STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UNIVERSITY OF MICHIGAN HEALTH SYSTEM,
Public Employer-Respondent,

MERC Case No. 19-H-1721-CE

-and-

UNIVERSITY OF MICHIGAN HOUSE OFFICERS ASSOCIATION
Labor Organization-Charging Party.

APPEARANCES:

University of Michigan, Office of the Vice President and General Counsel, by David J. Masson, for Respondent

Soldon McCoy, LLC, by Kyle A. McCoy, for Charging Party

DECISION AND ORDER

In August 2019, the University of Michigan Health System (UMHS or Respondent) decided to expand the patient-guest parking accommodations at one of its parking structures near the main hospital campus. It notified the University of Michigan House Officers Association (HOA or Charging Party) that several hundred parking spaces utilized by UMHS employees (including HOA members) in two parking locations would be re-classified, the effect of which was to require bargaining unit employees to relocate to other parking lots and pay significantly more to acquire a parking pass in a particular location than previously. The HOA demanded to bargain over the parking changes and their impact. UMHS refused to bargain and implemented the changes unilaterally, asserting that the matter was already covered by the parties' collective bargaining agreement. The HOA filed this unfair labor practice charge alleging that UMHS unlawfully refused to bargain over the parking changes and also violated its duty to bargain by failing to provide the HOA with requested information concerning the names of all UMHS employees who enjoyed parking privileges.

In his Decision and Recommended Order[1] issued on April 15, 2020, Administrative Law Judge (ALJ) Calderwood found that UMHS violated Section 10(1)(a) of the Public Employment Relations Act (PERA) by unilaterally removing and relocating employee parking spaces, but that it did not violate Section 10(1)(e) of PERA by refusing to provide the requested information because the HOA had failed to establish the relevance of its request.[2] The ALJ recommended that the Commission order the return of the relocated spaces, reimbursement of any added expense to

---

[1] MOAHR Hearing Docket No. 19-017498
[2] The Charging Party did not file exceptions to the dismissal of the refusal to provide information allegation.

impacted HOA bargaining unit employees, and that, on request, UMHS bargain collectively with the HOA over the parking changes unilaterally implemented.

In its exceptions, UHMS argues that it had no duty to bargain because the parties' collective bargaining agreement covered the dispute and, further, that the relocation of parking spaces had no material impact on bargaining unit employees and, therefore, was not a mandatory subject of bargaining. We find no merit to these arguments. The collective bargaining agreement contains very specific and limited provisions regarding certain parking locations and the unique circumstances under which employees will be provided with free or designated parking in those locations, none of which are involved in this dispute. Contrary to UMHS' assertion, we find that the collective bargaining agreement did not cover the dispute, and the unilateral changes made by UMHS were material and had a substantial impact on employees. Consequently, we enter the ALJ's recommended order as the order of the Commission.

Procedural History:

On August 22, 2019, the HOA filed the instant charge alleging that UMHS' unilateral implementation of changes to employee parking rules and access, its refusal to bargain over the decision and its effects, and its failure to provide information requested, violated Sections 10(1)(a) and (e) of PERA.

The charge was heard on November 7, 2019. At the beginning of the hearing, Counsel for UMHS moved to dismiss the charge arguing that the dispute was covered by the parties' collective bargaining agreement and should be decided pursuant to the contractual grievance and arbitration procedure, and not by the Commission. The ALJ denied UMHS's motion.

Facts:

UMHS is a division of the University of Michigan (University) that includes the University's medical school, hospitals, medical centers, clinics and more. The HOA represents a bargaining unit comprised of doctors and dentists employed by UMHS. These employees are also referred to as "House Officers." UMHS and the HOA were parties to a collective bargaining agreement effective from July 1, 2017 through June 30, 2020. Article XVIII of the contract, entitled "Parking", contains the following provisions:

> 145 The Employer agrees to provide designated parking for an employee who is specifically designated as on call. Access will be provided to P3 between 4:00 p.m. and 9:00 a.m. In the event the exit from the structure after 9:00 a.m. is not automated, employees will be able to call parking services directly to facilitate exit. Communication with an employee's supervisor is not required to allow exit in this circumstance. The phone number to parking services will remain posted and visible at the exit of P3.

> 146 Employees who are called to the Hospital for an emergency consult, whether in the Emergency Department or on a service, may use valet parking at the Emergency entrance at no expense. Employees must provide the valet attendant with proper identification and indicate which service the consult is related to.
>
> 147 An employee who has been assigned to an off-site location and is required to return to the Hospital prior to 4:00 p.m. (give that at 4:00 p.m. [sic] they will have access to P3) will not have to pay for parking fees incurred in the Patient/Visitor Parking Structure (P2) during the required return period. Exit from the parking structure will require a parking voucher, available primarily through their Individual Program Coordinators or the Program Coordinators' designees. If the Program Coordinator is not available, the parking vouchers will be available at the main entrance desk located on floor 1 of the Taubman Center prior to leaving the parking area.
>
> 148 The Employer reserves the right to modify this arrangement upon two (2) weeks' notice to the Association, provided, however, that no such notice will be given until the Association has had the opportunity to discuss the matter with the University in an effort to solve the problem. While the Employer cannot foresee every reason for modification, modification will not be unreasonably exercised, i.e. will not be exercised without good reason. It is understood that impact on Patient/Visitor parking needs would be reason for modification. In any case, however, abuse of this arrangement shall always be reason for modifying the current arrangement.
>
> 149 Parking services shall communicate changes to parking structures and parking processes to the HOA Board at least two (2) weeks prior to any change. At this point, one (1) parking services contact individual will be identified to communicate with the HOA Board during the transition period, which will begin two (2) weeks before the change and end at a time mutually agreed upon by the HOA Board and the employer.

The agreement also contains a standard "waiver" clause at Article XXXV providing, in relevant part:

> The Employer and the Association acknowledge that during the negotiations which resulted in the Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Employer and the Association for the life of this agreement each voluntarily and unqualifiedly waives the right, and agrees the other shall not be obligated, to bargain collectively with respect to any subject or matter

referred to or covered in this Agreement, or with respect to any subject or matter referred to in the negotiation of this Agreement.

The University operates several parking sites on or near its main hospital campus. The sites relevant to this matter include four structures identified as P1, P2, P3, and P4, and two surface lots identified as M71 and M29. While all of these parking sites are fairly near the main hospital campus, the surface lots are further away than the parking structures and are not covered. Employee parking is available in each of the parking sites except P2, which is reserved for patients and visitors and only accessible to employees under very limited conditions.

The University's parking system allows employees to purchase annual parking passes based on a four-tiered system using color coded designations of Gold, Blue, Yellow, and Orange. Passes range in price as follows--$1845 (gold), $751 (blue), $164 (yellow) and $82 (orange). Pass holders can park in the designated color-coded areas and in any lower priced areas. For example, employees with Gold passes can park in all 4 color coded sections; those with Blue passes can park in blue, yellow, and orange spaces; while those with Orange passes are limited to orange designated spaces only. At the time of this dispute the overwhelming majority of the bargaining unit employees maintained blue parking passes.

