STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF LANSING,
Public Employer-Respondent,

Case No. C12 F-116
-and- Docket No. 12-001100-MERC

TEAMSTERS LOCAL 243,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Dykema Gossett, PLLC, by Kiffi Y. Ford, for Respondent

Soldon Law Firm, LLC, by Kyle McCoy, for Charging Party

DECISION AND ORDER

On January 19, 2016, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by either of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: March 16, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Dykema Gossett, PLLC, by Kiffi Y. Ford, for Respondent

Soldon Law Firm, LLC, by Kyle McCoy, for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge originally filed by Teamsters Local 580 against the City of Lansing.[1] Pursuant to Sections 10 and 16 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge for the Michigan Administrative Hearing System (hereafter "MAHS"), acting on behalf of the Michigan Employment Relations Commission (hereafter "the Commission").

The Unfair Labor Practice Charge and Procedural History:

The charge, which was filed on June 22, 2012, alleges that the City violated PERA by announcing its intention to unilaterally implement twenty-six (26) forced furlough days for the 2013 fiscal year, which was scheduled to commence on July 1, 2012. An evidentiary hearing was set for November 19, 2012. On that date, the parties convened in Lansing, Michigan and agreed to adjourn further proceedings in this matter pending the resolution of a related dispute in Ingham County Circuit Court.

On January 7, 2014, Charging Party moved to have this case removed from adjourned without date status and to have an evidentiary hearing scheduled.

[1] Teamsters Local 580 merged with Teamsters Local 243 sometime prior to oral argument in this matter and the case caption has been modified to reflect that change. Charging Party is referred to as Teamsters Local 243 throughout this decision.

I directed the City to file a response addressing whether the case should be placed back on the active docket. By letter dated January 27, 2014, the City indicated that it had no objection to the Union's motion and an evidentiary hearing was subsequently scheduled for May 12, 2014. Prior to that date, the parties notified my office that they had reached a tentative settlement of the dispute. The parties jointly requested that the hearing date be cancelled while the resolution was finalized.

By letter dated October 31, 2014, Charging Party indicated that the settlement had fallen through and once again requested that an immediate hearing date be scheduled. Thereafter, a series of pretrial conferences were held, with both parties ultimately changing legal representatives.[2]

On or about January 15, 2015, Respondent's new attorney submitted, for the first time, a copy of a document entitled, "Memorandum of Understanding" which was entered into by the parties on November 29, 2012. Respondent asserted that the agreement rendered the charge moot by resolving the dispute over furlough days and that the case should, therefore, be summarily dismissed.

I directed the parties to file position statements addressing the legal implications of the November 29, 2012, memorandum of understanding. Charging Party filed its position statement on February 18, 2015, and the City submitted its reply on March 18, 2015. Oral argument was held before the undersigned on July 9, 2015.

Facts:

The following facts are derived from the unfair labor practice charge and the Union's February 18, 2015, position statement, as well as the undisputed factual assertions set forth in the City's position statement and by the representatives of the parties at oral argument.

Teamsters Local 243 represents City of Lansing employees in the Clerical, Technical, Professional bargaining unit and the Supervisory unit. The most recent collective bargaining agreements for the two units covered the period February 1, 2007, through January 21, 2012. In June of 2011, the parties agreed to modify those contracts to include twenty-one (21) unpaid furlough days for members of both bargaining units during the 2012 fiscal year.

On June 15, 2012, the City informed representatives of Teamsters Local 243 that it intended to impose twenty-six (26) furlough days for the 2013 fiscal year, which was to commence on July 1, 2012. The furlough days were scheduled to go into effect starting with the pay period beginning June 23, 2012, and would apply to members of both the Clerical, Technical, Professional and Supervisory bargaining units. The Union filed the instant charge on June 22, 2012, in response to that announcement. Thereafter, the furlough days went into effect.

[2] On or about December 10, 2014, Charging Party filed a document which was initially treated by the undersigned as an amended charge, but which was later assigned its own case number, C15 C-031; Docket No. 14-042345-MERC. That charge was subsequently withdrawn by the Union and the case was formally closed by MAHS on June 10, 2015.

