TRUE COPY

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

17TH JUDICIAL PROBATE COURT, 55TH JUDICIAL CIRCUIT COURT,
AND 80TH JUDICIAL DISTRICT COURT,
Public Employers-Respondents,

MERC Case No. C18 J-097

-and-

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),
AND UNITS 3, 4, AND 5 OF ITS LOCAL UNION NO. 1974,
Labor Organization-Charging Party,

-and-

GLADWIN COUNTY AND GLADWIN COUNTY BOARD OF COMMISSIONERS,
Interested Party-Court Funding Agent.
_____/

APPEARANCES:

Michigan Justice PLLC, by Albert B. Addis, for the Respondents

Pinsky, Smith, Fayette & Kennedy, LLP, by Michael L. Fayette, for Charging Party

Masud Labor Law Group, by Joshua Leadford, for the Interested Party

DECISION AND ORDER

On March 14, 2019, Administrative Law Judge Julia C. Stern (ALJ) issued her Decision and Recommended Order[1] in the above matter pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ found that the Commission did not have jurisdiction over this dispute and recommended that the charge be dismissed. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with § 16 of PERA.

On January 10, 2020, the Commission received a stipulation signed by all parties requesting that this charge be dismissed with prejudice. The parties' request is hereby approved and the charge in this matter is dismissed with prejudice.

[1] MOAHR Hearing Docket No. 18-019524

This Decision and Order and the Decision and Recommended Order of the Administrative Law Judge will be published in accordance with Commission policy.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Samuel R. Bagenstos, Commission Chair

Edward D. Callaghan, Commission Member

Robert S. LaBrant, Commission Member

Dated: FEB 12 2020

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

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AND 80TH JUDICIAL DISTRICT COURT,
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Case No. C18 J-097
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GLADWIN COUNTY AND GLADWIN COUNTY BOARD OF COMMISSIONERS,
Court Funding Agent-Interested Party.
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APPEARANCES:

Michigan Justice PLLC, by Albert B. Addis, for the Respondents-Public Employers

Pinsky, Smith, Fayette & Kennedy, LLP, by Michael L. Fayette, for Charging Party

Masud Labor Law Group, by Joshua Leadford, for Gladwin County and the Gladwin County Board of Commissioners.

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

On October 10, 2018, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and Units 3, 4, and 5 of its Local Union No. 1974, (hereinafter the Union) filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against Gladwin County and the Gladwin County Board of Commissioners (hereinafter Gladwin County or the County) as agents of the 17th Judicial Probate Court, 55th Judicial Circuit Court, and 80th Judicial District Court (hereinafter the Courts), pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, MCL 423.216. Pursuant to

Section 16 of the Act, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) with the Michigan Administrative Hearing System.

On November 28, 2018, Gladwin County filed a motion for summary dismissal of the charge against it. Based on facts set forth in the parties' pleadings and not in dispute, as set forth below, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and History of the Proceeding:

The charge alleges that Gladwin County, as agent for the above Courts, violated Section 10(1)(a) and (e) of PERA, and caused the Courts to violate these sections of the Act, by repudiating the collective bargaining agreement between Charging Party and the Courts. The alleged repudiation occurred on or about April 18, 2018 and consisted of the County deducting medical insurance premiums from the paychecks of employees of the Courts in violation of the collective bargaining agreement.

On October 15, 2018, I issued an order to the Courts pursuant to Rule 165 of the Commission's General Rules, 2012 AACS, 2014 AACS, R 423.165, requiring them to show cause why they should not be found to have violated their duty to bargain in good faith under Section 10(1)(e). I noted in that order that Gladwin County, as the Courts' funding agent, was not a co-employer of Court employees, citing *Judicial Attorneys Assn v State,* 459 Mich 291 (1998). On November 6, 2018, I held a telephone conference with counsel for the Courts, the Union and Gladwin County at which counsel explained the nature of the dispute and their clients' respective positions on the issues. They also told me that the Courts had filed an action in circuit court against Gladwin County to enjoin the deductions and promised to keep me updated on the progress of this action.

As agreed at the conference, the Courts filed a position statement and response to my order on November 13, 2018, and Gladwin County filed a motion for summary disposition on November 26, 2018. The Union filed a response opposing the motion on or about December 11, 2018. In its position statement, the Courts made it clear that they had no dispute with the Union and asserted that they had taken no action to repudiate their collective bargaining agreement in violation of PERA. They pointed out that the County, the entity handling the Courts' payroll for its employees in Gladwin County, had commenced the deductions without the Courts' approval and over their explicit objection. In fact, the Courts pointed out, they had initiated an action in circuit court to enjoin the County's interference with the collective bargaining agreement. They argued that the County, and not the Courts, had committed the unfair labor practice.

Meanwhile, a judge from Bay County was appointed to hear the civil action filed by the Courts. In mid-December, Gladwin County filed a motion for summary disposition with the Circuit Court, the Union filed a motion to intervene, the Courts filed a motion for a preliminary injunction, and Gladwin County agreed to continue placing the monies it was deducting from the paychecks of employees in an escrow account until the circuit court proceedings, including any appeals, were resolved.

I held another telephone conference with the parties on January 15, 2019. On or around February 8, 2019, the parties notified me that the Circuit Court had issued an order from the bench in the lawsuit before it and had scheduled a status conference for March 8, 2019 to discuss what further steps might occur in the litigation.

Facts:

Except where specifically noted, the following facts are not in dispute. The Union represents employees of the 17th Judicial Probate Court, the 55th Judicial Circuit Court, and the 80th Judicial District Court. The jurisdiction of these three courts extends over two counties, Gladwin and Clare. All three Courts have judges and employees who work in Gladwin County and the 55th Judicial Circuit Court and 80th Judicial District Court also have judges and employees who work in Clare County. Gladwin County is the funding agent for the Courts' operations in Gladwin County and Clare County is the funding agent for the Courts' operations in Clare County. The two counties provide the Courts with services that include handling the Courts' payroll and purchasing healthcare coverage for the Courts' employees located in their respective counties.

The 2007 Collective Bargaining Agreement

On the same date, and in connection with its decision in *Judicial Attorneys Assn,* supra, the Supreme Court issued Supreme Court Administrative Order (SCAO) 1998-5. This administrative order, as amended, contains directives to the trial courts under the Supreme Court's supervision relative to their relationship with their local funding units. Topics covered in SCAO 1998-5 include the court budgeting process; procedures for resolving funding disputes between a court and its funding unit, including mediation by the State Court Administrator; and participation by a funding unit in the collective bargaining process for court employees. SCAO 1998-5 provides that collective bargaining agreements covering trial court employees are to be bargained and signed by the court's chief judge. SCAO 1998-5 allows a funding unit to create a local court management council and contains a set of suggested bylaws for such councils.[1] However, if a trial court does not have a local court management council, the court's chief judge must consult regularly with the funding unit on personnel policies and must, if the funding unit desires, permit its representative to attend all collective bargaining sessions. Per SCAO 1998-5, a chief judge may also designate the funding unit to bargain on its behalf. Under the administrative order, a role of a local court management council remains merely advisory unless the court's chief judge or the judge's designee agrees to the council bylaws set out in the order. If the chief judge agrees to these bylaws, the court must thereafter implement any personnel policies agreed upon by the council concerning compensation, fringe benefits, and pensions. SCAO 1998-5 further states that if these bylaws are adopted, the local court management council is to agree on bargaining strategy and a proposed dollar value for personnel costs. If an impasse occurs on the

[1] The bylaws require that a judge or chief judge of each court for which the council serves as management be a member of the council; that funding unit membership on the council cannot exceed judicial membership by more than one vote; and that any council action, including dissolution of the council, requires a majority vote of judicial members and a majority vote of the funding unit representatives.

council regarding these matters the chief judge must immediately notify the State Court Administrator.

The Union and the Courts have been parties to a series of collective bargaining agreements covering employees of all three Courts. Gladwin County has a local court management council which has adopted the bylaws set out in 1998-5, and the 2007 collective bargaining agreement was also reviewed, if not formally approved by the Gladwin County Board of Commissioners before it took effect. The pleadings do not indicate if Clare County also has a local court management council or how or to what extent Clare County has participated in the bargaining between the Union and the Courts.

The collective bargaining agreement at issue (the 2007 agreement) was entered into by the Union and the Courts in 2007. The agreement contains, in Section 22.0, the following duration clause:

> Termination. This Agreement shall become effective as of December 19, 2007 and shall remain in force until 11:59 pm, September 30, 2010 and, thereafter, for successive periods of one (1) year unless either party shall, on or before the sixtieth (60th) day prior to expiration, serve written notice on the other party of a desire to terminate, modify, alter, negotiate, change, or amend this Agreement. A notice of desire to modify, alter, amend, negotiate, or change, or any combination thereof, shall have the effect of terminating the entire Agreement on the expiration date, or subsequent one (1) year period, whichever is the case, in the same manner as a notice to terminate, unless before that date all subjects of amendment proposed by either party have been disposed of by agreement or by withdrawal of the part[sic] proposing amendment, modification, alteration, negotiation, change, or any combination thereof.
>
> The written notice referred to in this Section shall be considered properly served by the parties if it is sent by certified mail to the respective business addresses on or before the sixtieth (60th) day prior to the expiration date of this agreement.

Neither the Union nor the Courts served written notice pursuant to this provision until on or about August 1, 2018.

The collective bargaining agreement also contains a provision, Section 14, stating that Courts' employees will be provided with specified Blue Cross/Blue Shield health, prescription, dental and vision plans and that "the employer" agrees to pay the full premium for this coverage except for the dollar amount monthly employee contributions for single, two person, and full family coverage set out in the agreement. Section 14 has separate subsections for employees funded by Clare County and employees funded by Gladwin County, but the benefits in both sections are the same. Section 14(D) states that upon termination and during subsequent negotiations, employee contributions shall remain at the amount as of September 30, 2010 pending agreement on new contribution rates.

Finally, Section 19.1 of the 2007 collective bargaining agreement explicitly permits the Courts and the Union to amend or otherwise alter the agreement during its term but provides that such change will not be effective unless it is reduced to writing and signed by authorized representatives of both parties.

Act 152 and the Dispute Between the County and the Courts

In 2011, the Michigan Legislature enacted the "Publicly Funded Health Insurance Contribution Act," 2011 PA 152 (Act 152), MCL 15.562 et seq. The purpose of the statute was to put limits on how much public employers in Michigan can pay toward the cost of the health insurance they provide to their employees and elected officials. Act 152 provides public employers with alternate methods for complying with the statute. In brief, Section 3, the default method, provides "hard cap" limits on the amounts a public employer can pay annually for single, two person and family coverage; new hard caps, computed in accord with a method set out in the statute, are announced each year by the State Treasurer. Under Section 4, a public employer, by majority vote of its governing body, may elect instead to limit its contribution to 80% of the total annual costs of all the medical benefit plans it offers or contributes to for its employees and elected public officials. Section 8 allows a public employer to "opt out" of complying with Act 152 but requires an annual vote of 2/3 of the employer's governing body to do so.

Act 152 includes, in Section 5, a "grandfather" clause which reads as follows:

> (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 sections 3 and 4 do not apply to an employee covered by that contract until the contract expires.* A public employer's expenditures for medical benefit plans under a collective bargaining agreement or other contract described in this subsection shall be excluded from calculation of the public employer's maximum payment under section 4. *The requirements of sections 3 and 4 apply to any extension or renewal of the contract.* [Emphasis added].
>
> (2) A collective bargaining agreement or other contract that is executed on or after September 27, 2011 shall not include terms that are inconsistent with the requirements of sections 3 and 4.

As Gladwin County interpreted Section 5, the 2007 collective bargaining agreement had automatically renewed for a one-year period after its stated expiration date of September 30, 2010, since neither the Courts nor the Union had provided notice Section 22. Then, as the County saw it, on September 30, 2011, the 2007 agreement automatically renewed for another year when neither party gave notice. The County concluded that the since the contract had automatically renewed, it did not come within the grandfather provision in Section 5 of Act 152. In late 2011, Gladwin County notified the Courts that the amount that Gladwin County would be contributing to the costs of the health care coverage provided to Court employees under the collective bargaining agreement would exceed the hard caps for the upcoming 2012 medical

benefit plan year, and asked the Courts to reopen negotiations with the Union.[2] It appears that Clare County did not make a similar demand. The Courts and the Union disagreed with Gladwin County that their collective bargaining agreement had been renewed or extended and the County did not pursue the matter at that time.

Both Gladwin and Clare Counties continued to make health care payments that complied with the original terms of the collective bargaining agreement until January 2014, when Gladwin County informed the Courts that because its contributions to the health care plans for Court employees exceeded the hard caps for its 2014 medical benefit plan year, Gladwin County would stop paying the premiums for the plans in the 2007 agreement. It informed the Courts that it would instead enroll employees in a less comprehensive base health care plan, with lower premiums, that the County intended to implement, along with a health reimbursement account (HRA), for its own employees effective February 1, 2014.[3] Faced with this ultimatum, on January 27, 2014, the Courts and the Union entered into a memorandum of agreement (MOU) stating that Court employees would enroll in the new Gladwin County employee plan. The MOU made it clear that the parties were entering into the MOU under duress. The MOU stated, "The parties agree that the Memorandum of Understanding is not an attempt by any party to renegotiate, extend or renew the current labor contract, but is entered into for the sole purpose of providing health insurance to the Court's employees." [4]

From February 1, 2014, to date, Court employees, or at least those funded by Gladwin County, have been offered the same health insurance plans offered to Gladwin County employees. According to Gladwin County, the County was in compliance with Act 152 for the medical benefit plan years 2014, 2015, 2016, and 2017 because its contributions to these health insurance plans remained below the Section 3 hard caps for each of those years.

From documents attached to the County's pleadings, however, it appears that around the end of December 2015 the County raised the Act 152 issue with the Courts again with respect to its 2016 medical benefit plan year. In response to a request from the County, on May 17, 2016, the State Treasury Department (Treasury) issued an advice letter in which it concluded that while the County is not a co-employer with the Courts of the Courts' employees, both the Courts and Gladwin County are responsible for ensuring that the publicly funded contributions to the Courts' employees' health care plan remain within the limitations prescribed by Act 152. It concluded that the Legislature's clear intent was that Act 152 apply to all public employees and elected officials and, given the "unique relationship" between Gladwin County and the Courts, they were jointly responsible for compliance. The Treasury letter also addressed the question of

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[2] On September 12, 2012, in response to an inquiry from another district court, the State Court Administrator issued a letter in which he: (1) confirmed that the State's trial courts met Act 152's definition of a "public employer, " and (2) as the "designated state official" for the judicial branch under Act 152, stated that trial courts were expected to adopt their local funding unit's method of complying with Act 152 unless the trial court was able to provide the State Court Administrator with a compelling case in writing for deviating from this method.

[3] As noted above, employees were required to contribute to the plan set out in the 2007 collective bargaining agreement. It is not clear from the pleadings whether the new plan required employee premium contribution.

[4] Although not entirely clear from the pleadings, it appears that Court employees funded by Clare County continued to receive health care benefits as provided in the original agreement.

whether the Courts' 2007 collective bargaining agreement was grandfathered under Section 5 of Act 152. The letter concluded that the 2007 agreement "attempts to extend its terms by automatic one-year renewal." It concluded, therefore, that 2007 agreement was not grandfathered and, as provided in Act 152, that Courts' medical benefit plans were required to comply with Section 3 or Section 4 of Act 152 beginning with its first medical benefit plan coverage year commencing after January 1, 2012.

According to the County, in the fall of 2017 it determined that for its 2018 medical benefit plan year, the contributions necessary to maintain its existing health plans for its employees and Court employees would exceed the hard caps. Sometime before the middle of December 2017, the County notified the Courts of its conclusion. In a letter to the Gladwin County Board of Commissioners dated December 20, 2017, the Courts again argued that their 2007 collective bargaining agreement with the Union had not been renewed or extended but had simply not expired since no notice to terminate had been given by either party. The letter also asserted that since the Court was the employer of its employees, any sanctions the State of Michigan might impose for non-compliance with Act 152 would have to be directed at the Courts and not the County. Thus, according to the Courts, the County's concern about losing its State revenue sharing payments was thus unfounded. The Courts' letter also suggested that the Board of Commissioners consider voting to "opt-out" of Act 152 pursuant to Section 8 of that Act if it remained concerned about its Act 152 compliance.

At its April 24, 2018, meeting the Gladwin County Board of Commissioners passed a resolution directing the county clerk to begin deducting premium share contributions from those Court employees covered by the Gladwin County health insurance programs effective with the payroll beginning April 30, 2018.[5] Per the terms of the resolution, all these premium share contributions were placed in an escrow account and remained in escrow as of the date of the County's motion in this case.

On or about August 1, 2018, the Courts served the Union with the notice of a desire to modify, alter, negotiate, change or amend their collective bargaining agreement as required by the duration clause of this agreement, and requested that Gladwin County's local court management council meet to discuss bargaining strategy for a new contract.

On or about February 8, 2019, the parties notified me that the Circuit Court had issued a bench ruling in the Courts' action against the County. The Circuit Court did not immediately issue a written order but scheduled a status conference for March 8, 2019. The parties appear to agree that the Court ruled that the 2007 collective bargaining agreement was grandfathered under Section 5 of Act 152 because (1) as a contract of indefinite duration, it remained in effect until a party to the contract served timely notice to terminate, modify or amend it; (2) an "extension or renewal" of the contract under Section 5 requires an affirmative act of the parties and therefore the 2007 agreement did not "automatically" renew; and (3) the 2014 MOU did not serve to terminate the 2007 agreement and did not constitute an extension or renewal of that agreement. The County notified me of its intent to appeal the Circuit Court's order as soon as it issued a written order.

[5] As noted above, it is not clear from the pleadings whether the County implemented a new premium share or increased the employees' existing premium contribution.

Positions of the County and the Union:

The arguments made by the County in its motion to dismiss the charge are as follows. First, the County disagrees that it is an "agent" of the Courts. Citing *46th Cir Trial Court v Crawford Co,* 476 Mich 131 (2006), the County asserts that it has the constitutional right to determine the appropriation it will provide to fund the Courts' operations, and that only through litigation commenced in the circuit court, and in limited circumstances, can the Courts seek payment of funds above the levels volunteered by the County.[6] The County also points out that the Courts and the County have, pursuant to SCAO 1998-5, created a local court management council through which the parties must mutually agree upon economic proposals for purposes of collective bargaining with the Union. According to the County, "given these pragmatic considerations," the County should be considered a joint employer with the Courts under PERA for the limited purpose of the economic package to be funded. However, according to the County, since it never assented to paying healthcare premiums above the hard caps, it cannot be held to have violated its duty to bargain in good faith by refusing to do so.

Second, according to the County, any alleged "repudiation" of the contract occurred in January 2014, when the County told the Union that it would no longer fund the health insurance plans provided for in the 2007 CBA. Therefore, according to the County, the charge filed by the Union on October 18, 2018, was untimely under Section 16(a) of PERA.

