STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:
CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent,

-and-

MERC Case No. C10 L-295

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 312,
Labor Organization- Charging Party,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25
An Interested Party.
_____/

APPEARANCES:

Sydney R. Zack and Joseph P. Martinico for Respondent

Sheff, Washington & Driver, by George B. Washington, for Charging Party

Miller Cohen P.L.C., by Richard G. Mack, Jr. and Robert D. Fetter, for the Interested Party

DECISION AND ORDER

On August 7, 2012, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charge. The ALJ's Decision and Recommended Order was served on the interested parties in accord with Section 16 of the Act.

Charging Party filed exceptions to the ALJ's Decision and Recommended Order on September 20, 2012.

On July 26, 2013, this case was placed on hold due to bankruptcy proceedings involving the Respondent City of Detroit. To our knowledge, those bankruptcy proceedings have since concluded.

On October 6, 2016, the Commission wrote to the Parties:

> It is our understanding that the City exited bankruptcy some time ago. On the advice of the Attorney General's office, the Commission has continued to hold in abeyance this case and all others involving the City. At this time, however, we can see no reason to delay moving forward with this matter.
>
> If any party believes this case has not been resolved by proceedings before the United States Bankruptcy Court in Case No. 13-53846, that party shall notify the Commission in writing and provide supporting documentation within twenty (20) days from the date of this letter.
>
> If this office does not hear from the parties within twenty (20) days from the date of this letter, the Commission will consider the matter closed, and an Order closing the case will be issued.

Neither Charging Party nor Respondent replied to the Commission's October 6, 2016 letter.

A charge that fails to state a claim under the Public Employment Relations Act is subject to dismissal pursuant to an Order to Show Cause why it should not be dismissed. The failure to respond to such an order may, in itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

In the instant case, the parties' failure to respond to the Commission's October 6, 2016 letter warrants dismissal of the charge and an Order closing the case.

ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie Yaw, Commission Member

Dated: February 15, 2017

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

Case No. C10 L-295

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Respondent-Public Employer,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 312,
Charging Party-Labor Organization,

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APPEARANCES:

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Miller Cohen P.L.C., by Richard G. Mack, Jr. and Robert D. Fetter, for the Interested Party

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on December 7, 2010 by the American Federation of State, County and Municipal Employees (AFSCME) Local 312 against the City of Detroit. The charge alleges that Respondent violated PERA by unilaterally changing terms and conditions of employment set forth in an expired supplemental agreement between Local 312 and the City. 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 David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

Findings of Fact:

The following facts are derived from the briefs submitted by the parties on Respondent's motion for summary disposition, as well as the statements made by counsel during oral argument before the undersigned on October 14, 2011. In addition, two prior Commission decisions involving these same parties, *City of Detroit*, 1986 MERC Lab Op 834, affirmed 172 Mich App 761 (1988) and *City of Detroit*, 1988 MERC Lab Op 100, have been relied upon for certain background facts, as was the Fact Finding Report in Case No. D09 A-0062 issued by William E. Long on June 25, 2010. Any disputes of fact have been resolved in favor of the non-moving party, AFSCME Local 312, for purposes of this Decision and Recommended Order on Summary Disposition.

Michigan AFSCME Council 25 represents employees of the City of Detroit in various Local Unions, including Charging Party AFSCME Local 312. Terms and conditions of employment for City employees within AFSCME units are determined by several master collective bargaining agreements negotiated by AFSCME Council 25 on behalf of its Locals. The master agreement covering non-supervisory employees is typically negotiated first, followed by separate master agreements for supervisory employees, emergency operators, seasonal employees and other classifications. After the master agreements have been ratified, the AFSCME Locals then typically negotiate supplemental agreements containing terms and conditions of employment specific to the employees within those individual units.