After this case was placed in adjourned without date status, the parties entered into a memorandum of understanding (MOU) setting forth certain terms and conditions of employment for the 2013 fiscal year. The document, which was signed by representatives of the City and both bargaining units on November 29, 2012, provides:

> Whereas the adopted Fiscal Year (FY) 2013 budget calls for cost reduction measures, one of which is a reduction of two hundred eight (208) work hours for the fiscal year July 1, 2012 – June 30, 2013, the City of Lansing (City) and the Teamsters Local 243 Clerical, Technical, Professional and Supervisory Units ("Union") have mutually agreed as follows:
>
> 1. Employees will have health insurance options as per the City's "Summit" Proposal (effective date to be February 1, 2013):
>
>   a. Base Plan (1000/2000 Deductible Plan): BSBS Community Blue PPO Plan 12/20 or PHP Plan DPL155500 will be provided by the City with no premium cost/sharing by the employee; or
>   b. Option 1 (500/1000 Deductible Plan): the employee may elect the BCBS PPO Plan commonly known as "68056-662" or PHP DPL15000 by paying the cost difference above the cost of the corresponding company's Base Plan product.
>
> 2. In the event that health insurance plans changes referenced in paragraph one (1) above are ratified by the Union no later than November 30, 2012, the City will pay each employee a one-thousand dollar ($1,000.00) signing bonus effective the first full pay period following January 1, 2013.
>
> 3. Pursuant to Article 12 of the parties' current collective bargaining agreement, employees' work schedules may be other than eight (8) hours per day. The employee and his/her department head or designee may enter into a mutual agreement which redefines the employees' workday. All parties agree that any such agreement is not being implemented for the purpose of avoiding overtime and that this Memorandum of Understanding does not limit or change the rights of the City under the current collective bargaining agreement to establish work schedules and make work assignments.
>
>   a. Holidays: holidays will be paid at the number of hours normally worked by the employee on the day the holiday is observed.
>   b. Vacation, sick leave, personal leave and any other paid leave time will be paid at the hours normally worked by the employee. Accrual rates will remain as is provided for in the current collective bargaining agreement.
>   c. Personal leave: twenty (20) personal leave hours will be credited to each employee on January 1, 2013.
>   d. Overtime: overtime compensation or compensatory time shall continue to be due for time worked in excess of the normal scheduled workday

(including those that are flexible schedules pursuant to paragraph 3 above) or forty (40) hours in a work week.

4. Final Average Compensation: At the time of retirement if it is discovered that an employee's required furlough hours during FY10, FY11, FY12, FY13 have caused a reduction in the final average compensation, calculation for what otherwise would have been their highest twenty-four (24) continuous months, the employee may utilize available accumulated sick or vacation time from their sick leave or vacation time banks and designate these hours as hours worked (up to the maximum furlough hours taken). If the employee chooses to do so, the employee must submit the requirement [sic] paperwork at the time leave balance payout amounts are calculated. Hours designated will be included in the calculation of final average compensation and paid out as wages.

5. Payment of Wages: Employees may spread the reduction of pay across all pay periods remaining in FY13 so as to lessen the impact on the paycheck.

6. This agreement constitutes the entirety of the agreements between the parties regarding this matter. No other terms were agreed to.

7. This agreement expires June 30, 2013.

There is no dispute that all of the terms of the November 29, 2012, memorandum of understanding have been fully implemented, including the payout by the City of the $1,000.00 cash bonus to bargaining unit members.

Discussion and Conclusions of Law:

Respondent asserts that the unfair labor practice charge alleging a failure to bargain in good faith should be dismissed because, subsequent to its filing, the parties entered into an MOU that resolved all issues relating to the implementation of furlough days for the 2013 fiscal year. For that reason, the City contends that there is no longer any live controversy and that the charge has, therefore, been rendered moot. Although Charging Party concedes that its representatives signed the MOU and that the agreement contains terms relating to the implementation of furlough days, it asserts that the Union never agreed to the furlough days and that there never was any opportunity for meaningful bargaining to have occurred given that change had already been imposed by the time negotiations on the MOU had begun.

