

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

-and-

MERC Case No. C12 F-125
Hearing Docket No. 12-001181

COALITION OF THE CITY OF DETROIT UNIONS
and AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 25,
Labor Organizations-Charging Parties.

APPEARANCES:

Butzel Long, by Craig S. Schwartz, for Respondent

Miller Cohen, PLC, by Richard G. Mack, Jr., and Ada Verloren, for Charging Parties

DECISION AND ORDER

On July 2, 2012, Charging Parties Coalition of the City of Detroit Unions and the American Federation of State, County and Municipal Employees (AFSCME), Council 25 filed a charge in this matter against Respondent, the City of Detroit. The matter was assigned to Administrative Law (ALJ) David M. Peltz for hearing. ALJ Peltz held a hearing on August 15, 2012 and issued his Decision and Recommended Order in this matter on August 30, 2012.

Charging Party filed exceptions to the ALJ's Decision and Recommended Order on September 24, 2012. Respondent filed a brief in support of the ALJ's Decision and Recommended Order on October 3, 2012.

On July 25, 2013, before the Commission issued a decision in this case, United States Bankruptcy Judge Stephen Rhodes issued an order staying proceedings against the City before all domestic governmental units including the Michigan Employment Relations Commission.

On October 5, 2016, we sent a letter to the parties indicating that we understood that the City of Detroit exited bankruptcy some time ago, and that this matter may have been resolved in the bankruptcy proceedings. We, therefore, notified the parties that if either party believed that

this matter was not resolved by the bankruptcy proceedings, that party must notify the Commission in writing and provide supporting documentation justifying review of the matter by the Commission. We informed the parties that if such notice and supporting documentation was not received by the Commission by the close of business on October 25, 2016, the Commission would consider this matter closed. Neither party provided notice that the matter had not been resolved by the bankruptcy proceedings by October 25. However, on January 19, 2017, we received a letter from Charging Party withdrawing this case pursuant to a Bankruptcy Court order dated January 9, 2017. Accordingly, we issue the following order.

ORDER

No further proceedings will be held in this case. This matter is closed.

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:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C12 F-125
Docket No. 12-001181-MERC

-and-

COALITION OF THE CITY OF DETROIT UNIONS
and AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 25,
Charging Parties-Labor Organizations.

APPEARANCES:

Butzel Long, by Craig S. Schwartz, for Respondent

Miller Cohen, PLC, by Richard G. Mack, Jr., for Charging Parties

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the pleadings, briefs and the transcript of the oral argument which was held on August 15, 2012, I make the following findings of fact and conclusions of law.

This case arises from an unfair labor practice charge filed on July 2, 2012, by the Coalition of Detroit Unions, a group comprised of thirty-three labor organizations representing employees of the City of Detroit, and by the American Federation of State, County and Municipal Employees (AFSCME), Council 25. The charge alleges that the City violated PERA when, on or about July 1, 2012, it unilaterally implemented new terms and conditions of employment for City employees, and by refusing to provide information to the Unions concerning those changes. Respondent contends that its actions were authorized by Section 14a(10), MCL 141.1514a(1) of the Local Government & School District Fiscal Accountability Act, Public Act 4 of 2011, and by a recent amendment to Section 15 of PERA.¹

¹ This matter was previously consolidated with Case No. C12 D-065; Docket No. 12-000577, in which the same Unions assert that the City violated its duty to bargain in good faith under PERA by failing or refusing to submit tentative agreements to Respondent's City Council for ratification. Additional proceedings are still pending in that matter.

After the charge was filed, the parties notified the undersigned that they were in agreement that there were no material questions of fact in dispute and that the matter was, therefore, ripe for a decision on summary disposition. Specifically, both parties agreed that the City implemented changes to terms and conditions of employment for members of Charging Parties' bargaining units in July of 2012 and that Respondent did so without first bargaining with the Unions over those changes. Accordingly, a briefing schedule was established and oral argument was scheduled for August 15, 2012. The Unions and the City each filed their competing motions for summary disposition and briefs in support thereof on July 19, 2012. The City filed a reply to Charging Parties' motion on July 19, 2012. On July 30, 2012, the Unions filed what appears to have been intended to be a reply to the City's motion, but which was actually entitled, "Brief in Support of Motion for Partial Summary Disposition."

On August 8, 2012, the State Board of Canvassers voted to certify a referendum for the November ballot which, if passed, would repeal PA 4. Pursuant to Const 1963, art 2, Section 9 and MCL 168.477(2), the Board's action had the effect of suspending PA 4 pending the results of the upcoming election. As a result of the suspension of PA 4, the City acknowledges that Section 15(1) of PERA once again applies and that Respondent has a duty to negotiate in good faith with the Unions over terms and conditions of employment for members of Charging Parties' bargaining units. Nevertheless, both parties indicated that they wished to proceed with oral argument in this matter in order to clarify whether the City acted lawfully in implementing new terms and conditions of employment in July of 2012 while PA 4 was in effect.

On August 15, 2012, the parties appeared for oral argument before the undersigned on the issues set forth in Case No. C12 F-125. After considering the extensive arguments made by counsel for each party on the record, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition was appropriate pursuant to Commission Rule R 423.165(1). See also *Detroit Pub Sch*, 22 MPER 19 (2009) and *Oakland Co and Oakland Co Sheriff v Oakland Co Deputy Sheriffs Ass'n*, 282 Mich App 266 (2009). Accordingly, I rendered a decision from the bench, finding that Charging Parties had failed to state a valid claim under PERA. The substantive portion of my findings and conclusions of law are set forth below:

The Charging Party [Unions] contend that the City breached its duty to bargain in good faith by unilaterally implementing terms and conditions of employment upon members of Charging Party Unions, and by failing or refusing to provide information to the Unions concerning the changes. I'll note before we examine the bargaining obligation generally that at the start of today's argument, Charging Party argued passionately that the Commission should somehow -- and I'm going to paraphrase Mr. Mack's argument here -- guard against encroachment of bargaining rights by the Legislature. And at the conclusion of the argument, Mr. Mack finished by discussing how significant these changes imposed by the City were and how they affect the terms and conditions of [employment for] City employees. Both of those arguments certainly indicate the Unions' position and demonstrate their concern for the ramifications of what has occurred here, but ultimately neither of those considerations are relevant to this proceeding. The Commission has no authority, to the extent that the Legislature has made a

decision to, as the Unions put it, “encroach” bargaining rights, the Commission has no authority to question that decision or to attempt to limit the Legislature's actions. To the extent the Charging Parties have an issue with what the Legislature did, it's up to the Unions to take those issues up with the Legislature itself.

Now, as I indicated, this case concerns the duty to bargain. And as we know, under Section 15 of the Act, PERA, 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 considered mandatory subjects of bargaining. And I will cite the case that Mr. Mack referenced several times, *Detroit Police Officers Ass'n v City of Detroit*, 391 Mich 44 of 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 Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309; *Detroit Bd of Ed*, 2000 MERC Lab Op, Lab Op, 375. The duty to provide information under PERA is part and parcel of the duty to bargain in good faith, and the Commission has long held that in order to satisfy its bargaining obligation, an employer must timely supply requested information to permit the Union to engage in collective bargaining and to police the administration of the contract. See for example *Wayne County*, 1997 MERC Lab Op 679.

Despite that general obligation to bargain, Respondent contends that its actions in this matter were authorized by the financial security agreement or “consent agreement” which the City entered into with the State of Michigan on April 4, 2012 pursuant to Section 14a(10), MCL 141.1514a(1) of PA 4, and also by Section 15(9) of PERA. [The City alleges that under both Section 14a(10) of PA 4 and Section 15(9) of PERA, its obligation to bargain under Section 15(1) of PERA was suspended beginning thirty days after the consent agreement was signed.]

Section 15(1) of PERA provides:

The public employer shall bargain collectively with the representatives of its employees as described in Section 11, and may make and enter into collective bargaining agreements with those representatives, except as otherwise provided in this section. For purposes of this section, to bargain collectively is to perform a mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached, if requested by either party, but this obligation does not compel either party to agree to a proposal or to make a concession.

Effective March 16 of 2011, Public Act 4 of 2011 was enacted by the Legislature for the stated purpose of placing financial checks and balances on public employers in a state of financial stress or emergency. As part of [that] statutory scheme, PA 4 authorizes the state treasurer to enter into a consent agreement with a local government in a state of financial stress or emergency for a period necessary to achieve the goals and objectives of the agreement. Section 14a of PA 4 suspends Section 15(1) of PERA for employers subject to a consent agreement.

Section 14a of PA 4, the section relied upon by Respondent in the instant case, states in pertinent part:

(1) A consent agreement as provided in Section 13(1)(c) may require a continuing operations plan or recovery plan if required by the state financial authority.

