STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TRAVERSE BAY INTERMEDIATE SCHOOL DISTRICT,
Public Employer-Respondent,

-and-

MERC Case No. C12 G-129
Hearing Docket No. 12-001190

TRAVERSE BAY INTERMEDIATE SCHOOL DISTRICT
EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Charging Party.
____/

APPEARANCES:

Thrun Law Firm, by Kevin S. Harty, for Respondent

White, Schneider, Young & Chiodini, by Jeffrey S. Donahue, for Charging Party

ORDER ON REMAND

This matter is on remand from the Michigan Court of Appeals. The Commission issued a Decision and Order on October 20, 2015, finding that Respondent Traverse Bay Intermediate School District did not violate PERA when, on July 1, 2012, it increased the share of health care costs that employees in the bargaining unit represented by Charging Party were required to pay. We concluded that Respondent's actions in implementing the §3 "hard caps" option on July 1, 2012, in order to comply with Act 152 did not constitute an unfair labor practice. In a January 19, 2017 unpublished decision, the Michigan Court of Appeals reversed our Decision and Order, and remanded the matter for further proceedings. The Court found that our interpretation of Section 5 of PA 152 nullified an otherwise enforceable provision in the parties' 2010-2012 collective bargaining agreement that had not yet expired. The Court of Appeals decision is attached hereto and incorporated by reference. In accordance with the Michigan Court of Appeals decision, we issue the following Order.

ORDER

Respondent Traverse Bay Intermediate School District, its officers and agents, are hereby ordered to:

1. Cease and desist from repudiating the terms and conditions of employment set forth in Article XIII (E) of the July 1, 2010 Agreement.

2. Make members of the bargaining unit represented by Traverse Bay Intermediate School District Education Association MEA/NEA whole for any loss of pay

incurred as a result of the conduct described above, plus interest at the statutory rate, computed quarterly, with the full method of calculation, and actual individual calculations, disclosed to Charging Party prior to the payment thereof.

3. Post the attached notice in conspicuous places on Respondent's premises, including all places where notices to members of Charging Party's bargaining unit are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: June 9, 2017

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **TRAVERSE BAY INTERMEDIATE SCHOOL DISTRICT** TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT repudiate the terms and conditions of employment set forth in Article XIII (E) of the July 1, 2010 Agreement.

As a public employer under the PERA, we are obligated to bargain in good faith with representatives selected by the majority of our employees with respect to rates of pay, hours of employment or other terms and conditions of employment. This obligation includes the duty to refrain from altering the terms of an existing collective bargaining agreement covering wages, hours or working conditions without the consent of the union.

TRAVERSE BAY INTERMEDIATE SCHOOL DISTRICT

By: ______________________________

Title: _____________________________

Date: ___________

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.
Case No. C12G-129/12-0111190-MERC

STATE OF MICHIGAN

COURT OF APPEALS

TRAVERSE BAY INTERMEDIATE SCHOOL DISTRICT, Plaintiff-Appellee,	UNPUBLISHED January 19, 2017
v	No. 330037 MERC LC No. 00-000129
TRAVERSE BAY INTERMEDIATE SCHOOL DISTRICT EDUCATION ASSOCIATION MEA/NEA, Defendant-Appellant.	

Before: M. J. KELLY, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

The charging party, the Traverse Intermediate School District Education Association, MEA/NEA (the Association), appeals by right the order of the Michigan Employment Relations Commission (MERC) dismissing its unfair labor practice charge against respondent the Traverse Bay Intermediate School District (the District). For the reasons stated in this opinion, we reverse and remand for further proceedings.

I. BASIC FACTS

The basic facts are undisputed. On July 1, 2010, the parties entered into a collective bargaining agreement. The agreement took effect on July 1, 2010 and provided that it would "continue in full force and effect until **June 30, 2012.**" (Emphasis in original). Article XIII(E) of the agreement also contained a provision requiring the District to pay 90% of the health insurance premiums for qualifying employees for "the full twelve (12) month period commencing September 1 and ending August 31 . . . ." The parties acknowledge that the requirement in Article XIII(E) extended beyond the stated duration of the collective bargaining agreement.