"Mootness precludes the adjudication of a claim where the actual controversy no longer exists, such as where 'the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome,'" *Michigan Chiropractic Council v Comm'r of Ins*, 475 Mich 363, 371 n 15 (2006) (opinion of Young, J.), quoting *Los Angeles Co v Davis*, 440 US 625, 631 (1979) (internal citations omitted), or where a subsequent event renders it impossible to fashion a remedy. *In re Contempt of Dudzinski*, 257 Mich App 96, 112 (2003). See also *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 112-113 (2002), clarified in part in *Herald Co,*

Inc v Eastern Michigan Univ Bd of Regents, 475 Mich 463, 470-472 (2006); *People v Cathey*, 261 Mich App 506, 510 (2004); *Mead v Batchlor*, 435 Mich 480, 486 (1990). Mootness is a question which may be raised at any time. *Michigan Chiropractic Council*, *supra*. An otherwise moot issue may be reviewed if it is deemed to be of public significance and is expected to recur while simultaneously likely to evade judicial review. *Wayne County Int Sch Dist*, 1993 MERC Lab Op 317, 324; *Jackson Community Coll*, 1989 MERC Lab Op 913. See also *City of Warren v Detroit*, 261 Mich App 165 (2004); *Whitman v Mercy-Memorial Hosp*, 128 Mich App 155 (1983).

The signing of a collective bargaining agreement does not necessarily render moot a refusal to bargain charge. *Ingham County*, 1998 MERC Lab Op 321; *Cass County Rd Comm*, 1984 MERC Lab Op 306, 308. However, the primary objective of PERA is the prompt effectuation of labor peace, achieved through the existence of a mutually accepted collective bargaining agreement. Therefore, the Commission has not hesitated to dismiss an unfair labor practice charge where the signing of the agreement has substantially removed any effective remedy beyond a cease and desist order and notice posting. *City of Saginaw*, 1984 MERC Lab Op 104. The language of ALJ Shlomo Sperka in *Saginaw Education Ass'n*, 1982 MERC Lab Op 100, 105 (no exceptions) is instructional here. In recommending dismissal of a bargaining charge as moot, Judge Sperka wrote, "[I]f there is no longer a live controversy and the purposes of the Public Employment Relations Act have been effectuated in that a collective bargaining agreement has been reached between the parties, there should be a compelling reason to refuse to recognize the mootness of the charge, even if a violation might have occurred."

The Commission recently considered a similar mootness claim in *Traverse Bay ISD*, 28 MPER 59 (2014). The dispute in *Traverse Bay* arose from the passage of Public Act 152 of 2011, which was enacted to limit public employers' expenditures for employee medical benefit plans. Section 3 of PA 152, MCL 15.563, sets specific dollar limits, or a "hard cap," on the amounts a public employer can pay for employee medical benefit plans, commencing with the medical benefit plan year beginning on or after January 1, 2012. Pursuant to Section 4 of the Act, a public employer may, by a majority vote of its governing body, alternatively elect to comply with the limit on expenditures by paying no more than 80 percent of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials (the "80/20" option). However, neither Section 3 nor 4 apply where the parties are covered by a collective bargaining agreement or other contract that was in effect prior to the effective date of PA 152 if that agreement is inconsistent with the terms of the Act. Under such circumstances, the Act's cost-sharing obligations commence upon the expiration of the collective bargaining agreement or contract. MCL 15.565. Pursuant to MCL 15.569, failure to comply with the requirements of PA 152 subjects a public employer to severe financial penalties.

In *Traverse Bay*, the parties' collective bargaining agreement required the employer to pay a ninety percent share of the premium for its employees' health insurance coverage. Just prior to the expiration of that agreement on June 30, 2012, the employer informed the union and its employees that it was implementing the hard cap option under Section 3 of PA 152, effective July 1, 2012. The union responded by filing an unfair labor practice charge alleging that the employer violated PERA, in part, by breaching its duty to maintain the status quo regarding terms and conditions of employment after expiration of the collective bargaining agreement by

implementing the hard cap option without any meaningful bargaining or reaching a good faith impasse on the issue of health insurance. Subsequent to the filing of the charge, the parties entered into a new collective bargaining agreement, the terms of which were made retroactive to July 1, 2012. The agreement provided that "effective July 1 through December 31, 2012," the employer's total monthly contribution for health insurance and health savings account deductibles would be equal to the employer's "hard cap" amounts under Act 152.

The employer in *Traverse Bay* argued that the unfair labor practice charge had been rendered moot because there was no longer any actual controversy as a result of the parties' agreement on a new contract embodying the insurance premium allocation. Administrative Law Judge Julia Stern agreed that summary disposition was appropriate, finding nothing in the circumstances of the case to warrant further proceedings on the charge. In fact, the ALJ determined that adjudication of the charging party's claims after the parties had resolved the underlying issue in their contract "might do more to rekindle tensions between the parties than relieve them." The Commission affirmed the ALJ's decision dismissing the charge as moot. In so holding, the Commission noted that the scope of a public employer's duty to bargain over the implementation of health insurance premium increases in light of Act 152 had already been decided and, therefore, the case before it did not involve any questions of public policy that would be likely to recur but evade judicial review. See also *Kalamazoo Public Library*, 1994 MERC Lab Op 486 (no exceptions) (charge deemed moot and "literally, an exercise in futility" where parties subsequently negotiated new contract language relating to the subject matter of the dispute); *Clerical-Technical Union of MSU*, 1985 MERC Lab Op 145 (no exceptions) (execution of memorandum of understanding could not preserve dispute as an unfair labor practice); *City of Jackson*, 1985 MERC Lab Op 138 (no exceptions) (charge moot where parties reached a contractual agreement covering the issue of whether temporary employees should be excluded form the unit).

In the instant case, as in *Traverse Bay*, the parties executed an agreement subsequent to the initiation of proceedings with the Commission which relates specifically to the subject matter of the charge. The MOU explicitly recognizes that employees in the bargaining unit will be subject to a reduction of two hundred eight (208) work hours over the course of the period July 1, 2012, to June 30, 2013. In fact, that proposition is set forth in the preamble to the MOU, signifying that the implementation of furlough days was an integral part of the agreement and that all of the other terms which follow were negotiated based upon the premise that the reduction of hours had been accepted as a cost-savings measure. Those terms include an agreement on health insurance plan changes, modified work schedules and, most notably, a method of calculating the impact of the furlough days on final average compensation for Charging Party's members. The MOU also allows employees to spread the reduction of pay across multiple pay periods so as to lesson the impact of the furlough days, and the City agreed to pay bargaining unit members a $1,000.00 bonus as a result of their ratification of the health plan changes set forth within the MOU. It is undisputed that all of the terms of the agreement have been fully implemented, including the payout of the signing bonus. Under such circumstances, I find that Respondent has satisfied its obligation to bargain with the Union and that any order requiring the City to restore the status quo and bargain with the implementation of furlough days would be improper.

Charging Party suggests that the signing of the MOU should not render the instant charge moot because there was an imbalance in power which prevented the possibility of any meaningful bargaining occurring between the parties. This argument overlooks the fact that the Union was under no legal obligation to enter into negotiations with the City concerning the impact of furlough days on its members, nor is there any claim that Charging Party's representatives were compelled to agree to any of the provisions set forth in the MOU. To the contrary, it is clear from the record that the Union willingly agreed to bargain over the implementation of furlough days and other terms and conditions of employment for the 2013 fiscal year. While that resolution may have been different than what the Union was initially seeking by way of the filing of the charge, it is the remedy ultimately deemed acceptable by both parties.

I find that the purposes of PERA were effectuated in that a voluntary agreement was reached between the parties and that the Union has failed to set forth any compelling policy reason to refuse to recognize the mootness of the instant charge. The law is well settled with respect to a public employer's duty to bargain in good faith over a decision to reduce employee work hours. See e.g. *Wayne County*, 28 MPER 35 (2014) (no exceptions) (county violated its bargaining duty by unilaterally imposing "Friday furloughs" which reduced the length of the normal work week from five days per week to four days, and "Holiday furloughs" which took away pre-existing paid holidays); *36th District Court*, 21 MPER 19 (2008) (employer violated PERA by unilaterally changing the number of days in the workweek from five to four); *AFSCME v Wayne County*, 152 Mich App 87 (1986), aff' g *Wayne County (AFSCME)*, 1984 MERC Lab Op 1142 (unilateral implementation of "Friday furlough days" unlawful). See also *Village of Stockbridge*, 25 MPER 31 (2011) (no exceptions); *Genesee County*, 23 MPER 69 (2010) (no exceptions); *Goodrich Schools*, 22 MPER 103 (2009); *Ionia County Rd Comm*, 1984 MERC Lab Op 625, aff' d unpublished Court of Appeals # 78969 (September 24, 1989). This is not an issue which is likely to recur, yet evade judicial review. For these reasons, I conclude that the unfair labor practice charge filed in this matter is moot and that further proceedings are not warranted.

I have carefully considered the other arguments 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

The unfair labor practice charge filed by Teamsters Local 243 against the City of Lansing in Case No. C12 F-112; Docket No. 12-001100-MERC, is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: January 19, 2016