* * *

(9) Except as otherwise provided in this subsection, the consent agreement may include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government by the state treasurer of 1 or more of the powers prescribed for emergency managers in section 19 for such periods and upon such terms and conditions as the state treasurer considers necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement. However, the consent agreement shall not include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government of the powers prescribed for emergency managers in section 19(1)(k).

Subsection (10), which is the most pertinent section of PA 4 for purpose of this dispute, reads:

Unless the state treasurer determines otherwise, beginning 30 days after the date a local government enters into a consent agreement under this act, that local government is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for the remaining term of the consent agreement.

As [the Employer] has emphasized, at the same time that the Legislature enacted PA 4, it also amended Section 15 of PERA to add Section 9. That section provides:

A unit of local government that enters into a consent agreement under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, is not subject to subsection (1) for the term of the consent agreement, as provided in the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.

As previously noted, Respondent entered into a consent agreement with the state treasurer pursuant to PA 4 on April 4 of 2012. Section 4.4 of that [consent] agreement states:

Duty to Bargain. It is the State Treasurer's determination pursuant to MCL 141.15144a(10) that beginning 30 days after the effective date of this agreement, the City is not subject to Sec. 15(1) of Act 336, Public Acts of Michigan, 1947, as amended, MCL 423.215, for the remaining term of this agreement.

The City contends that as a result of the passage of PA 4 and the amendment to Section 15 of PERA and Section 4.4 of the consent agreement, it no longer has any duty to bargain with Charging Parties for the duration of the consent agreement as a matter of law. Therefore, the City asserts that it had no duty under PERA to provide information to Charging Parties or to negotiate with the Unions over the implementation of new or changed terms and conditions of employment.

In response, Charging Parties contend that despite the elimination of Section 15(1) of PERA, Respondent remained obligated to bargain with its Unions. According to Charging Parties, . . . Section 15(1) of PERA is only one of several provisions of the Act from which the duty to bargain is derived. [T]he Unions allege that any of the alternative provisions serve to require some form of collective bargaining by the City. In support of this contention, the Unions have cited Section 9 of PERA, which provides:

It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

Section 10(1) [of PERA], also relied upon by Charging Parties in their brief and today during oral argument, makes it unlawful for a public employer to "refuse to bargain collectively with representatives of its public employees subject to the provisions of Section 11".

Section 11 of PERA, [also] relied upon by Charging Parties, provides:

Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer: Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the bargaining representative has been given opportunity to be present at such adjustment.

Finally, the Unions rely on Section 16 of PERA, which provides remedies and procedures for unfair labor practices by public employers or labor organizations under Section 10 of the Act. Based upon [the] above sections, the Unions argue that the elimination of Section 15(1), and I'm quoting now from the Unions' brief, is "inconsequential" with respect to remedying the City's failure to bargain.

The problem with Charging Parties' argument is that it essentially makes no attempt to explain what the Legislature's intent was in enacting Section 14a of PA 4 and [in] amending Section 15 of PERA. If the Commission were to accept the Unions' argument and find that a duty to bargain still exists for public employers subject to a consent agreement, it would render the statutory language suspending Section 15(1) of PERA essentially superfluous, thereby violating rules of construction that require that a court should, as far as possible, give effect to every phrase, clause and word in a statute, and avoid rendering any part of a statute nugatory. *Hoste v Shanty Creek Management, Inc*, 459 Mich 561 (1999). Another fundamental canon of statutory construction is that statutes should be construed so as to prevent or resolve injustice or prejudice to the public interest. This is *McCauley v General Motors Corp*, 457 Mich 513 (1998), and *Webster v Rotary Electric Steel Co*, 321 Mich 526 (1948). To assert, as the Unions do here, that the Legislature explicitly suspended the duty to bargain in two separate statutes, yet nevertheless intended that the duty to bargain would continue unabated, would be just such an absurd result.

In an effort to give some meaning to the statutory language, Charging Parties suggest that there exists some lesser or diminished bargaining obligation under PA 4, perhaps some duty to "meet and confer", something short of an obligation to bargain and execute a full written agreement. However, there is nothing in the statute which supports such an interpretation. The Legislature clearly knew how to set forth, for example, an obligation to meet and confer. You

can look to Section 19(1)(k) of PA 4, which discusses an emergency manager's power to reject, modify or terminate existing agreements, which may only be done, according to the statute, "after meeting and conferring with the appropriate bargaining representative". Had the Legislature intended to impose a meet and confer requirement upon a public employer subject to a consent agreement, it could have used the same or similar language to do so. This, in my opinion, establishes that the statutory interpretation of PA 4 and the amendment to PERA offered by the Unions in this case is erroneous.