Effective September 27, 2011, the Legislature enacted the Publicly Funded Health Insurance Contribution Act, MCL 15.561 *et seq*. (PA 152). Relevant to this appeal, PA 152 set limits on the maximum amount that a public employer could contribute to an employee's health

care costs. MCL 15.563; MCL 15.564. The statute provides that a public employer can only contribute to an employee medical benefit plan using the "hard caps" option in section § 3 of the act[1] or the "80/20" option in § 4 of the act.[2] It is undisputed that the parties' 2010-2012 collective bargaining agreement required the District to contribute to its qualifying employees'

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[1] Section 3 provides in relevant part:

> (1) Except as otherwise provided in this act, a public employer that offers or contributes to a medical benefit plan for its employees or elected public officials shall pay no more of the annual costs or illustrative rate and any payments for reimbursement of co-pays, deductibles, or payments into health savings accounts, flexible spending accounts, or similar accounts used for health care costs, than a total amount equal to $5,500.00 times the number of employees and elected public officials with single-person coverage, $11,000.00 times the number of employees and elected public officials with individual-and-spouse coverage or individual-plus-1-nonspouse-dependent coverage, plus $15,000.00 times the number of employees and elected public officials with family coverage, for a medical benefit plan coverage year beginning on or after January 1, 2012. . . . [MCL 15.563(1).]

[2] Section 4 provides:

> (1) By a majority vote of its governing body each year, prior to the beginning of the medical benefit plan coverage year, a public employer, excluding this state, may elect to comply with this section for a medical benefit plan coverage year instead of the requirements in section 3. The designated state official may elect to comply with this section instead of section 3 as to medical benefit plans for state employees and state officers.
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> (2) For medical benefit plan coverage years beginning on or after January 1, 2012, a public employer shall pay not more than 80% of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials. For purposes of this subsection, total annual costs includes the premium or illustrative rate of the medical benefit plan and all employer payments for reimbursement of co-pays, deductibles, and payments into health savings accounts, flexible spending accounts, or similar accounts used for health care but does not include beneficiary-paid copayments, coinsurance, deductibles, other out-of-pocket expenses, other service-related fees that are assessed to the coverage beneficiary, or beneficiary payments into health savings accounts, flexible spending accounts, or similar accounts used for health care. For purposes of this section, each elected public official who participates in a medical benefit plan offered by a public employer shall be required to pay 20% or more of the total annual costs of that plan. The public employer may allocate the employees' share of total annual costs of the medical benefit plans among the employees of the public employer as it sees fit.

medical benefits plans in an amount that exceeded the limits imposed by PA 152. Nevertheless, the District was not required to immediately implement the contribution limitations set forth in PA 152 because the act expressly provided that it did not apply to existing agreements. See *Van Buren Co Ed Ass'n v Decatur Pub School*, 309 Mich App 630, 634; 872 NW2d 710 (2015) ("In enacting PA 152, the Legislature recognized that medical benefit plans may have been subject to existing collective bargaining agreements (CBAs), and it grandfathered in a public employer's contributions to medical benefit plans under existing CBAs."). MCL 15.565 provides in relevant part:

> (1) If a collective bargaining agreement or other contract that is inconsistent with sections 3 and 4 is in effect for 1 or more employees of a public employer on September 27, 2011, the requirements of section 3 or 4 do not apply to an employee covered by that contract until the contract expires.

The parties agree that, under this provision, the District was obligated to continue paying 90% of the health insurance premiums for qualified employees; however, the District asserts that under the plain language of the statute, the obligation only extended until June 30, 2012, which was when the 2010-2012 collective bargaining agreement "expired." In contrast, the Association argues that the District remained contractually obligated to pay 90% of the insurance premiums for the months of July and August 2012 because, under the express language in the 2010-2012 collective bargaining agreement, the District had contracted to pay 90% of the premium until August 31, 2012.

The parties were unable to resolve their dispute during negotiations for a successor collective bargaining agreement. Subsequently, on June 11, 2012, the District sent a letter to its employees notifying them that under PA 152 it would limit its contributions to the employees' medical benefits plan starting in July 2012 by using the "hard caps" option in § 3 of PA 152. After receiving the letter, the Association initiated a grievance against the District, asserting that the planned action violated Article XIII(E) of the existing collective bargaining agreement. It does not appear that the Association pursued the grievance. Instead, on July 3, 2012, the Association filed an unfair labor practice charge against the District, alleging in part that the decision to implement PA 152 on July 1, 2012 was a repudiation of its contractual agreement to pay 90% of the health insurance premium for qualified employees until August 31, 2012.

A hearing on the matter was initially set for January 23, 2013, but it was adjourned over the Association's objection pending MERC's decision in *Van Buren Co Ed Ass'n*, 309 Mich App 630. In January 2014, MERC issued its decision in *Van Buren Co Ed Ass'n*. In February 2014, the District filed a motion for summary disposition in the instant case. In June 2014, the administrative law judge (ALJ) assigned to the case heard oral argument. In December 2014, she issued a decision and recommended order in the Association's favor. The District filed exceptions to the ALJ's decision and recommended order. Thereafter, MERC reversed the ALJ's decision and recommended order and dismissed the unfair labor practice charge,

concluding that under *Bd of Ed of the Capac Community Schs*, 29 MPER 16 (2016),[3] it had already determined that a provision in a collective bargaining agreement that extended beyond the agreement's expiration date did not constitute a collective bargaining agreement and so the employer had to comply with the requirements of PA 152 on the date that the collective bargaining agreement expired. MERC further concluded that there was not a mid-term modification of the collective bargaining agreement because the agreement had expired before the implementation of the hard caps option. Moreover, MERC concluded that because there was a bona fide dispute over the contract language, there was no repudiation, so the charge failed to state a claim upon which relief could be granted. This appeal follows.

II. PA 152

A. STANDARD OF REVIEW

The Association argues that MERC erred in dismissing its unfair labor practice charge. "We review MERC decisions pursuant to Const 1963, art 6, § 28, and MCL 423.216(e)." *Van Buren Co Ed Ass'n*, 309 Mich App at 639 (quotation marks and citation omitted). "MERC's factual findings are 'conclusive if they are supported by competent, material, and substantial evidence on the record considered as a whole.' " *Calhoun Intermediate Sch Dist v Calhoun Intermediate Ed Ass'n*, 314 Mich App 41, 46; 885 NW2d 310 (2016), quoting *Police Officers Ass'n of Mich v Fraternal Order of Police, Montcalm Co Lodge No 149*, 235 Mich App 580, 586; 599 NW2d 504 (1999). "We review de novo MERC's legal rulings." *Calhoun Intermediate Sch Dist*, 314 Mich App at 46. Likewise, statutory interpretation is a question of law that is considered de novo on appeal. *Van Buren Co Ed Ass'n*, 309 Mich App at 639.

B. ANALYSIS

Resolution of this issue requires this Court to interpret PA 152 and its application to the parties' 2010-2012 collective bargaining agreement. "The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language." *Van Buren Co Ed Ass'n*, 309 Mich App at 643 (citation omitted). The Legislature is presumed to have intended the meaning it plainly expressed, *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012), and clear statutory language must be enforced as written, *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012). Similarly, when interpreting a contract, "this Court's obligation is to determine the intent of the parties" by examining "the language of the contract" and according "the words their ordinary and plain meaning, if such meanings are apparent." *In re Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007). "If the contractual language is unambiguous, courts must interpret and enforce the contract as written." *Id*. Contract language is patently ambiguous "[w]here the contract

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[3] MERC's decision in *Capac* was appealed to this Court; however, it was dismissed by stipulation before this Court reached a decision. *Bd of Ed of Capac Community Schs v Capac Ed Ass'n*, unpublished order of the Court of Appeals, entered October 16, 2016 (Docket No. 328837).

language is unclear or susceptible to multiple meanings. . . ." *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

We turn first to the statutory language at issue. MCL 15.565(1) provides:

> (1) If a collective bargaining agreement or other contract that is inconsistent with sections 3 and 4 is in effect for 1 or more employees of a public employer on September 27, 2011, the requirements of section 3 or 4 do not apply to an employee covered by that contract *until the contract expires*. . . . [Emphasis added.]

PA 152 does not define the word "expires." However, when interpreting a statute, we give undefined words their plain and ordinary meaning. *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). The word "expire" means "to come to an end." *Merriam-Webster's Collegiate Dictionary* (11th ed). Thus, in order for a collective bargaining agreement or other contract to expire, it must come to an end. Based on this language, it is plain that the Legislature intended that all contractual agreements entered into before September 27, 2011 would be exempt from the requirements of PA 152 until the expiration of the agreement. The question on appeal, therefore, is whether Article XIII(E) of the parties' 2010-2012 collective bargaining agreement came to an end on June 30, 2012 or whether it came to an end on August 31, 2012.