The County also argues that the wage deductions it made in 2018 were lawful because, without those deductions, its contribution to the Courts employees' health care for its 2018 medical benefit plan year would have exceeded the hard caps in Section 3 of Act 152. As it did in the circuit court action, the Court argues that the 2007 collective bargaining agreement expired on September 30, 2010, and that thereafter the agreement was automatically renewed for a series of one-year terms. Because it was automatically renewed or extended, the agreement was not grandfathered by Section 5 of Act 152. Alternatively, it maintains that the 2014 MOU, in which the Union and the Courts agreed to the implementation of a health care plan different than that in the 2007 collective bargaining agreement, constituted a new agreement on healthcare executed after Act 152's effective date and, therefore, it was not grandfathered by Section 5.

In its response to the County's motion, the Union asserts that whether or not the County is considered to be a joint employer with the Courts, the County was obligated to continue providing the benefits set out in the 2007 agreement and its failure to do so constituted a repudiation of that agreement. It also maintains that the statute of limitations for its charge began to run on May 1, 2018, when the County began deducting unauthorized premium copayments from the paychecks of unit members, and that its charge filed on October 10, 2018, was therefore

[6] In *46th District,* the Court held that while the judiciary has inherent power under the Michigan Constitution to compel the legislative branch to provide funding necessary for the judiciary to carry out its constitutional responsibilities, this power is limited to funds sufficient to meet its critical needs. When a trial court seeks funding beyond that which its funding agent is willing to provide, and the dispute cannot be settled with the State Court Administrator's assistance, the trial court can file suit in circuit court against the funding agent. The trial court then bears the burden of demonstrating that the additional funding is reasonable and necessary to the court's ability to perform its functions. *Ibid* 149-150.

timely. The remainder of the Union's arguments address the County's claim that it was required by Act 152 to increase the Court employees' premium contributions.

Discussion and Conclusions of Law:

Section 10(1) of PERA, including Section 10(1)(e), prohibits certain conduct by public employers, their officers, and their agents. The Commission's authority to determine whether a person or entity is an "employer" of a particular public employee or group of public employees under PERA is recognized as part of its responsibility to administer the statute. See e.g., *City of Pontiac and Pontiac Housing Comm,* 22 MPER 46 (2009). The Commission's authority extends to determining joint or co-employer status, even when, as in the case of elected officials, their status as an employer or co-employer depends on the authority granted to them by statutes other than PERA. *St Clair Prosecutor v Michigan Council 25, AFSCME,* 425 Mich 204 (1986); *Berrien County,* 1987 MERC Lab Op 306; *Branch Co Bd of Comm and Branch Co Clerk et al,* 2002 MERC Lab Op 110, aff'd in part and reversed in part, *Branch Co Bd of Comm v International Union UAW,* unpublished opinion of the Court of Appeals, 16 MPER 70 (2003).

In *Judicial Attorneys Assn v State,* 459 Mich 291 (1998), however, the Michigan Supreme Court concluded that an attempt by the Legislature to statutorily create an employment relationship between trial court employees and the funding agent for their court violated the separation of powers doctrine. The statute in that case purported to make Wayne County, the funding agent for the Third Judicial Circuit Court, the employer of that court's employees. The statute gave Wayne County the authority, in concurrence with the chief judge of the court, to establish personnel policies and make and enter into collective bargaining agreements. It further provided, however, that if Wayne County and the chief judge were not able to concur on the exercise of their authority on any matter, Wayne County had the authority to establish policies and procedures relating to compensation, fringe benefits, holidays and leave, while the chief judge had the authority to establish policies and procedures relating to all other types of personnel matters.

The Supreme Court in *Judicial Attorneys Assn* acknowledged that the trial courts presented a complex situation, with the Supreme Court having general supervisory control over all trial courts, the chief judges of the courts having control over the the day-to-day operations of the courts, and the trial courts being dependent on local governmental units for the bulk of their funding. It concluded however, that the judicial branch's powers necessarily included the administrative function of controlling those who work within the judicial branch, and that the "fundamental and ultimate responsibility" for all aspects of court administration, including operations and personnel matters within the trial courts, resides solely within the judicial branch. The Supreme Court held that the fact that the statute before it preserved the chief judge's role in making decisions over noneconomic personnel matters did not overcome the statute's constitutional flaw, i.e. that the "fundamental employer role of judicial branch employees is to be exercised by the local legislative branch rather than by the judicial branch itself." The Court noted that the judicial branch can, on its own authority, and for practical reasons, decide to share some limited employment-related decision making upon determining that this is in the best interest of the public. Moreover, in recognition of what the Court said was the necessity for some chief judges to before more heedful of the practical needs of funding agents, the Court, by

separate order, issued SCAO 1998-5. In addition, as discussed in footnote five above, the Supreme Court has by caselaw established standards and procedures for resolving disputes between trial courts and their funding agents over economic matters.

The County argues that, for practical reasons, the Commission should consider it to be a joint employer of the Courts' employees with respect to the economic terms and conditions of their employment.[7] I note that the County is also making this argument in another case, a unit clarification petition filed by the County asking the Commission to split the Union's existing bargaining units into separate units of Gladwin County and Clare County employees.[8] I find that under the Court's reasoning in *Judicial Attorneys Assn*, the Commission is prohibited from finding the County to be a joint or co-employer with the Courts under PERA. The Court held in *Judicial Attorneys Assn* that the Legislature, i.e., the legislative branch, lacks constitutional authority to statutorily assign the powers of an employer of trial court employees to another arm of the legislative branch, i.e., the court's county funding agent. If the Legislature does not have this authority, in my view, it follows that the Commission is prohibited from interpreting PERA to give a funding agent the statutory rights of an employer under the Act, including the right to participate in collective bargaining and to approve agreements establishing terms and conditions of employment.

If the County is not a "public employer" of the Court's employees within the meaning of PERA, it follows that it cannot be found guilty of an unfair labor practice under Section 10 of PERA with respect to these employees. Therefore, I conclude that any charge against it under Section 10, including the Union's charge that the County violated its duty to bargain in good faith by repudiating a collective bargaining agreement, must be dismissed on jurisdictional grounds. I also find that the charge against the Courts alleging that they violated their duty to bargain in good faith should be dismissed. It is undisputed that the Courts had no say in the alleged repudiation and in fact vehemently opposed it. Insofar as I can determine, there is no dispute of any kind between the Courts and the Union.

The Commission is not charged with administering Act 152, and its authority to interpret Act 152 extends only to determining whether a public employer is excused by that statute from what, in the absence of the statute, would be its obligation to bargain under PERA. *Shelby Twp,* 28 MPER 21 (2014); *Decatur Pub Sch*, 27 MPER 41 (2014). It has, in these cases and in *Genesee Co,* 26 MPER 48 (2013) (no exceptions), addressed the applicability of Act 152 to collective bargaining disputes. However, the dispute in this case, involving whether a collective bargaining agreement or agreements fall under the grandfather clause of Section of Act 152, is a dispute between several trial courts and one of their funding agents, not between public employers and the collective bargaining representatives of their employees. I conclude that the Commission does not have jurisdiction over this dispute, and that the charge should be dismissed as to all parties. I therefore recommend that the Commission issue the following order.

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[7] Although these terms are sometimes used interchangeably, in *St. Clair Co Prosecutor* at 224, fn 2, the Supreme distinguished them on the basis that co-employers each exercise authority over certain aspects of the employment relationship, while joint employers, despite being separate entities, possess joint authority over all aspects of the relationship.

[8] This petition, Case No. UC18 J-009/18-023145-MERC, is pending before me but was not consolidated with this charge.

RECOMMENDED ORDER

The charge in this case is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: March 14, 2019