[In attempting to establish that a duty to bargain survives the enactment of Public Act 4 of 2011 and the amendment to Section 15, Charging Parties cite other recent amendments to PERA which created a number of "prohibited subjects of bargaining." For example, Section 15(3)(g) makes the decision by a public school employer of whether to use volunteers in providing school services a prohibited subject of bargaining. The term "prohibited" subject of bargaining is synonymous with an "illegal" subject of bargaining; employers and unions are not explicitly forbidden from discussing an illegal or prohibited subject, but a contract provision embodying such a subject is unenforceable. *Detroit Police Officers Ass'n*, *supra* at 54-55 n 6; *Michigan State AFL-CIO v MERC*, 212 Mich App 472, 487 n 9 (1995). See also *Grand Haven Pub Sch*, 19 MPER 82 (2006); *Parchment Sch Dist*, 2000 MERC Lab Op 110 (no exceptions). Charging Parties contend that the creation of this list of prohibited subjects of bargaining shows that the when the Legislature intends for bargaining to completely cease, it knows how to do so explicitly.]

I think that list of prohibited subjects of bargaining actually works against the Unions' argument here, because the key point is [that the Legislature] included that list of prohibited subjects of bargaining within Section 15 itself, not in some other section [of PERA]. The Legislature recognized that Section 15 [is] the source of the duty to bargain and, therefore, when they were placing limitations on that duty, they did so right within Section 15 itself.

The Unions have also argued today that we should . . . consider that what the Legislature did with PA 4 is to [essentially] create [another class of] permissive or prohibited subjects of bargaining. I don't believe that's what's occurred here. When we speak [of] prohibited subjects of bargaining, we're talking about what topics or items can be bargained, or what items can be bargained to the point of an enforceable agreement. Here, the Legislature didn't use that language because . . . they didn't want any bargaining to occur whatsoever unless the state treasurer agreed. So there would have been no point in using the similar language that they did with respect to prohibited subjects of bargaining.

Again, I think Section 15(1) of PERA is clearly the [sole] source of a public employer's obligation to bargain under the Act. The very first sentence of Section 15(1) states, and I'll repeat it: "A public employer shall bargain

collectively with representatives of its employees as described in Section 11, and may make and enter into collective bargaining agreements with those representatives." Other sections of PERA reference the bargaining obligation, as the Unions have pointed out, but none of these provisions can be said to establish such [a] duty.

For example, Section 10(1)(e) makes it an unfair labor practice to refuse to bargain in good faith. Thus, the purpose of that section is to establish a cause of action for failing to comply with the bargaining obligations set forth elsewhere in the Act. Section 10(1)(e) is necessary because without it, MERC would have no jurisdiction to remedy a breach of the duty to bargain in good faith. [Contrast Section 10(1)(e) of PERA with Section 17(1)] which provides that education associations "shall not veto", "shall not require the bargaining unit to obtain ratification", and "shall not in any other way prohibit or prevent the bargaining unit from entering into, ratifying, or executing a collective bargaining agreement." Although that provision prohibits unions from taking certain actions, it is not included within the list of unfair labor practices contained within Section 10(1) of the Act and, therefore, MERC has no jurisdiction or authority to remedy a violation of Section 17(1). See *Redford Union School District*, 23 MPER 32 (2010). So Section 10(1)(e) was necessary in order to give MERC jurisdiction to enforce the duty to bargain [which is itself set forth in Section 15(1) of the Act].

Section 9, relied upon by the Unions in this case, merely gives public employees the right to organize and to collectively bargain, it doesn't mandate good-faith bargaining on the part of public employers. Section 11 of the Act recognizes that representatives designated or selected for purposes of collective bargaining by the majority of the public employees shall be the exclusive representatives of the public employees, and requires the public employer to recognize the labor organizations as such, but reference to bargaining is dependent upon or derivative of the obligations set forth in Section 15(1). And finally, Section 16 of PERA provides remedies and procedures for unfair labor practices by public employers or labor organizations under Section 10. It's necessary for enforcement of the other provisions, namely, Section 10(1) in this case.