A collective bargaining agreement is "[a] contract between an employer and a labor union regulating employment conditions, wages, benefits, and grievances." Black's Law Dictionary (Deluxe 8th ed).[4] Here, the parties' 2010-2012 collective bargaining agreement has two provisions addressing the duration of the agreement. First, Article XV provides that the provisions of the collective bargaining agreement "shall be effective" starting July 1, 2010, and "shall continue in full force and effect until **June 30, 2012**." Second, Article XIII(E), requires the District to continue paying 90% of its qualified employees' health insurance premiums in July and August 2012. It provides:

> The Board shall make ninety (90%) percent payment on insurance premiums for all employees who complete their contractual obligation to assure insurance coverage for the full twelve (12) month period commencing September 1 and ending August 31, even though the teacher may not be returning the next school year.

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[4] The Association appears to argue that the contractual obligation in Article XIII(E) could be construed as an unexpired "other contract" that was entered into before September 27, 2011, so it was exempt from PA 152 until its expiration on August 31, 2012. We disagree. Article XIII(E) is included in the 2010-2012 collective bargaining agreement, and there is no indication in the record that the parties intended it to be a separate agreement.

Thus, under the plain language of the collective bargaining agreement, the provisions in Article XIII(E) could not come to an end, i.e., expire, until August 31, 2012, whereas the remaining terms of the agreement clearly expired on June 30, 2012.

On appeal, the District contends that since PA 152 was enacted, the contractual agreement reflected in Article XIII(E) is now an illegal contract provision and is unenforceable. We disagree for two reasons.

First, this Court has previously held that the parties to a collective bargaining agreement may agree to contractual obligations that extend beyond the expiration of the agreement. See *Ottawa Co v Jaklinski*, 423 Mich 1, 24-25; 377 NW2d 668 (1985) (opinion by WILLIAMS, C.J.) (noting that the parties to a collective bargaining agreement "may agree to extend beyond contract expiration any substantive or procedural rights"). Further, MERC has long held that such agreements remain enforceable even after the expiration of collective bargaining agreement. *Ann Arbor Fire Fighters Local 1733*, 1990 MERC Lab Op 528. See also *John Wiley & Sons, Inc v Livingston*, 376 US 543, 555; 84 S Ct 909; 11 L ed 2d 898 (1964) (finding "no reason why parties could not if they so choose agree to the accrual of rights during the term of an agreement and their realization after the agreement expired").

Second, the District acknowledges that under Article XIII(E) it remains contractually obligated to contribute to its employees' health insurance premiums for the months of July and August 2012 despite the "expiration" of the collective bargaining agreement on June 30, 2012.[5] This strongly suggests that, in the absence of PA 152, the District intended to honor its contractual promise to pay 90% of the premium. Further, although the provision providing that the contract loses "full force and effect" on June 30, 2012 and the provision providing that certain obligations extend for two months beyond that date may appear to conflict, because it is permissible for the parties to agree to be bound by terms that extend beyond the stated expiration of a collective bargaining agreement, we conclude that the language is not ambiguous, i.e. unclear or susceptible to multiple meanings. See *Port Huron Ed Ass'n*, 452 Mich at 323. The plain and ordinary language used in the contract provides that the parties intended most of the contractual obligations to end on June 30, 2012, but also intended the provisions relating to the payment of health insurance premiums for qualified employees to extend for two more months. Thus, in accordance with the parties' intent as expressed by the language of the contract, the 2010-2012 collective bargaining agreement did not fully expire or come to an end until August 31, 2012.

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[5] Moreover, there is evidence in the record showing that the District had previously continued its health insurance obligations beyond the stated duration of prior collective bargaining agreements with the Association.

For these reasons, we conclude that MERC's interpretation nullifies an otherwise enforceable provision in the parties' 2010-2012 collective bargaining agreement that was entered into before September 27, 2011 and that, by its plain terms, had not yet expired. Accordingly, MERC erred in its interpretation of PA 152.[6]

We also conclude that MERC erred in dismissing the unfair labor practice charge after concluding that the District's unilateral modification of Article XIII(E) was not a repudiation of the collective bargaining agreement. MERC has long held that it will find an unfair labor practice when an employer's unilateral modification of a collective bargaining agreement amounts to repudiation of the CBA. See, e.g., *Plymouth-Canton Community Sch Bd of Ed v Plymouth-Canton Ass'n of Ed Office Personnel*, 1984 Lab Op 894. When a party repudiates a collective bargaining agreement, it violates its duty to bargain in good faith. *Maud Preston Palenske Mem Library v AFSCME Council 25, Local 2757.09 and Local 2757.10*, MERC Decision & Order (Case No. C12 K-223), issued April 10, 2014. "Repudiation exists when 1) the contract breach is substantial, and has a significant impact on the bargaining unit and 2) no bona fide dispute over interpretation of the contract is involved." *Gibraltar Sch Dist v Gibraltar Custodial-Maintenance Ass'n/MEA*, MERC Decision & Order (Case No. CU01 I-052), issued June 30, 2003. "The Commission has defined repudiation as an attempt to rewrite the contract, a

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[6] The District directs us to a FAQ issued by the Department of Treasury. The FAQ provides:

> **Q8-6**. A collective bargaining agreement (CBA) expired in December 2012. In the CBA, there was a separate moratorium agreement on health care costs and premiums until December 31, 2013. Does the public employer need to comply with the requirements of the Act, as of January 1, 2013, for the group of employees covered by the moratorium under the expired CBA?
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> A8-6. Yes. The public employer would need to comply with the Act for a medical benefit plan coverage year beginning after the CBA expired in December 2012. Section 5 of the Act (MCL 15.565) directs that if a CBA or other contract that is inconsistent with the Act is in effect for 1 or more employees of a public employer on September 27, 2011, the requirements of the Act do not apply to an employee covered by that contract until the contract expires. Thus, the public employer did not need to comply with the Act until after the CBA expired in December 2012.
>
> The expired CBA's provision that there is a moratorium or postponement of action on health care costs and premiums until December 31, 2013, does not constitute a CBA.

We are not bound by the Department of Treasury's interpretation of PA 152. See *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259 (2008) (stating that an "agency's interpretation [of a statute] is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue").

refusal to acknowledge its existence, or a complete disregard for the contract as written." *City of Detroit (Dep't of Transp) v Amalgamated Transit Union, Local 26*, MERC Decision & Order (Case No. C04 B-061), issued April 25, 2006.

Here, the District's unilateral actions essentially rewrote Article XIII(E) of the collective bargaining agreement so that instead of requiring the District to pay 90% of the health insurance premium, the District only had to pay the "hard caps" amount for July and August 2012. The District asserts that there was a bona fide dispute over the contract language, so it did not repudiate the contract; however, the District does not identify what the bona fide dispute over the contract is. Instead, on appeal, the District only argues that the enactment of PA 152 prohibits it from honoring the health insurance provisions in Article XIII(E). Given that there is no identified dispute over the contractual language, it is clear that the parties' dispute centered solely on the application of the statutory language to the plain terms of their contract. As a result, we conclude that the parties did not have a bona fide dispute over the interpretation of the 2010-2012 collective bargaining agreement.

The District also argues that there was no repudiation because it was required to be extra cautious when implementing PA 152 because it would have been subject to the steep penalties for non-compliance with the statute that are set forth in § 9.[7] According to the District's argument before the ALJ, the potential loss to the District could have been around 2 million dollars, which is not a paltry sum. Nevertheless, instead of unilaterally modifying Article XIII(E) in its favor, the District could have negotiated an agreement before June 30, 2012 so that it could comply with PA 152 before its full contractual obligations under the parties' 2010-2012 collective bargaining agreement expired.

On this record, we conclude that because there was no bona fide dispute over the terms of the contract, the District's unilateral actions rewriting its obligations in Article XIII(E) constituted an unfair labor practice. See *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n/Mich Ed Ass'n*, 458 Mich 540, 553; 581 NW2d 707 (1998) ("By unilaterally modifying the existing contract in midterm without the agreement of the school district, respondent MEA committed an unfair labor practice.").

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[7] Section 9 provides:

> If a public employer fails to comply with this act, the public employer shall permit the state treasurer to reduce by 10% each economic vitality incentive program payment received under 2011 PA 63 and the department of education shall assess the public employer a penalty equal to 10% of each payment of any funds for which the public employer qualifies under the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772, during the period that the public employer fails to comply with this act. Any reduction setoff or penalty amounts recovered shall be returned to the fund from which the reduction is assessed or upon which the penalty is determined. The department of education may also refer the penalty collection to the department of treasury for collection consistent with section 13 of 1941 PA 122, MCL 205.13. [MCL 15.569.]

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien