

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

In the Matter of:

GENESEE COUNTY & GENESEE COUNTY REGISTER OF DEEDS,  
Respondent in MERC Case No. C15 G-092; Hearing Docket No. 15-042683,  
Petitioner in MERC Case No. UC15 K-017; Hearing Docket No.16-000545,

-and-

AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 916,  
Charging Party in MERC Case No. C15 G-092; Hearing Docket No. 15-042683,  
Labor Organization in MERC Case No. UC15 K-017; Hearing Docket No. 16-000545.

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APPEARANCES:

Keller Thoma, P.C., by Richard W. Fanning, Jr., for the Public Employer

Kenneth J. Bailey, Jr., Staff Attorney, for the Labor Organization

**DECISION AND ORDER**

On June 13, 2017, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as moot. Further, the ALJ found that the position at issue should be excluded from the bargaining unit and recommended that the Commission grant the unit clarification petition.

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

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

**ORDER**

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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: July 27, 2017

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**APPEARANCES:**

Keller Thoma, P.C., by Richard W. Fanning, Jr., for the Public Employer

Kenneth Bailey, Staff Attorney, for the Labor Organization

**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE**

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and MCL 423.216, these matters were consolidated and heard on April 26, 2016, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the entire record, including the transcript, exhibits and post-hearing briefs, as well as the stipulation of facts agreed to by the parties, the undersigned makes the following findings of fact and conclusions of law, and issues the following order:

**The Unfair Labor Practice Charge and the Petition:**

In the unfair labor practice charge filed on July 6, 2015, by the American Federation of State, County & Municipal Employees (AFSCME) Council 25 and its affiliated Local 916 against Genesee County and the Genesee County Register of Deeds, the Union alleges that Respondents violated Section 10(1)(e) of PERA. According to the charge, Respondents repudiated the collective bargaining agreement, as well as the terms of a settlement agreement entered into by the parties on May 26, 2009, when it authorized a pay raise for the Chief Deputy Register of Deeds over the Union's objection.

On November 2, 2015, Genesee County and the Genesee County Register of Deeds filed a petition seeking to exclude the Chief Deputy Register of Deeds from the bargaining unit represented by AFSCME Local 916. Respondents contend that the Chief Deputy Register of Deeds is an executive based upon the Commission's definition of that term.

Findings of Fact:

I. Background

Genesee County has approximately 950 regular employees, as well as several hundred seasonal employees working in the Parks Department, the Sheriff's Department, Animal Control and the Treasurer's Office. County employees are represented for purposes of collective bargaining by various affiliates of AFSCME Council 25. Charging Party is a collection of individual AFSCME chapters, each of which represents supervisory employees of Genesee County, including employees of the Genesee County Register of Deeds, a department for which the County is the funding unit. AFSCME Local 496.00 is comprised of supervisory and maintenance employees. AFSCME Local 496.01 represents professional and technical employees of the County. Terrie Campbell is the business representative for all the AFSCME units.

II. Facts – Case No. UC15 K-017; Docket No. 16-000545-MERC

Historically, Genesee County has had a publicly elected County Clerk and a publicly elected Register of Deeds. The County Clerk and the Register of Deeds oversaw their own separate departments, each of which was staffed by a chief deputy and other employees. The Chief Deputy Clerk was not included in any bargaining unit. The Chief Deputy Register of Deeds was included in the supervisory bargaining unit represented by AFSCME Local 916. The offices of the County Clerk and the Register of Deeds were housed in separate locations.

In 2012, the County decided to merge the County Clerk and Register of Deeds into a single position. John Gleason was elected to the newly created position in November of 2012. Gleason formally took office as the Clerk/Register of Deeds on January 1, 2013. Despite the merger, the Clerk's office and the office of the Register of Deeds have remained distinct departments with their own separate staff and independent chief deputies. The Clerk's office is housed in the County Courthouse on South Saginaw Street. The office of the Register of Deeds is located about two blocks away in the County Administration Building on South Beach Street. Gleason's office is in the County Courthouse.

Upon taking office, Gleason removed the existing Chief Deputy Clerk, Janet Davis, and appointed Leslie Raleigh in her place. Gleason wanted to similarly remove the existing Chief Deputy Register of Deeds, Shannon Cooper, but his attempt to do so was blocked by the County Board of Commissioners. Following litigation, it was determined that Gleason had the authority to make the staffing decision. On March 3, 2015, Gleason unappointed Cooper and replaced her with Roberta Sacharski, who remained in that position as of the date of the hearing in this matter. Sacharski has a Bachelor of Arts degree in Social Science and a Juris Doctorate degree from the

Thomas M. Cooley Law School. Prior to taking the chief deputy position, she was in private practice with a Lansing area law firm.<sup>1</sup>

The Genesee County Register of Deeds is responsible for receiving, recovering and maintaining more than 120 types of land records, including real estate deeds and liens. Each year, the department handles approximately 10,000 documents which are vital records to all transfers of interest in land within the County. The department serves as one of the County's largest sources of revenue, with a projected revenue of over \$2 million for the 2015-2016 fiscal year from copying fees and the recording of documents. Expenditures for that same period were expected to total over \$1.2 million, including salaries and fringe benefits.

At the time of the hearing in this matter, the office of the Register of Deeds had thirteen employees, including Sacharski, Deputy Register of Deeds Shelia House, six secretaries, a technician and four contract workers. Sacharski and House are both in the same chapter of the bargaining unit represented by AFSCME Local 916. The secretaries are represented for purposes of collective bargaining by AFSCME Local 49.600, while the technician is a member of AFSCME Local 49.601. The four contract workers are not included in any bargaining unit.

As Chief Deputy Register of Deeds, Sacharski reports directly to Gleason. However, Gleason does not take an active role in the management of the Register's office and relies almost entirely upon Sacharski to direct the operations of the department. Gleason estimated that approximately 90 percent of his time is spent at the County Courthouse overseeing the Clerk's office, including its 27 employees. Gleason testified that he checks in with Sacharski on a daily basis, typically by telephone or e-mail. During these conversations, Sacharski updates Gleason on the day-to-day operations of the department. According to Gleason, some of these conversations are "more in-depth than others." Sacharski confirmed that she and Gleason communicate, but maintained that these conversations are not a daily occurrence. Sacharski estimated that she talks with Gleason only a couple of times per week.

In her capacity as Chief Deputy Register of Deeds, Sacharski is responsible for all personnel decisions affecting the department. Sacharski supervises the Deputy Register of Deeds and the 11 other employees working in the Register's office. She approves employee requests for time-off, determines the physical arrangement of work stations and phones within the office and conducts performance appraisals of all staff members. Gleason does not approve the performance appraisals, nor does he attend meetings at which Sacharski presents the appraisals to employees. Sacharski leads staff meetings, including meetings attended by AFSCME representatives. She assigns and reassigns daily tasks to the clerical employees, technician and contract employees on a rotating basis. Although House is not a part of this rotation, her work is also assigned by Sacharski.

Gleason testified that Sacharski is solely responsible for making all hiring, firing and disciplinary decisions relating to the Register's office. When asked whether he has the ultimate say with respect to the hiring and firing of staff members, Gleason responded, "[Sacharski's] been

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<sup>1</sup> A job description for the Chief Deputy Register of Deeds position was entered into evidence at the start of the hearing. The document indicates that the chief deputy "performs journeyman level clerical work" and that the position requires only a high school degree, as well as progressively responsible clerical experience. However, there was no testimony regarding the creation of this document or any indication that it was updated following the merger of the Clerk and Register of Deeds positions.

doing it and I haven't obstructed her from doing that. . . . I haven't objected to her decision-making. I think she's the authoritative figure in that room. She's there every single minute. She understands. I think there's more evidence to be acquired by watching rather than me sitting [in] an office after the fact." Gleason conceded that he has the legal authority to discipline employees of the Register's office, but explained that it would be impractical for him to do so because he is not a regular presence in the Administration Building.

When a position within the Register's office becomes vacant, Sacharski sends forms to the Human Resources Department notifying the County of the job opening. Human Resources posts the position and then provides Sacharski with a list of qualified applicants. Sacharski generally interviews the candidates by herself, although Gleason has sat in on a few of the interviews for the purpose of evaluating the type of applicants who are seeking employment with the department. Thereafter, Sacharski completes a referral form designating whether the Human Resources Department should offer the position to the candidate. In every instance, Sacharski has been solely responsible for making the decision regarding which candidate to hire. Sacharski also decides whether to add the names of candidates who are not hired to the eligibility list for future job openings.

With respect to discipline, Sacharski has terminated employees, as well as issued notices of suspension and written reprimands to her staff. She has also issued counseling memos documenting her oral discussions with employees, although such memos do not constitute formal discipline pursuant to County policy. When disciplining a staff member, Sacharski completes a Notice of Disciplinary Action form detailing the nature of the violation and her response. She is not required or expected to get the approval of Gleason or anyone else prior to making a disciplinary decision. However, she generally keeps Gleason apprised of problems she may be having with her staff, particularly any individual with whom Gleason has a personal relationship. In such instances, Gleason may attempt to help remedy the issue. Sacharski described one instance in which she discussed a troublesome employee with Gleason and then later decided to fire that employee without giving Gleason any prior notice of her decision.

When a new employee is hired or an employee separates from the Register's office for any reason, Sacharski typically completes the appropriate forms, signs them under the designation "Department Head" and submits them to the Human Resources Department. She also completes other County forms, including employee accident or incident reports. However, there have been several occasions in which Gleason has signed the Notice of Appointment/Transfer form as "Department Head."

When Sacharski was appointed Chief Deputy Register of Deeds, a full-time IT Technician was assigned to the department. Sacharski realized that the position was unnecessary and reassigned the employee to the IT department. Sacharski notified the County of this action via a memorandum to the Controller dated May 20, 2015. Although Sacharski discussed the change with Gleason, she testified that it was her decision and that the approval of the Clerk/Register was not required.

As Chief Deputy Register of Deeds, Sacharski has the authority to purchase materials and supplies for the department, including office supplies and software. Sacharski does not need to seek Gleason's consent before making such purchases, but most purchases exceeding \$5,000 amount must be preapproved by the Board of Commissioners. That same policy applies to all departments within the County. When bids are required pursuant to County policy, Sacharski submits the request

to the County Controller. In addition to supplies, Sacharski is responsible for administering contracts with outside vendors. For example, when the Register's office needed outside assistance with document scanning, Sacharski went to the Board of Commissioners and presented a request for services and assisted corporation counsel in drafting the contract with the vendor. The contract was then approved by the prosecuting attorney and signed by the Board of Commissioners. Once such a contract has been signed, Sacharski is responsible for addressing any issues that may arise and ensuring that the vendor gets paid.

Sacharski prepares the annual budget for the Register's office. Prior to the beginning of each fiscal year, the County's Assistant Controller sends a memo to all department heads summarizing the procedure for the submission of each department's requested budget. Following receipt of that memo, Sacharski calculates the projected revenues and expenditures of the Register's office and submits the requested budget directly to the Assistant Controller. Although Sacharski may consult with Gleason regarding "critical areas" of the budget, Gleason does not review each item line by line. Gleason testified that if a disagreement were to arise between he and Sacharski over the requested budget, he could not foresee a circumstance in which he would overrule her recommendations. Gleason testified that he would "listen to her" because she is responsible for running the day-to-day operations of the department. However, the request itself is submitted to the Assistant Controller under Gleason's signature.

Employment policies applicable to all County employees generally are set forth in the "Personnel Policy Manual for Genesee County," a 96-page document which, by its terms, is intended to "establish a system of uniform and equitable policies, in the form of rules and regulations" governing hiring, compensation, fringe benefits, hours of work and other terms and conditions of employment. However, Sacharski has created and implemented various policies for employees of the Register's office, including policies on overtime and employee use of personal and vacation time. Sacharski has also formulated administrative and procedural policies impacting the function and efficiency of the department, particularly those which involve the processing of documents. On or about April 22, 2015, Sacharski implemented a new "mail out" procedure governing the way real estate documents are returned to citizens after they have been recorded or rejected. Other policies put in place by Sacharski include new work flow requirements, the execution of new letters to accompany returned documents and the implementation of a new procedure for electronic filings. Sacharski communicates these policies to her staff in the form of memos which are sometimes referred to as "Roberta's Rap." Sacharski testified that she has the authority to create these policies without seeking the approval of anyone else, although she copies Gleason on her emails to staff to "keep him in the know."

Gleason confirmed that Sacharski discusses some policy decisions with him and he described "team meetings" at which policy decisions are implemented "as a unit." However, he emphasized that Sacharski is not required to get his approval regarding departmental policy. In fact, Gleason surmised that there likely have been policies implemented by Sacharski of which he remains unaware. While conceding that he technically has the final say on what policies are implemented, Gleason testified that Sacharski had not made any policy decisions with which he disagreed and that he would defer to her judgment if such a situation were to occur. Gleason testified, "She runs the office. I'm not, I don't have a physical presence. I don't think that's good for anybody involved in the operation of the office."

Sacharski has appeared before the Board of Commissioners, primarily for purchasing requisitions and requests for the establishment of new positions. In addition to making the request for scanning services described above, Sacharski sought the Board's approval of a plan to eliminate the four contract workers and replace them with County employees. When Sacharski has a request, the matter is put on the Board's agenda for discussion at a public meeting. Sacharski then presents information to the commissioners at the meeting and answers any questions they may have concerning the request. Sacharski also prepared a document entitled "Operational Review of the Genesee County Register of Deeds" and presented it to the Board and the County Controller as part of the settlement of the lawsuit which Gleason filed against the County regarding his authority to appoint a Chief Deputy Register of Deeds. The document provides a detailed description of the processes and functions of the Register's office. Although Sacharski discussed the task with Gleason, the document was entirely her work.

Sacharski represents management as part of the contractual grievance procedure for employees of the Register's office. Grievances initially go to the front-line supervisor which, in this case, is the Deputy Register of Deeds. If the grievance is not resolved at that level, it is then submitted to Sacharski. Any grievance filed by the Deputy Register of Deeds would go directly to Sacharski. Although Sacharski has discussed grievances with the Clerk/Register, Gleason testified that the decision whether to grant or deny a grievance at that step rests solely with Sacharski, who signs each grievance as "Department Head." Sacharski also attended a special conference with the Union as a representative of management and has communicated with Union representatives on labor relations issues. For example, she had numerous email discussions with a steward for Local 496.00 regarding the Union's request that she put departmental policies concerning overtime, vacation time and personal leave in writing. Those policies were implemented by Gleason before Sacharski was hired. Sacharski ultimately refused the Union's request.

Negotiations for successor collective bargaining agreements between the County and AFSCME Locals 496.00 and 496.01 began sometime after Sacharski began as Chief Deputy Register of Deeds in March of 2015. AFSCME staff representative Terrie Campbell testified that there were 15-20 bargaining sessions for Local 496.00 and approximately 12 sessions for the Local 496.01 contract. Anita Galajda, Human Resources and Labor Relations Director, asserted that there were approximately eight bargaining sessions for Local 496.00 and about 6 negotiating dates for Local 496.01. Sacharski participated in bargaining as a management representative for negotiations involving both Locals on August 25, 2015, following which she prepared a memo for Gleason summarizing what was discussed during those sessions.<sup>2</sup> Prior to taking part in bargaining, Sacharski met with Galajda to discuss bargaining strategy. This discussion pertained to the County's bargaining strategy generally and was not limited to issues involving the Register's office.

State law governs the handling, recording and preservation of land documents. See MCL 561.1 *et seq.* and MCL 565.201 *et seq.* In her capacity as Chief Deputy Register of Deeds, Sacharski is responsible for keeping abreast of legislative changes affecting the department.

### III. Facts – Case No. C15 G-092; Docket No. 15-042683-MERC

The parties stipulated to the following facts in lieu of a hearing on the unfair labor practice charge. At all times pertinent to this case, a collective bargaining agreement has been in effect

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<sup>2</sup> Gleason himself was present for one or two bargaining sessions in total.

between the parties. The most recent contract covers the period March 5, 2014, to June 30, 2015. The position at issue in this dispute, the Chief Deputy Register of Deeds, is covered by that contract. The agreement provides a starting wage rate for the Chief Deputy Register of Deeds of \$48,294 for the first year of employment.

In February of 2015, Respondents approached AFSCME Local 916 and proposed entering into an agreement to start Sacharski, the new Chief Deputy Register of Deeds, at a rate higher than that which is set forth in the collective bargaining agreement. The Union membership voted down that proposal and informed Respondents of that decision. Nevertheless, Respondents started the Chief Deputy at the higher rate. As noted, Sacharski began working for the County as Chief Deputy Register of Deeds in March of 2015.

### Discussion and Conclusions of Law:

#### I. Case No. UC15 K-017; Docket No. 16-000545-MERC

The County asserts that unit clarification is appropriate because there has been a fundamental change in the scope and responsibilities of the Chief Deputy Register of Deeds position as a result of the merger of the Clerk and Register of Deeds positions. According to the County, placement of the Chief Deputy Register of Deeds within a collective bargaining unit is no longer appropriate because the position is responsible for the entire operation of a major department. In support of this contention, the County cites Sacharski's policy-making responsibilities, her involvement with collective bargaining and the budget process, her authority to hire, fire and discipline staff, her interaction with the Board of Commissioners and her authority to requisition supplies and administer contracts. The Union asserts that the petition should be dismissed because the duties of the Chief Deputy Register of Deeds do not meet the criteria for exclusion as an executive. According to the Union, Sacharski functions as a department level supervisor only and lacks the requisite collective bargaining responsibilities and authority to formulate, determine and effectuate policy on an employer-wide basis required to constitute an executive.

A unit clarification petition is appropriate for resolving ambiguities concerning unit placement of individuals in newly created classifications or where there is ambiguity due to recent substantial changes in existing job classifications so as to raise a question as to appropriate bargaining unit placement. *City of Grand Rapids*, 19 MPER 43 (2006); *Lapeer Co*, 1993 MERC Lab Op 649; *Washtenaw Cmty College*, 1993 MERC Lab Op 781. The unit clarification process is generally not appropriate to accrete positions historically excluded from the bargaining unit, whether that exclusion was by express agreement or acquiescence. *Grosse Pointe Pub Lib*, 19 MPER 32 (2006); *Jackson Public Schools*, 1997 MERC Lab Op 290, 298-299. However, the Commission will entertain a unit clarification petition where a question arises as to whether a position should be excluded from a bargaining unit because of executive status. See e.g. *Village of Chesaning*, 1988 MERC Lab Op 1063.

In *Hillsdale Cmty Sch*, 1968 MERC Lab Op 859, enf'd 24 Mich App 36 (1970), the Commission held that supervisors have a right to organize under PERA. At the same time, however, the Commission noted that there is a "level at which organization must end." In *Grandville Mun Exec Ass'n v Grandville*, 453 Mich 428, 439-440 (1996), the Supreme Court approved the Commission's longstanding policy of excluding from collective bargaining as executives "those

managerial employees in the public sector whose responsibilities are so intrinsically connected to the determination of their employer's policies that including them in collective bargaining units would impede, rather than further, the purposes of PERA.” The definition of an executive has been subject to many different formulations, finally culminating in the adoption by the Commission of a four-part definition incorporating elements of the prior definitions of the term. That reformulated definition, which the Commission first set forth in *City of Detroit (Police Dep't)*, 1996 MERC Lab Op 84, 106, provides:

An executive means an employee who (1) is a policy making head of a major department of a public employer; or (2) in the case of employers with 1,000 or more employees, is a chief deputy to a department head, or is the head of a section or division of a major department who reports directly to a chief deputy and who exercises substantial discretion in formulating, determining and effectuating management policy; or (3) pursuant to statutory or charter provision, exercises a substantial degree of autonomy in carrying out his or her public services and who has direct access to or direct influence upon the governing body of a public employer in a policy making role; or (4) formulates, determines and effectuates management policy on an employer-wide basis.