So these other provisions all derive from, when they make reference to the duty to bargain, they derive from the obligations set forth in Section 15(1) of the Act, they are not the source of that obligation. Based on the statutory language itself, I find that by enacting PA 4 and amending Section 15 of PERA, the Legislature intended to relieve public employers found to be in a state of financial stress or emergency and subject to a consent agreement from the obligation to collectively bargain.

The legislative history of PA 4 overwhelmingly supports this conclusion. We heard from Mr. Mack that we should not give any credence to legislative or bill analysis, and while the Supreme Court has . . . expressed a reluctance to rely

on bill analyses, the Courts nonetheless have held that legislative bill analyses do have probative value. . . in certain limited circumstances. *Kelly Services, Inc v Treasury Dept*, 296 Mich App 306 (2012); *Kinder Morgan Mich, LLC, v City of Jackson*, 277 Mich App 159 (2007). And so we examine the legislative history here, or I'm examining it for confirmation of my textual analysis, but not to derive the legislative intent solely from that analysis.

If you look at the legislative history, Senate Fiscal Analysis of House Bill 4214 or Senate Bill S14 of March 18, 2011, states very clearly that the legislation would "provide that a local government that entered into a consent agreement would not be subject to collective bargaining requirements during the term of the agreement, unless the state treasurer determined otherwise." The analysis goes on to discuss what it refers to as the "collective bargaining exemption", stating: "Beginning 20 days after a local government entered into a consent agreement, the local government would not be subject to Section 15(1) of the public employment relations Act for the remaining term of the agreement, unless the State Treasurer determined otherwise." [And the analysis] notes [exactly what] Section 15(1) . . . does require, which is that a public employer bargain collectively.

In discussing the impact of Senate Bill 158, the legislative analysis states [that] the "suspension of the collective bargaining process itself during the period of a consent agreement could result in some administrative savings. Those would result from the elimination of resources devoted to the bargaining process, for the duration of the consent agreement." Finally, under "Fiscal Impact", the legislative analysis notes [that] "the requirement to collectively bargain would not be in effect for a local government entering into a consent agreement."

Similarly, the House Fiscal Analysis from April 6, 2011, [which] I believe is the last analysis, states that "a unit of local government that entered into a consent agreement under the Local Government School District Fiscal Accountability Act would not be subject to the Public Employment Relations Act's requirement to collectively bargain, throughout the term of the consent agreement."

So again, I think . . . the [legislative] analysis provides confirmation of my earlier conclusion [which was] based on the text of the statute itself. I would conclude that pursuant to 14a of PA 4, Section 15(9) of PERA and Section 4.4 of the consent agreement between the City and the state treasurer, that Respondent was under no obligation to bargain with the Charging Parties, and that the City did not act unlawfully in unilaterally implementing terms and conditions of employment to Charging Parties' members or in failing or refusing to provide information to the Unions.

I do want to address several other arguments that Charging Parties made in the briefs and here today. I'll note that I reject Charging Parties' reliance upon

federal law to establish a continuing duty to bargain. Charging Parties assert that the removal of Section 15(1) of PERA makes the Act analogous to federal labor law as it existed prior to the 1947 Taft-Hartley amendments to the National Labor Relations Act (NLRA) of 1935 or the “Wagner Act,” as it was commonly referred to at the time. Those amendments included the addition of Section 8(d) to what is now known as the National Labor Relations Act. Section 8(d) is, according to the Unions, “virtually identical” to Section 15(1) of PERA.

From 1935, when the NLRA was enacted, until 1947, there was no Section 8(d) in the NLRA, yet as Charging Parties point out, the Courts nevertheless found a duty to bargain under federal law. The cases relied upon by Charging Parties were premised not on other provisions of the [NLRA], but upon the notion that the duty to bargain was a “fundamental right.” Some of the cases cited by Charging Parties in their brief [include] *NLRB v Jones and Steel Corp*, 301 U S 1 (1937), and *Amalgamated Utility Workers v Consolidated Edison Co*, 209 US 261 (1940). In the latter of which . . . the Court indicated that the right to collective bargaining is so fundamental that it cannot be said to have been created by the Wagner Act.

Now, as an aside, the concept of collective bargaining as a fundamental right may be the basis for a valid attack on PA 4 under federal or perhaps even international law; however, this is an administrative proceeding under a specific State statute, and the scope of this hearing is limited to whether Respondent actually violated PERA. The Commission has no jurisdiction to recognize or enforce rights on the basis that they are “fundamental.”

Now, based on the pre-Taft-Hartley decisions, the Unions assert . . . that [with the] removal of Section 15(1) from PERA . . . the obligations of a public employer subject to a consent agreement are the same as those of employers under federal law prior to 1947 and, therefore, the Unions contend, there remains a duty to bargain for public employers in Michigan subject to a consent agreement. I think the Unions' argument here is very creative, and I certainly give credit to Charging Parties' counsel for thinking outside the box here, but I'm ultimately not persuaded the federal law has any relevance here.

First, it's well established that while federal precedent is often given great weight in interpreting PERA, at least where PERA's language is identical to that of the NLRA, the Commission is not bound to follow its every turn and twist. *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530. You can't look at PERA as it currently exists and compare the Act to the NLRA during the pre-Taft-Hartley era. This is not a situation where Section 15 never existed. The bargaining obligation set forth in Section 15(1) has been part of PERA since 1965, well after the enactment of Taft-Hartley. The obligation of a public employer in Michigan to collectively bargain is an existing right, and in enacting PA 4 and amending PERA, the Legislature expressed its intent to take away that obligation in certain very specific situations and for a limited time period.

More importantly, I think, the language of Section 15 is different from that of Section 8(d) of the NLRA in one very critical respect. Although federal courts recognized the existence of a duty to bargain prior to 1947, the Wagner Act did not define that duty. In enacting Section 8(d), Congress defined what it means to collectively bargain. Section 8(d) states:

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession

What we now refer to as PERA was originally enacted in 1947 as the Hutchinson Act. The 1965 amendments to the Act contain various provisions conferring bargaining rights and obligations on public employers, their employees and labor organizations, including Section 15(1). In enacting Section 15(1), the Michigan Legislature adopted the federal definition of the duty to bargain as set forth in Section 8(d) of the National Labor Relations Act. However, the Legislature did not merely copy the language of Section 8(d) verbatim, rather the Legislature added an additional sentence to the beginning of that section. Section 15(1) begins, as I previously noted: “A public employer shall bargain collectively with the representatives of its employees as described in section 11 and may make and enter into collective bargaining agreements with those representatives.” Thus Section 15(1) does not merely define what it means to collectively bargain, as Section 8(d) of the NLRA does; rather, the provision explicitly confers upon public employers within the State the obligation to collectively bargain. In removing that language for public employers subject to a consent agreement, the Legislature explicitly suspended that collective bargaining obligation.

I also reject the Charging Parties' reliance on the City charter to establish a bargaining duty on the part of Respondent. In their motion for . . . summary disposition, the Unions ask that the Commission construe the current state labor law in harmony with the City charter which, according to the Unions, recognizes the City's duty to bargain with the representatives of its employees. The Commission, of course, has no jurisdiction to enforce the City charter. Moreover, the Michigan Supreme Court has consistently construed PERA as the dominant law regarding public employee labor relations and has held that the bargaining obligation under PERA prevails over conflicting legislation, charters, ordinances or resolutions. See *IAFF Local 1383 v City of Warren*, 411 Mich 642 (1981).

[A]s previously stated, in addition to enacting PA 4, the Legislature amended PERA by adding Section 15(9), which I've previously quoted. PERA

controls over any inconsistent provisions of the City charter, and the latter can not be relied upon to support a conclusion that Respondent acted unlawfully in refusing to bargain with Charging Parties in July of 2012, particularly where the argument of the Unions is directly contrary to recent legislative action. To accept Charging Parties' argument that the City charter could alter the bargaining obligation of a public employer under PERA would necessarily and improperly end PERA's status as the statewide bargaining statute and replace it instead with a patchwork of local laws.

In conclusion, I find that there are no genuine disputes of material fact with respect to Case No. C12 F-125. Charging Parties' motion for . . . summary disposition is hereby denied [and] Respondent's motion for . . . summary disposition is hereby granted . . .²

Based on the findings of fact and conclusions of law set forth above, I recommend that the Commission issue an order dismissing the unfair labor practice charge filed by the Coalition of Detroit Unions and AFSCME Council 25 against the City of Detroit in Case No. C12 F-125; Docket No. 12-001181 in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 30, 2012

² The transcript excerpt reproduced herein contains typographical corrections and other edits for clarity purposes. The complete unedited transcript is maintained within the Commission case file.