The rights of the Local Unions to negotiate supplemental collective bargaining agreements is the same for all AFSCME affiliates, except for AFSCME Local 312 and AFSCME Local 214, both of which represent non-supervisory employees of Respondent's Department of Transportation. Pursuant to a memorandum of understanding which has been incorporated into the AFSCME non-supervisory master agreement since as early as 1974, Locals 312 and 214 have the authority to bargain supplemental agreements with terms different from those set forth in the master agreement covering non-supervisory employees of the City. Specifically, this memorandum of understanding states, "Because Local 214 and 312 have had separate contracts over the years, they shall have the right to negotiate supplemental agreements even as regards some areas which might be covered by the master agreement." The most recent supplemental agreement covering AFSCME Local 312 expired in 2001; however, the parties continued to recognize that agreement until the events giving rise to the instant dispute.

The City and AFSCME Council 25 began negotiations on a new master agreement for non-supervisory employees in September of 2008. Respondent's labor relations director, Joseph Martinico, was the chief negotiator for the City throughout the course of the negotiations. Local 312's president, Leamon Wilson, was in attendance at every bargaining session. A key issue during negotiations was the imposition of budget required furlough (BRF) days for City employees. When the parties were unable to reach an agreement on a successor contract, the Union filed a petition for fact finding with MERC on or about August 10, 2009. The fact finder appointed by the Commission, William Long, held 22 hearings between December 21, 2009 and April 24, 2010. Although representatives from many of the various AFSCME local affiliates attended the hearings, there was no testimony taken during the fact finding proceedings from Wilson or any other representative of Local 312.

Long issued his Fact Finding Report on June 25, 2010. The report notes that prior to or during the fact finding process, the parties reached agreement on a number of issues, including maintenance of the memorandum of understanding concerning supplemental agreements covering AFSCME Locals 312 and 214. In total, there were 14 outstanding issues presented to the fact finder during the hearings. With respect to wages, the City proposed the implementation of BRF days in the form of twenty-six days off without pay for each of three consecutive twelve-month periods. The City also proposed that employees earn overtime only after actually working 40 hours in a scheduled week, as opposed to the then-existing practice of including time earned and used for vacation, sick time, holidays, jury duty, funeral leave and time lost resulting from a job connected injury when computing the 40 hour overtime requirement. According to the Fact Finding Report, AFSCME Council 25 proposed to retain the current contract language regarding the calculation of overtime and proposed that all AFSCME members take 13 mandatory BRF days for the duration of the agreement. Ultimately, the fact finder recommended the City's proposal on BRF days, as well as a modified version of the City's proposal on overtime which added holidays and jury duty into the calculation of hours worked.

Following the issuance of the Fact Finding Report, the parties met on several occasions in an attempt to reach agreement on the remaining outstanding issues. In a letter to Michigan AFSCME Council 25 president Albert Garrett dated September 10, 2010, Martinico asserted that the parties were at impasse and that the City intended to implement the various proposals it had made in fact finding upon all of the AFSCME bargaining units, provided that City Council approved the imposed terms. The letter specifically indicated that AFSCME employees would be subject to 26 BRF days for three consecutive twelve month periods and that overtime would not be payable unless employees actually worked more than forty hours within a work week.

On September 27, 2010, Garrett sent a letter to Respondent's Mayor, Dave Bing, asserting that the fact finding proceeding had not pertained to any master agreement other than the contract covering non-supervisory AFSCME employees. Martinico replied to Garrett by letter dated October 13, 2010. Martinico noted that MERC had earlier rejected a motion filed by AFSCME on June 9, 2010 to amend its fact finding petition to exclude all bargaining units other than the non-supervisory unit and asserted that at no point during the nearly two years of negotiations and fact finding had AFSCME made any demand to bargain with respect to any of the other units. According to Martinico, "the City understood that the fact-finding petition and subsequent hearings and the Fact-Finder's Report and Recommendations were applicable to all of the AFSCME bargaining units".

In November of 2010, the City unilaterally implemented the changes described in the Martinico letter, including the imposition of BRF days and the new requirements for calculating overtime. In response, AFSCME Local 312 filed the instant charge on December 7, 2010. In the charge, the Union asserted that the City had violated PERA by imposing upon its members terms and conditions of employment which conflicted with the following provisions of the expired Local 312 supplemental agreement: (1) the requirement that all members of the grievance committee be paid for 40 hours per week; (2) the requirement that employees' days off be scheduled so that they are consecutive; (3) the requirement that new schedules for employees be provided to Local 312 at least seven days prior to the effective date of such changes; and (4) the requirement that unit members receive premium pay for working more than five days in a

workweek.[1] According to the charge, Respondent had taken the position that "the Master now supersedes Local 312's Supplement" an assertion which Local 312 claimed had never been the case previously in the City of Detroit. Michigan AFSCME Council 25 was not named in the charge as a party to this dispute.

While the instant charge was pending, AFSCME Council 25 responded to the City's unilateral implementation of terms and conditions of employment by way of a letter from Council 25's president Garrett to Martinico dated January 19, 2011. The subject of the letter was described by Garrett as "2008-2012 City of Detroit & AFSCME, Council 25 Labor Contract." The letter contained signature lines for both Garrett and Martinico, with the notation "AGREED" typed next to the line reserved for Martinico's signature. There is no dispute that both Garrett and Martinico signed the document. Because this letter is at the center of the instant dispute, it is quoted in full below:

> This letter is intended to clarify AFSCME's position as it relates to bringing closure to the 2008-2012 Labor Agreements between the parties.
>
> As we both know, the City of Detroit and AFSCME have engaged in negotiations over the terms of a collective bargaining agreement for more than two years. The process included mediation and ultimately fact finding before a State appointed Fact Finder. The Fact Finder's report was issued on June 25, 2010 and the parties continued bargaining for more than 60 days following the release of the report, without reaching agreement. Following exhaustion of all of the procedures required by law, the City exercised its right to impose contract terms.
>
> AFSCME understands that the City has lawfully imposed a full agreement on AFSCME and its affiliated units of the City of Detroit. AFSCME understands that this imposition is for the full agreement, including all terms imposed by the City and all other Articles tentatively agreed to by the parties during negotiations, for all five master agreements representing the AFSCME and all units (except the Emergency Services Operations (ESO) unit, as indicated below). AFSCME, and its affiliated City of Detroit unions and locals, accepts the imposed agreements and accepts said terms as final and binding upon the parties and shall withdraw all fact finding petitions filed on behalf of said unions and locals, based upon said understandings.
>
> AFSCME acknowledges that the imposition will be effective for all of its affiliated unions and locals (and their respective bargaining agreements), except for the ESO unit. It is AFSCME's position that ESO's are eligible for arbitration under Act 312 and the City disputes their eligibility at this time. Additionally, the City has informed the union that the application of furlough days for the Crossing Guards (Local 1863), Senior ESOs Telecommunications Operations (TCOs) and Senior TCOs have been waived for reasons of operational necessity. AFSCME's acceptance of the imposed terms is reliant upon these understandings as well.

[1] Charging Party's allegation regarding the posting of work schedules was withdrawn during the oral argument held in this matter.

> Finally, AFSCME agrees to withdraw and/or refrain from filing any/all claims, charges, grievances or other litigation related in any way to the negotiation process or the imposition of contract terms by the City. This does not limit the union's right to grieve the City's interpretation or application of any such terms, or any subsequent unfair labor practice charges or grievances.

On March 4, 2011, AFSCME Council 25 requested in writing that the City resume dues deductions for each of its local affiliates, including Local 312. Local 312 submitted its own request for the resumption of dues deductions on March 15, 2011. In a letter to Local 312 president Leamon Wilson dated March 16, 2011, Martinico indicated that dues deductions would not be reinstated until Local 312 "has agreed to observe and comply with the terms of the Letter of Agreement with AFSCME Council 25, dated January 19, 2011, entitled '2008-2012 City of Detroit & AFSCME Council 25 Labor Contracts.'" Martinico copied Garrett on the March 16, 2011 letter.

On June 9, 2011, Respondent moved to dismiss the instant charge on the basis that AFSCME Local 312 had failed to state a claim upon which relief can be granted under PERA. In its motion, Respondent asserted that AFSCME Council 25, as the certified bargaining agent for all AFSCME-represented employees of the City of Detroit, had the sole authority to enter into binding agreements on behalf of its affiliated unions, including Local 312, and that the Garrett-Martinico letter of January 19, 2011 constituted explicit acceptance by Council 25 of all of the terms and conditions imposed by the City. For that reason, Respondent asserted that it had fulfilled its statutory obligation to bargain and that the changes to terms and conditions of employment applicable to members of AFSCME Local 312 were lawfully implemented.

Upon receipt of the City's motion to dismiss, I forwarded a copy of the unfair labor practice charge to Michigan AFSCME Council 25 and offered that organization the opportunity to intervene in the case as an interested party. Indeed, Council 25 filed a brief in response to the City's motion for summary disposition on July 1, 2011. AFSCME Local 312 filed its own response to the City's motion on July 26, 2011. On August 19, 2011, the City filed a reply to both of the Unions' briefs.

Oral argument was held on the City's motion to dismiss on October 14, 2011. At the hearing, counsel for Respondent asserted that the City was willing to negotiate a new supplemental agreement with AFSCME Local 312, but that its obligation to bargain extends only to terms and conditions of employment unique to that Local. At the conclusion of oral argument, I directed the parties to file supplemental briefs addressing various issues which were raised for the first time at the hearing. The parties each filed their supplemental pleadings on December 12, 2011.

Arguments of the Parties:

Respondent asserts that this charge should be dismissed because AFSCME Council 25, as the exclusive representative for City of Detroit employees within AFSCME bargaining units, had the power to bind all of its affiliated Locals, and that it did so by way of the January 19, 2011 letter from Garrett to the City. According to Respondent, the January 19, 2011 letter, which was signed by both Garrett and the City's labor relations director, constitutes a clear and explicit agreement by the parties to impose the terms set forth in the City's last best offer on all AFSCME bargaining units. The City argues that the only exceptions identified in the letter were the agreement to exclude emergency service operations employees from the terms of the contract and acknowledgment by the parties that BRF days would not apply to four classifications: senior emergency service operators, crossing guards, telecommunications operators and senior telecommunication operators. The City argues that had Council 25 intended to exclude Local 312 or any of its members from the terms of the agreement, it could have done so by expressing that intent in the January 19, 2011 letter. According to Respondent, the Garrett-Martinico letter constitutes a waiver by Council 25 of the right to negotiate further as to the application of BRF days and overtime requirements to the members of Charging Party's unit. In addition, Respondent contends that dismissal is warranted in this matter because Garrett expressly agreed to withdraw any pending charges related to the negotiation or imposition of terms and conditions of employment by the City.

Both Charging Party and Michigan AFSCME Council 25 concede that as part of the resolution of negotiations on a new master agreement, Garrett acquiesced to the imposition of BRF days and changes to overtime requirements for AFSCME members. However, the Unions argue that the question of how such terms and conditions of employment will apply specifically to members of AFSCME Local 312 must be addressed through supplemental negotiations with Charging Party as required by past practice and the memorandum of understanding which has been in existence for over thirty years, and that such negotiations simply never occurred in this matter. Therefore, the Unions contend that the City's unilateral imposition of terms and conditions of employment which conflict with the expired Local 312 supplemental agreement constitutes a violation by Respondent of its duty to bargain in good faith under Section 10(1)(e) of PERA. The Unions also dispute Respondent's contention that the Garrett-Martinico letter contains an agreement to withdraw the instant charge. According to the Unions, the Garrett-Martinico letter's reference to a withdrawal of pending charges relating to "the negotiations" simply cannot apply to these proceedings since the letter did not address in any way a new supplemental agreement for Local 312, and because the only negotiations which had occurred up to and including the date of the oral argument in this matter related solely to the master AFSCME collective bargaining agreements. Accordingly, the Unions argue that the City's motion to dismiss should be denied.

