 G-079A and C15 E-063, I met with the parties and discussed the Governor's declaration of a financial emergency in the County and its potential impact on the three then pending charges, C14 G-079, C14 G-079A, and C15 E-063. Recognizing that the financial emergency determination would likely result in a consent agreement between the County and the State Treasurer, the parties agreed to adjourn that day's oral argument, and hold this matter in abeyance. Furthermore, the parties agreed that post-hearing briefs in Case No. C14 G-079 would not have to be filed until some date yet to be decided. A pre-hearing conference was scheduled for August 31, 2015.

On August 21, 2015, the County and the State Treasure entered into a Consent Agreement pursuant to PA 436. Under the terms of that agreement and consistent with Section 8(11) of Act 436, effective September 20, 2015, the County would no longer be subject to Section 15(1) of PERA for the term of the agreement and, as a result of such suspension, would have no duty under PERA to bargain with any of the unions representing its employees.

On December 17, 2015, the Parties appeared before the undersigned for oral argument.[6] Following extensive arguments made by both parties on the record and with consideration given to the pleadings and filings submitted by the parties, together with the attachments thereto, I concluded that summary dismissal of Case No. 14 G-079A; Docket No. 15-037169-MERC was not appropriate and denied Respondent's motion from the bench. A written order to that effect was issued February 17, 2016.

Post hearing briefs in Case No C14 G-079 were filed by the parties the first week of February 2016.

Charging Party, on February 17, 2016, filed an unfair labor practice charge, Case No. C16 B-015, alleging that the County had failed to engage in good faith bargaining from August 21, 2015,

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4 That same day, Counsel for Charging Party filed Case No. C15 E-063; Docket No. 15-035160-MERC, on behalf of the County's other ASFCME Council 25 bargaining units, Local 25, 101, 409, 1659, 1862, 2057 and 2926, which mirrored the regressive bargaining allegations contained in the present charge.

5 Respondent also sought dismissal of Case No. C15 E-063.

6 At the onset of that hearing, Charging Party withdrew Case No. C15 E-063. An Order of Withdrawal in Case No. C15 E-063 was issued on December 29, 2015.

through September 20, 2015, the later date being the date upon which the County's duty to bargain under Section 15 of PERA was suspended by nature of the Consent Agreement. The Union also alleged that the County, and more specifically Wayne County CEO Warren Evans, had violated Sections 10 and 11 of PERA, by attempting to undermine the Union's attorney by refusing to meet with him and communicating to various members of the unit that they should fire said attorney. Charging Party requested as part of the remedy that the County be ordered to withdraw its last bargaining proposals and void the working conditions it had imposed.

Several telephone conferences were held with the parties during the first three months of 2016 in which the status of the County's finances and Consent Agreement were discussed in connection with the pending cases. Ultimately it was my decision to adjourn Case Nos. C14 G-079A and C16 B-015 without date because of the suspension of the County's duty to bargain under Section 15(1) of PERA by way of the Consent Agreement. I also chose to hold off issuing any decision in Case No. C14 G-079 for the same reason as it was not known when the County would be released from the Consent Agreement or its duty to bargain under Section 15(1) of PERA restored.

On October 18, 2016, the State Treasurer sent a letter to the County which appeared to release the County from the Consent Agreement. That letter, in part, stated the following:

> I am in receipt of your letter dated October 6, 2016, in which you certified that Wayne County is eligible for release from the Consent Agreement entered into on August 21, 2015. I am pleased to agree with your certification. Specifically, I find that the county has satisfied the Consent Agreement terms found in Subsections 11(a)(1)-(3) of the Agreement. As a result of this determination, the County has successfully completed and is hereby released from its Consent Agreement.

On October 20, 2016, Charging Party's counsel sent my office an email with the October 18, 2016, letter from the State Treasurer attached and requested a conference call to discuss scheduling Case Nos. C14-G-079A and C16 B-015 for hearing. During an October 25, 2016, conference call, the County objected to scheduling the cases for hearing and asserted that, by the terms of the Consent Agreement, it remained exempt from Section 15(1) of PERA until October 1, 2019, the Treasurer's October 18, 2016, letter notwithstanding.[7] No decision was made at that time on how to proceed.

On October 27, 2016, another telephone conference call was held at which time I directed both parties to provide written position statements as to whether the County was in fact still exempt from Section 15(1) of PERA.

On November 7, 2016, Charging Party made a written request with the Bureau of Employment Relations, the Commission's administrative staff, for mediation services. That request was docketed as Case No. D16 K-0900.

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7 Section 10 of the Consent Agreement, entitled "Term" of the agreement provided that the suspension of the duty to bargain, along with various other terms, would survive the County's release from the agreement and continue in effect until some date in the future which coincided with the County's fiscal year and a two-year budget required under the agreement.

On November 11, 2016, the County provided, by email, a copy of a November 10, 2016, letter from the Deputy State Treasurer, which clarified that the term of the two-year budget plan it was requiring under the Consent Agreement was for Fiscal Year 2017 and 2018. Accordingly, the County revised its position such that its duty to bargain under Section 15(1) would be reinstated October 1, 2018, as opposed to October 1, 2019.

On November 22, 2016, the County filed a Position Statement and Motion to Dismiss in Case Nos. C14-G-079A and C16 B-015. The Union filed its Position Statement with my office on November 23, 2016. Emails were exchanged with the parties regarding the timeline in which the Union was to respond to the County's motion.

On November 28, 2016, Local 3317 filed its last and most recent charge against the County, Case No C16 K-125; Docket No 16-033168-MERC. In this charge, the Union alleged that the County was released from the Consent Agreement on October 18, 2016, and therefore once again subject to Section 15(1) of PERA and that the County had refused to bargain with Charging Party. The Union also alleges that the County imposed modified employment terms on September 23, 2016, which it claims are "worse than the comparable wages, hours and other terms and conditions of employment of County unionized employees." Lastly, Charging Party claims that it is the only union in the County that has had its dues check-off terminated and that said termination was done in retaliation for its insistence on pursuing the charges.

On December 21, 2016, I received notice from the County that it wished its motion to dismiss filed in Case Nos. C14 G-079A and C16 B-015 to apply to Case No. C16 K-125 as well.