In mid-2018, the University and its UMHS division contemplated expanding patient-visitor parking capacity in structure P3 by relocating a series of color-coded spaces in parking sites P3, P4 and M71. At that time, P3 had 280 Gold spaces, 257 Blue spaces, and some overflow Patient/Visitor spaces; P4 had 482 Patient/Visitor spaces, and 792 Blue spaces; M71, the larger and further of the two surface lots had 250 Yellow spaces; and M29, the closer but much smaller surface lot had 100 Blue spaces and 48 Valet spaces. On March 18, 2019, UMHS emailed the HOA advising that parking changes were forthcoming, including converting 280 Gold spaces in structure P3 to patient-visitor spaces; converting 380 Blue spaces in structure P4 to Gold spaces; and converting 250 spaces in Lot M71 from Yellow to Blue spaces. The email further advised the HOA that …"[t]hese changes will not affect the parking programs already covered by the HOA collective bargaining agreement."

Shortly thereafter, the HOA emailed UMHS demanding "to bargain the proposed changes to employee parking at Michigan Medicine…. and the negative impact these changes will have on house officers…". UMHS rejected the demand asserting that bargaining was not required because (i) the matter was already covered under Article XVIII of the collective bargaining agreement and (ii) the planned changes would have minimal impact on employees. By email dated July 19, 2019, UMHS informed all impacted employees (including HOA members) that the parking changes identified earlier would start August 12, 2019 albeit with one modification, which was that only 280 spaces, rather than 380, in P4 would be converted from Blue to Gold.

As a result of the unilateral changes, many employees who had parked in Blue spaces in the P4 structure would be required to walk a further distance to get to the Hospital, and park in an uncovered surface lot (M71 or M29). Furthermore, those that had previously parked in M71, or

those who opted in the future to park in M71, an entirely Yellow lot, had paid $164 per year for parking, but given the far fewer Yellow spaces available following the parking changes, would likely be required to upgrade to a Blue pass, at a cost of $751 per year.

Discussion:

1. Legal Standards

Section 15 of the Public Employment Relations Act (PERA) imposes a duty to bargain on public employers and unions with respect to those matters which constitute "mandatory subjects of bargaining." MCL 423.215; *Detroit v Michigan Council 25, AFSCME*, 118 Mich. App 211, 215; 324 NW2d 578 (1982). A mandatory subject of bargaining is one which has a material or significant impact on "wages, hours and other terms and conditions of employment." *Southfield Police Officers Ass'n v Southfield,* 433 Mich. 168, 177; 445 NW2d 98 (1989); *Port Huron Area School District*, 28 MPER 45 (2014). What constitutes a mandatory subject of bargaining "must be decided case by case." *Southfield Police Officers Ass'n*, at 178. The Commission has taken a broad view of the phrase "other terms and conditions of employment" for purposes of determining whether an issue involves a mandatory subject of bargaining. *Central Michigan Univ. Faculty Ass'n v. Central Michigan Univ.*, 404 Mich. 268, 279-290, 273 NW 2d 21, 25-31(1978).

If a collective bargaining agreement covers a mandatory subject of bargaining, the parties are deemed to have fulfilled their statutory duty to bargain regarding the matter. As the Michigan Supreme Court stated in *Port Huron Ed Ass'n v Port Huron Area Sch Dist.*, 452 Mich. 309, 321 (1996):

> When the unfair labor charge is the failure to bargain, however, it is often necessary for the MERC, like the NLRB, to review the terms of an agreement to ascertain whether a party has breached its statutory duty to bargain. See *Detroit Fire Fighters Ass'n v. Detroit*, 408 Mich. 663, 293 N.W.2d 278 (1980) . . . In reviewing an agreement for any PERA violation, the MERC's initial charge is to determine whether the agreement "covers" the dispute. If the term or condition in dispute is "covered" by the agreement, the details and enforceability of the provision are left to arbitration.

Further, "[o]nce 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." *Id.* at 327. When the matter is covered by the agreement, further bargaining on that subject is foreclosed because the parties have fulfilled their statutory duty to bargain. *Macomb Co. v. AFSCME Council* 25, 494 Mich. 65, 79 (2013); *Berrien County*, 33 MPER 30 (2019). The relevant question in determining whether a collective bargaining agreement covers an issue is whether "the agreement contains provisions that can be reasonably relied on for the actions in dispute." *Id*.

The "covered by" doctrine is separate and distinct from the doctrine of "waiver". As explained by the Court in *Port Huron*:

> A waiver occurs when a union knowingly and voluntarily *relinquishes* its right to bargain about a matter; but where the matter is covered by the collective bargaining agreement, the union *has exercised* its bargaining right and the question of waiver is irrelevant.

Id. at 319*, citing Dept. of Navy v. Fed. Labor Rel. Auth.,* 962 F.2d 48 (DC Cir.1992). The Michigan Courts have continued to ascribe to the rule that a waiver must be "clear and unmistakable" in order to obviate the necessity for bargaining. *Amalgamated Transit Union Local 1564 v. Southeastern Mich. Transp. Auth.,* 437 Mich. 441, 460-461, 473 N.W. 2d 249 (1991); *Lansing Fire Fighters v. Lansing,* 133 Mich. App. 56, 349 N.W. 2d 253 (1984); *Kent Co. Ed. Ass'n v. Cedar Springs*, 157 Mich. App 59, 66; 403 N.W. 2d 494 (1987).

2. The Changes to Employee Parking Were Material and Constituted a Mandatory Subject of Bargaining

Although the Commission has yet to consider whether employee parking is a mandatory subject of bargaining, the Commission and Michigan's Court's often look to federal precedent on analogous provisions of the National Labor Relations Act ("NLRA") for guidance in interpreting PERA. *Interurban Transit Partnership*, 30 MPER 56 (2017). Under the NLRA, a change in an employer's parking policy is a mandatory subject of bargaining where the change significantly affects employees' terms and conditions of employment. See *Success Vill. Apartments, Inc.*, 348 NLRB 579, 580 (2006); *Berkshire Nursing Home, LLC*, 345 NLRB 220 (2005); *United Parcel Serv.*, 336 NLRB 1134, 1136 (2001); *Dynatron/Bondo Corp.* 324 NLRB 572, 578 (1997), enf. denied 176 F.3d 1310 (11th Cir. 1999); *Advertiser's Mfg. Co.*, 280 NLRB 1185, 1193 (1986).

UMHS argues that the parking changes involved in this dispute had a *de minimus* impact on bargaining unit employees and, therefore, were not a mandatory subject of bargaining. UMHS further contends that its position is supported by our decision in *Berrien County Intermediate School District*, 21 MPER 22 (2008). We disagree.

In *Berrien County Intermediate School District*, the Commission found that the employer did not violate its duty to bargain when it replaced a fully funded health insurance program with a self-funded one for bargaining unit members. In dismissing the charge, we noted that there had been no substantive changes made to healthcare coverage or benefits and that no change was made to the claim forms or procedures. Although the employer assumed responsibility for the cost of healthcare claims, it also purchased excess loss insurance and designated reserve funds to cover those costs. Consequently, we held that there was no duty to bargain over the *de minimus* changes in working conditions involved in the case. See also *City of Southfield (Police Department)*, 6 MPER 24024 (1993) (no exceptions).

Conversely, here, the changes were material. UMHS employees are offered parking in parking structures P1, P3, P4, and surface lots M71 and M29. These parking options are the only options near the Hospital that bargaining unit members can utilize on a large-scale basis. The impact of moving Blue spots from P4 to M71 and M29 were substantial and not *de minimus*

changes in working conditions. Bargaining unit employees who are forced to park in either the M71 or M29 surface lots, as opposed to the much closer and enclosed P4, are required to walk a greater distance in varying states of weather to their workplace, which during a Michigan winter, means longer exposure to potentially icy, hazardous sidewalks, and frigid cold. Their vehicles are not covered while they are at work, which could mean significant accumulations of snow and ice, requiring more time and effort to exit the lot after finishing a long workday. Additionally, as a result of the relocation of 250 Blue spaces from P4 to M71, which had previously been an entirely Yellow lot, many employees will likely pay significantly more to park in M71 then what they would have paid had they chosen to park there before the changes: $751 a year as opposed to $164 a year. Accordingly, we find that the parking changes involved in this dispute had a material impact on unit employees and required UMHS to bargain with the HOA over them.

3. The Dispute Is Not Covered by the Parties' Contract

The Employer asserts that the ALJ's decision is contrary to the Michigan Supreme Court's decision in *Port Huron Education Assoc. v. Port Huron School District*, 452 Mich. 309, 550 NW 2d 228 (1996), and the Court of Appeals' decision in *Gogebic Comm. College Michigan Educ. Support Personnel Assoc. v. Gogebic Comm. College*, 245 Mich. App. 342, 632 NW 2d 517 (2001). In that regard, it contends that because the parties' contract contained certain limited provisions concerning employee parking, it cannot be obligated to bargain over unrelated parking changes that the HOA failed to negotiate into the agreement. The Employer submits that *Port Huron* and *Gogebic* support that result. We disagree. Neither *Port Huron* nor *Gogebic* warrant the sweeping interpretation urged by the Employer. The facts of both cases were decidedly different than those here, and the basis for the courts' findings and conclusions are readily distinguishable.

In *Port Huron*, the employer's unilateral action involved the proration of insurance benefits for employees. Unlike here, the proration applied by the employer was specifically provided for, and allowed by, the terms of the parties' collective bargaining agreement. Indeed, the union did not dispute that the contract covered the issue. It argued however, that a contrary existing "past practice" modified the terms of the agreement, and the employer's unilateral modification to that past practice in the absence of bargaining was a violation of PERA.

While acknowledging that a "past practice" could create a term or condition of employment that cannot be unilaterally altered absent bargaining, the Court found that "the unambiguous contract language controlled unless the past practice was so widely acknowledged and mutually accepted that it amended the contract." *Id.* at 312. It further ruled that "the party seeking to supplant the contract language must show the parties had a meeting of the minds with respect to the new terms or conditions so that there was an agreement to modify the contract." *Id.* The Court neither stated nor implied that where a collective bargaining agreement contained provisions regarding a particular subject, then the contract should be deemed to cover *all* disputes concerning that subject, whether or not reasonably subsumed within the negotiated language.

The Employer relies on the Court's citation to *Dept. of Navy* in which the D.C. Circuit noted that "a subject need not be explicitly mentioned in an agreement in order for the subject to be covered" by the agreement. *Id.* at fn. 16. However, despite that reference, the *Port Huron* Court was careful *not* to reach the conclusion advocated for by the Employer here. It stated:

> We do not address the outer limits of when a subject is "covered by" an agreement. The language granting the district the right to prorate benefits in PQ of the agreement, and the additional language in PH identifying the method by which benefits will be prorated, does not implicate that question. The association does not dispute that prorationing of benefits is addressed in the agreement. Thus, under any reasonable definition of the term "covered by", we conclude the prorationing of insurance benefits is "covered by" the agreement. *Id.* at 324.

Notably, the *Port Huron* Court also distinguished *Amalgamated Transit Union Local 1564 v. Southeastern Mich. Transp. Auth.,* 437 Mich. 441 (1991), in which the collective bargaining agreement contained several provisions regarding probationary employees, including giving the employer sole discretion to discharge those employees. The contract did not, however, specifically address the *discipline* of probationary employees. The Court determined that *Amalgamated* was distinguishable from the case before it because, unlike the proration of benefits, "disciplinary procedures for probationary employees were not covered by the agreement." *Id.* at 325, fn. 19.

It is clear from the Court's analysis in *Port Huron* that something more than the mere reference to a subject in a collective bargaining agreement is required to warrant the conclusion that all manner of disputes concerning that subject are covered by the contract. The fact that the Court found *Amalgamated* to be distinguishable strongly suggests that a contract must contain language fairly specific to the matter in dispute in order to "cover" it and thereby relieve a party of the duty to bargain over changes to terms of employment. At a minimum, there must be a reasonable basis upon which to conclude that the matter is subsumed within the existing language.

The issue in *Gogebic* involved the employer's unilateral decision to self-insure the dental benefits provided to employees. The contract language identified the insurance carriers for health and vision benefits, but not for dental benefits. Rather, the negotiated language provided only that the employer would maintain a specific level of coverage. The Court of Appeals determined, based on the health and vision provisions, that the parties had bargained over the issue of carriers. It therefore concluded that the contract covered the carrier issue regarding dental benefits, and the employer had no obligation to bargain before making the change to a self-insured plan. Under those facts and circumstances, the lack of any explicit mention in the parties' contract concerning the carrier for dental insurance did not foreclose a determination that the matter was covered by the contract.

Unlike in the instant case however, the precise issue to which the unilateral change was made in *Gogebic*, i.e. the insurance carrier, had indisputably been bargained by the parties with regard to two other forms of insurance: health and vision. The Court therefore reasonably

concluded that because the contract was silent concerning the carrier for dental insurance, the parties had agreed not to obligate the employer to a specific dental insurance carrier.

Conversely, here, while the unilateral changes all involve various aspects of *employee-paid* parking available to virtually all bargaining unit employees, the contract addresses only situations in which a very limited subset of employees may avail themselves of *free* parking or parking in special circumstances. Specifically, paragraph 145 provides for "designated parking" for on-call employees (while the record is not clear whether this parking is free, it is certainly only available to those limited "on-call" employees); paragraph 146 provides for free "valet parking" for employees called in for emergency consults; and paragraph 147 provides for free parking for employees who were assigned to an off-site location and required to return to the Hospital prior to 4:00 p.m.

Absent from the contract is any mention of either employee-paid parking passes, or the cost or location of available parking for employees who purchase those passes. In other words, the contract is devoid of any mention of parking options for employees who otherwise come to work on a normal workday. In addition, the contract contains no employee parking provisions related to either P4 or M71, the two parking lots to which the vast majority of changes were effectuated.

As we stated in *Berrien County,* 33 MPER 30 (2019), "the germane question in determining whether the contract covers an issue is if the agreement contains provisions that can *reasonably relied on* for the actions in dispute" (citing, *City of Royal Oak*, 23 MPER 107 (2010). Here, there is no reasonable basis upon which to conclude either that the parties addressed those issues during negotiations or that the contract covered them. Moreover, the Employer implicitly acknowledged that it had not relied on the contractual "parking" provisions for the actions it took when it advised the Union on March 23, 2019 that "none of the parking changes impact the special programs and off-hours parking that were specifically provided for in Article XVIII of the contract."

Nor do the remaining contract provisions militate in favor of a different result. While paragraph 148 allows the employer to make certain changes, those changes are specific to the parking arrangements identified in the preceding paragraphs 145 through 147. Although paragraph 149 more generally provides that "parking services shall communicate changes to parking structures and parking processes to the HOA Board at least two (2) weeks prior to any change", it does not vest the employer with the right to effectuate such changes in the absence of bargaining. Even if paragraph 149 were interpreted as addressing changes to parking provisions beyond those contained in paragraph 145 through 147, rather than simply identifying the mechanism for notification of parking changes, it does not contemplate that such changes could be made unilaterally by the Employer.

Lastly, although the Employer did not take exception to the ALJ's determination that the Union did not waive its right to bargain over the parking changes, it nevertheless argues that the contractual waiver clause is evidence supporting a finding of contract coverage. We reject that argument as well. The Employer has conflated the issue of "waiver" with that of "contract

coverage." In *Gogebic*, while the Court found the language in the waiver clause constituted an additional basis for finding the matter to be covered by the contract, it had already first determined that the contract language concerning dental insurance covered the disputed issue. There is nothing in *Gogebic*, or any other Court decision, suggesting that absent contract language covering the subject in dispute, a broad waiver clause would nevertheless support a finding of contract coverage. Indeed, such a determination would directly conflict with the decisions of the Courts that waivers of bargaining rights must be "clear and unmistakable" and are to be construed narrowly. *Port Huron*, 452 Mich. at 319-320.

The basis for the "covered by" doctrine drives home this point. It exists to require parties who bring disputes over contract language to the Commission, to resolve those disputes utilizing the grievance and arbitration machinery they negotiated for that purpose. MERC does not settle disputes over contract language. ("The MERC does not involve itself with contract interpretation when the agreement provides a grievance process that culminates in arbitration." *Port* Huron, 452 Mich. at 321). A necessary component of the "covered by" doctrine is the existence of contract language upon which a party could file a grievance over a unilateral change. There must exist some contract language for an arbitrator to interpret. Here, there is no contract language addressing the parking issues in dispute. There is nothing the HOA could present to an arbitrator by way of contract language to support a grievance. While the HOA could argue that the Employer altered an established past practice, it is not "past practice" that constitutes the grist of the covered by doctrine, but rather, contract language.

Our prior decisions further support our ruling. For example, in *City of Detroit Fire Department*, 34 MPER 17 (2020), we ruled that although the contract allowed the employer to determine the equipment to be used by employees, it did not cover the employer's unilateral utilization of new data derived from such equipment for the purpose of investigating and disciplining employees. There was no language in the agreement either giving the employer such authority, or otherwise addressing the manner in which novel data from new equipment could be utilized, and discipline was mandatory subject of bargaining.

In *Berrien County*, 33 MPER 30 (2019), the contract gave the employer the management right to "determine the equipment. . .to be used", and the union had not objected to existing practices or work rules requiring the use of mobile recording systems and surveillance equipment. As such, we concluded that the contract covered a new policy requiring body-worn cameras. Because the contract vested the employer with rights concerning the use of "equipment", it was for an arbitrator, not the Commission, to determine whether the parties intended that language to cover the body-worn cameras at issue. Here, there is no contract language vesting the Employer with rights concerning parking passes, parking lot locations, or the cost of parking.

In another case involving *Berrien County*, 21 MPER 22 (2008), we determined that the employer did not violate its duty to bargain by changing to a self-funded health insurance plan, because the contract contained provisions for the types of coverage and benefits, but not for a particular insurer. Significantly, the employer made no substantive changes to the level of

coverage or benefits provided, or to procedures or claim forms. As such, it was for an arbitrator to determine whether the employer violated the agreement merely by changing to a self-funded plan where employees' coverage and level of benefits remained unchanged. Here, not only does the contract not address any aspect of the employee-paid parking in dispute, but the changes made had a material and significant impact on the affected employees.

In *City of Bay City*, 34 MPER 1 (2020), we found that the employer's elimination of paper pay stubs in the absence of bargaining did not constitute a violation of its duty to bargain under PERA. Our ruling rested in large part on the determination that the change was neither material, nor did it impact employees' terms of employment because the information remained accessible to them, albeit through an electronic, versus paper, format. Employee wages and benefits were unaffected by the change. There, since the contract provided for mandatory direct deposit, it was up to an arbitrator, not MERC, to determine whether the elimination of paper pay stubs was subsumed within the contract's direct deposit provisions. A reasonable extension of a direct deposit contract provision could include electronic pay stubs. Here, the changes to parking were substantive and materially impacted employees' terms of employment. Further, there is no reasonable extension of the contract language in this case that could include the paid parking passes, or location of parking lots and parking spaces utilized by the vast majority of employees during the course of a normal workday.

In sum, we find that the changes to employee parking were substantive and material, and that the parties' collective bargaining agreement did not cover the dispute so as to relieve the employer of its duty to bargain. By refusing to accede to the Union's demand for bargaining over the changes, the Employer violated PERA. We have considered all other arguments raised by the parties and they would not change our decision.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Robert S. LaBrant, Commission Member

Tinamarie Pappas, Commission Member

Issued: February 9, 2021

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

In the Matter of:

UNIVERSITY OF MICHIGAN HEALTH SYSTEM,
Public Employer-Respondent,

Case No. 19-H-1721-CE
-and-
Docket Number. 19-017498-MERC

UNIVERSITY OF MICHIGAN HOUSE OFFICERS ASSOCIATION,
Labor Organization-Charging Party.

____/

APPEARANCES:

University of Michigan, Office of the Vice President and General Counsel, by David J. Masson for the Respondent

Soldon McCoy, LLC, by Kyle A. McCoy for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

On August 22, 2019, the University of Michigan House Officers Association (Charging Party or Association) filed the present unfair labor practice charge against the University of Michigan Health System (Respondent or UMHS). 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 charge was assigned to Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission (Commission). The parties appeared before the undersigned on November 7, 2019, in Detroit, Michigan. Based upon the entire record, including the transcript of the hearing, the exhibits admitted into the record and the parties' post hearing briefs, I make the following findings of fact, conclusions of law and recommended order.

Unfair Labor Practice Charge and Procedural History:

The Association's charge alleges that the University's unilateral decision and implementation of changes to certain parking structures used by the members of the Association's bargaining unit, its refusal to bargain said decision and/or implementation, and its failure to provide information requested related thereto, violated Sections 10(1)(a) and (e) of PERA.

At the beginning of the November 7, 2019, hearing Counsel for the Respondent moved to dismiss the charge arguing that the present dispute was covered by the parties' contract and should therefore proceed under the agreed upon grievance and arbitration procedure. As will be discussed in more detail below, I denied the Respondent's motion and proceeded to take testimony.

Findings of Fact:

The UMHS is a division of the University of Michigan (University) and includes the University's Medical School, its various hospitals, medical centers, and clinics, its Faculty Group Practice, and other departments and entities. The Association is the authorized bargaining representative for a bargaining unit comprised of doctors and dentists employed by the Respondent and who are in a recognized training program, i.e., Medical Residents. The Association's bargaining unit members are also referred to as "House Officers." According to the parties' collective bargaining agreement, effective from July 1, 2017, through June 30, 2020, there are eight levels of House Officer, HO I through HO VIII, with the level presumably corresponding to the number of years in the program.