Discussion and Conclusions of Law:

Under Section 15 of the Act, public employers and labor organizations have a duty to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. MCL 423.215(1); *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). A party violates PERA if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless that party has fulfilled its statutory obligation or has been freed from it. *Port Huron Education Ass'n v Port Huron Area School*

District, 452 Mich 309, 317; *Detroit Bd of Education*, 2000 MERC Lab Op 375, 377. A party can fulfill its obligation under Section 15 of PERA by bargaining about a subject and memorializing the resolution of that subject in the collective bargaining agreement. Under such circumstances, the matter is "covered by" the agreement. *Port Huron*, *supra* at 318; *St. Clair County ISD*, 2005 MERC Lab Op 55, 61-62. As the Michigan Supreme Court stated in *Port Huron*, *supra* at 327, "Once the employer has fulfilled its duty to bargain, it has a right to rely on the agreement as the statement of its obligations on any topic 'covered by' the agreement." At the same time, bargaining unit members have a right to rely upon the terms and conditions in the contract and to expect that they will continue unchanged. *Detroit Bd of Ed*, *supra*. See also *Wayne County Community College*, 20 MPER 59 (2007).

At oral argument and in their respective briefs on Respondent's motion for summary disposition, AFSCME Local 312, Michigan AFSCME Council 25 and the City of Detroit have each characterized the correspondence between Respondent's labor relations director Martinico and Council 25 president Garrett as establishing an "imposed" master agreement for employees of the City of Detroit within AFSCME bargaining units.[2] It is hornbook law that a contract is an agreement between two or more parties. By definition, therefore, a contract cannot be unilaterally imposed. *Redford Union Sch Dist*, 23 MPER 32 (2010) at fn 1. An employer may "impose" changes in terms and conditions of employment after the parties have reached a bona fide impasse in negotiations. *Wayne County*, 1988 MERC Lab Op 7. This includes any changes "reasonably comprehended" within the employer's pre-impasse proposals. *Escanaba Area Public Schools*, 1990 MERC Lab Op 887. See also *Taft Broadcasting Co*, 163 NLRB 475 (1967). However, even the existence of a bona fide impasse does not permanently terminate the collective bargaining obligation. Rather, the duty to bargain is merely suspended until circumstances change which break the impasse. *Escanaba Public Schools*, 1990 MERC Lab Op 887, 891; *City of Ishpeming*, 1985 MERC Lab Op 517. The Commission has held that even lawful changes implemented after impasse do not have the status of a collective bargaining agreement and do not act to foreclose bargaining over these issues for a set period, as is the case when the parties voluntarily enter into a collective bargaining agreement with a fixed term. *Escanaba*, *supra*; *Wayne County*, 1988 MERC Lab Op 7, 15 at fn 2.

In the instant case, the parties bargained for almost two years on new master agreements, including a master contract covering non-supervisory AFSCME employees. When those negotiations proved unsuccessful, the City, by way of a letter from Martinico to Garrett dated September 10, 2010, announced that it intended to impose its last best offer upon all of the AFSCME bargaining units. The letter specifically identified several of the terms and conditions of employment which the City was prepared to implement, including a ten percent wage reduction in the form of 26 BRF days off without pay for each of three consecutive twelve month periods and a change in the method by which overtime is calculated. Had nothing further transpired and, assuming arguendo that a lawful impasse had been reached, Respondent would have been entitled under PERA to unilaterally implement those terms and further negotiations would have been suspended. However, the City would have remained obligated to bargain with

[2] Martinico's correspondence to Local 312 of March 16, 2011 more accurately refers to the January 19, 2011 jointly signed Garrett-Martinico letter as a "Letter of Agreement" which is a common form of labor-management contract.

Council 25 over a new collective bargaining agreement, the terms of which would, if agreed upon, then replace the conditions of employment previously imposed by Respondent.

Instead, however, Garrett sent a letter to the City captioned "2008-2012 City of Detroit & AFSCME, Council 25 Labor Contract" in which he expressly accepted all of the terms and conditions of employment that Martinico had previously delineated while, at the same time, Garrett proposed certain narrow modifications thereto. In the letter, Garrett wrote that "AFSCME, and its affiliated City of Detroit unions and locals, accepts the imposed agreements and accepts said terms as final and binding on the parties" with the understanding that certain terms would not apply to ESOs and other classifications. Martinico conveyed his agreement with the modifications proposed by Council 25 by signing the letter on the line provided to him by Council 25, with the notation "AGREED" next to Martinico's signature. I find that the Garrett-Martinico letter established a binding contract or "letter of agreement" between Respondent and Council 25. The fact that this contract was not agreed to at the bargaining table or ratified by AFSCME members does not alter this conclusion or render the contract any less valid or enforceable.[3] For the stability of labor relations, a party must be able to rely on the apparent authority of those representatives entering into settlements on behalf of the principal. *Oakland Univ*, 23 MPER 86 (settlement agreement entered into by the employer's president and vice provost was enforceable despite the fact that it was never adopted by the employer's governing body). See also *City of Detroit*, 24 MPER 11 (2011) (union bound to collective bargaining agreement accepted by its president following rejection of the tentative contract by membership). Here, Garrett, as president of AFSCME Council 25, had apparent authority, on which the City was entitled to rely, to bind AFSCME Council 25 and all of its Local Unions.

Having concluded that the Garrett-Martinico letter constitutes an enforceable letter of agreement, the next question is whether that contract included a waiver by AFSCME Council 25 of Local 312's right to bargain certain terms and conditions which may conflict with those set forth in the master agreement. Although the Commission does not enforce collective bargaining agreements per se, it does have the authority to interpret the terms of a collective bargaining agreement where necessary to determine whether a party has repudiated its collective bargaining obligations. An alleged breach of contract will constitute a violation of PERA only if a repudiation can be demonstrated. See e.g. *City of Detroit (Transp Dept)*, 1984 MERC Lab Op 937, aff'd 150 Mich App 605 (1985); *Jonesville Bd of Ed*, 1980 MERC Lab Op 891, 900-901. A finding of repudiation cannot be based on an insubstantial or isolated breach of contract. *Oakland County Sheriff*, 1983 MERC Lab Op 538, 542. Repudiation exists when 1) the contract breach is substantial, and has a significant impact on the bargaining unit and 2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Comm Sch*, 1984 MERC Lab Op 894, 897. The Commission will find a repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960.

[3] In his letter of September 10, 2010, Martinico suggested that he would seek approval by City Council of the terms and conditions of employment which Respondent had intended to impose. The record does not reflect whether City Council actually approved those terms or whether the Garrett-Martinico letter was ever brought to City Council for approval. Regardless, AFSCME was equally entitled to rely on Martinico's assertions of authority.

In the instant case, the parties dispute the meaning and scope of the Garrett-Martinico letter. The City contends that Council 25 acquiesced to the imposition of BRF days and changes to overtime compensation requirements for the members of Local 312. In support of this contention, the City relies on the acknowledgement by the parties in the Garrett-Martinico letter that "the imposition will be effective for all of its affiliate unions and locals (and their respective bargaining agreements)." In addition, the City argues that the omission of Local 312 from the list of bargaining units or classifications excluded from the full scope of the agreement indicates a clear intention on the part of Council 25 to relinquish any right to bargain further over the terms agreed upon by Garrett and Martinico. The Unions assert that Respondent's interpretation of the Garrett-Martinico letter is erroneous and that the document's reference to "all five master agreements" establishes that Council 25 never intended for the document to constitute a waiver of Local 312's right to bargain a supplemental agreement or negotiate over how such terms and conditions of employment will apply specifically to its members. I find that both the City and the Unions present colorable arguments concerning interpretation of the terms agreed to by Council 25 and Respondent. Were it not for my conclusion, as set forth below, that AFSCME Council 25 expressly waived litigation of all claims relating to this dispute, regardless of forum, I would find that a bona fide dispute exists over the meaning of the Garrett-Martinico letter of agreement which should properly be resolved through grievance arbitration proceedings.

While expressly retaining AFSCME Council 25's right to file "*subsequent* unfair labor practice charges or grievances" and to "grieve the City's interpretation or application of any such terms," Garrett concluded his January 19, 2011 letter to Martinico by agreeing to withdraw "*any/all claims, charges*, grievances or other litigation *related in any way to the negotiation process* or the imposition of contract terms by the City." (Emphasis supplied.) The Unions argue that this provision cannot reasonably be interpreted as an agreement by Council 25 to withdraw the instant charge since the claim in this matter is that the City violated Section 10(1)(e) of PERA by making unilateral changes to the terms and conditions of employment set forth in the expired supplemental agreement covering AFSCME Local 312 and its members. Because the Garrett-Martinico letter does not explicitly reference the Local 312 supplemental agreement, and given the fact there had not yet been in any negotiations on a successor contract for AFSCME Local 312 when Garrett sent the letter to the City, the Unions contend that this case cannot be considered "related in any way to the negotiation process" as that phrase is used by Council 25 and Respondent in the Garrett-Martinico letter. I disagree.

Although AFSCME Council 25 retained the right to bring "subsequent" unfair labor practice charges, this case is clearly not such a dispute. The instant charge was filed by AFSCME Local 312 on December 7, 2010 and had already been pending for more than a month when Garrett and Martinico signed the letter of agreement on January 19, 2011. By the time this case was docketed by MAHS and a Complaint and Notice of Hearing were issued by the undersigned, Respondent had, according to the charge itself, already unilaterally implemented BRF days and changes to the overtime compensation requirements for Local 312, and the City had also expressed the position that the imposed terms and conditions of employment, later accepted by Council 25, superseded Local 312's right to bargain a conflicting supplemental agreement. In agreeing to withdraw all "claims, charges, grievances or other litigation" which "in any way" related to the negotiation process and the imposition of terms of employment by

the City, Council 25 clearly and unambiguously articulated its intent to waive any further litigation over the then-pending allegations set forth by Local 312 in the instant charge. Such an explicit waiver must be enforced in furtherance of the principle of finality of contract, which is a basic principle of collective bargaining. See e.g. *Lakeview Schools*, 1990 MERC Lab Op 56. As the Commission recently expressed in *Oakland Univ*, *supra* at 321:

> To allow one party to renege on a lawful agreement would negate the stability and reliability that is the goal of good faith bargaining. It is central to the stability of labor relations that such agreements be enforced, for if they can be unilaterally revoked, the stability and the possibility of future good faith bargaining is undermined. See, *Kalamazoo Co & Kalamazoo Co Sheriff*, 22 MPER 94 (2009).

See also *Third Judicial Circuit Court*, 25 MPER 45 (2011).

For the above reasons, I conclude that Respondent fulfilled its statutory obligation to bargain in this matter and that the changes to terms and conditions of employment listed by Local 312 in the charge were lawfully implemented. I have carefully considered all other arguments set forth by the parties and conclude that they do not warrant a change in the outcome of this dispute.[4] Having found that there are no material disputes of fact in this matter and that Charging Party AFSCME Local 312 has failed to state a claim for which relief can be granted under PERA, I hereby recommend that the Commission issue the order set forth below.

[4] There is simply no merit to AFSCME Council 25's contention that the doctrine of collateral estoppel warrants judgment in favor of Local 312 in this matter. Although I held in an earlier case that the City of Detroit had violated Section 10(1)(e) of PERA by refusing to negotiate a supplemental agreement with another AFSCME affiliate, Local 542, the facts giving rise to that matter predated the Garrett-Martinico letter and there was no suggestion in that case that Council 25 had ever waived its right to litigate the dispute or relinquished the right of any of its Local Unions to bargain a supplemental agreement with Respondent. See *City of Detroit*, 25 MPER 68 (2012).

Similarly, *City of Detroit*, 1986 MERC Lab Op 834, affirmed 172 Mich App 761 (1988), is distinguishable on its face. In that matter, the Commission found that the City had violated the Act by unilaterally reducing sick days for members of AFSCME Local 312. In so holding, the Commission rejected Respondent's argument that an oral agreement between the City and AFSCME Council 25 justified the change in benefits, finding that there was no evidence in the record establishing the existence of such an agreement. In the instant case, Respondent and Council 25 entered into a written agreement which, as noted, contains an explicit wavier by Council 25 of its right, and that of its Local Unions, to litigate any disputes arising from the negotiation process.

RECOMMENDED ORDER

The unfair labor practice charge filed by AFSCME Local 312 against the City of Detroit in Case No. C10 L-295 is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 7, 2012