STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF ECORSE,
Public Employer-Respondent,

MERC Case No. C15 I-123
-and- Hearing Docket No. 15-052746

ECORSE FIRE FIGHTERS LOCAL 684, I.A.F.F.,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Logan, Huchla & Wycoff, P.C., by Cassandra L. Booms, for Respondent

Michael L. O'Hearon, for Charging Party

DECISION AND ORDER

On December 17, 2015, Administrative Law Judge Julia C. Stern (ALJ) issued her Decision and Recommended Order on Motion for Summary Disposition and Motion for Partial Summary Disposition in the above matter finding that Respondent violated §10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, when, on August 24, 2015, it refused Charging Party's written demands to meet and bargain for a new collective bargaining agreement. The ALJ found that Respondent's exemption from its duty to bargain under §15(1) of PERA expired five years after the date that an emergency financial manager was appointed to address its financial emergency. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with § 16 of PERA.

Respondent filed exceptions and a brief in support of its exceptions to the ALJ's Decision and Recommended Order on January 6, 2016. Charging Party filed its brief in support of the ALJ's Decision and Recommended Order on January 19, 2016.

In its exceptions, Respondent contends that the ALJ erred in finding that Respondent's five-year exemption under Act 436 from the duty to bargain began on October 26, 2009, the date on which an emergency financial manager was first appointed. Respondent asserts that the five-year period began to run on March 28, 2013, the date on which Act 436 took effect.

In its brief in support of the ALJ's Decision and Recommended Order, Charging Party contends that the ALJ's decision was based upon well-established principles of statutory interpretation and should be affirmed.

We have reviewed the exceptions filed by Respondent and find them to be without merit.

Factual Summary:

We adopt the facts set forth in the ALJ's Decision and Recommended Order and will not repeat them here, except where necessary. Charging Party represents a bargaining unit consisting of all full-time firefighters employed by Respondent. The collective bargaining agreement (CBA) applicable to this bargaining unit expired on July 1, 2014.

On October 26, 2009, Respondent's mayor was notified by then-Governor Jennifer Granholm that, in accordance with the authorizing statute then in effect, the Local Government Fiscal Responsibility Act, 1990 PA 72 (Act 72), MCL 141.1519, a local government financial emergency existed in the City of Ecorse. The governor assigned responsibility for managing the financial emergency to the Local Emergency Financial Assistance Loan Board and directed the Board to appoint an emergency financial manager. Subsequent to this, an emergency financial manager was appointed.

Act 72 did not give an emergency financial manager the right to modify or terminate an existing collective bargaining agreement and did not eliminate the duty of a local government to bargain in good faith with the bargaining representative of its employees under PERA.

On March 16, 2011, the Michigan Legislature enacted the Local Government and School District Fiscal Accountability Act, 2011 PA 4 (Act 4). This statute, which was then signed by Governor Snyder, was given immediate effect by the Legislature. Section 15(4) of Act 4 authorized the governor, upon the finding of a financial emergency, to declare a local government in receivership and to appoint an emergency manager. The statute gave emergency managers certain powers with respect to local governments in receivership, including the power to "reject, modify or terminate one or more terms of an existing collective bargaining agreement." Additionally, §26(3) of Act 4 stated, " Subject to section 30(2), a local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first."

Act 4 repealed Act 72. Nonetheless, it provided, in § 30, that an emergency financial manager appointed under Act 72 would continue to act as an emergency financial manager for the local government under the new law.

In 2012, a petition for referendum of Act 4 was filed with the Michigan Secretary of State and presented to the Board of Canvassers for review pursuant to Article 2, § 9 of the Michigan Constitution and the Michigan Election Law, MCL 168.1. On August 8, 2012, the Board of Canvassers certified the referendum for placement on the ballot for the November 6, 2012 election. Pursuant to MCL 168.477(2), Act 4 ceased to be effective on August 8. On November 6, 2012, Act 4 was repealed by referendum. The repeal by referendum of Act 4 invalidated the legislature's repeal of Act 72 and Act 72 was, therefore, revived. During this entire time, Respondent remained under the oversight of an emergency financial manager.

