

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

In the Matter of:

WAYNE COUNTY,  
Public Employer-Respondent,

MERC Case No. D16 K-0900

-and-

AFSCME LOCAL 3317,  
Labor Organization-Petitioner.

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**APPEARANCES:**

Office of Wayne County Corporation Counsel, by Bruce A. Campbell, and the Mike Cox Law Firm, PLLC, by Michael A. Cox and William S. Pearson, for Respondent

Jamil Akhtar, P.C., by Jamil Akhtar, for Petitioner

**DECISION AND ORDER**

This matter is before the Commission on a motion by the Employer, Wayne County, to dismiss the request of the Union, AFSCME Local 3317, for mediation in Case No. D16 K-0900. In the alternative, the Employer seeks to enforce the Commission's October 16, 2015 Decision and Order, which dismissed the Union's petition for Act 312<sup>1</sup> arbitration in Case No. D14 A-0018.

**Procedural history**

In Case No. D14 A-0018, we reviewed the question of whether Wayne County was required to participate in Act 312 arbitration with AFSCME Local 3317 as the result of the petition filed by the Union on August 19, 2014. After an arbitration panel chairperson had been appointed in that matter, but before the proceedings began, the parties entered into a memorandum of agreement dated October 1, 2014. The agreement provided that the Act 312 petition would be dismissed without prejudice, but that it could

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<sup>1</sup> 1969 PA 312, as amended by 1976 PA 203, 1977 PA 303, and 2011 PA 116, MCL 423.231-247, provides for compulsory binding arbitration of unresolved contract disputes in municipal police and fire departments.

be refiled on a date after the November 4, 2014 general election. After the memorandum of agreement had been extended several times, the Union filed a request for reinstatement of the Act 312 petition on June 22, 2015. The petition was reinstated and on June 23, 2015, the chairperson of the arbitration panel was reappointed. On August 21, 2015, before the arbitration proceeded to hearing, Wayne County entered into a consent agreement with the State Treasurer under the Local Financial Stability and Choice Act, 2012 PA 436, as amended, (Act 436), MCL 141.1541 – 141.1575.

On September 1, 2015, the Employer filed a motion to dismiss the Act 312 arbitration. After duly considering the matter, the Commission issued its October 16, 2015 Decision and Order granting the Employer's motion to dismiss the arbitration. The Commission concluded that, by the terms of the Consent Agreement, the County's duty to bargain had been suspended as of September 20, 2015, and the County could not be required to participate in Act 312 arbitration at that time. The Union appealed the Commission's decision to the Michigan Court of Appeals. The appeal was dismissed on February 8, 2016, following the Union's motion to withdraw the appeal.

On November 7, 2016, the Union filed a letter with the Bureau of Employment Relations, which serves as the Commission's administrative staff. The letter notified the Bureau of the Union's intention to reopen negotiations with the Employer for a new collective bargaining agreement and included the Union's request for mediation. In light of the Union's filing, the Bureau assigned a mediator and attempted to schedule mediation between the parties. On February 9, 2017, Wayne County filed its Motion to Enforce Commission Order Dismissing Act 312 or in the Alternative, Motion to Dismiss Union's Request for Mediation Pursuant to a Consent Agreement between Wayne County and the State of Michigan and PA 436. The Employer contends that it has no duty to bargain because it is still subject to the Consent Agreement with the State and the suspension of its duty to bargain continues until October 1, 2018. Both parties filed additional written arguments on, or before, March 15, 2017. On March 17, 2017, the Bureau informed the parties that the Commission would be conducting oral argument at its April 11, 2017 meeting. At that time, the Commission requested that the parties address any other issues they deemed relevant to the resolution of the matter, to specifically address several questions posed by the Commission, and to submit those responses prior to the close of business on April 3, 2017. Both parties submitted additional briefs by that date.

We considered this matter at our regular monthly meeting on April 11, 2017. At that meeting, both parties provided oral arguments in support of their respective positions. Having considered the parties' oral arguments as well as the written materials filed by the parties, we have determined that there are no material facts at issue and that the Employer's motion to dismiss the Union's request for mediation should be granted for the reasons discussed below.

## Factual Summary

The Consent Agreement between Wayne County and the State of Michigan contains the following provisions that are relevant to the issue before us:

- 2(b) Consistent with section 8(11) of Act 436, beginning 30 days after the effective date of this agreement the County is not subject to section 15(1) of 1947 PA 336, as amended, MCL 423.215, for the remaining term of this agreement.
- 2(d) If a two-year budget is implemented for the County under section 11 that includes contractual and employment agreements, the contractual and employment agreements, and any provisions of those contractual and employment agreements relating to wages, hours, or other terms and conditions of employment for County employees will remain effective while the two-year budget is effective and may not be amended while the two-year budget is effective without the approval of the State Treasurer consistent with section 21 of Act 436. However, until a new collective bargaining agreement is effective, the terms and conditions of employment established in contractual and employment agreements included with a two-year budget under section 11 will remain in effect.
- 10. Term. This agreement is effective beginning on the effective date under section 20 and remains effective until the Release Date under section 11(a) or an uncured material breach is declared and not cured, *except that sections 2(b) to 2(f) and 5, and the requirement to adopt and implement a two-year budget under section 11 survive the Release Date under section 11(a) and continue in effect for the remaining term of this agreement, which expires at the end of the last County fiscal year after the Release Date covered by the two-year budget adopted under section 11* (emphasis added).
- 11. Release. (a) The County is released from this agreement and the requirements of section 8 of Act 436 upon written notification from the State Treasurer to the County Executive and clerk of the County Commission that the County has complied with this agreement (the "Release Date"). Consistent with section 21(1) of Act 436, the State Treasurer shall require the County Commission and the County Executive, and both are hereby jointly authorized, to exercise the powers prescribed for emergency managers under section 21(2) of Act 436 to adopt and implement using Charter

procedures a two-year budget for the County, including all contractual and employment agreements, effective beginning on the first day of a fiscal year beginning after the Release Date. The County is not required to adopt a two-year budget before the Release Date. The County will be deemed by the State Treasurer to have complied with this agreement and the State Treasurer shall release the County from the requirements of section 8 of Act 436 if the County Executive certifies in writing to the State Treasurer, and the State Treasurer concurs in writing, that all of the following conditions are satisfied:

- (1) the fiscal stability of the County has been restored as demonstrated by action taken by the County after December 31, 2014 that will eliminate the County's \$52 million structural deficit, with reductions (if any) resulting from reductions in payments to the WCERS, changes in benefits provided to the WCERS participants, or OPEB changes, verified by an independent actuary acceptable to the State Treasurer;
- (2) the County has paid all outstanding amounts owed by the County to the Michigan Department of Health and Humans Services ("MDHHS") relating to the County's child care fund or has entered into a written agreement with MDHHS relating to amounts owed by the County and the director of MDHHS confirms that the County is in compliance with that agreement; and
- (3) based upon an audited financial statement for a fiscal year ending after December 31, 2014, the County is not required to submit a financial plan under section 21(2) of the Glenn Stell State Revenue Sharing Act of 1971, 1971 PA 140, as amended, MCL 141.921(2).

(b) After the Release Date, the County shall not amend any two-year budget adopted for the County under section 11(a) without the approval of the State Treasurer, and shall not revise any order issued by the County Executive under this agreement before one year after the Release Date. The State Treasurer recommends the County continue using a two-year budgeting process after the expiration of this agreement.

The Union's November 7, 2016 letter, which gave notice of the Union's intention to reopen negotiations with the Employer for a new collective bargaining agreement,

asserted that Wayne County had been released from the Consent Agreement as of October 18, 2016. The Union's assertion was based on a letter from State Treasurer Nick A. Khouri to Wayne County Executive Warren C. Evans dated October 18, 2016, which states in relevant part:

I am in receipt of your letter dated October 6, 2016, in which you certified that Wayne County is eligible for release from the Consent Agreement entered into on August 21, 2015. I am pleased to agree with your certification. Specifically, I find that the county has satisfied the Consent Agreement terms found in Subsections 11(a)(1)-(3) of the Agreement. As a result of this determination, the County has successfully completed and is hereby released from its Consent Agreement.

The letter from State Treasurer Khouri also sets forth the County's obligation to apply proceeds from asset sales in excess of \$25 million to the County's pension funds. Additionally, the letter specifically states that the County is not released from its pledge to apply proceeds from the sale of the Downriver Sewer facility to the County's pension and OPEB funds.

State Treasurer Khouri provided further clarification of the County's obligations in a letter to the Wayne County Executive dated November 10, 2016, which states:

In the letter granting release from the agreement, dated October 18, 2016, the Department of Treasury waived the requirement that amendments to the two year budget be approved by the Department.

The Department did not waive the requirement for Wayne County to adopt a two year budget. As required by the Consent Agreement, the County must adopt a two year budget beginning the first fiscal year after the release. The release date of the County from the Consent Agreement occurred 18 days after the start of the County's current fiscal year. However, for the avoidance of doubt, the two year budget contemplated by the department at the time of release was for fiscal years 2017 and 2018.

Based on the October 18, 2016 letter from State Treasurer Khouri, the Union contends that the suspension of the Employer's duty to bargain ended on October 18, 2016. However, the Employer disputes that and relies on Khouri's November 10, 2016 letter and provisions of the Consent Agreement as support for its contention that the suspension of its duty to bargain does not end until the end of its 2018 fiscal year on September 30, 2018.

### Discussion and Conclusions of Law:

As we stated in our prior decision regarding these parties, *Wayne Co & Wayne Co Sheriff*, 29 MPER 26 (2015): "A public employer that has no duty to bargain has no duty to participate in mediation."

To determine whether the County can be required to participate in mediation, we must determine whether the suspension of the County's duty to bargain ended with the State Treasurer's October 18, 2016 letter stating "the County has successfully completed and is hereby released from its Consent Agreement" or whether the suspension of the County's duty to bargain continues through September 30, 2018.

Section 15(1) of PERA, 1947 PA 336 as amended, MCL 423.215(1) is the provision that sets forth public employers' duty to bargain. Section 8(11) of Act 436 expressly provides limitations on a public employer's duty to bargain when that employer is covered by a consent agreement:

*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 (emphasis added).*

Consistent with Act 436, § 15(8) & (9) of PERA, 1947 PA 336 as amended, provides:

- (8) Collective bargaining agreements under this act may be rejected, modified, or terminated pursuant to the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575. *This act does not confer a right to bargain that would infringe on the exercise of powers under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.*
- (9) A unit of local government that enters into a consent agreement under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, *is not subject to subsection (1) for the term of the consent agreement*, as provided in the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575 (emphasis added).

### The Consent Agreement

The above-quoted language of § 8(11) of Act 436 and § 15(9) of PERA is reflected in the Consent Agreement between the County and the State. Section 2(b) of the Consent Agreement provides that "beginning 30 days after the effective date of this

agreement the County is not subject to section 15(1) of 1947 PA 336, as amended, MCL 423.215, for the remaining term of this agreement."

The term of the Consent Agreement is defined in § 10 of the Consent Agreement. Section 10 provides that the Consent Agreement is "effective until the Release Date under section 11(a)." However, § 10 further provides that "sections 2(b) to 2(f) and 5, . . . survive the Release Date . . . and continue in effect for the remaining term of this agreement, *which expires at the end of the last County fiscal year after the Release Date covered by the two-year budget adopted under section 11*" (emphasis added). The two-year budget the County was required to adopt covers the County's fiscal years for 2017 and 2018 and ends September 30, 2018. Therefore, under the terms of the Consent Agreement, the suspension of the County's duty to bargain expires September 30, 2018 and the County's duty to bargain will not resume until October 1, 2018.