On January 13, 2017, I received Local 3317's response to the County's motion. Oral argument was heard on January 20, 2017, in Detroit, Michigan.

On February 9, 2017, the County filed a Motion to Enforce Commission Order Dismissing Act 312 or in the Alternative, Motion to Dismiss Union's Request for Mediation Pursuant to a Consent Agreement between Wayne County and the State of Michigan and PA 436.[8] As part of its motion, the County also argued that dismissal of the four then-pending unfair labor practice charges against it should also be dismissed. Both parties filed additional written arguments with the Commission on, or before, March 15, 2017. Oral argument was set before the Commission at its April 11, 2017, meeting in Detroit, Michigan. Additionally, the Commission requested that the parties address other issues it identified as relevant in writing by April 3, 2017.

On March 3, 2017, I issued an interim order encompassing the four then pending cases between the parties, C14 G-079, C14 G-079A, in which I determined, the terms of the Consent Agreement notwithstanding, that County's duty to bargain was reinstated as of October 18, 2016, the date when the State Treasurer released it from the Consent Agreement.

On May 12, 2017, the Commission issued its Decision and Order in Case No. D16

8 As will be discussed in more detail below, the Commission previously, in Case No. D14 A-0018, *Wayne County*, 29 MPER 26 (2015), dismissed the Union's petition for Act 312 arbitration after the County had entered into the Consent Agreement with the State Treasurer.

K-0900 finding that PA 436 and PERA gave the State Treasurer authority to draft a consent agreement where the suspension of the duty to bargain could remain in effect past the agreement's release date. As such, the Commission dismissed the petition holding that the County's duty to bargain was suspended until October 1, 2018. The Commission recognized that my March 3, 2017, Interim Order, reached the opposite conclusion as to the duration of the suspension of the duty to bargain, but because my interim order was not a final order as identified under Rule 161(7) of the Commission's Rules, R 423.161(7), 2002 AACS; 2014 AACS, declined to review the order despite requests from the parties to do so.

During a May 16, 2017, telephone pre-hearing conference I indicated to the parties that, my March 3, 2017, Interim Order notwithstanding, the Commission's May 12, 2017, holding that the County's duty to bargain remain suspended until October 1, 2018, was controlling. I further indicated that nothing within the Commission's recent decision precluded the exercise of jurisdiction over the parties over the pending charges, with the exception of the one portion of Case C16 K-125 based on the incorrect assertion that the County's duty to bargain was restored on October 18, 2016. I denied a verbal request for an adjournment made by the County's counsel to hold the pending cases in abeyance. During this call Respondent's Assistant Corporation Counsel Bruce Campbell was joined by the two attorneys from the Mike Cox Law Firm, PLLC, Michael A. Cox and Joseph P. Furton, Jr. It was decided during this call that the three pending cases, which had previously been consolidated, would now be separated with a separate record created for each one.

On May 19, 2017, The Mike Cox Law Firm, PLLC, filed an appearance as counsel for Respondent in each of the pending cases.

On May 23, 2017, the parties were sent an Order scheduling C14 G-079A, C16 B-015, and C16 K-126 for hearing on June 12 and June 13, 2017.

On May 26, 2017, the County filed with the Commission a Motion to Reconsider its earlier May 12, 2017, decision in which the County, in part, sought an order by the Commission to instruct the undersigned to dismiss the four then-pending charges against it.

On May 31, 2017, I issued a Decision and Recommended Order in Case No. C14 G-079 in which I recommended that the Commission dismiss that charge in its entirety.

On June 7, 2017, Respondent's counsel filed a Renewed Motion for Adjournment of the upcoming hearing dates in order to allow the Commission to decide Respondent's Motion to Reconsider filed on May 26, 2017, in Case No. D16 K-0900. In an interim order dated June 8, 2017, I denied Respondent's request, and stated:

> Further delaying these proceedings to allow the County to pursue what amounts to another attempt at an interlocutory appeal of my order denying its motion to dismiss not only is contrary to the Commission's rule preventing such appeals of non-final orders, Rule 161 (7), but also infringes on the Charging Party's right to due process. In simply moving forward with the hearings while the Commission considers the County's interlocutory appeal of my interim order, the County is in no danger of suffering any irreparable harm, as no decision and recommended order will be issued until after the Commission issues its decision on the Motion to Reconsider.

On June 8, 2017, Respondent's counsel instituted a proceeding with the Michigan Court of Claims, Case No. 17-000168-MZ, for both a declaratory judgement and injunctive relief against MAHS and myself, in my official capacity. Respondent also filed a motion for a temporary restraining order and preliminary injunction to force me to adjourn the June 12 and June 13, 2017, hearing dates. Respondent's position in that filing was similar in nature to the arguments made before me in its November 2016, motion to dismiss and its arguments made before the Commission in Case No. D16 K-0900 and again in its motion for reconsideration.

On June 12, 2017, the parties appeared before the undersigned for the scheduled evidentiary hearing. In the early afternoon, during Respondent's cross-examination of Dwayne B. Seals, a former Chief Financial Advisor for the Wayne County Board of Commissioners, the hearing was interrupted, and I was provided a Temporary Restraining Order and Order to Appear for Show Cause Hearing issued by Court of Claims Judge, Cynthia D. Stephens. The hearings were then adjourned without date.

On June 19, 2017, MAHS and the County agreed to a stipulated order, which foremost dismissed all claims, with prejudice, against the undersigned. After my dismissal from that action, MAHS and the County went on to stipulate to several other matters, most notably agreeing to hold all claims against Respondent regarding the County's "duty to bargain" in abeyance until after the Commission issues a decision in Case No. D16 K-0900 and further agreeing that the enforcement of any decision and recommended order issued by the undersigned in these matters could not occur until after October 2018.

On July 12, 2017, the Commission issued an Order in Case No. D16 K-0900 denying Respondent's Motion for Reconsideration. The Commission, in concluding its decision, stated:

> In the motion for reconsideration, the County essentially restates the same arguments it presented in support of its motion to dismiss the Union's request for mediation. Those arguments were carefully considered and discussed in our May 12, 2017 Decision and Order. For this reason and the reasons set forth above, we find that the County has not set forth grounds for reconsideration. See *City of Detroit Water & Sewerage Dep't*, 1997 MERC Lab Op 453, in which the Commission denied the charging party's motion for reconsideration where the charging party restated the same arguments he made in his exceptions.

Continuation of the hearings in the present matter, Case No. C14 G-079A were held before the undersigned on October 2 and October 3, 2017. Case No. C16 B-015 was heard on October 4, 2017, and November 6, 2017; Case No. C16 K-126 was also heard in part on October 4, 2017, and concluded on November 6, 2017. For efficiency, the parties stipulated that the exhibits admitted as part of one proceeding could nonetheless be considered by the undersigned in the other two as well.

On October 10, 2017, by stipulation between MAHS and the County, a Final Order Regarding Injunctive Relief was issued by Judge Stephens in the Court of Claims proceeding. That order stated in the relevant part the following:

> Based on the Stipulation of the parties, and the court being otherwise informed of the premises, this matter is resolved as follows. No remedy may be effective against

> Wayne County on any "duty to bargain" unfair labor practice charge prior to October 1, 2018.
>
> This is a final order, that resolves all pending claims in the case. The Court shall retain jurisdiction for the limited purpose of enforcement.

Commission, State, and Federal Court Proceedings Between the Parties:

In addition to the presently outstanding three unfair labor practice proceedings pending before the undersigned as well as Case No. C14 G-079: Docket No. 14-015819, identified above, there have been several corollary proceedings before the Commission, State Court, as well as the Federal Court.

On August 19, 2014, Local 3317, filed a petition with the Commission for Act 312 Arbitration, Case No. C14 A-0018. For reasons that will be more fully discussed below, the Union later withdrew that petition only to later seek its reinstatement on June 22, 2015. Following execution of the Consent Agreement with the State Treasurer, the County, on September 1, 2015, moved to dismiss the petition on the grounds that as of September 20, 2015, its duty to bargain under Section 15(1) of PERA would be suspended and it would be under no duty to participate in such proceedings. The Commission, in its decision issued October 16, 2015, *Wayne County*, 29 MPER 26 (2015) dismissing the petition, stating:

> In conclusion, we find that the Employers in this matter are subject to a consent agreement under Act 436 that suspended the County' s duty to bargain as of September 20, 2015. The Employers have expressed an unwillingness to bargain or participate in Act 312 arbitration in light of Act 436. As such, as of September 20, 2015, the Employers cannot be required to participate in Act 312 arbitration. Accordingly, the Act 312 arbitration in the case before us must be dismissed as of that date.

Charging Party, at some point after Wayne County moved to dismiss the Act 312 petition before the Commission in Case No. D14 A-0018, identified above, but before the Commission issued its written decision granting the County's request, filed suit in Wayne County Circuit Court, Case No. 15-011774-CK, claiming breach of contract. Following the Commission's dismissal of the Act 312 petition, the Circuit Court dismissed Local's 3317 breach of contract claim on the basis that "res judicata" barred the claim given the Commission's dismissal. Local 3317 appealed the Circuit Court's dismissal to the Court of Appeals. Local 3317 also appealed the Commission's decision in Case No. D14 A-0018, *Wayne County*, 29 MPER 26 (2015) but later dismissed that appeal. See *Wayne Co v AFSCME Local 3317*, unpublished order of the Court of Appeals, entered February 8, 2016 (Docket No. 329998).

The Court of Appeals, in an unpublished decision issued December 28, 2017, Docket No. 334638, held that given the Union's earlier dismissal of its appeal of the Commission's dismissal of the Act 312 petition, the case before it was moot. The Court stated:

> [E]ven if the County did make a contractual promise to participate in Act 312 proceedings, it is impossible to enforce any such promise because the MERC has dismissed the Act 312 proceedings and the Union has voluntarily withdrawn its

appeal of the MERC decision.

The Court went on to state that its dismissal of the appeal was "due in part to the Union's own unexplained choice to withdraw its appeal of the MERC decision." The Court accordingly did not address the substantive basis for the appeal.

In *AFSCME Council 25 v Charter County of Wayne*, Case No. 15-13288-CV, filed in the Eastern District of Michigan, Southern Division, Counsel for Local 3317 filed suit on behalf of Charging Party and the other AFSCME Locals in Wayne County in what appears to be a challenge of the County's ability to impose employment terms on Local 3317 under PA 436 and the Consent Agreement on the grounds that the County's actions violate Charging Party's due process and/or the imposition of employment terms were done in retaliation for Charging Party pursuing litigation against the County.

During a series of conference calls held on September 17, 2015, before U.S. District Court Judge Matthew F. Leitman, the original judge assigned to Case No. 15-13288-CV, Local 3317's counsel sought a temporary restraining order (TRO) to prevent the County from imposing employment terms on September 21, 2015.[9] A TRO was never issued in the case.

Following several starts and stops and other procedural and pre-hearing machinations, Judge Levy, on July 21, 2016, issued a written decision dismissing the case with prejudice. See *AFSCME Council 25 v Charter County of Wayne*, 2016 WL 3924114. Judge Levy, in addressing the multitude of individual due process claims offered by Local 3317, determined that none of those claims, in light of Local 3317's inability to point to either a law or contract that provided a property, could support a due process claim. More specifically, in addressing Charging Party's argument that the expired contract clause that prohibited the parties from submitting issues regarding retirement to Act 312 Arbitration until October 1, 2020, precluded the County from imposing employment terms that changed to those provisions pursuant to PA 436 and the Consent Agreement, stated:[10]

> Plaintiffs provide no reason why a provision that permits them to refrain from submitting disputes to Act 312 arbitration would prevent the imposition of new terms under Act 436 once the duty to bargain had expired. The provision contains no such bar, and does not affirmatively state that the retirement provisions will remain in effect until 2020 – it states only that plaintiffs have no obligation to bargain over the provisions (which they did not) and will not submit any retirement disputes to Act 312 arbitration (which they also did not). Accordingly, this claim must also be dismissed.

Judge Levy, later, summed up the general position of the Court with respect to Charging

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9 For reasons not available to the undersigned, Judge Leitman was later replaced by Judge Judith E. Levy.

10 As discussed in C14 G-079, Article 38 of the parties' contract set forth the applicable provisions regarding retirement terms agreed to between the parties. Article 38.01(L) provided the following:

> Upon the termination of this Collective Bargaining Agreement on September 30, 2011, the parties may agree to bargain over retirement related issues during the next round of contract negotiations. However, all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 38 of this Agreement, covering the period of October 1, 2008 through September 30, 2011, shall not be subject to Act 312 arbitration until October 1, 2020.

Party's property right claims by stating:

> If Act 436 removes the obligation of defendants to bargain over mandatory subjects of bargaining, and plaintiffs cannot plead the existence of the actual contract provision or law at issue, then plaintiffs can neither establish a property right or that property right's deprivation as a matter of law.

Moving on to the Union's retaliation claims, Judge Levy stated:

> Plaintiffs filed suit on September 16, 2015, to stop the imposition of unfavorable terms on September 20, 2015. The unfavorable terms were then imposed on September 21, 2015. A First Amendment retaliation claim requires that an adverse action be taken because the plaintiff engaged in protected conduct. When the plaintiff takes the protected conduct to prevent the already-known adverse action from taking place, a complaint without pleading something more than what is set forth in this case, cannot properly allege that the occurrence of the known adverse action is the basis for a retaliation claim. In short, a retaliation claim will generally not stand where an adverse action is threatened by a date certain, a plaintiff responds to the threat by engaging in protected conduct to prevent the adverse action, and a defendant then carries through with the adverse action in the manner previously threatened.

Findings of Fact:

I. Background and the County's Financial Struggles

For a more complete recitation of the events and actions of the parties leading up to the present dispute set forth herein see *Wayne County*, 31 MPER 17 (2017) (no exceptions). As such, the extensive history leading up to the events at issue here will not be repeated except as necessary.

On February 5, 2014, then County Executive Robert A. Ficano presented a deficit elimination plan (DEP) to the County's Board of Commissioners (Board) pursuant to Section 21(2) of the Glenn Steil State Revenue Sharing Act of 1971, Public Act 140 of 1971. The DEP claimed that at the end of its most recent Fiscal Year (FY), September 30, 2013, the County's General Fund had an accumulated deficit net of $93 million, with projected losses of $30 million and $32 million for the next two years, if no changes were made.

As part of the DEP's proposed method of reducing the County's deficit, the County Executive sought the following changes/concessions from certain County employees, including members of Charging Party's bargaining unit:

- Effective October 1, 2014, decreasing the defined benefit plan multiplier from 2.5% to 1.5% of average financial compensation for all years of credited service;

- Effective October 1, 2014, limiting the amount of paid leave used to determine accrued financial benefits within the County's pension plan as well as restricting the use of overtime hours when computing average final compensation;

- Effective October 1, 2014, increasing the employee contributions in defined benefit plans 1, 3, 5 and 6 to 7% of gross wages until October 1, 2017, at which time employee contributions would be reduced to 6% of gross wages;

- Effective October 1, 2014, the contribution rates for defined benefit plan 4 would be 10% for the employer and 4% for the employees;

- Effective October 1, 2014, a 5% wage reduction; and,

- Elimination of Columbus Day and birthdays as holidays.

In addition to the above financial concessions and other proposals impacting current County employees, the DEP also sought significant changes to retiree healthcare benefits.

Sometime in the beginning of May 2014 the original DEP was revised and once again presented to the County's Board. The revised DEP remained largely unchanged from its earlier version with the exception that the proposed changes to retiree healthcare had been removed and the plan had been updated to reflect an increase of $10 million dollars in state revenue sharing. At some point in May the Board adopted the revised DEP. Neither the DEP nor the revised DEP were ever approved by the State Treasurer.

In early August of 2014, Warren Evans, a former Wayne County Sheriff and Chief of the Detroit Police Department, won the Wayne County Executive Democratic Primary. It was presumed at the time that Evans would be elected the next Wayne County CEO in the upcoming November election.

By letter dated October 29, 2014, Wayne County Treasurer Raymond J. Wojtowicz, notified the County's Board of Commissions Chairman, Gary Woronchak, that upon completing a review of the County's Delinquent Tax Revolving Fund (DRTF) as of September 30, 2014, his office had declared a surplus of almost $79 million dollars which could be transferred from the DTRF to the County's General Fund.[11] Included with that letter was a proposed resolution by which the Board could receive the funds upon its adoption. A resolution to receive those funds was not actually adopted by the Board until June 4, 2015.

In November of 2014 Evans won the election for County CEO. Woronchak testified that while the surplus funds from the DTRF were available to be put in the County's budget in late 2014, he asked the incoming Evans administration whether they preferred that the Board wait until the new administration was in office before the funds were transferred. According to the Board Chair, he received a response from someone within the incoming administration that they would prefer the Board to wait to receive those funds; Woronchak testified that he could not recall with whom he spoke.

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11 While the actual mechanics and specifics of the County's DTRF and the Delinquent Tax Act, MCL 211.87, are beyond the scope of this decision, in summary the County Treasurer maintains a fund that is used to advance funds to municipalities, school districts, and other taxing authorities in Wayne County prior to the actual collection of those taxes, interests and fees. In order to be able to advance those monies, the County Treasurer borrows money which is then paid back upon the collection the taxes and other monies. At the Treasurer's discretion and prerogative, any "surplus" funds from the DTRF may be transferred to the County's General Fund by Board resolution.

Three individuals with unique insight into the County's financial situation testified in this proceeding, the Board's Chief Financial Advisor Dwayne Seals, County Auditor General Macella Cora, and County Deputy Chief Financial Officer Kevin Haney. Addressing the DTRF explicitly, each testified in some fashion to the notion that, while the County's budget contained cash transfers from the DTRF, continued reliance on those funds was unwise. Seals testified that the amount of DTRF funds available to the County had been in decline recently and that it would be prudent to treat the amounts available in 2014 as "extraordinary or unusual." Cora testified that, based on her experience, recent DTRF transfers were in much greater amounts than those that had occurred in the past. Cora claimed that there were years where there were no funds available to be transferred from the DTRF. Haney also testified that continued reliance on DTRF from 2015 forward was not wise because projections had the amount available from the DTRF falling. Haney further stated that when the monies from the DTRF did eventually make it into the County's budget it was used to address the County's accumulated deficit. According to Haney, he could only rely on the DTRF funds as "one-time gifts" because the amount of future DTRF funds available was always unknown until such time that the County Treasurer would declare a surplus.