In December 2012, the legislature passed the Local Financial Stability and Choice Act, 2012 PA 436, (Act 436) MCL 141.1541. This statute, which became effective on March 28, 2013, contains a provision essentially identical to § 26(3) of Act 4.

On March 26, 2013, Respondent's emergency financial manager received a letter from Governor Rick Snyder that confirmed her status as an emergency financial manager. The letter noted that she was "appointed pursuant to Section 18(1) of Public Act 72 of 1990, the Local Government Fiscal Responsibility Act and now maintained under Section 9(10) and Section 31 of Public Act 436 of 2012." A Receivership Transition Advisory Board replaced the emergency financial manager in April 2013.

On March 3, 2015, Charging Party sent Respondent a written demand to bargain for a successor collective bargaining agreement. Charging Party reiterated its demand on August 14, 2015. On August 24, 2015, Respondent sent Charging Party a letter refusing to meet and informing Charging Party of its position that it has no obligation to bargain under §15(1) of PERA because it is in receivership under the Local Financial Stability and Choice Act, 2012 PA 436 (Act 436), MCL 141.1541.

On September 14, 2015, Charging Party filed the instant unfair labor practice charge alleging that Respondent violated §10(1)(a) and (e) of PERA by refusing Charging Party's demands to negotiate a new collective bargaining agreement and by asserting that it had no duty to bargain under §15(1) of PERA. The charge further alleged that Respondent violated §10(1)(a) and (e) by unilaterally altering its method of calculating final average compensation for pension purposes when it calculated the pension of recently-retired bargaining unit member Scott Douglas.

On October 26, 2015, Respondent filed a motion for summary disposition under Rule 423.165(2)(d) alleging that the charge failed to state a claim upon which relief could be granted. On November 23, 2015, Charging Party filed a response in opposition to Respondent's motion for summary disposition and a cross-motion for partial summary disposition, asserting that it was entitled to summary disposition on its allegations relating to Respondent's failure/refusal to bargain. Respondent filed a response in opposition to Charging Party's motion on December 7, 2015.

On December 17, 2015, the ALJ severed the allegation that Respondent unilaterally altered its method of calculating final average compensation for pension purposes from the remainder of the charge. Citing the parties' agreement that there was no material dispute of fact over the bargaining charge, the ALJ granted Charging Party's motion for partial summary disposition on the alleged failure/refusal to bargain by Respondent.

Discussion and Conclusions of Law:

As noted by the ALJ, the sole issue in this dispute is the date on which Respondent's five year "exemption" from its duty to bargain under PERA, as set out in §27(3) of Act 436, begin to run.

Section 27(3) of Act 436, MCL 141.1567, continues the exemption from the duty to bargain for a local government in receivership that was contained in Act 4. That section of Act 436 provides:

> A local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.

Additionally, Sections 30 and 31 of Act 436 make certain actions taken under former statutes 1990 PA 72 and 2011 PA 4 effective under Act 436. Section 30, MCL 141.1570, states:

> (1) All of the following actions that occurred under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72, before the effective date of this act are effective under this act:
>
> > (a) A determination by the state treasurer or superintendent of public instruction pursuant to a preliminary review of the existence of probable financial stress or a serious financial problem in a local government.
> >
> > (b) The appointment of a review team.
> >
> > (c) The findings and conclusions contained in a review team report submitted to the governor.
> >
> > (d) A determination by the governor of a financial emergency in a local government.
> >
> > (e) A confirmation by the governor of a financial emergency in a local government.
>
> (2) An action contained in subsection (1) need not be reenacted or reaffirmed in any manner to be effective under this Act.

Section 31 of Act 436, MCL 141.1567, provides:

> An emergency manager or emergency financial manager appointed and serving under state law immediately prior to the effective date of this act shall continue under this act as an emergency manager for the local government.

Finally, Section 2(q) of Act 436, MCL 141.1542, defines "receivership" as the process under Act 436 by which a financial emergency is addressed through the appointment of an emergency manager:

> "Receivership" means the process under this act by which a financial emergency is addressed through the appointment of an emergency manager. Receivership does not include chapter 9 or any provision under federal bankruptcy law.

Under well-established MERC law, a municipality in receivership pursuant to Act 436 has no duty to bargain under PERA. *Wayne County*, 29 MPER 26 (2015); *City of Detroit*, 27 MPER 6 (2013). The charge in this case alleges that Respondent violated its duty to bargain under §15(1) and §10(1)(e) of PERA by refusing to meet to engage in bargaining for a successor agreement. Respondent, however, contends that it was not obligated to bargain under §15(1) of PERA because it was in receivership under Act 436 at the time.

There is no dispute that, at all times material to this case, Respondent was "in receivership" within the meaning of Act 436.

Charging Party argues that the Act 436 exemption contained in Section 27(3) is straight forward and must be measured from "the date the local government is placed in receivership," October 2009 in this case. Respondent argues that the exemption should begin on March 28, 2013, the effective date of Act 436. Respondent notes that under §27(3) of Act 436, a local government must be "placed in receivership under this act" and that it could not have been placed in receivership under Act 436 until that statute took effect on March 28, 2013.

When interpreting statutory language, the primary goal is to discern and give effect to the legislative intent that may reasonably be inferred from the language of the statute. *Neal v Wilkes*, 470 Mich 661, 665, 685 NW2d 648 (2004). In determining legislative intent, courts must give the words of the statute their common and ordinary meaning. *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146, 644 NW2d 715 (2002). Moreover, a court must "give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." Id. Additionally, when enacting legislation, the Legislature is presumed to have knowledge of existing laws and to have considered the effect of new laws on the existing laws. *Walen v Dep't of Corrections*, 443 Mich 240, 248, 505 NW2d 519 (1993).

Contrary to Respondent's contention, the Commission finds that the language of Act 436, when read as a whole, supports the ALJ's conclusion that Respondent's five-year exemption from the duty to bargain under §15(1) began on the date that an emergency financial manager was first appointed in October 2009. Although Respondent relies heavily on §27's reference to "receivership under this act" and argues that Charging Party's interpretation of the statute would amount to a retroactive application of Act 436, we cannot construe a word or phrase of a statute in isolation. To the contrary, we must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme and avoid an interpretation that would render any part of the statute meaningless. In this case, the Legislature's clear intent, as expressed in §30 and §31 of Act 436, was to make the process for addressing local government financial emergencies continuous despite the replacement of one statute by another. Act 436 was, therefore, intended to function and be interpreted as a successor statute to Act 72 and Act 4. When Governor Granholm determined that a local government financial emergency

existed in the City of Ecorse in October 2009 that action was effective under Act 4 and, later, under Act 436 as though it had been done pursuant to Act 436.

Although Respondent's interpretation of Act 436 implicitly asserts that the statute guarantees a full five year exemption from the duty to bargain, we find that § 27(3) actually sets a maximum exemption of five years by declaring that a local government would not be subject to the duty to bargain "for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, *whichever occurs first*" (emphasis added). Under Respondent's interpretation of the statute, we agree with the ALJ that Respondent would realize an exemption in excess of five years because it was exempt from the duty to bargain under Act 4 prior to the enactment of Act 436, a result contrary to the clear language of §27(3).

Consequently, we conclude that Respondent's five-year exemption from the duty to bargain under §15(1) began on the date that an emergency financial manager was first appointed. Respondent therefore violated §10(1)(a) and (e) of PERA by refusing, on August 24, 2015, Charging Party's demand to meet to bargain a new collective bargaining agreement.

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. We, therefore, affirm the ALJ's decision and adopt the Order recommended by the ALJ.

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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: May 13, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF ECORSE,
Public Employer-Respondent,

Case No. C15 I-123
Docket No. 15-052746-MERC

-and-

ECORSE FIRE FIGHTERS LOCAL 684, I.A.F.F.,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Logan, Huchla & Wycoff, P.C., by Cassandra L. Booms, for Respondent

Michael L. O'Hearon, for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION FOR SUMMARY DISPOSITION AND MOTION FOR PARTIAL SUMMARY DISPOSITION

On September 24, 2015, the Ecorse Fire Fighters Local 684, I.A.F.F., filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the City of Ecorse pursuant to §§10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and MCL 423.216. Pursuant to §16, the charges were assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS).