#### The Authority of the State Treasurer under Act 436

In its March 17, 2017 communication to the parties, the Commission asked that the parties explain the effect of the language in § 10 of the Consent Agreement on the duration of the County's duty to bargain. In response to the Commission's question, the Union argues:

Section 10 of the Consent Agreement does not reference any of the provision of Act 436, P.A. 2012, as the authoritative legislative enactment, which would bring Section 10 of the Consent Agreement under the provisions of said Act. This is a contractual agreement between Wayne County and the State Treasurer, which is not authorized by the statute.

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Clearly, the Respondent cannot point to any legislative intent as expressed in the language in Act 436, which would allow for the Respondent to enter into a contract, which is contrary to the specific provisions of Section 15 of the PERA.

The Union has offered no case or statutory citations to support its contention that § 10 of the Consent Agreement is not authorized by statute. We note that § 15(9) of PERA provides that when a local unit of government has entered into a consent agreement under Act 436, that local unit of government is not subject to § 15(1) of PERA for the term of the consent agreement. MCL 423.215(9). If the terms of the Consent Agreement comply with Act 436, it is not necessary for a particular provision of the agreement to specifically refer to language in Act 436 that authorizes that provision. However, review of the Union's argument that § 10 of the Consent Agreement is not authorized by Act 436 requires our examination of the authority of the State Treasurer in setting the terms of a consent agreement under Act 436.

Our goal in construing the language of Act 436 is to effectuate the Legislature's intent as inferred from the wording of the statute. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156-157 (2011); *Casco Twp v Sec'y of State*, 472 Mich 566, 571, (2005). *Robertson v Daimler Chrysler Corp*, 465 Mich 732, 748 (2002). The most reliable evidence of the Act's intent is the statute's wording. *Neal v Wilkes*, 470 Mich 661, 665 (2004); *Sun Valley Foods Co v Ward*, 460 Mich 230, 236 (1999). While our focus is on § 8 of Act 436, we must interpret the words of the Act "in their context and with a view to their place in the overall statutory scheme." *Manuel v Gill*, 481 Mich 637, 650 (2008), quoting *Davis v Michigan Dep't of Treasury*, 489 US 803, 809, (1989). A statutory provision that is in dispute must be read in the light of the general purpose of the act and in conjunction with pertinent provisions thereof. *Romeo Homes v Comm'r of Revenue*, 361 Mich 128, 135 (1960).

We look first at the preamble of Act 436, which provides insight as to the Legislature's purpose.<sup>2</sup> The preamble of Act 436 states, in relevant part, that the Act is:

AN ACT to safeguard and assure the financial accountability of local units of government and school districts; to preserve the capacity of local units of government and school districts to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of local units of government and school districts and the provision of services by local units of government and school districts; to provide criteria to be used in determining the financial condition of local units of government and school districts; to authorize a declaration of the existence of a financial emergency within a local unit of government or school district; to prescribe remedial measures to address a financial emergency within a local unit of government or school district; . . . to provide for the termination of a financial emergency within a local unit of government or school district; . . . to prescribe the powers and duties of certain state agencies and officials and officials within local units of government and school districts . . .

To fulfill that purpose, § 4(1) of the Act vests authority in the state financial authority to conduct a preliminary review to determine the existence of probable financial stress within a local government. MCL 141.1544(1). In the case of a municipal government, such as a county, § 2 defines "state financial authority" as the State Treasurer. See MCL 141.1542(n) and (u)(i).

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<sup>2</sup> Although a preamble is not to be considered authority for construing an act, it is useful for interpreting its purpose and scope. *Malcolm v City of East Detroit*, 437 Mich 132, 143 (1991) citing 2A Sands, Sutherland Statutory Construction (4th ed), § 47.04, pp. 126–128. See also *Kestenbaum v Michigan State Univ*, 414 Mich 510, 540 (1982); *People ex rel Shumway v Bennett*, 29 Mich 451, 458 (1874).

Section 4(3) of the Act sets forth procedures to be taken by the state financial authority and officials of the local government in conducting the preliminary review, which includes the preparation of a final report to the local emergency financial assistance loan board. MCL 141.1544(3). After receiving that report, the local emergency financial assistance loan board determines if probable financial stress exists. Upon a finding of probable financial stress, the governor appoints a review team consisting of the State Treasurer or his or her designee and other state officials. MCL 141.1544(4). The Department of Treasury provides staff for the review team. MCL 141.1544(6). The review team is responsible for conducting a review of the local government's finances and preparing a written report of its findings for submission to the Governor. MCL 141.1545. However, with the approval of the state financial authority (which as noted above, is the State Treasurer in this case) the review team may appoint an individual or firm to carry out the review. MCL 141.1545(5). The review team's report, must indicate whether a financial emergency exists within the local government. MCL 141.1545(4). In this case, the review team determined that a financial emergency exists.<sup>3</sup>

Upon the confirmation of a finding of a financial emergency, a local government has four options to select from to address the financial emergency. MCL 141.1547. One of those options is to "negotiate and sign a consent agreement with the State Treasurer" pursuant to § 8(1) of Act 436. That is the option Wayne County elected in this case.

Under § 8 of Act 436, the State Treasurer has broad authority to set the terms in the consent agreement with which the local government must comply. If the local government and the State Treasurer cannot reach agreement on those terms within 30 days, or within a shorter time at the discretion of Treasurer, the Treasurer may require the local government to proceed under one of the other options under § 7 of the Act. MCL 141.1548(1). A consent agreement must provide for remedial measures considered necessary to address the financial emergency and provide for the local government's financial stability. It must also provide for periodic financial status reports to the State Treasurer. The State Treasurer may require that the terms of a consent agreement require the local government to have a continuing operations plan or a recovery plan. MCL 141.1548(2). A continuing operations plan is subject to the Treasurer's approval. A local government's failure to submit an acceptable plan may be considered a material breach of the consent agreement. MCL 141.1548(3). The determination of whether the local government has materially breached a consent agreement is the sole responsibility of the State Treasurer. MCL 141.1548(1). If a consent agreement requires a recovery plan, it is up to the State Treasurer to develop the recovery plan with input from local government. A recovery plan supersedes the budget and general appropriations ordinance adopted by the local government. MCL 141.1548(9). Further, § 8 expressly provides that the Treasurer has the authority to give certain officials of the local government one or more of the powers of emergency managers "for such periods and upon such terms and

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<sup>3</sup> See the second paragraph of the Consent Agreement.

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." MCL 141.1548(10). Although the Treasurer is not authorized to grant local government officials under a consent agreement the power to "reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement" under § 12(1)(k) of Act 436, the powers the Treasurer may grant are quite extensive. Moreover, *unless the State Treasurer determines otherwise*, the local government's duty to bargain is suspended beginning 30 days after it enters into a consent agreement and for the remaining term of that agreement. MCL 141.1548(11). A local government is released from the requirements of § 8 of Act 436 upon compliance with a consent agreement as determined by the State Treasurer. MCL 141.1548(13).

As noted above, § 8 of Act 436 gives the Treasurer broad authority and discretion in setting the terms of a consent agreement. Upon review of § 8, we further note that while § 8 sets the minimum requirements for a continuing operations plan and for a recovery plan, the Treasurer has discretion to impose additional requirements in each case. However, there do not appear to be any limitations on the Treasurer's discretion in setting the terms of a consent agreement as long as the requirements imposed are reasonably related to ensuring the local government's return to, or maintenance of, financial stability.

#### The October 18, 2016 Letter from the State Treasurer to the Wayne County Executive

As noted above, the Union relies on the language in the State Treasurer's letter stating:

"Specifically, I find that the county has satisfied the Consent Agreement terms found in Subsections 11(a)(1)-(3) of the Agreement. As a result of this determination, the County has successfully completed and is hereby released from its Consent Agreement. . . . I trust that your administration will continue the good work and financial reforms which justify this release. I congratulate you for the significant progress the county has made while successfully completing this Consent Agreement."

Based on that language, the Union believes that the County had been released from its privileges and obligations under the Consent Agreement. Initially, we had the same impression from reading the Treasurer's letter.

The Union also relies on the language in §8 (13) of Act 436 which states, "A local government is released from the requirements under this section *upon compliance with the consent agreement as determined by the state treasurer*" (emphasis added). The Union argues:

There is no authority to be found in Act 436, P.A. 2012, which grants the State Treasurer the authority to extend the terms of the suspension of the employer's duty to bargain beyond the Consent Agreement release date. . . . The legislature in adopting Act 436 specifically restricted the MERC from exercising authority under Section 15(1) of the PERA, for a limited period of time. This restriction on the MERC was to last only until the County was released by the State Treasurer, from the Consent Agreement.

The rules of statutory construction tell us that a statute is enacted and meant to be read as a whole. *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)*, 409 Mich 299, 317-318 (1980). Review of Act 436 as a whole, and of § 8 in particular, indicates that the State Treasurer has the authority to set each of the terms of a consent agreement and has very broad discretion in doing so. Section 8(11) of Act 436 gives the State Treasurer discretion to determine the beginning date of the suspension of the duty to bargain and by setting the term of the consent agreement, the Treasurer sets the end date of the suspension of the duty to bargain. § 8(11) states:

*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 (emphasis added).*

Moreover, § 15(9) of PERA expressly provides that a unit of local government that enters into a consent agreement under Act 436 is not subject to the duty to bargain "for the term of the consent agreement." MCL 423.215(9).

The term of this Consent Agreement between Wayne County and the State of Michigan is set by language in § 10 of the Consent Agreement. Upon reviewing the Consent Agreement, particularly §§ 10 and 11, it is apparent that some of the Consent Agreement provisions were designed to apply after the release date. Section 10 makes it clear that the County continues to have certain privileges and obligations under the Consent Agreement after the release date. In setting forth the term of the Consent Agreement, § 10 provides that §§ 2(b) to 2(f) and 5 survive the release date. Pursuant to § 2(b) the County continues to be free from its duty to bargain for the remaining term of the Consent Agreement. Moreover, § 11 of the Consent Agreement provides that the County is not required to adopt a two-year budget before the release date. After the release date, § 11(b) prohibits the County from amending any two-year budget adopted under § 11(a) without the approval of the Treasurer and from revising any order issued by the County Executive before one year after the release date.<sup>4</sup> It is, therefore, apparent

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<sup>4</sup> We note that in the October 18, 2016 letter, the Treasurer waived the requirement that the Department of Treasury approve future County budget amendments.

that the phrase "release date" is not the same as the end of the term of the Consent Agreement.

Additionally, the Treasurer's November 10, 2016 letter, clarified his understanding of the Consent Agreement and his intentions in the October 18, 2016 letter. The Treasurer's November 10, 2016 letter explained that the County was required to adopt a two-year budget beginning the first fiscal year after the release date and that the two-year budget contemplated by the Department of Treasury was for the fiscal years of 2017 and 2018.

We asked the parties to explain what, if any, bearing the language of § 8(11) of Act 436 has on the duration of the suspension of the Employer's duty to bargain. In responding to our question, the Union asserted that § 8(11) must be read in conjunction with § 8(10) and § 8(13). Section § 8(10) provides:

(10) 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 as otherwise provided in this act 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 12(1)(k) (emphasis added).

We agree with the Union that § 8(11) must be read in conjunction with § 8(10) and § 8(13). However, contrary to the Union's position, § 8(10) further supports the County's position that in negotiating the Consent Agreement with the County, the State Treasurer had the authority to include language in the Agreement that extends the term of the Consent Agreement, and with it the suspension of the County's duty to bargain, beyond the release date.

The Union also appears to rely on the language in § 8(13) of Act 436 that states, "A local government is released from the requirements under this section upon compliance with the consent agreement *as determined by the state treasurer*"(emphasis added). It appears that the Union contends that once the Treasurer released the County from some of its obligations under the Consent Agreement, the County no longer had obligations under § 8 of Act 436. However, despite the Treasurer's use of the sentence, "As a result of this determination, the County has successfully completed and is hereby released from its Consent Agreement" in the October 18, 2016 letter, it is clear from both that letter and the Treasurer's November 10, 2016 letter that the County continues to have

responsibilities under the Consent Agreement. Also, by the terms of the Consent Agreement, the County continues to have privileges and responsibilities related to the County's financial stability beyond the release date and through the end of the term of the Consent Agreement. Those privileges include the suspension of the County's duty to bargain.

In support of the Union's argument that the suspension of the County's duty to bargain came to an end after the October 18, 2016 letter from State Treasurer Khouri, the Union interprets our decision in *City of Ecorse*, 29 MPER 76 (2016), as holding that "discharge by the State Treasurer triggers the employer's duty to bargain with its unions." The Union further argues that the suspension of the County's duty to bargain, "is only applicable during the period of time in which the Respondent is in receivership."

The Union's arguments conflate requirements applying to receivership under § 27 of Act 436 with those of § 8. *City of Ecorse* does not address consent agreements or the power of the State Treasurer to determine whether a public employer has complied with the terms of a consent agreement. In *City of Ecorse*, we examined the meaning of § 27(3) of Act 436, which 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." Act 436 defines receivership as "the process . . . by which a financial emergency is addressed through the appointment of an emergency manager." MCL 141.1542(q). See *Wayne Co & Wayne Co Sheriff*, 29 MPER 26 (2015). No emergency manager was appointed for the County; the County has not been in receivership. The County is a party to a consent agreement with the State Treasurer. Consent agreements are governed by § 8 of Act 436, which provides in subsection 11 that the term of the suspension of the employer's duty to bargain ends with the term of the consent agreement.

#### Interim Order Denying Motion for Summary Disposition by ALJ Calderwood

Both parties have referred to the February 9, 2017 interim order issued by ALJ Calderwood in four unfair labor practice charge proceedings between these parties. We direct the parties' attention to Rule 161(7) of the General Rules of the Michigan Employment Relations Commission, 2014 AACS, R 423.161(7), which addresses the circumstances in which a party may seek Commission review of an ALJ's ruling on a motion, stating:

Rulings by an administrative law judge on any motion, except a motion resulting in a ruling dismissing or sustaining the unfair labor practice charge in its entirety, shall not be appealed directly to the commission, but shall be considered by the commission only if raised in exceptions or cross exceptions to the proposed decision and recommended order filed under R 423.176.

We recognize that ALJ Calderwood's interim order reached a different conclusion regarding the duration of the Employer's duty to bargain than we have in this matter. However, the ALJ's order did not dismiss or sustain either of the four unfair labor practice charges in their entirety. Accordingly, under Rule 161(7) any review of the ALJ's order by this Commission must await the filing of exceptions to the ALJ's decision and recommended order on one or more of the four unfair labor practice charges in dispute between these parties. See *Southfield Pub Sch*, 21 MPER 54 (2008); *Otsego Co (Gaylord Regional Airport)*, 21 MPER 20 (2008); *City of Detroit (Health Dep't)*, 21 MPER 14 (2008).

### Conclusion

We find clear legislative intent in Act 436 and in § 15(8) & (9) of PERA to give the State Treasurer broad authority to draft a consent agreement that provides that the suspension of the County's duty to bargain will continue through the end of term of the Consent Agreement. The Consent Agreement, by its terms, provides that the suspension of the County's duty to bargain survives the release date and continues in effect for the remaining term of the Consent Agreement. The Consent Agreement expires at the end of the last County fiscal year covered by the two-year budget adopted as required by § 11 of the Consent Agreement. The last County fiscal year covered by that two-year budget ends September 30, 2018. Therefore, under the terms of the Consent Agreement, the County's duty to bargain is suspended until October 1, 2018. Accordingly, the Union's request for mediation must be dismissed.

We have considered all arguments submitted by the parties and conclude that they would not change the result in this case.

### ORDER

The Employer's motion to dismiss the Union's request for mediation is granted. Mediation shall not be ordered between these parties until the term of the Consent Agreement ends or the Employer agrees to mediation.

#### MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: May 12, 2017