Seals also testified that from as far back as 2006 through the present, he had growing concerns regarding the County's financial situation. Seals stated that he "felt that the [Ficano] administration was not being truthful about the true deficit of Wayne County." Seals agreed, when asked whether any administration that would follow the Ficano administration would be "discrete and smart not to trust the numbers." Seals went on to criticize "unnecessary expenses" and other projects that, in his opinion, the County should not have undertaken. Seals identified the failed Wayne County Jail Project as one such example. Seals went on to outline how the County's revenue had decreased dramatically over the years beginning with the 2006 recession that resulted in reduced property tax collections, the largest source of general fund revenue. Seals also identified rising health care and retirement costs, or legacy costs, as problematic, especially given that the ratio of County retirees to active County employees was increasing.[12]

Cora, in addition to testifying on the DTRF, also testified at length regarding the County's financial situation leading up to the end of the County's 2014 budget year and the beginning of 2015 budget year.[13] Cora claimed that during the time in question, the County's liquidity position was weak, meaning that it had limited assets to pay bills when compared to its liabilities. Cora identified pension, active and retiree health care, and salaries as the "big pieces" that would have to be addressed at the County in order to improve its financial situation.

Haney's testimony added more details and insight into the County's deteriorating finances. The Deputy CFO testified that in 2008 the County's property tax collection was around $378 million and that the amount had dropped by approximately $100 million by 2015. According to Haney, the County's structural deficit was something that he had been struggling with for quite some time prior to the Evans administration coming in. Similar to Seals and Cora, Haney also identified personnel costs, both active and retiree, as problematic areas. Haney claimed that in 2003 the pension was roughly 90% funded and that the County contributed 12% of its payroll to the system; by 2014 the pension system was only 45% funded and the County was now contributing

12 Retiree health expenses are also commonly referred to as OPEB liability, which stands for "other post employment benefits" which is separate from pension costs for retirees.

13 The County's budget year is not a calendar year but rather runs from October 1 through September 30 of any given year.

50.6% of its payroll to the system. Haney claimed that prior to the Evans administration, he tried to alert Ficano and his executive team to the County's worsening financial state "any chance [he] could."

Sometime after taking office, the Evans administration contracted with the accounting firm Ernst and Young to do an analysis of the County's financials, clarify both the structural and accrued deficits, and study projected revenues and expenses. The result of that analysis, Project Myers, was an in-depth report that examined the state of the County's finances. One of the first pages of the report was a disclaimer by the accounting firm that stated in part the following:

> Information contained herein has not been independently verified and is subject to material change based on continuing review. Accordingly, the information contained herein is not intended to be and should not be relied upon as legal, auditing or accounting advice.
>
> The assumptions and underlying data were produced by the Charter County of Wayne (the "County") and its management ("Management") and consist of information obtained solely from the County or publicly available resources. With respect to prospective financial information received from the County, this information was not examined, compiled and agreed upon procedures were not applied to such information in accordance with attestation standards established by the AICPA and no assurance of any kind is expressed on the information presented. It is the County's responsibility to make its own decision based on the information available to it.
>
> Management has the knowledge, experience and ability to form its own conclusions. There will usually be differences between projected and actual results because events and circumstances frequently do not occur as expected and those differences may be material. No responsibility is taken for the achievement of projected results. Accordingly, reliance on this report is prohibited by any third party as the projected financial information contained herein is subject to material change and may not reflect actual results.
>
> Pension results are highly sensitive to underlying assumptions. To the extent the assumptions change and/or the experience differs from the assumptions the projection will change. Pension projections are illustrative and should not be used or relied upon Wayne County or any other party for budgeting or any other financial purpose.

The report indicated an estimated annual structural deficit of approximately $50 million dollars and an accumulated deficit of $161 million dollars as of Fiscal Year (FY) 2015 – both of those assumptions were made without accounting for DTRF transfers. The Report went on to present a five-year projection from FY 2014 through FY 2019 in which $286 million dollars could be transferred from the DTRF to the County's General Fund. Expected DTRF transfer amounts peaked in FY 2015 at $152.7 million dollars but then plunged to $39.5 million dollars for FY 2016 and gradually decreased even more to $29.7 million dollars for FY 2019. Even when accounting for the DTRF transfers, the Report noted that without "drastic budget cuts or significant changes to legacy liabilities" the County's projected accumulated deficit would reach $220 million by FY

2019. With respect to the County's defined benefit plan, the Report found that the plan was only funded at 44% and that the County was using 48.6% of its payroll expenditures on retiree benefits.[14]

Director of Labor Relations Kenneth Wilson testified that the Myers Report, along with other unidentified financial documents, helped to guide the new administration in crafting the County's position as it related to the continued bargaining with Charging Party and the County's other bargaining units. The Myers Report was provided to the County's bargaining units, including Charging Party.

Following the issuance of the Myers report, sometime in February or March 2015, Wilson and other members of the County's bargaining team created a document titled "Summary of Proposed Modifications" which listed several different proposed employment term modifications that, if implemented, could offer the County tens of millions in savings to its general fund. Wilson testified that the Summary was used "county-wide" with respect to making proposals to the County's various bargaining units, including Charging Party. The modifications proposed in the Summary included changes to pensions/retirement terms and health insurance as will be described in more detail below. Also proposed was a 5% wage reduction, but Charging Party and a certain few other groups, including the Police Officers Association of Michigan Unit, and others were exempted from such.

II. OPEB and the MacDonald Settlement

As discussed above, one of the main driving forces for the County's financial struggles was the rising cost of retiree healthcare or OPEB. In a July 2015 report by the Office of the Auditor General, Cora listed the County's unfunded actuarial accrued liability at $910 million as of September 30, 2014. The Meyers Report placed OPEB liability at over $1.5 billion in FY 2013 and over $1.3 billion in FY 2014.

Sometime in late summer of 2015, after this charge was filed, the County and its retirees entered into a settlement, which would later become known as the MacDonald Settlement, which had the effect of significantly lowering the County's accrued OPEB liability from $1.3 billion to around $470 million. Wilson admitted that he would have been aware that the above deal had been reached in May or June and possibly as early as April 2015.

III. Negotiations with Local 3317

Charging Party represents a bargaining unit comprised of Sergeants, Lieutenants and Captains employed with the Wayne County Sheriff's Department. The parties were signatories to a collective bargaining agreement in effect from October 1, 2011, through September 30, 2014. The parties began bargaining over a successor agreement sometime in the beginning of 2014, with the first formal session occurring in March 2014.

According to testimony both in this proceeding and from the original filing, Case No. C14 G-079, that gave way to the bifurcation of the regressive bargaining charge, it appears that the

14 Cora testified that as recently as 2004 the County's pension plan was approximately 90% funded but that the amount had fallen considerably through the years to approximately 40-46% funded in 2016.

County's initial bargaining position was founded in the DEP to a large extent. Testimony from both this matter and C14 G-079 establishes that the updated DEP adopted by the Board in May was provided to Charging Party during a bargaining session in early June.

The May DEP outlined medical plan options that, according to the DEP, would save the County $1.8 million. The plans set forth therein had a $750 deductible single person plan and a $1,500 deductible family plan.[15]

During a June 12, 2014, bargaining session the County, through Wilson, provided the Union with a proposal for a four-year contract which was not entirely the same as the DEP. The first year of the contract would continue with the status quo. The second year of the contract maintained the wage level but decreased the pension multiplier for those exceeding 1.5% to 1.5% as set forth in the DEP. This year set the employee contribution for defined benefit plans 1, 3, 5, and 6 at 4% for those unit members with a base wage rate of less than $54,000.00 annually and 5% for those members with an annual wage rate exceeding $54,000.00, as opposed to 7% as set forth in the revised DEP.[16] Also beginning this year, the employee contribution rate for those participating in the defined compensation plan would be set at 4% - a year later than set forth in the revised DEP. At the beginning of the third year, the unit would receive a 2.5% wage increase. Another 2.5% raise would occur at the beginning of the fourth year. Also occurring in this last year, the "lookback period" in order to determine final average compensation (FAC) for purposes of calculating pension benefits was set at five years, leave hours contributing to FAC was capped at 240 hours and elimination of overtime hours for FAC was eliminated.

On August 19, 2014, with the parties still unable to agree to a contract, Charging Party filed for Act 312 Arbitration, Case No. D14 A-0018. On September 9, 2014, C. Barry Ott was appointed chairperson of the arbitration panel selected to hear the arbitration.

Sometime in late September 2014, Wilson met with Charging Party's Bargaining Team Chair Sergeant Daniel Connell, and Chief Negotiator and Attorney Jamil Akhtar, to discuss what issues had already been agreed upon and which issues were still outstanding and would be taken to Act 312 arbitration. According to Connell's testimony, the parties had reached agreement on all "non-economic articles" such that they were "off the table" for arbitration.

During the late September meeting the parties discussed the possibility of extending the contract on a short-term basis to allow the parties to continue negotiating in exchange for Charging Party's withdrawal of its Act 312 petition. Connell testified that it was Wilson who approached the Union's team about the proposal. Wilson sent Akhtar a letter, dated September 30, 2014, along with a draft of the proposed agreement regarding the Act 312 petition and extending the contract. The cover letter stated in part:

> Enclosed is a draft of an agreement that effectively provides the parties a window of opportunity to negotiate after the November general election, but otherwise provides your client all the protection it needs. Simply, as I indicated previously, we agree to

15 Sergeant Daniel Connell testified that in the past Charging Party's premium share was less than 20 percent of the premium cost.

16 In either group, if the employee had already accrued the maximum retirement allowance permitted under the respective plans then contribution amount was reduced to 2% and 3% respectively.

extend the collective bargaining agreement in its totality until the earlier of the date when a petition is refiled or December 1, 2014.

The proposed agreement attached to the above letter contained the following provisions:

1. Local 3317 agrees that, upon the execution of this Memorandum of Agreement by all parties, it will dismiss its petition under Act 312, Public Acts of 1989, as amended, Case No. 014 A-0018, without prejudice. This petition may be re-filed on a date after the November 4, 2014 general election, but not later than December 15, 2014.

2. The parties agree that, except where prohibited by law, absent agreement of the parties to the contrary, the collective bargaining agreement shall be extended in its totality until the earlier of the date when the petition was re-filed or December 1, 2014.

3. All articles of the collective bargaining agreement which have been tentatively agreed to by the parties, shall remain off the table for the purpose of continuing collective bargaining. Upon re-filing, Case No. 014 A-0018 shall be reinstated and proceed to hearing as provided under the Act.

The parties eventually agreed to and signed the above Memorandum of Agreement (MOA) with the only substantive changes from the original to the one signed being December 15, 2014, inserted as the date that the extended contract would expire. Charging Party withdrew its petition for Act 312 arbitration shortly thereafter.

The parties amended that agreement several times, with each amendment further extending the collective bargaining agreement and the deadline by which the Act 312 petition could be refiled. Those amendments also provided that all other provisions of the original agreement would continue in full force and effect. The last agreement extended those dates through July 1, 2015.

Wilson testified that during conversations with Charging Party's attorney, Akhtar told him that he, Akhtar, wanted the extension for the "stability of having a contract" and because he "didn't want to be raided."[17]

On April 17, 2015, Wilson emailed Akhtar new proposals from the county in advance of the parties scheduled bargaining session on April 10, 2015. Like the earlier proposal from June 12, 2014, this new one was also for a four-year contract term, however the changes proposed were not implemented gradually or staggered as before. The changes within this proposal, as identified below, from the June 2014 proposal, are essentially taken verbatim from the Summary of Proposed Modifications, created in the preceding months. The new proposal's medical plan options raised deductible amounts from $750 for single coverage and $1,500 for family coverage, to $1,300 for singles and $2,600 for families – in either plan the employee's premium share would be set at 25% of the premium cost. Additionally, this proposal reduced the pension multiplier even further from 2014's 1.5% to 1.25% while also increasing the lookback period from five years to ten years. The contribution level for defined benefit plans 1, 3, 5 and 6 increased from 6% from the 2014 proposal to 7% and from 7% to 8% with the demarcation line for annual base wage set at $52,155.00 as

17 The record does not elaborate on what Akhtar may have meant by this statement.

opposed to the 2014 base wage rate proposal of $54,000.00. Employee contribution to the defined compensation plan remained unchanged at 4%.

The record clearly establishes that the above terms offered to Charging Party's bargaining unit in April of 2015, were also offered, in almost identical fashion as it relates to pensions, retirement plans and health insurance, to several other bargaining units within the County, including AFSCME Locals 15, 101, 409, 1659, 1862, 2057, and 2926, and the Government Administrators Association. Each of these proposals also included the 5% wage reduction which Charging Party was exempted from.

Connelly testified that during the first bargaining session between Charging Party and the County's bargaining team, Wilson stated that "everything is open and subject to bargaining." According to Connell, he took this to mean that the non-economic terms that the parties had previously agreed upon and which were identified as "off the table" in the parties' series of MOA's would no longer be honored by the County.[18] Wilson disputed this claim, asserting that he "didn't remember telling [Charging Party] that we were no longer honoring the [tentative agreements]." Wilson went further to clarify that his position was that the tentative agreements were "off the table for purposes of bargaining" and that "if we reached a collective bargaining agreement, we would move onto economics, and if we reached an agreement as to a CBA, then these TA's would be included."

Sometime in May 2015, Akhtar, presumably by email, contacted Seals and asked to have a meeting with the Chief Financial Advisor to discuss a Fact Sheet recently prepared by Seals for use by the County's Board. Seals initially agreed to that meeting but later cancelled.

The Fact Sheet created by Seals, dated May 15, 2015, appears on its face to partially contradict the projections as outlined by Project Meyers.[19] The Fact Sheet indicated, among other things, that as of September 30, 2014, the County had a $58 million General Fund operating surplus of revenues over expenditures; the accumulated deficit decreased from $159.5 million to $82.8 million; the total County deficit decreased from $180.6 million to $93.8 million. Additionally, the Fact Sheet listed the County's OPEB liability at $1.6 billion and the pension plan as 45% percent funded.

In an email dated May 29, 2015, Seals cancelled his upcoming meeting, writing:

> I just had an opportunity to actually read your email. When you asked to talk/meet about a document that I produced (I'm always willing to provide an explanation on something that I produced), I agreed. However, after receiving a number calls asking why am I engaging/interfering into an administration function (contracts negotiations) as a legislature employee, I assured them that union negotiations or strategy planning is beyond my job as the fiscal advisor to the commission.

* * *

18 In later testimony, Connell agreed that from December 2014 through September of 2015, the County never made any non-economic proposal to Charging Party.

19 Seals testified that he used his analysis of the County's Confidential Annual Financial Report, a report that is prepared annually for adoption by the County and then filed with State Treasurer, as the basis for his Fact Sheet.

> Because of the concern that I could be interfering with negotiations (which is not my intention), I think it would be prudent for us to cancel our meeting…

At hearing Seals claimed he made the decision to cancel the meeting because of a conversation he had with someone, possibly Wilson, but that he was not sure.

IV. Act 312 Arbitration and Case No. D14 A-0018

As stated above, Charging Party filed for Act 312 Arbitration on August 19, 2014, Case No. D14 A-0018. Charging Party later dismissed the petition pursuant to the MOA initially executed between the parties on December 12, 2014, and extended several times.

On June 22, 2015, after the present charge was filed, Charging Party filed a request with the Commission to reinstate Case No. D14 A-0018; the petition was reinstated on June 23, 2015. The Arbitration Chairperson remanded the matter for 21 days of further negotiations pursuant to Section 7 of Act 312, MCL 423.237a. The parties engaged in negotiations with the assistance of a mediator.

On July 22, 2015, Governor Snyder declared that a local government financial emergency existed in Wayne County pursuant to the Local Financial Stability and Choice Act, 2012 PA 436 (PA 436).

On July 31, 2015, the mediator notified the Arbitration Chairperson that the matter should proceed to arbitration. The parties were instructed to exchange last best offers by August 24, 2015. The arbitration hearings were scheduled for several days between September 10, 2015, and October 13, 2015.

On August 21, 2015, the County entered into a consent agreement with the State treasurer which, as indicated above, had the practical effect of suspending the County's duty to bargain under Section 15 of PERA as of September 20, 2015.

On September 1, 2015, the County filed a Motion to Dismiss Act 312 Arbitration with the Commission, claiming that with the suspension of its duty to bargain under the Consent Agreement, it no longer had any duty to proceed with the Act 312 arbitration. The Commission addressed the County's motion at its regular monthly meeting on October 16, 2015, at which both parties offered oral arguments in support of their respective positions. In its written decision dismissing the Act 312 petition, the Commission stated:

> [W]e find that the Employers in this matter are subject to a consent agreement under Act 436 that suspended the County' s duty to bargain as of September 20, 2015. The Employers have expressed an unwillingness to bargain or participate in Act 312 arbitration in light of Act 436. As such, as of September 20, 2015, the Employers cannot be required to participate in Act 312 arbitration. Accordingly, the Act 312 arbitration in the case before us must be dismissed as of that date.

Discussion and Conclusions of Law:

The question presented in this proceeding is whether the County violated its duty to bargain in good faith under Section 15 of PERA by engaging in regressive bargaining as it relates to its May 2014 bargaining position and proposals and its August 2015 bargaining position and proposals and by refusing to provide information. Additionally, Charging Party alleges that the County withheld information regarding the latter's financial situation.

It is well established that making a contract proposal which is less favorable to the other party than the previous proposal is not *per se* evidence of bad faith bargaining. *Kalamazoo Public Schools*, 1977 MERC Lab Op 771. Instead, a party's conduct must be viewed in its totality to determine whether the allegedly regressive proposals are a tactic to avoid reaching a good faith agreement. *Alba Public Schools*, 1989 MERC Lab Op 823, 827. However, successively less generous offers, when made without reasonable justification and without any significant compensatory proposals, may indicate an intention not to reach a good faith agreement. *Id.*

At no point during this proceeding has Respondent disputed that the proposals made to Charging Party in early 2015 under the Evans administration were less generous economically than the proposals it had made the previous year. Additionally, Respondent has not argued that it made any significant compensatory proposals to serve as a set-off to the less generous economic offers. Rather, Respondent claims that it possessed reasonable justification for its actions; said justification being a change in the county's economic position as well as a change in the county's executive administration.

Charging Party argues in its post hearing brief that the County's conduct, when viewed as a whole, establishes that the County violated its duty to bargain in good faith. In support of this claim, Charging Party argues that the County's economic and financial situation did not worsen between May 2014 and April 2015 as claimed by Respondent as evidenced by the Fact Sheet prepared by Seals in May 2015. To this point, Charging Party alleges that Seals was pressured not to speak with it regarding the report. Charging Party claims that Respondent's reliance on Project Meyers, given the report's explicit disclaimer, is unreasonable. Moreover, Charging Party points to the County's refusal to proceed to Act 312 Arbitration following the petition's reinstatement in 2015 as further proof of the County's unwillingness to bargain in good faith.

The proposal initially made to Charging Party in 2014, while tracking somewhat with the Ficano administration's DEP as it related to changes in healthcare and pension and benefit plan contributions and multiplier, called for the implementation of those changes over a period of years. Moreover, while the DEP called for a 5% wage reduction, no such reduction was present in the proposal to Charging Party, rather the unit was set to receive a 2.5% increase in the third year of the four-year deal. Charging Party never accepted that proposal nor does it appear from the record that any legitimate counter-proposal was made to the County.

There is no question that the 2015 proposal made to Charging Party was less economically generous then the preceding proposal. However, as testified to by Wilson, the County's newest proposal was based on what the new administration believed was the correct financial picture facing the County. While Charging Party went to great lengths in its attempt to paint a narrative that the County's "new" vision of its finances was false and claimed that the Meyers Report could not be trusted, all it succeeded in showing was that several individuals who worked intimately with the County's finances, Seals, Cora and Haney, had differing opinions as to the exact size of the County's various debts, deficits and liabilities. Regardless of these differences, I find that the

record clearly establishes that the County was facing financial struggles. Seals, Cora and Haney each testified at length regarding the County's financial situation, and while the three did not agree with one another as to the exact depth of the County's struggles, not one of them testified that the County was in a stable or positive financial position when the Evans administration took over from the Ficano administration. Moreover, nearly every witness that testified voiced their opinion that the financial picture painted by the outgoing administration could not be trusted. Cora, Seals and Haney also testified that the biggest issue facing the County was personnel costs, both for actives and retirees; testimony corroborated by the Project Meyers. Furthermore, while the MacDonald settlement may have reduced the County's OPEB liability significantly, there is no indication that the cost-savings that resulted therefrom equated to immediate savings or an increase in money coming into the County's coffers; rather it appears that the savings, while no doubt significant, were future savings.

Furthermore, the record, as developed in this proceeding, does not establish that the County's actions between and surrounding the 2014 proposal and the 2015 proposal were indicative of an unwillingness to reach an agreement. There is no allegation that the County ever refused to meet with the Charging Party to bargain.[20] Additionally, the County presented its justification for its proposals, the DEP in 2014, and Project Meyers for 2015, to Charging Party. While Charging Party argued, without any credible evidence, that the County's failure to apply the DTRF funds released by the County Treasurer in 2014 was done at the request of Evans for the purpose of hiding funds to make the County's financial outlook worse than first thought, the Board Chairman testified that he is the one who asked the incoming Evans administration whether they wished to wait until they took office for the money to be transferred. Additionally, there is no reason to conclude that the existence of this money was ever secret or hidden – DTRF funds and projected funds were accounted for in the many financial documents, reports and analyses entered into this record. Moreover, with rising structural and accumulated deficits, using DTRF funds for any purpose other than paying down those amounts, as was done, is on its face unreasonable.

Moving on to Charging Party's reliance on the County's eventual refusal to participate in Act 312 arbitration as evidence of the County's bad faith approach to bargaining, the record once again does not support such a conclusion. The parties entered into the MOA and by all evidence it appears that they abided by the terms of that agreement while it was in effect. The last of those agreements expired in July of 2015. That the County subsequently entered into the Consent Agreement, which later excused it from any Act 312 obligation, is not evidence of bad-faith bargaining.

Addressing claims that the County either failed to provide information or otherwise withheld information that the Union requested, here too the record does not support Charging Party's allegations. Under PERA, an employer satisfies its bargaining obligation if it supplies, in a timely manner, requested information which will permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne County*, 1997 MERC Lab Op 679. Charging Party claims in its post-hearing brief that it "had a right to obtain the economic information the [County] was using in supporting its regressive contract proposals." The record indicates that Charging Party was provided such economic information, the Meyers Report. Charging Party did not identify with any specificity what information it requested that it was not provided or given access to. While Charging Party does make reference to Seals' cancellation of the meeting to discuss the May

20 Charging Party's complaints regarding the Seals' meeting cancellation will be addressed below.

2015 Fact Sheet he authored for the County's Commission in the same paragraph where it discusses information requests, it does not indicate how the cancellation by Seals, who was not on the County's bargaining team and whom, by all accounts, had no role in bargaining, violated the County's duty to supply information as requested. Moreover, the duty called into question by Charging Party, encompasses the provision of information, not a duty to meet and discuss the information.

In conclusion, it is the opinion of the undersigned after considering all arguments as put forth by the parties that the evidence on the record, taken as a whole, does not establish that the County violated its duty to bargain in good faith in connection with its bargaining proposal made to Charging Party in 2015. As such I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge filed by AFSCME Council 25, Local 3317 against Wayne County in Case No. C14 G-079A be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 10, 2018