Relevant to the present matter, the University operates and maintains four parking structures near the University's main hospital campus (Hospital). Those four structures are identified as P1, P2, P3, and P4. Both P2 and P3 appear to be directly connected to the Hospital's main building. While P4 is separated from the Hospital by surrounding streets, it is connected to the Mott Hospital and Von Voigtlander Women's Hospital by way of a sky-walk. P1 is unquestionably the farthest in distance of the four structures from the Hospital. In addition to the aforementioned structures, there are two surface lots located near the Hospital, M71 and M29. While these lots are near the Hospital, they are nonetheless farther in travel distance than the four structures. Throughout the University's entire campus, there are many more parking structures and parking lots.

Article XVIII of the parties' contract, entitled "Parking" sets forth several paragraphs dealing with parking and states in the relevant part the following:

> 145 The Employer agrees to provide designated parking for an employee who is specifically designated as on call. Access will be provided to P3 between 4:00 p.m. and 9:00 a.m. In the event that exit from the structure after 9:00 a.m. is not automated, employees will be able to call parking services directly to facilitate exit. Communication with an employee's supervisor is not required to allow exit in this circumstance. The phone number to parking services will remain posted and visible at the exit of P3.
>
> 146 Employees who are called to the Hospital for an emergency consult, whether in the Emergency Department or on a service, may use valet parking at the Emergency entrance at no expense. Employees must provide the valet attendant with proper identification and indicate which service the consult is related to.
>
> 147 An employee who has been assigned to an off-site location and is required to return to the Hospital prior to 4:00 p.m. (given that at 4:00pm [sic] they will have access to P3) will not have to pay for parking fees incurred in the

Patient/Visitor Parking Structure (P2) during the required return period. Exit from the parking structure will require a parking voucher, available primarily through their individual Program Coordinators or the Program Coordinators' designees. If the Program Coordinator is not available, the parking vouchers will be available at the main entrance desk located on floor 1 of the Taubman Center prior to leaving the parking area.

148 The Employer reserves the right to modify this arrangement upon two (2) weeks notice to the Association, provided, however, that no such notice will be given until the Association has had the opportunity to discuss the matter with the University in an effort to solve the problem. While the Employer cannot foresee every reason for modification, modification will not be unreasonably exercised, i.e., will not be exercised without good reason. It is understood that impact on Patient/Visitor parking needs would be reason for modification. In any case, however, abuse of this arrangement shall always be reason for modifying the current arrangement.

149 Parking services shall communicate changes to parking structures and parking processes to the HOA Board at least two (2) weeks prior to any change. At this point, one (1) parking services contact individual will be identified to communicate with the HOA Board during the transition period, which will begin two (2) weeks before the change and end at a time mutually agreed upon by the HOA Board and the employer.

Article XX of the contract, entitled "Complaint, Grievance, and Arbitration Procedure" sets forth the parties' agreed upon grievance and arbitration procedures, culminating with final and binding arbitration.

In addition, Article XXXV of the contract, sets forth a waiver clause, which at Paragraph 246, states the following in its entirety:

> The Employer and the Association acknowledge that during the negotiations which resulted in the Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Employer and the Association for the life of this agreement each voluntarily and unqualifiedly waives the right, and agrees the other shall not be obliged, to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter referred to in the negotiation of this Agreement.

The University's parking system operates on a four-tiered pass system: Gold, Blue, Yellow, and Orange. Gold, the most expensive pass available at $1,845 a year, allows holders to park in any Gold, Blue, Yellow or Orange spot. Blue, the next most expensive pass at $751 a year, allows its holders to park in Blue, Yellow or Orange spots. Yellow pass holders, who pay $164 a year, can park in Yellow or Orange spots, while Orange passes, at $82 a year, only allow parking in

Orange spots. As will be set forth below in greater detail, parking structures and lots can have different designated spots that correspond with the different level of passes in addition to other classes of spots, including but not limited to, patient, visitor, valet, etc.

According to the Respondent's own policy, only certain individuals are eligible for a Gold pass and include "physicians (MD) who see patients" and "executive officers and deans." Testimony from the hearing establishes that only some House Officers, HO VI and above, could be eligible to purchase a Gold pass. Eligibility notwithstanding, Hilary King, one of the Respondent's Associate Hospital Directors, and the self-described "administrative contact for parking", testified that the University has not been routinely issuing Gold passes and instead considers them on a "one-off basis." In any event, the record overwhelmingly establishes that House Officers cannot secure Gold passes and instead must choose between Blue, Yellow or Orange.

At the time of the hearing, the Association's bargaining unit was comprised of 1,248 bargaining unit members. According to a spreadsheet provided to the Association on April 14, 2019, by Michelle Sullivan, Respondent's Director of Labor Relations, the overwhelming majority of those bargaining unit members have a Blue parking pass, while five held Yellow passes, and only one held an Orange pass.[1]

In early 2018, the Respondent became aware that patients were failing to keep scheduled medical appointments at the Hospital because of problems and difficulties finding parking spots. The Respondent, in response to this issue, created the Parking and Transportation Advisory Committee (Committee). Association member Margaret Smith was a member of the Committee. The Committee's designated purpose was to "improve employee engagement in the identification, prioritization and implementation of actions to improve parking and transportation for Michigan Medical employees."

The Committee's first meeting occurred sometime in January 2018, during which time a January 12, 2018, report prepared by the University's Logistics, Transportation and Parking Department and entitled "Transportation & Parking Overview" was provided to members of the Committee. According to the report, the University maintained 28,727 parking spots throughout its various Ann Arbor campus areas. The total number of spaces includes permit, patient, visitor, valet and other appropriately designated spots. The report indicated that the Respondent maintained the following parking spot breakdown relative to the permitted spots in the four lots relevant to this proceeding: In P1 there were 216 Patient/Visitor spots, 208 Gold spots and 464 Blue spots; In P2 there were 1,158 Patient/Visitor spots; In P3 there were some overflow Patient/Visitor spots, 280 Gold spots and 257 Blue spots; In P4 there were 482 Patient/Visitor spots and 792 Blue spots. P4 does not contain any Valet spots. According to that report, and other documents entered into the record, M71, the larger and further of the two surface lots, was a "Yellow" lot with approximately 250 Yellow spots, while M29, closer but about half as large, had 100 Blue spots and 48 Valet spots.

[1] There was testimony at the hearing that one member of the unit, someone who was formerly a faculty member, possessed a Gold pass, but the spreadsheet of parking passes did not indicate such was the case.

Sometime in July of 2018, the Committee issued its final report which encompassed several recommended changes with respect to parking. Relevant to this dispute, that final report recommended that the 280 Gold spots then located in P3 be converted to Patient/Visitor spots and that 280 of the 792 Blue spots in P4 be converted to 280 Gold spots. The final report also recommended that the 250 Yellow spots in M71 be converted to Blue spots.

On March 18, 2019, Sullivan emailed the Association's Executive Director, Robin Tarter, and other members of the Association including Smith, letting them know that changes regarding parking would be forthcoming. That email included the copy of an announcement that was set to go out the next day announcing and outlining the changes and also announcing three open houses scheduled in late March and April of 2019 to go over the changes. According to the information attached to the email and relevant to this dispute, sometime between April 26, 2019, and May 6, 2019, the 280 Gold spots then located in P3 would be converted to Patient/Visitor spots, 380 Blue spots then located in P4 would be converted to Gold spots, and the 250 Yellow spots then located in M71 would be converted to Blue spots. Sullivan's email went on to state, "Please note, these changes will not affect the parking programs already covered by the HOA collective bargaining agreement."

On March 22, 2019, the Respondent announced through a mass email that the planned parking changes were being delayed and that "an additional period of study is warranted, to further enhance the good work completed by the [Committee]." That email also indicated that the open houses scheduled to discuss the planned changes were postponed.

On March 23, 2019, Tarter sent an email with a subject line that read "Demand to Bargain" to the Respondent. That email stated in the relevant portion the following:

> Please accept this correspondence as the House Officers Association's clear and unequivocal demand to bargain the proposed changes to employee parking at Michigan Medicine. The parties must negotiate both the substance of these unilateral changes and the negative impact these changes will have on house officers. Employee parking is a negotiable condition of employment, and the parties explicitly recognized as much by the inclusion of Article XVII [sic] in our labor contract.

In Sullivan's March 25, 2019, email in response to Tarter, the Director wrote in part:

> It is important to note that none of the parking changes impact the special programs and off-hours parking that were specifically provided for in Article XVIII of the contract. Because parking for House [O]fficers is covered in Article XVIII of our collective bargaining agreement, there is no duty to bargain during the term of the contract. In addition and regardless, however, given the net addition of employee parking spaces, the options for employees to utilize free parking and shuttle services, and the fact that the recent changes have resulted only in the movement of parking options within the existing parking offered by the University, the University is not required to bargain regarding these changes.

In early April of 2019, the Association sought information relative to the parking issue that included a list of all employees who have a parking pass and the level of that pass. On April 12, 2019, Sullivan responded to the information request, and with respect to passes held by all University employees, stated:

> The University objects to the relevance of this request, given that employees are not assigned to park in any particular lot and parking locations may vary. The University also objects to the relevancy of this request as it pertains to employees who are not part of the HOA bargaining unit. Notwithstanding the objections, I will provide job title, FTE status, and parking permit information for the members of your bargaining unit. We are still gathering the information and will provide it as soon as it is ready.

On April 14, 2019, the University did provide parking pass information for bargaining unit members. On April 15, 2019, Tarter emailed Sullivan clarifying the Association's request as to other University employees, and stated:

> The HOA has requested to know the number of OTHER employees and contractors who currently have access to P3, regardless of method – gold, blue, business, community physician, etc.
>
> Do employees and contractors with non-patient care responsibilities park in P3. If so, who are they and what is their job title?

In an April 17, 2019, email response, Sullivan again objected to the Association's request as it related to other University employees, stating in part:

> The University objects to the relevancy of the requests you have set forth below and will not be providing the information… we are providing information that pertains to members of the HOA bargaining unit…

The record does not indicate that any other emails regarding the above requests for information were sent between the parties.

At the hearing, Tarter testified that she believed the information regarding who else parked in P3 other than bargaining unit members was relevant because there could be a possibility through bargaining for the parties to be able to swap spots in P3 for more Blue spots in P4. Tarter further testified that she discussed the reasons why the Association should have this information at a meeting with herself, Smith, Sullivan and King.

Sullivan, through her testimony admitted that she met with Tarter and others to discuss the parking changes and claimed that the meeting occurred around April 23, 2019. Sullivan's recollection of that meeting was devoid of any recollection that Tarter had offered an explanation as to why the Association's outstanding information request was relevant. Sullivan, when describing that meeting, testified:

> The majority of the time spent in the meeting was hearing from them how they felt the shifting spaces were affecting them. At the very conclusion of the meeting we were asked who parks in P3. I think we were asked specifically about people that don't have patient care responsibilities. I did not have the answer to the question, but it was just who parks there. There was no explanation about why it was relevant.

On July 19, 2019, Respondent sent out a mass email to its employees, including Association members, that indicated beginning on August 12, 2019, the previously delayed changes to parking would occur with some slight alterations from when the changes had first been announced. The newly announced changes amounted to 280 Gold spots in P3 converted to Patient/Visitor spots; 280 Blue spots, down from the initial 380 Blue spots, in P4 converted to Gold spots; the 250 Yellow spots in M71 converted to Blue spots; and the 48 Valet spots in M29 converted to Blue spots.

King, when discussing the reasoning behind moving the 280 Gold spots from P3 to P4, testified at the hearing, "that's the level of service we had been providing all along." Moreover, King, when asked why the Gold spots could not be placed in M71 or M29 as opposed to P4, replied by stating:

> So part of the provision of what the cost of parking is, is associated to [the] proximity of the work environment. So people who pay significantly more for a higher level parking expect to be parking proximate, more proximate to buildings.

Discussion and Conclusions of Law:

Employer's Motion for Summary Disposition

As stated above, at the onset of the hearing, the Employer moved to dismiss the allegations challenging its actions on parking arguing that the parties' agreement covered the issue and that the dispute should proceed pursuant to the contract's grievance provision as opposed to as an unfair labor practice. The Employer also argued that, the preceding notwithstanding, the parties' contract also contained a broad waiver clause relieving it of any duty to bargain over the issue of parking during the pendency of the contract.[2]

It is well established that when the collective bargaining agreement covers the subject matter in dispute, the parties have fulfilled their statutory duty to bargain. As the Michigan Supreme Court stated in *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 327 (1996): "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." Similarly 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, 2000 MERC Lab Op 375, 377. See also *Wayne Co Cmty Coll*, 20 MPER 59 (2007). An employer may defend against a charge that it has unilaterally altered working conditions by arguing that it has fulfilled its duty to bargain by negotiating a provision in the collective bargaining agreement that fixes the parties' rights and

---

[2] I note that during the hearing the Employer's counsel unequivocally maintained that it did not bargain in any way with the Association prior to making the changes at issue herein.

forecloses further mandatory bargaining. *Port Huron Ed Ass'n*, supra. More simply put, as the Commission recently stated in *Berrien County,* 33 MPER 30 (2019), "the germane question in determining whether the contract covers an issue is if the agreement contains provisions that can be reasonably relied on for the actions in dispute."

It is important to note that the "covered by" argument is separate and distinct from the Employer's other argument that the Association waived its right to bargain over the issue. Our Supreme Court, in *Port Huron* at 319, discussed the difference between "covered by" and a waiver at length. Quoting Judge Harry T. Edwards in *Dep't of Navy v Federal Labor Relations Authority*, 962 F2d 48 at 57 (DC Cir, 1992), the *Port Huron* Court explained the difference as follows:

> A waiver occurs when a union knowingly and voluntarily relinquishes its right to bargain about a matter; but where the matter is covered by the collective bargaining agreement, the union has exercised its bargaining right and the question of waiver is irrelevant.
>
> ...
>
> Indeed, the difference between the two concepts goes to the structural heart of labor law. When parties bargain about a subject and memorialize the results of their negotiation in a collective bargaining agreement, they create a set of enforceable rules — a new code of conduct for themselves — on that subject. Because of the fundamental policy of freedom of contract, the parties are generally free to agree to whatever specific rules they like, and in most circumstances it is beyond the competence of the Authority, the National Labor Relations Board or the courts to interfere with the parties' choice .... On the other hand, when a union waives its right to bargain about a particular matter, it surrenders the opportunity to create a set of contractual rules that bind the employer, and instead cedes full discretion to the employer on that matter. For that reason, the courts require "clear and unmistakable" evidence of waiver and have tended to construe waivers narrowly.

The Employer, in support of its argument that the contract covers the parking issue relevant herein, points to *Gogebic Cmty College Support Personnel Assn v Gogebic Cmty College,* 246 Mich App 342 (2000,) aff'g *Gogebic Cmty College,* 1999 MERC Lab Op 28*,* as directly on point. In *Gogebic*, under the collective bargaining agreement, the employer was obligated to pay the premium for dental insurance benefits set out in the contract. The contract did contain a zipper clause but did not specify the insurance carrier. A dispute arose when the employer switched from purchasing insurance from a carrier to being self-funded. The Commission held, first, that because the subject of dental insurance was "covered by" the collective bargaining, the union had already exercised its bargaining right and, second, that because the contract was silent regarding an insurance carrier, the contract unambiguously gave the employer the right to unilaterally select a carrier. The Court of Appeals agreed with the Commission that the issue of dental coverage was clearly and unambiguously "covered by" the collective bargaining agreement and that the union had exercised its right to bargain over the matter.

According to the Employer, paragraphs 145, 146, 147, 148, and 149 of the contract address parking and thereby "cover" the subject matter of this dispute. Applying the Commission's

"germane question" as set forth above, it is clear to the undersigned that the Employer cannot reasonably rely on the contract's provisions that pertain to parking to support its decision to remove the 280 Blue pass spots from P4. First off, none of the relevant paragraphs provide any general statement with respect to the provision of parking; rather, as will be discussed hereafter, each of the paragraphs set forth very specific provisions regarding specific parking locations, none of which explicitly or implicitly address parking in P4.[3] In Paragraph 145, the Employer explicitly agreed to provide parking in P3 for "on-call" designated Association members. In paragraph 146, the Employer explicitly agreed to allow Association members who are called to provide an emergency consult to utilize Valet spots; there are no Valet spots located in P4. Paragraph 147 allows certain Association members who are returning to the Hospital from an off-site location before a certain time to have their parking fees waived if they park in the Patient/Visitor spots in P2. Under paragraph 148, the Employer reserves the "right to modify this arrangement" upon notice to the Association. The only reasonable reading of paragraph 148 clearly indicates that the "arrangement" the provision is referring to is the prior three paragraphs as it relates to P2 and P3 and Valet spots. Lastly, paragraph 149 merely provides the mechanism by which the Respondent will communicate parking changes.

Addressing the Employer's *Gogebic* comparison, I do not find the comparison compelling or persuasive. In *Gogebic*, the parties' dispute arose after the employer changed the way in which dental benefits were provided. The employer did not change the level of benefits or its contribution for the same. Those provisions clearly 'covered' the topic of dental insurance and could be reasonably relied to support the employer's actions. Here however, the provisions at issue do not cover the topic of parking but rather cover very specific and nuanced aspects related to "special programs and off-hours parking" as quoted from Sullivan's March 25, 2019, email. Accordingly, I found at the hearing that the parties' contract did not cover the Employer's actions as it related to P4.

While not explicitly addressed during the hearing, the Employer's waiver argument also lacks merit. Our Commission will not find a waiver based on a "zipper" clause absent specific reference in the clause to the subject of the action and/or there is evidence that the parties discussed the issue during bargaining. See *Kent County Ed Ass ' n v Cedar Springs*, 157 Mich App 59 (1987). Here, the waiver clause does not explicitly or implicitly cover the issue of parking, and while the parties' presumably discussed "special programs and off-hours parking" relative to P2 or P3, there is no indication that parking, in general terms or in relation to P4, was discussed during negotiations.

Unilateral Change in Parking at P4

Under Section 15 of PERA, public employers are required to bargain collectively with the recognized representative of its public employees. Certain issues including "wages, hours and other terms and conditions of employment" are considered to be mandatory subjects of collective bargaining. *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). Issues outside of this category are classified as either permissive or illegal subjects of bargaining. *Id* at fn 6. A public employer's unilateral action, or its refusal to engage in collective bargaining, with respect

[3] In support of this position, I note that Sullivan, in her March 25, 2019, email to Tarter regarding the changes, stated that the planned changes had no effect on the parking provisions set forth in the contract.

to a mandatory subject, may constitute an unfair labor practice under Section 10(1)(e) of PERA. However, the Commission has held that there is no duty to bargain over de minimus changes in working conditions. *Berrien County Intermediate School District*, 21 MPER 22 (2008).

The Commission has yet to consider whether parking is a mandatory subject of bargaining such that an employer is refrained from taking unilateral action without bargaining first. Both Michigan Courts and the Commission have looked to federal precedent interpreting mandatory subjects because the language in Section 8(d) of National Labor Relations Act (NLRA) is identical to the applicable language of Section 15 of PERA. *Detroit Police Officers Ass'n v Detroit*, supra. The preceding notwithstanding, neither the Commission nor our Courts constrain themselves to limits under the NLRA and instead tend to take a more expansive and broad view of what is a mandatory subject of bargaining because, unlike employees who are covered by the NLRA, public employees in Michigan are prohibited from striking pursuant to Section 2 of PERA. *Van Buren Pub Sch Dist v Wayne Co Circuit Judge*, 61 Mich App 6 (1975). Ultimately however, whether a topic is a mandatory subject of bargaining is determined on a case-by-case basis. *Southfield Police Officers Ass'n v City of Southfield*, 433 Mich 168, 178 (1989).

Under federal law, the National Labor Relations Board (NLRB), the body charged with interpreting and enforcing the NLRA, has long held that, generally speaking, parking privileges are a mandatory subject of bargaining. See *United Parcel Service*, 336 NLRB 1134 (2001) (the employer was required to bargain over effects of relocating a parking lot 1-1/2 miles from its facility, thereby increasing employees' commuting time by 40 minutes). The preceding classification of parking as a mandatory subject notwithstanding, the Board has refused to find violations of the NLRA where the changes to parking are not substantial. See *Advertiser's Mfg Co.*, 280 NLRB 1185, 1193 (1986) (A unilateral change that prohibited employees from parking in the first row of the employee parking lot, did not violate the NLRA, because it "… at most, required a few employee to walk a few extra yards from their cars to the plant …"); See also *Berkshire Nursing Home, LLC,* 345 NLRB 220 (2005) (ban on parking in employer's lot not material where only effect on employees was a minor inconvenience in having to walk several minutes to employer's facility).

In addition to the federal view on parking as mandatory subject of bargaining, several states have also reached the same conclusion with respect to their own public sector labor laws. Charging Party, in its brief, cites to public sector cases in both Illinois and Washington where parking issues were deemed a mandatory subject. See *In re Southern Illinois University Edwardsville Professional Staff Ass'n*, 15 Pub Employee Rep (Ill) par 1063, Nos 97-CA-0016-S, 97-CA-0017-S (IELRB September 22, 1998) (the Illinois Educational Labor Relations Board concluded parking fees concerned terms and conditions of employment and were therefore mandatory subjects of bargaining); See also *King County*, Decision 11319-A (PECB, 2013) (Washington's Public Employment Relations Commission held that the employer engaged in an unfair labor practice when it unilaterally changed the parking fees it charged to members of a labor organization representing some of its employees). In addition to the cases cited by the Charging Party, California's Public Employment Relations Board, in *Regents of the University of California,* (11/14/83) (PERB Decision No. 356-H), also held that the University of California violated the state's labor laws when it unilaterally raised the parking fees paid by its police officer employees for parking operated by the employer.

In the present matter, it is clear that the University offers parking opportunities to its employees. Just relative to the Hospital, the University offers employee parking through its four different passes in P1, P3, P4, and surface lots M71 and M29. Moreover, it appears that these parking options are for the most part the only options near the Hospital that bargaining unit members and other University employees can utilize on a large-scale basis. Accepting this, as well as both federal and other state precedent, it is my finding that in general terms, parking is a mandatory subject of bargaining. I further find that as such, the Respondent is generally precluded from taking unilateral action with respect to parking without first bargaining to impasse. However, the inquiry does not end there as in order to find that the Respondent violated PERA by moving Blue spots from P4 to M71 and M29, I must also determine that the changes were substantial. I do make such a determination. Here, the result of the Employer's actions not only has the potential of causing the unit members who are forced to park in M71, a surface lot, as opposed to the much closer and enclosed P4, to walk farther in varying states of weather to their workplace, but it also forces them to do so at a much greater cost then what they would have paid had they chosen to park in M71 in the first place before the changes. While the Employer is correct in its assertion that the total net change of Blue pass spots throughout P1, P3, P4, and surface lots M71 and M29, equates to a total increase in the number of Blue pass spots available, the fact remains that for at least the 250 Blue pass spots now in M71, association members who park there are parking in spots that would have only cost them $164 a year as opposed to the $751 a year they are in fact being charged.

For these reasons, it is my finding that the Respondent did violate PERA when it unilaterally removed 280 Blue pass spots from P4 and placed them in M71 and M29 respectively.

April 12, and April 15, 2019, Information Requests

It is a long held principle under the Act that an employer, in order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, must supply in a timely manner information requested by the union which will permit the bargaining representative to engage in collective bargaining and police the administration of its collective bargaining agreement. *Wayne Co*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384. Information relating to terms and conditions of employment, such as wages, job descriptions, and other information pertaining to bargaining unit employees, is considered presumptively relevant. *West Bloomfield Sch Dist,* 28 MPER 82 (2015); *Plymouth Canton Cmty Schs*, 1998 MERC Lab Op 545.

However, an employer has no statutory duty to respond to an inappropriate request for information, and an employer's failure to respond to a union's request for information that is not presumptively relevant does not shift the burden of showing relevance to the employer. *State Judicial Council*, 1991 MERC Lab Op 510, 512. When the request is for information with respect to matters occurring outside the unit, the union must demonstrate its relevance as information about non-unit employees is not presumptively relevant. See *City of Pontiac*, 1981 MERC Lab Op 57.

Here, the only information request at issue is the Association's request for documents showing which contractors and employees outside of the bargaining unit have access to P3 and their corresponding pass levels. As set forth above, this information concerning individuals not in the bargaining unit is not presumptively relevant. Moreover, while the Respondent was not

obligated to object to the request on relevancy, Sullivan did in fact make just such an objection, first on April 12, 2019, and then again on April 15, 2019.

Tarter's explanation at the hearing as to why the Association wanted the information appeared reasonable and relevant to the present issue between the parties. However, the record does not support a finding that Tarter ever actually communicated that reason to the Respondent. While Tarter testified that she discussed her reasons at a meeting with Sullivan in late April 2019, her testimony was devoid of actual details of what was said and most notably devoid of any recollection that Sullivan responded to the alleged request in any way. Sullivan's testimony on the other hand was specific and contained more details. I find Sullivan's testimony credible that while Tarter did ask who else parked in P3 and that she, Sullivan could not provide an answer since she did not have the information, Tarter did not explain why the information was relevant to the Association's role as the unit's bargaining agent.

Accordingly, and for the reasons set forth above, it is my finding that the Charging Party, after making a presumptively irrelevant information request, did not demonstrate that its request was indeed relevant. As such, Respondent's refusal to provide said information did not violate PERA.

I have carefully considered all other arguments as set forth by the parties in this matter and conclude that they do not warrant a change in the result. For the reasons set forth above, I recommend that the Commission issue the following order:

RECOMMENDED ORDER[4]

Respondent University of Michigan Health System, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to bargain collectively with the House Officers Association with respect to changes made to the P4 parking structure.

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

    a. On request, bargain collectively with the Association as the exclusive collective bargaining representative of its employees.

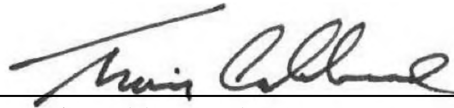
[4] On March 10, 2020, Michigan's Governor, Gretchen Wilson, issued Executive Order 2020-4 declaring a state of emergency across the state of Michigan in response to the rapid spread of the novel coronavirus, COVID-19. On March 23, 2020, Governor Whitmer issued Executive Order 2020-21, colloquially called "Stay Home, Stay Safe" and which directed "residents to remain at home or in their place of residence to the maximum extent feasible." Governor Whitmer's Stay Safe, Stay Home order took effect on March 24, 2020, and was set to expire on April 14, 2020. On April 9, 2020, Governor Whitmer issued Executive Order 2020-42, which reaffirmed, clarified and expanded the measures set forth in Executive Order 2020-21, the Stay Home, Stay Safe order and extended their duration through April 30, 2020. Prior to the issuance of this Decision and Recommended Order, the parties were contacted and both agreed that any affirmative remedy, should one be ordered in the present matter, would be delayed in its execution and/or implementation until such time as Governor Whitmer lifts and/or rescinds the Stay Home, Stay Safe order(s). The parties were also notified that the time period to file exceptions with the Commission regarding this Decision and Recommended Order, as set forth under Rule 176, R 423.176, would not be tolled during the above time period.

b. Return the 280 Blue parking spots to P4.

c. Make whole the employees in the bargaining unit for any monetary losses they have suffered by reason of Respondent's unilateral removal of 280 Blue parking spots from P4, plus interest on these sums at the statutory rate, computed quarterly.

d. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees are customarily posted, for a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Date: April 15, 2020

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION (COMMISSION) ON AN UNFAIR LABOR PRACTICE CHARGE FILED BY THE **UNIVERSITY OF MICHIGAN HOUSE OFFICERS ASSOCIATION**, THE COMMISSION HAS FOUND THE **UNIVERSITY OF MICHIGAN HEALTH SYSTEM** TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL cease and desist from refusing to bargain collectively with the House Officers Association with respect to changes made to the P4 parking structure.

WE WILL take the following affirmative action to effectuate the purposes of the Act:

1. On request, bargain collectively with the Association as the exclusive collective bargaining representative of its employees.

2. Return the 280 Blue parking spots to P4.

3. Make whole the employees in the bargaining unit for any monetary losses they have suffered by reason of Respondent's unilateral removal of 280 Blue parking spots from P4, plus interest on these sums at the statutory rate, computed quarterly.

4. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees are customarily posted, for a period of thirty (30) consecutive days.

UNIVERSITY OF MICHIGAN HEALTH SYSTEM

By: ______________________________________

Title: _____________________________________

This notice must be posted for a period of thirty (30) consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.

Case No. 19-H-1721-CE; Docket Number. 19-017498-MERC