The most significant factors in determining whether a position is an executive are the scope of its responsibilities, the extent of its authority, and the interchangeability of its functions with other executives. *UAW v Sterling Heights*, 163 Mich App 8 (1987); *City of Burton*, 19 MPER 55 (2006); *Carman-Ainsworth Cmty Sch*, 16 MPER 28 (2003). Within these categories, the Commission considers factors such as the number of executive positions relative to the size of the organization, the extent of budget responsibilities, responsibility for preparation of departmental rules and regulations, the degree of interchangeability of functions between the employee and his or her immediate supervisor, and the degree of participation in labor relations or the formulation of collective bargaining policy. *Muskegon Co Prof Command Ass'n v Muskegon*, 186 Mich App 365 (1990); *Detroit v Foreman's Ass'n*, 109 Mich App 141 (1981); *Arenac County*, 2001 MERC Lab 208. The executive exclusion is applied cautiously so as to fulfill PERA's purpose of providing employees with an opportunity to be represented and bargain collectively. See e.g. *Pontiac Sch Dist*, 1997 MERC Lab Op 173; *City of Saginaw (City Attorney)*, 1991 MERC Lab Op 253.

Sacharski is chief deputy to Gleason who, in his dual role as County Clerk/Register of Deeds, heads both departments. As a general rule, chief deputies or assistants to department heads do not qualify as executives. See e.g., *Shelby Twp*, 1997 MERC Lab Op 469; *Big Brothers/Big Sisters of Greater Lansing*, 1988 MERC Lab Op 786; *City of Pontiac*, 1988 MERC Lab Op 390. When the Commission reformulated the definition of executive in 1996, however, it explicitly recognized an exception to this rule for cases involving large employers. As noted, a chief deputy to a department head may qualify as an executive under part two of the definition where the employer has more than 1000 employees. Although this number was selected arbitrarily, it represented an attempt by the Commission to acknowledge the unique operational needs of large employers. According to the Commission, “Part two of the above definition recognizes, as we have done in applying our previous definitions, that there may be more executives in a larger public employer and that executive duties may extend farther down into the organizational structure.” *City of Detroit (Police Dep't)*, 1996 MERC Lab Op at 106. In the instant case, the record establishes that Genesee County has approximately 950 regular employees, as well as several hundred seasonal employees working in the Parks Department, the Sheriff's Department, Animal Control and the Treasurer's

Office. I find that the County constitutes a large employer within the meaning of the definition set forth in *City of Detroit (Police Dep't)*.

Although Sacharski reports to the Clerk/Register of Deeds, the record indicates that she effectively functions as the director of the Register of Deeds department. Gleason testified that he spends virtually all his time at the County Courthouse overseeing the operation of the Clerk's office and leaves management of the Register's office, which is located in a separate building, to Sacharski. As chief deputy, Sacharski has the statutory authority to perform the duties of the Register of Deeds in his absence. MCL 53.92. The services provided by the Register's office are mandated by statute and essential to the operation of the County. The office handles approximately 10,000 land documents per year and serves as one of the County's largest sources of revenue. Sacharski is responsible for keeping up-to-date on changes in the law affecting the Register's office and assuring that the department is in conformance with applicable statutes.

In her capacity as chief deputy, Sacharski, has the authority of a department director with respect to the preparation of budget requests, the purchasing of supplies and equipment and all personnel matters. She exercises supervisory authority over the individuals employed at the Register's office and has broad discretion with regard to hiring and discipline. When a position within the Register's office becomes vacant, she works with the Human Resources Department to post the position, interviews the applicants and is responsible for deciding which candidate to hire. Similarly, she may terminate employees without the approval of the Clerk/Register. Like other department directors within the County, Sacharski has the authority to spend up to \$5,000 without the approval of the Board of Commissioners. She prepared a substantive report regarding the operation of the Register's office for the Board and has appeared before that body in connection with purchasing requisitions and requests for the establishment of new positions. Although final decisions on such matters are made by the Board, Sacharski plays a role in that process by providing the Commissioners with information and answering their questions.

The Chief Deputy Register of Deeds also has broad discretion in effectuating policy. Sacharski has implemented various policies applicable to employees of the Register's office, including guidelines relating to employee use of overtime and personal and vacation time. She has also established procedures which shape how services are provided by the Register's office, including the implementation of a new process governing how land documents are returned to citizens after they have been recorded or rejected. In addition, Sacharski is responsible for making policy determinations regarding staffing of the office. She sought the Board's approval to eliminate contract workers and have them replaced by County employees and she made the determination that the department no longer needed a full-time IT Technician position. Sacharski participates in labor relations and has played a role, albeit a limited one, in formulating collective bargaining policy, including negotiation strategies for the County generally. She is authorized to grant or deny grievances and has represented management at special conferences with Union representatives. For these reasons, I conclude that the Chief Deputy Register of Deeds is an executive as the Commission has defined that term.

The Commission reached a similar conclusion in *Macomb County, 1993 MERC Lab Op 125*. In that case, as here, the employer combined the functions of its clerk and register of deeds into one office. Following the consolidation, the union filed a petition seeking to add a previously excluded position, chief deputy clerk, to its existing supervisory unit. The record established that the chief deputy clerk prepared the draft of the clerk's office budget and exercised supervisory authority

over all employees of the department. She served as the regular contact person with the personnel department in matters relating to hiring and promotion and she exercised broad discretion in grievance processing, discipline and hiring. The chief clerk had the statutory right to succeed the clerk in her absence. Although *Macomb* was decided three years before the adoption of the four-part definition of executive set forth in *City of Detroit (Police Dep't)*, 1996 MERC Lab Op 84, the Commission relied upon essentially the same criteria utilized today in concluding that the chief deputy clerk qualified as an executive. See also *Bay County*, 1997 MERC Lab Op 327 (equalization director was an executive despite the fact that she reported to the county's finance director).

I conclude that the Chief Deputy Register of Deeds is an executive who should be excluded from participation in collective bargaining. The record establishes that Sacharski is chief deputy to the head of a major department of the County who exercises substantial discretion in formulating, determining and effectuating management policy. In so holding, I explicitly reject the Union's contention that the chief deputy does not qualify as an executive because her policymaking responsibilities are limited to the operation of the Register's office, as that is not a requirement under part two of the definition.

## II. Case No. C15 G-092; Docket No. 15-042683-MERC

Under Section 15 of the Act, 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 mandatory subjects of bargaining. MCL 423.215(1); *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (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, 317 (1996); *Detroit Bd of Ed*, 2000 MERC Lab Op 375, 377. A party can fulfill its obligation under Section 15 of PERA by bargaining about a subject and memorializing the resolution of that subject in the collective bargaining agreement. Under such circumstances, the matter is "covered by" the agreement. *Port Huron* at 318; *St Clair Co ISD*, 2005 MERC Lab Op 55, 61-62. As the Michigan Supreme Court stated in *Port Huron* at 327, "Once the employer has fulfilled its duty to bargain, it has a right to rely on the agreement as the statement of its obligations on any topic 'covered by' the agreement." At the same time, bargaining unit members have a right to rely upon the terms and conditions in the contract and to expect that they will continue unchanged. *Detroit Bd of Ed*. See also *Wayne Co Comm Coll*, 20 MPER 59 (2007). The employer's duty to maintain the status quo pending satisfaction of its bargaining obligation continues even after the expiration of a collective bargaining agreement. *Local 1467 IAFF v City of Portage*, 134 Mich App 466 (1984); *Detroit Police Officers Ass'n v Detroit*, 61 App 487 (1975).

The Commission's role in disputes involving alleged contract breaches is limited. *Genesee Twp*, 23 MPER 90 (2010) (no exceptions). Where there is a collective bargaining agreement covering the subject matter of the dispute which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the contract controls and no PERA issue is present. *Macomb Co v AFSCME Council 25, Locals 411 and 893*, 494 Mich 65 (2013). An alleged breach of contract will constitute a violation of PERA only if a repudiation can be demonstrated. See e.g. *City of Detroit (Transp Dep't)*, 1984 MERC Lab Op 937, aff'd 150 Mich App 605 (1985); *Jonesville Bd of Ed*, 1980 MERC Lab Op 891, 900-901. A finding of repudiation cannot be based on an insubstantial or isolated breach of contract. *Oakland Co Sheriff*, 1983 MERC Lab Op 538, 542. Repudiation exists when (1) the contract breach

is substantial, and (2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Comm Sch*, 1984 MERC Lab Op 894, 897. The Commission will find a repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960.

As noted, there is no dispute that the Chief Deputy Register of Deeds was not paid the entry level wage rate set forth in the collective bargaining agreement. Respondents argue that the Commission cannot order the County to decrease Sacharski's salary because such action is prohibited by MCL 45.421(1), which provides:

The annual salary of each salaried county officer, which is by law fixed by the county board of commissioners, shall be fixed by the board before November 1 each year and shall not be diminished during the term for which the county officer has been elected or appointed, but may be increased by the board during the officer's term of office.

Respondents assert that the Clerk/Register is a "county officer" for purposes of this statute. In addition, Respondents contend that the term of a deputy of a county officer is co-extensive with the term of the elected official who appointed that deputy and that the compensation level applies to the position, not the individual holding that position. According to Respondents, the level of compensation for the chief deputy position was fixed as of the date that Gleason took office as Clerk/Register. Since Sacharski's predecessor was in place when Gleason took office and was paid at the top of the pay scale, Respondents assert that the compensation applicable to that position cannot be reduced to the starting pay level as demanded by the Union.

As discussed above, I find that the Chief Deputy Register of Deeds is an executive under PERA and, therefore, should be excluded from the bargaining unit. This finding substantially removes any effective remedy beyond a cease and desist order. Given that the conduct complained of in this matter does not raise an important question of public interest and is not capable of repetition, I find that the allegations set forth in the charge have been rendered moot. *City of Lansing*, 29 MPER 63 (2016) (no exceptions); *Traverse Bay ISD*, 28 MPER 59 (2014); *Kalamazoo Pub Lib*, 1994 MERC Lab Op 486 (no exceptions); *City of Saginaw*, 1984 MERC Lab Op 104; *Saginaw Ed Ass'n*, 1982 MERC Lab Op 100, 105 (no exceptions).

Nevertheless, it should be noted that the statute relied upon by the County was originally enacted in 1879, long before PERA. PERA is the dominant law regulating public employee labor relations, and it prevails over other conflicting statutes "to ensure uniformity, consistency, and predictability in the critically important and complex field of public sector labor law." *St Clair Co ISD*, 2000 MERC Lab Op 55; *Kent Co Deputy Sheriffs' Ass'n v Kent Co Sheriff*, 238 Mich App 310, 313 (1999). See also *Rockwell v Crestwood Sch Dist*, 393 Mich 616 (1975); *Plymouth-Canton Comm Sch*, 1998 MERC Lab Op 545; *Detroit Bd of Ed*, 1986 MERC Lab Op 121, 123. The Michigan Supreme Court has consistently held that the bargaining obligation under PERA prevails over conflicting legislation, charters, ordinances, or resolutions. *IAFF Local 1383 v City of Warren*, 411 Mich 642 (1981). Accordingly, to the extent that there is a conflict with MCL 45.421(1), the provisions of PERA must prevail.

It should also be noted that the one of the harms which was intended to be prevented by MCL 45.421 was the use of an indirect method of discharging a county official by the subterfuge of reducing her salary. *McQuaid v Bd of Auditors of Oakland Co*, 315 Mich 234 (1946), an occurrence which is not implicated by this dispute. When judicial interpretation is necessary the court must read the statute in light of the harm it is meant to remedy and give the statutory language a reasonable construction that best accomplishes the purposes of the statute. *Marquis v Hartford Accident & Indem*, 444 Mich 638, 644 (1994).

Accordingly, I conclude that Respondents' reliance on MCL 45.421 is misplaced. Because of my finding that the charge is moot, however, I need not determine whether the actions of Respondents in this matter constituted a repudiation of the collective bargaining agreement.

For the reasons set forth above, I recommend that the Commission issue the following order:

**RECOMMENDED ORDER**

The unfair labor practice charge filed by AFSCME Council 25 and its Affiliated Local 916 in Case No. C16 G-092; Docket No. 15-042683-MERC is hereby dismissed as moot.

The petition filed by Genesee County and the Genesee County Register of Deeds in Case No. UC15 K-017; Docket No. 16-000545-MERC is hereby granted and the bargaining unit is clarified to exclude the position of Chief Deputy Register of Deeds.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: June 13, 2017