On November 3, 2015, Respondent filed a motion for summary disposition under Rule 1513(2)(d) of the MAHS Administrative Rules, R 792.11513(2)(d), asserting that the charge failed to state a claim on which relief could be granted. On November 23, 2015, Charging Party filed a response in opposition to Respondent's motion and a cross-motion for partial summary disposition under Rule 1513(2)(f). Charging Party asserts that with respect to the first allegation of its charge there is no material dispute of fact and it is entitled to judgment as a matter of law. Respondent filed a response in opposition to Charging Party's motion on December 7, 2015.

The Unfair Labor Practice Charge:

Charging Party represents a bargaining unit of Respondent's fire fighters. The charge alleges, first, that Respondent has violated §10(1)(a) and (e) of PERA by refusing Charging Party's demands to negotiate a new collective bargaining agreement and by asserting, on August 25, 2015, that it had no duty to bargain with Charging Party under §15(1) of PERA. The charge also alleges that Respondent violated §10(1)(a) and (e) by unilaterally altering its method of calculating final average compensation for pension purposes in calculating the pension of recently-retired unit member Scott Douglas.

Respondent argues that it is entitled to summary disposition on the entire charge because, as a matter of law, it has no statutory duty to bargain. Charging Party seeks summary disposition on the first allegation, but not on the second.

Facts:

The parties agree that there is no material dispute of fact with respect to the first allegation. The parties' collective bargaining agreement expired on July 1, 2014. On March 3, 2015, and again on August 14, 2015, Charging Party demanded in writing that Respondent engage in bargaining for a successor agreement. On August 24, 2015, Respondent sent Charging Party a letter refusing to meet and informing Charging Party of its position that it has no obligation to bargain under §15(1) of PERA because it is in receivership under the Local Financial Stability and Choice Act, 2012 PA 436 (Act 436), MCL 141.1541 et seq.

In 1990, the Legislature adopted the Local Government Fiscal Responsibility Act, 1990 PA 72 (Act 72). That statute allowed for the appointment of an emergency financial manager when the Governor determined that a municipality was experiencing a local government financial emergency. Act 72 did not include any provision addressing the duty of a public employer to bargain under §15 of PERA.

On October 26, 2009, then-Governor Jennifer Granholm issued a letter to Respondent's mayor formally notifying him of her determination, pursuant to §15(2) of Act 72, that a local government financial emergency existed in the City of Ecorse. Granholm assigned responsibility for managing the financial emergency to the Local Emergency Financial Assistance Loan Board as provided by Act 72 and directed it to appoint an emergency financial manager. Shortly thereafter, although on a date not reflected in the parties' pleadings, an emergency financial manager was appointed.

Respondent remained under the oversight of an emergency financial manager in 2011, when Act 72 was replaced and repealed by the Local Government and School District Fiscal Accountability Act, 2011 PA 4 (Act 4). Act 4 substantially altered the powers given to an emergency manager. In addition, §26(3) of Act 4 stated:

> Subject to section 30(2), a local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.

Respondent was still under the oversight of an emergency financial manager when Act 4 was repealed by referendum of the voters at the November 2012 general election, an event which served to revive Act 72 for a short time. Before the end of that year, the Legislature adopted Act 436, which became effective on March 28, 2013.

Sections 30 and 31 make actions taken under the former statutes effective under Act 436. Section 30, MCL 141.1570 states:

> (1) All of the following actions that occurred under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72, before the effective date of this act are effective under this act:
>
> > (a) A determination by the state treasurer or superintendent of public instruction pursuant to a preliminary review of the existence of probable financial stress or a serious financial problem in a local government.
> >
> > (b) The appointment of a review team.
> >
> > (c) The findings and conclusions contained in a review team report submitted to the governor.
> >
> > (d) A determination by the governor of a financial emergency in a local government.
> >
> > (e) A confirmation by the governor of a financial emergency in a local government.
>
> (2) An action contained in subsection (1) need not be reenacted or reaffirmed in any manner to be effective under this Act.

Section 31 of Act 436, MCL 141.1567 reads as follows:

> An emergency manager or emergency financial manager appointed and serving under state law immediately prior to the effective date of this act shall continue under this act as an emergency manager for the local government.

Section 27(3) of Act 436, MCL 141. 1567, continues the exemption from the duty to bargain for local governments in receivership contained in Act 4. It states:

> A local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.

Section 2(q) of Act 436, MCL 141.1542, defines “receivership” as follows:

> "Receivership" means the process under this act by which a financial emergency is addressed through the appointment of an emergency manager. Receivership does not include chapter 9 or any provision under federal bankruptcy law.

On March 26, 2013, Respondent's emergency financial manager received a letter from Governor Rick Snyder confirming her existing status as an emergency financial manager, "having been appointed pursuant to Section 18(1) of Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, and now maintained under Section 9(10) and Section 31 of Public Act 436 of 2012." In April 2013, the emergency financial manager was replaced with a Receivership Transition Advisory Board. Charging Party does not dispute that Respondent remains "in receivership" within the meaning of Act 436.

Discussion and Conclusions of Law:

The sole issue in dispute is the date Respondent's five year "exemption" from its duty to bargain under PERA, as set out in §27(3) of Act 436, began to run.

Charging Party's position is that the five year period began to run on the date Granholm determined that Respondent had a local government financial emergency in 2009. It points to the fact that §27(3) of Act 436 refers to a period of five years "*from the date the local government is placed in receivership*." That is, the five-year exemption is measured from a definite point in time explicitly stated in the statute, the date the local government is placed in receivership. According to Charging Party, Respondent has plainly been "in receivership" since 2009, even though Act 72 did not use that specific phrase. Charging Party argues that §30 of Act 436, which states that the determination or confirmation by the governor of a financial emergency need not be reenacted or reaffirmed in any manner to be effective under Act 436, clearly reflects the Legislature's intent that Act 436 function and be interpreted as a successor statute to Act 72 and Act 4. Therefore, according to Charging Party's reading of the statute, Respondent was "placed in receivership" with the meaning of §27(3) in 2009 and its exemption under that section from the duty to bargain expired on October 27, 2014.

Respondent's position is that the five year period began to run on March 28, 2013, the date that Act 436 took effect. It points to the phrase at the beginning of the §30, "a local government *placed in receivership under this act* is not subject to. . ." Respondent argues that it could not have been placed in receivership under Act 436 until that statute took effect. Therefore, according to Respondent, it was not placed in receivership under Act 436 until that statute's effective date. Respondent maintains that under the plain language of §27(3), its five-year exemption began on March 28, 2013. In response to Charging Party's claim that §30 reflects the Legislature's intent that Act 436 be interpreted as a successor to Act 72 and Act 4, Respondent argues that §30 merely removes the need for reconfirmation of its financial emergency, but does not address the effective date of the determination of the emergency. That is, according to Respondent, without §30 the determination of Respondent's financial emergency would be considered to have never existed. However, because of §30, that determination is given a new effective date of March 28, 2013. According to Respondent's reading of the statute, it will have no duty to bargain with Charging Party until March 2018 or until its receivership is terminated, whichever comes first.

The parties are in agreement as to the principals to be applied in interpreting a statute. The primary goal of judicial interpretation is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins v Marlette Homes, Inc,* 456 Mich 511, 515 (1998). The first criterion in determining intent is the specific language of the statute. *Nastal v Henderson & Assoc Investigations, Inc,* 471 Mich 712, 720, (2005); *In re MCI Telecommunications Complaint,* 460 Mich 396, 411 (1999). The Legislature is presumed to have intended the meaning that it plainly expressed. *Pohutski v Allen Park,* 465 Mich 675, 683 (2002). If the plain and ordinary meaning of the language is clear, judicial construction is not necessary or permitted and the statute must be enforced as written. *Sun Valley Food Co v Ward,* 460 Mich 230, 236 (1999); *Robertson v DaimlerChrysler Corp,* 465 Mich 732, 748, (2002).

However, in discerning legislative intent, a court must "give effect to every word, phrase, and clause in a statute...." *State Farm Fire & Casualty Co v Old Republic Ins. Co.,* 466 Mich 142, 146, (2002). A court cannot construe a word or phrase of a statute in isolation but must consider "both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.' " *Sun Valley, supra* at 237, quoting *Bailey v United States,* 516 US 137, 145 (1995); *Shinholster v Annapolis Hosp,* 471 Mich. 540, 549, (2004).

Act 436 defines "receivership" as "the process by which a financial emergency is addressed through the appointment of an emergency manager." In this case, Respondent has had an emergency manager, or emergency financial manager, continuously since Governor Granholm determined in 2009 that Respondent had a local financial emergency and an emergency financial manager was appointed to address that emergency. When Act 436 took effect, the individual previously appointed as Respondent's emergency financial manager became its emergency manager under Act 436 by operation of §31 of that statute. Accordingly, Respondent's status as a local government in receivership continued without the need for separate action by the Legislature or the Governor. I find that under a plain reading of Act 436's provisions, the date that Respondent was placed in receivership under that act was the date that an emergency manager or emergency financial manager was first appointed to address its financial emergency. Respondent's interpretation, I conclude, unreasonably focuses on a single phrase in §27(3), "under this act." Not only is this phrase ambiguous in the context of §27(3), but Respondent has, I find, disregarded the Legislature's clear intent, as expressed in §30 and §31, to make the process for addressing local government financial emergencies continuous despite the replacement of one statute by another. I find that Respondent's five-year exemption under Act 436 from the duty to bargain under PERA began on the date that an emergency manager or emergency financial manager was first appointed.

Respondent notes in its motion that Act 72, unlike Act 4 and Act 436, did not exempt local governments in financial distress from their duty to bargain. It does not, however, make this difference a part of its argument. Because Act 72 did not contain an exemption from the duty to bargain, and an emergency financial manager was first appointed to address Respondent's financial emergency when Act 72 was in effect, Respondent was not exempt from bargaining for a full five years. I note, however, that Act 4 did include the exemption, in §26(3), and that Respondent was in receivership during the life of this statute. Under Respondent's interpretation of Act 436, Respondent and other similarly situated local governments could potentially be exempt from a duty to bargain for as many as seven years.

This result would, I conclude, be contrary to the Legislature's clearly expressed intent that the exemption from the duty to bargain not last longer than five years.

In accord with the discussion and conclusions of law set forth above, I conclude that Respondent's exemption from its duty to bargain under §15(1) of PERA expired five years after the date that an emergency financial manager was appointed to address its financial emergency. I find, therefore, that Respondent violated §10(1)(a) and (e) of PERA by refusing, on August 24, 2015, Charging Party's demand to meet to bargain a new collective bargaining agreement.

The charge also alleges that Respondent violated its duty to bargain by unilaterally altering its method of calculating final average compensation for pension purposes. Respondent denies that it altered its existing practice or method of calculating final average compensation, and Charging Party has not sought summary disposition of this allegation. I conclude that in order to promote an expeditious and just determination of the issues presented, this allegation should be severed from the charge so that Respondent may, if it chooses, immediately file exceptions to my ruling. Therefore, pursuant to Rule 1511 of the MAHS Administrative Rules, R 792. 11511, I order that this allegation be severed from Case No. C15 I-123/15-052746-MERC. The allegation will be given a separate case and docket number and, at Charging Party's request, either scheduled for hearing or held in abeyance pending a Commission decision on the instant charge.

I recommend that the Commission issue the following order in this case.

RECOMMENDED ORDER

Respondent City of Ecorse, its officers and agents, are hereby ordered to:

1. Cease and desist from refusing to bargain in good faith with the Charging Party Ecorse Fire Fighters Local 684, I.A.F.F. by refusing Charging Party's demands to negotiate a new collective bargaining agreement and by asserting, on August 25, 2015, that it had no duty to bargain with Charging Party under §15(1) of PERA.

2. Acknowledge its obligation under §15(1) of PERA to bargain with Charging Party over the wages, hours, and terms and conditions of employment of members of Charging Party's bargaining unit and, upon demand, meet with Charging Party for purposes of negotiating a new collective bargaining agreement.

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: December 17, 2015