# STATE OF MICHIGAN

# COURT OF APPEALS

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| SHELBY TOWNSHIP,<br><br>Respondent-Appellant, | UNPUBLISHED<br>December 15, 2015 |
| v | No. 323491<br>MERC |
| COMMAND OFFICERS ASSOCIATION OF MICHIGAN,<br><br>Charging Party-Appellee. | LC No. 12-000067 |

Before: SHAPIRO, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Respondent, Shelby Township (the Township), appeals as of right the decision of the Michigan Employment Relations Commission (MERC), which concluded that the Township failed to bargain over a mandatory subject of bargaining and applied an incorrect rate for health insurance to members of the charging party, Command Officers Association of Michigan (the Union). We affirm.

## I. LEGAL AND FACTUAL BACKGROUND

The Publicly Funded Health Insurance Contribution Act, MCL 15.561 *et seq*., limits how much public employers may pay toward healthcare costs for employee medical benefit plans. There are two alternatives available to the public employer: the "hard cap" option, MCL 15.563, gives employers the option to pay a specific amount per employee, while the "percentage" option, MCL 15.564, gives employers the option to pay not more than 80% of total healthcare costs for all employees and elected public officials. A medical benefit plan excludes "benefits provided to individuals retired from a public employer . . . ." MCL 15.562(e).

MCL 423.215b(1) provides that after a collective bargaining agreement expires, "a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date" and that the employees shall pay any increased costs of maintaining their benefits. The cost increase "shall not cause the total employee costs for those benefits to exceed the amount of the employee's share" under the Act. MCL 423.215b(4)(b).

The Union represents supervising law enforcement officers in the Township. The parties' collective bargaining agreement expired on December 31, 2010. When the contract expired, the Union's members paid flat annual rates. In November 2011, the Township adopted

the "percentage" option for only the Union's members and dispatchers—it decided to apply the "hard cap" option to non-union employees and other bargaining units.

The Union demanded to bargain about the calculation method and total amount of employee contributions, but the Township denied that it had made any decision regarding the amounts of premium sharing. On December 6, 2011, the Township voted to adopt an 80/20 premium sharing plan, and the Union renewed its demand to bargain. On January 11, 2012, the Township advised the Union that it would not bargain about the percentage sharing plan.

The Township's premium sharing plan became effective and increased the members' rates on January 1, 2012, even though the employees' plan did not renew until February 1, 2012. In January 2012, the Union's members were required to pay both their 20% share and a cost increase for that month. Additionally, the members' insurance rates were based on bundled rates, which included the insurance costs of retirees, instead of unbundled rates, which did not. John Vance, a plan analyst for the Township's insurance provider, testified that the insurance provider offered both bundled and unbundled rates to the Township in mid-January 2012.

Following a hearing before a magistrate, MERC ruled that the Township did not violate its duty to bargain by unilaterally choosing the "percentage" option instead of the "hard cap" option. However, MERC concluded that the Township had a duty to bargain about the calculation of the Union members' premium shares. MERC ruled that the Township improperly relied on bundled rates to calculate the employees' premiums because MCL 15.562(e) expressly excluded benefits to retirees from medical benefit plans. MERC concluded that the Township could not lawfully require the Union's members to pay more than 20% of the unbundled rate. It ordered the Township to recalculate the employees' premiums as of February 1, 2012, and refund any overpayments, as well as the increased cost in January 2012.

## II. STANDARDS OF REVIEW

This Court reviews MERC decisions to determine whether the decision is authorized by law and MERC's findings are supported by competent, material, and substantive evidence. Const 1963, art 6, § 28; *Grandville Muni Executive Ass'n v Grandville*, 453 Mich 428, 436; 553 NW2d 917 (1996). Substantial evidence is evidence that a reasonable person would accept to support a conclusion. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994) (opinion by BOYLE, J.). We review de novo MERC's legal decisions. *Branch Co Bd of Comm'rs v UAW*, 260 Mich App 189, 192-193; 677 NW2d 333 (2003). MERC's legal conclusions are not binding on this Court, but we afford them respectful consideration. See *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 97, 103; 754 NW2d 259 (2008).

## III. RATES AS A MANDATORY SUBJECT OF BARGAINING

The Township contends that MERC erred when it concluded that the percentage allocation of premium contributions is a mandatory subject of bargaining. We disagree.

The Public Employee Relations Act (PERA), MCL 423.201 *et seq*, controls in any conflict with another statute. *Van Buren Co Ed Ass'n v Decatur Pub Schs*, 309 Mich App 630, 643; ___ NW2d ___ (2015). PERA requires public employees to bargain about wages and conditions of employment. MCL 423.215(1). Health insurance benefits are a mandatory subject

of bargaining. *Ranta v Eaton Rapids Pub Schs Bd of Ed*, 271 Mich App 261, 270; 721 NW2d 806 (2006). A public employer does not have a duty to bargain about its choice between the "hard cap" and "percentage" options for employee medical plan contributions. *Van Buren Co Ed Ass'n*, 309 Mich App at 643. But a public employer must bargain about the amount that specific employee groups will pay toward the employees' portion of the contribution. *Id*. at 645-646.

In this case, MERC ruled that the Township did not have any duty to bargain about its choice of the "percentage" option over the "hard cap" option, but it concluded that the Township did have the duty to bargain over the percentages that the employee groups would contribute. MERC's decision is consistent with this Court's interpretation of the same statutory language in *Van Buren Co Ed Ass'n*. We conclude that MERC did not err by concluding that this was a mandatory subject of bargaining.

## IV. BUNDLED INSURANCE RATES

The Township also contends that MERC erred when it concluded that it had improperly calculated the employees' premiums on the basis of bundled rates that included retirees' insurance costs. According to the Township, it properly relied on a Department of Treasury document that approved of bundled rates. We disagree.

First, even presuming that the Department of Treasury's "frequently asked questions" document applies to the percentage option,[1] it does not supersede MERC's interpretation. PERA is a "highly specialized and politically sensitive field of law." *Kent Co Deputy Sheriffs' Ass'n v Kent Co Sheriff*, 238 Mich App 310, 313; 605 NW2d 363 (1999). MERC has sole jurisdiction to resolve issues involving unfair labor practices. *Id*. MCL 423.215b is part of PERA, which MERC is charged with enforcing. We conclude that MERC was not bound by the Department of Treasury's memorandum.

Second, we conclude that MERC did not err as a matter of law when it determined that the Township could not use a rate for its employees' premiums that included benefits for retired employees. The definition of "medical benefit plan" specifically *excludes* benefits to retired employees. MCL 15.562(e). The bundled rate used in this case included retirees' costs. The unbundled rate was available to the Township in mid-January, before the employees' insurance plan renewed on February 1, 2012. The Township's difficulty in complying with the statute does not render the statute unreasonable or allow this Court to avoid enforcing its language as written. See *Johnson v Recca*, 492 Mich 169, 187; 821 NW2d 520 (2012).

Finally, the Township argues that MERC improperly ordered it to unilaterally recalculate its premiums and reimburse the Union's members for any healthcare overcharges. Other than restating its previous arguments, the Township provides no authority for the proposition that MERC may not order recalculation and reimbursement as a remedy. We conclude that the Township has abandoned this issue. See *VanderWerp v Plainfield Charter Twp*, 278 Mich App

[1] This document concerned only the "hard cap" option and did not mention the "percentage" option that the Township chose in this case.

624, 633; 752 NW2d 479 (2008). Additionally, we note that MERC may impose any remedy that would make affected employees whole. See *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 10; 753 NW2d 595 (2008).

We affirm.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder