STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

**IN THE MATTER OF WAYNE COUNTY,**

Respondent/Public Employer

And

Case No. C14 G-079A
Docket No: 15-037169-MERC

**AFSCME COUNCIL 25, LOCAL 3317,**

Charging Party/Labor Organization

_____/

**CHARGING PARTY'S BRIEF IN SUPPORT OF ITS UNFAIR LABOR PRACTICE CHARGE ALLEGING REGRESSIVE BARGAINING**

**Part I. Procedural History:**

In February 2014 Wayne County prepared, under the provisions of the Uniform Budgeting and Account Act, a deficit elimination plan to be submitted to the State Treasurer. As of February 2014, AFSCME and Local 3317 (hereinafter Local 3317) had a Collective Bargaining Agreement (CBA) which ran through September 30, 2014. Local 3317 filed an unfair labor practice charge alleging that the Respondent would not bargain in good faith, in accordance with Sections 10, 15 and 16 of the PERA. This unfair labor practice charge ultimately went to a hearing before this Honorable Administrative Law Judge who ruled against the Union and the MERC upheld the ALJ's decision on August 11, 2017.

The CBA which was in affect at the time the Respondent submitted its Deficit Elimination Plan to the State of Michigan in February of 2014, contained

a provision which stated that the Union was not required to engage in mandatory bargaining as it relates to changes to the Pension Plan contained in Article 38 of the CBA, until 2020. (See MERC Decision dated August 11, 2017).

In September of 2014, the Union filed for Act 312 Arbitration and the Commission selected Barry Ott as the Chairman of the Arbitration Panel. After Arbitrator Ott was selected, an election for County Executive was to be held in November of 2017; Warren Evans won the August primary and therefore, it was assumed that he would win the November 2014 election for County Executive.

Under the provisions of the new amendment of Act 312 Arbitration, the arbitration process had to be concluded within (6) months and therefore, the Union would have had a new contract by March 2015, approximately (75) days after Warren Evans took office.

On or about October 1, 2014, Kenneth Wilson, Director of Labor Relations for Wayne County, approached Local 3317's Chairman of the Bargaining Team, Daniel Connell, and the Union's Chief Negotiator, Jamil Akhtar, and advised Local 3317, that he had the then-County Executive, Robert Ficano's authority to meet with the Union and to advise the Union that Warren Evans had requested that the Union withdraw its Petition for Act 312 Arbitration, in order that Evans could meet with the Union after January 1, 2015, to try and reach a new CBA. The Respondent and Local 3317 entered into a written contract, wherein the Respondent guaranteed the Union that in the event the parties were unable to reach a new CBA that the Respondent would not prevent Local 3317 from returning to Act 312 arbitration and the

outstanding economic issues would be settled by the Arbitrator. As of October 1, 2014, the Union and Respondent had reached and signed tentative agreements as to all economic provisions except for one minor issue.

Prior to Warren Evans taking office on January 1, 2015, he contacted the Wayne County Commission and requested that they hide from the Union $78,000,000.00 in General Fund cash which could be used for CBA purposes or any other funding for County General Fund obligations. The County Commissioners honored Evans' request and did not pass a resolution to transfer this $78,000,000.00 cash into the County's 2015 budget. Richard Kaufman, the Deputy County Executive, is on record as telling the Board of Commissioners in October 2015 that Evans withheld this information, as to the $78,000,000.00 in cash from the Unions in order that Evans could extract new contracts terms from the Unions which included severe economic concessions.

In April of 2015, Evans presented Local 3317 with contract proposals which were, as he stated in the newspaper, more **"Draconian"** than what the Ficano administration demanded in February in 2014.

The Evans' administration, in January 2015, presented to the public a **FAKE** report setting forth the economic condition of Wayne County and stated that the Respondent was on the verge of bankruptcy, because of its cash flow problems, its $1,300,000,000.00 unfunded liability relating to post-retirement medical benefits and unfunded pension obligations. This **"FAKE"** report was called "Project Meyer" and was prepared by Ernest & Young. Earnest & Young refused to certify the economic hardship which was set forth in the "Project

Meyer" report. At page (1) of the Ernest & Young "Project Meyer" report, Ernest & Young told the world that any third party could not rely upon the information in the "Project Meyer" report. Ernest & Young stated this qualifier as follows:

> ***"Accordingly, reliance on this report is prohibited by any third party as the projected financial information contained herein is subject to material change and may not reflect actual results."***

Despite this report from Ernest & Young, the Respondent insisted that the facts and figures contained in the "Project Meyer" report were legitimate and that the Unions would have to accept the findings as gospel and the Respondent would not change any of the economic elements contained in the "Project Meyer" report. Richard Kaufman, the Deputy County Executive, testified at the unfair labor practice hearing that a reason for the County Executive demanding "draconian" concessions from the Unions was in part due to the $1,300,000,000.00 unfunded accrued liability relating to post-retirement medical benefits. Here again, Kaufman's testimony was based upon this fake evidence. As of April of 2015, the date the Respondent made its "**Draconian**" contract demands on the Union, the Respondent had settled a class action lawsuit with its retirees wherein retirees, would no longer receive post-retirement benefits, but would receive cash stipends to pay for medical insurance which the retirees would purchase on the open market. This savings to the Respondent brought the $1,300,000,000.00 billion-dollar liability down to a $400,000.000.00 future liability and had a great impact on the Respondent's bond rating.

Mr. Dwayne Seals, the Chief Financial Advisor for the Wayne County Commission, and Ms. Marcella Cora, the Wayne County Auditor General, both testified during the unfair labor practice charge that Evans, prior to taking office, requested the County Commission to hid $78,000,000.00 in General Fund cash and further both Seals and Cora testified that the total amount of available cash which could have been included in the 2014-2015 budget, was approximately $150,000,000.00.

Most astonishing though was the testimony from Mr. Kenneth Wilson, the Director of Labor Relations for Wayne County, who testified that the Evans' administration never told Wilson about the $150,000,000.00 which Evans requested the County Commission to hide from the Unions nor that the Respondent had approximately $150,000,000.00 which could have been placed in the General Fund during the 2014-2015 fiscal year. As it turns out, the Commission, at Evan's request requested these funds to be retroactively included in the 2014-2015 fiscal year budget.

As soon as the Union received the Respondent's new economic proposals on April 20, 2015, the Union filed notice that it would not go back to the bargaining table and would invoke the provisions of Act 312 Arbitration, in order that the outstanding economic issues minus retirement would be submitted to arbitration. On June 20, 2015, the Union notified the Director of the MERC of its intent to go back to arbitration and the MERC reappointed Arbitrator Ott to finish the arbitration process. Arbitrator Ott sent the parties back to the bargaining table as allowed for under the provisions of Act 312, for

additional bargaining; further, in the event the parties were unable to reach an agreement that their last best offers had to be presented on August 24, 2015. On August 24, 2015, both parties submitted their last best offers.

For statutory reasons which have been dealt with by the MERC in its October 16, 2015 separate Decision relating to Act 312 arbitration, the Respondent, after submitting its last best offer to Arbitrator Ott, determined it would invoke the provisions of Act 436, P.A. 2012 and that it would not honor its written contract and personal guarantees and assurances that the Union would be allowed to go to arbitration.

The unfair labor practice charge which is now before this Honorable Administrative Law Judge, alleges that the Respondent committed an unfair labor practice, when in bargained in bad faith and which amounted to an act of **Regressive Bargaining** which is prohibited by the PERA.

**Part II. Respondent Through the Conduct of its County Executive, Deputy County Executive and Chief Negotiator Were Involved In Bad-Faith Conduct During the Course of Bargaining With Local 3317 in 2015; Said Bad-Faith Acts Constitutes Impermissible Regressive Bargaining on the Part of the Respondents:**

**Black's Law Dictionary** defines the term **"good faith"** as follows:

> *"Honesty of intention, the freedom from knowledge of circumstances which ought to put the holder upon inquiry (citations omitted). An honest intention to abstain from taking any unconscious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit, or belief of facts which render transactions unconscientious." (citations omitted).*

With this definition of good faith, which is required under Section 15 of the PERA, Local 3317 will now set forth the facts which demonstrate that the

Respondent's total conduct amounted to bad faith bargaining, prohibited by law, contract and fair dealings with its employees. The Charging Party, will now set out to prove that it was the intent of the Respondent to come to the bargaining table as of January 1, 2015, with a desire to defraud the members of the Wayne County Sheriff's Department, holding the classification of Sergeant, Lieutenant and Captain, represented by Local 3317, as it relates to a new CBA. As will be laid out below, the bad-faith acts and unconscionable actions of the Respondent cannot be questioned as to any fair reading of the undisputed facts as set forth below.

**A. <u>The Totality of the Circumstances:</u>**

The MERC has held, over the past 40 years, that in determining whether a party has bargained in bad faith, which constitutes an act of "**regressive bargaining,**" that the ALJ and MERC must look at the "**<u>totality of the circumstances</u>**." The totality of the circumstances deals with the conducts of the party being charged with bad-faith bargaining, during the course of time the parties were negotiating for a new CBA. The key element in determining whether a party has been involved in regressive bargaining is:

> *"The important issue is whether the employer approached the bargaining process with "an open mind and a sincere desire to reach an agreement."*

**<u>Detroit Police Officer's Ass'n v Detroit v Detroit</u>** 391 Mich 44, 54, 85 LRRM 2536, 2538 (1974). See also **<u>Alba Public Schools</u>**, 1989 MERC Lab Op 823, 827, **<u>Kalamazoo Public Schools</u>**, 1977 MERC Lab Op 771, 766, **<u>Virginia Elec & Power Company</u>** 314 US. 469; 9 LRRM 405 (1941)

With this guiding principle from the MERC, the National Labor Relations Board and the United States Supreme Court's, interpretation of said definition, the Union will now move forward in setting outs its case based upon the totality of the bad-faith and unconscionable conduct of the Respondents.

**B. <u>The February 2014 Contract Proposals Made by the Respondent:</u>**

Local 3317, in the spring of 2014, began bargaining for a replacement contract, the then current labor agreement was due to expire September 30, 2014. The Respondent presented a contract proposal to the Union, which constituted its Deficit-Elimination Plan, which was required to be prepared once the Respondent identified a budget problem, and which had to be reported to the State Treasurer. (Exhibit 13). The 2014 contract proposal, which was the Respondent's 2014 Deficit-Elimination Plan, and which was modified on (2) different occasions, prior to the Union petitioning for Act 312 arbitration, was set out by this Honorable Administrative Law Judge in his May 31, 2017 decision and recommended order in Case No. C14 G079, Docket No. 14-015819-MERC as follows:

*<u>"Findings of Fact:</u>*

> *Charging Party represents a bargaining unit comprised of Sergeants, Lieutenants and Captains employed with the Wayne County Sheriff's Department. The parties were signatories to a collective bargaining agreement in effect from October 1, 2011, through September 30, 2014. Article 38 of the contract set forth the applicable provisions regarding retirement terms agreed to between the parties. Article 38.01(L) provided the following:*
>
> *Upon the termination of this Collective Bargaining Agreement on September 30, 2011, the parties may agree to bargain over retirement*

*related issues during the next round of contract negotiations. However, all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 38 of this Agreement, covering the period of October 1, 2008 through September 30, 2011, shall not be subject to Act 312 arbitration until October 1, 2020.*

*On February 5, 2014, because the County was purportedly operating in a deficit, then County Executive Robert A. Ficano presented a deficit elimination plan (DEP) to the County's Board of Commissioners (Board). 4 That DEP began with the statement that "[a]s with many communities within the State of Michigan, and throughout the country, the Charter County of Wayne has experienced serious financial challenges since 2008." The DEP went on to claim that at the end of its most recent fiscal year, September 30, 2013, the County's General Fund had an accumulated [*13] deficit net of $ 93 million, with projected losses of $ 30 million and $ 32 million for the next two years, if no changes were made. As part of the DEP's proposed method of reducing the County's deficit, the County Executive sought the following changes/concessions from certain County employees, including members of Charging Party's bargaining unit:*

*- Effective October 1, 2014, decreasing the defined benefit plan multiplier from 2.5% to 1.5% of average financial compensation for all years of credited service;*

*- Effective October 1, 2017, limiting the amount of paid leave used to determine accrued financial benefits within the County's pension plan as well as restricting the use of overtime hours when computing average final compensation;*

*- Effective October 1, 2014, increasing the employee contributions in defined benefit plans 1, 3, 5 and 6 to 7% of gross wages until October 1, 2017, at which time employee contributions would be reduced to 6% of gross wages;*

*- Effective October 1, 2014, the contribution rates for defined benefit plan 4 would be 10% for the employer and 4% for the employees;*

*- Effective October 1, 2014, a 5% wage reduction; and,*

*- Elimination of Columbus Day and birthdays as holidays.*

*In addition to the above financial concessions and other proposals impacting current County employees, the DEP also sought significant changes to retiree healthcare benefits. This DEP was never approved by the County Board. 5*

*According to testimony provided by County Deputy Chief Financial Officer/Budget Director Kevin G. Haney, included within the DEP presented to the Board for consideration, was the accounting of approximately $ 84 million from the delinquent tax fund that could be released by the County Treasurer as unrestricted funds, meaning they could be added to the County's general fund. 6 Haney testified that the intent was to use those monies to help pay down the accumulated deficit but that the monies would have no impact on the structural deficit.*

*The parties began bargaining over a successor agreement sometime in the beginning of 2014, with the first formal session occurring on March 14, 2014, at which time a state mediator was present. The parties met again on March 27, April 9, April 15, and May 6, 2014, all without a state mediator present. Charging Party's bargaining chair, Sergeant Daniel Connell, testified that the Union's position at the onset of negotiations and throughout bargaining was for a one-year contract maintaining the status quo. Testimony provided by witnesses on both sides reveals that at the beginning of negotiations the parties did not agree to any negotiation ground rules in writing but that there was an understanding that "off the record" discussions, or "free-flowing" as parties also called such, was separate from formal bargaining and were simply informal discussions absent from proposals made at the bargaining table. The same witnesses agreed that the general plan for negotiations was for the parties to reach tentative agreement over non-economic issues first and then move on to discussing economic provisions.*

*During the above referenced bargaining sessions, notes prepared by Connell indicate that through these several meetings the parties engaged in "off the record" discussions as well as "free-flow" on numerous occasions. Additionally, the notes support Connell's claim as to the Union's position regarding a one-year status quo extension, as it appears that the Union made this specific proposal on April 9 and May 6, 2014. On April 15, 2014, the parties agreed to discuss retirement and Article 38 off the record and on May 6, 2014, the parties "free-flowed" on what it would take to open Article 38.*

*Sometime in the beginning of May the original DEP was revised and once again presented to the County's Board. The revised DEP remained largely unchanged from its earlier version with the exception that the proposed changes to retiree healthcare had been removed and the plan had been updated to reflect an increase of $ 10 million dollars in state revenue sharing. At some point in May the Board adopted the revised DEP. As of the May 14, 2015, hearing date the State Treasurer had not approved the County's revised DEP.*

*During the May 16, 2014, bargaining session the Union once again offered the one-year status quo extension. There was some discussion as to the DEP and the Union's desire to present it to its general membership. More "free-flow" discussions took place, however what was discussed is not readily apparent from the record. Connell testified that he understood the County's position a to economic proposals to be the terms as set forth in the DEP, i.e., changes in pension and a 5% wage reduction among other things.*

*Two more bargaining sessions occurred on June 3, 2014, and June 5, 2014, at which a state mediator was present at both.*

*During the June 12, 2014, bargaining session the County, through Wilson, provided the Union with a proposal for a four-year contract with a status quo first year. The second year of the contract proposed no change in base wages, but did decrease the pension multiplier for those exceeding 1.5% to 1.5% as set forth in the DEP, as well as also changed the employee contribution levels for defined benefit plans, of 7% and 4% respectively, essentially mirroring the revised DEP. At the beginning of the third year the unit would enjoy a 2.5% wage increase. Another 2.5% raise would occur at the beginning of the fourth year along with the proposed changes limiting the number of leave hours included with final average compensation and the elimination of overtime hours calculated therein. Additionally, this proposal sought to eliminate just birthdays as holiday days as opposed to birthdays and Columbus Day as provided for in the DEP.*

*The parties met on June 19, June 26, and July 8, 2014, all with a state mediator present.*

*On July 23, 2014, the parties met again, and a proposal was presented to the Union. It is not clear from the record what changes if any this proposal may have made from the earlier June 12, 2014, proposal. The Union's one-year status quo extension proposal was discussed.*

*The parties met on August 13, 2014, once again with a state mediator. At some point another proposal was presented to the Union. The new proposal still called for a four-year contract and was identical to the June 12, 2014, proposal except that the Employer had swapped the implementation year for the pension multiplier and limitation of average final compensation hours so that the limitation on leave hours and restriction of overtime hours in calculating average final compensation changes took place at the beginning of the second year, while the reduction in the pension multiplier was to take place in the fourth year."*

On April 20, 2015, the Respondent presented the Union with new contract proposals which Wayne County Executive Warren Evans was quoted in the local newspapers as being "Draconian" proposals. Warren Evans had been elected County Executive in November 2014, replacing then-County Executive, Robert Ficano.

Sergeant Daniel Connell, the Chairman of the Union's bargaining committee, testified at the unfair labor practice hearing as to the differences between the 2014 Ficano proposals and the April 2015 Warren Evans' proposals. (Connell TR 10-3-17 Volume III, pg. 10-28).

## III. The Respondent Did Not Have a Change in Economic Conditions, Which Would Warrant the Respondent Demanding "Draconian" Changes to the Collective Bargaining Agreement:

As will be explained in greater detail below, Wayne County did not have a worsening of its economic condition from May of 2014 to April of 2015, when it presented the Union with its new proposals.

### A. The County Executive's Bargaining Team Are Strangers to the Term "Good-Faith" When It Comes to Bargaining into Contracts With Local 3317:

In September 2014, the Union invoked the provisions of Act 312 contract arbitration and the MERC appointed arbitrator Barry Ott as the chairman of the arbitration panel. In August 2014, Warren Evans was elected as Democrat nominee for the office of County Executive, which, in Wayne County, assured him of a victory in the upcoming November general election. In late-September 2014, Mr. Kenneth Wilson, the Respondent's Director of Labor

Relations, contacted the Union's bargaining unit chairman, Mr. Daniel Connell, and the Union's chief negotiator, Mr. Jamil Akhtar, and advised them that the then-Ficano administration has authorized him to meet with the Union to request that the Union withdraw its petition for Act 312 arbitration, in order that Warren Evans, when he took office in January 2015, would have a chance to meet with the Union and try to work out a new contract. The Union initially rejected the proposal because, under the revisions of Act 312, the arbitration process would have been completed in March 2015; therefore, the Union would have a new 4-year contract and would not be subject to the provisions of the Emergency Manager Statute, being Act 436 PA 2012. (10-1-15, MERC Decision D14 A-0018).

Mr. Wilson looked Mr. Connell and Mr. Akhtar in the eye and gave Mr. Connell and Mr. Akhtar his personal assurances that the Union would be allowed to proceed to Act 312 arbitration, if a new agreement would not be reach, and he, in fact, put that understanding in writing (Exhibit 12). After receiving the April 20, 2015 contract proposal, which constitutes the basis for this unfair labor practice charge, the Union advised the MERC that it wanted to proceed to Act 312 arbitration; arbitrator Ott was re-appointed, and the parties proceeded to have a pre-hearing conference with Ott. At the pretrial conference, Ott ordered the parties back to the bargaining table and ordered that the parties were to submit last/best offers on August 24, 2015 if the parties could not reach an agreement.

After intensive negotiations, the parties submitted their last-best offers on August 24, 2015 (Hearing TR. October 4, 2017, Vol. III, pg. 55-58

The Respondent, in what can only be described as an act of bad faith, in its dealing with Local 3317, invoked the provisions of the Emergency Manager's Statute, Act 436 PA 2012, and voided the contract allowing the parties to engage in Act 312 arbitration. This can only be labeled as a "textbook definition of bad faith on the part of the Respondent." (MERC Decision 10-16-15; D14 A-0018).

Therefore, when evaluating the conduct of the Respondent under the "totality of the circumstances" evidentiary standard, this is an additional argument for finding an unfair labor practice was committed by the Respondent.

**B. <u>The Respondent's Near Economic Death is a FAKE Argument:</u>**

The Respondent relied upon two documents prepared by outside sources as its economic justification for its economic proposals; the first document is the Project Meyer Report, prepared by Ernest & Young (Exhibit 17,) and the second document is the so-called "Recover Plan," dated April 27, 2015 (Exhibit 19).

The third document, which the defendants relied upon is the Evans' letter to the State Treasurer, dated June 17, 2015, setting forth the Respondent's economic position and the need for state intervention (Exhibit 4). The Evans' June 17, 2015 letter was responded to by the Chairman of the Wayne County Board of Commissioners, Gary Woronchak (Exhibit 5).

In support of these three documents, the Respondent offered the testimony of the Deputy County Executive, Richard Kaufman, testified that based upon the Project Meyer Report (Exhibit 17), and the Recovery Plan (Exhibit 19), and the fact that the Respondent had a $13,000,000,000.00 in unfunded accrued liability, that it had to force all the Unions to take drastic cuts in their economic fringe benefits (Hearing TR October 4, 2017 hearing, pg. 27-55). Further, Kaufman testified that months before the settlement relating to post-retirement medical benefits was entered by the court in May-June 2015, that he had the Respondent auditors start to cost-out the new costs of post-retirement medical benefits (Hearing TR October 4, 2017, pg. 31-32). Even though Kaufman testified that the settlement took approximately $500 million off the Respondent's book for healthcare liability, the reports submitted by the County Executive by Moody's Investment Report dated February 19, 2016 stated that:

*"According to an actuarial valuation as of September 2015, modifications to retiree healthcare coverage reduced the county's OPEB UAAL to $468 million from $1.3 billion, reported as of October 2013. In fiscal 2014, the county's payout OPEB cost was $35.9 million, while the fiscal 2016 full actuarially required contribution (ARC) is estimated at $21 million..."* (Exhibit 9).

The Respondent set out on a course of conduct after he had presented the Union with its April 20, 2015 contract proposals to block the Union from receiving financial data from the County Board of Commissioners, Director of Audits, Mr. Dwayne Seals. Mr. Seals testified that he did receive an email from the Union (Exhibit 3) and that he agreed to meet with the Union; however, he was told by the County Executive's office that he should not meet with the

Union as it relates to his "fact sheet" dated June 12, 2017 (Exhibit 2). (Hearing TR Vol. 1, pgs.51-64). The MERC has long-held that it is a violation of Section 10 (1)(e) of PERA for an employer to refuse to provide information to the Union which is relevant to the bargaining process; Plymouth Canton Community Schools SCH 1998 MERC Lab Op 545; City of Detroit Dep't of Transp, 198 MERC Lab Op 205; Oakland University, 1994 MERC Lab Op 540 and Wayne County ISD, 1993 MERC Lab Op 317. The testimony offered by Mr. Seals was uncontroverted by any of the Respondent's witnesses. The Union had a right to obtain the economic information the Respondent was using in supporting its regressive contract proposals.

As to the information contained in the "Project Meyer Report," that information is bogus and not supported by the facts, from the date it was issued in January 2015 through this date. The authors of the report, Ernest & Young, one of the most reputable accounting firms in the world, refused to sign off on the report, which can only be interpreted to mean it was offering information which was not supported by the facts. The Project Meyer Report, at page 1, includes one of the most non-sequitur statements ever published in Wayne County. Page 1, in part, provides as follows:

> "***Accordingly, reliance on this report is prohibited by any third party as the projected financial information contained herein is subject to material change and may not reflect actual results."*** *(Exhibit 17, pg. 1).*

At the bargaining table, throughout the course of negotiations, the Respondent insisted that the Union had to rely upon the Project Meyer

statements as to the Respondent's financial condition, and that the Respondent was relying almost singly on said statements. This position was made by the respondent even in light of the fact that Ernest & Young stated, "reliance on this report is prohibited by any third party as the projected financial information contained herein is subject to material change and may not reflect actual results!" Local 3317 views itself as "**any third party**" as stated by Ernest & Young at page 1 of the Project Meyer Report. The Union had a right to have access to the economic information it requested and to provide answers from Mr. Seals as it relates to his report to the commission dated May 15, 2015 (Exhibit 2).

When the Respondent stated that it was relying upon this "**fake**" financial statement contained in Exhibit 17, that argument should be viewed as part of the totality of the conduct of the respondent in proving that it acted in bad faith during the 2015 bargaining process. Further, it is well-settled that a Union has the right to have access to all economic information and documents in the position of the employer and to have the ability to ask questions as to said economic information by the author of the documents. Here again, when this bad-faith violation of Section 10 and 15 of the PERA is reviewed with the rest of the undisputed facts as stated above, and which will be stated below, the totality of the respondent's conduct can only point this honorable commission's finding that the respondent was engaged in regressive bargaining.

**C. <u>The Respondent Withheld Vital Economic Information From The Union:</u>**

The United States Supreme Court in **NLRB v Truitt Mfg. Co.**, 351 U.S. 149 (1956) specifically stated that the collective bargaining process includes the parties to deal with one another in an "honest" fashion. The Truitt court stated this proposition as follows:

> [4] Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to pay an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy. And it would certainly not be farfetched for a trier of fact to reach the conclusion that bargaining lacks good faith when an employer mechanically repeats a claim of inability to pay without making the slightest effort to substantiate the claim. Such has been the holding of the Labor Board since shortly after the passage of the Wagner Act. In Pioneer Pearl Button Co., decided in 1936, where the employer's representative relied on the company's asserted "poor financial condition," the Board said: "He did no more than take refuge in the assertion that the respondent's financial condition was poor; he refused either to prove his statement, or to permit independent verification. This is not collective bargaining." 1 N. L. R. B. 837, 842-843. This was the position of the Board when the Taft-Hartley Act was passed in 1947 and has been its position ever since. We agree with the Board that a refusal to attempt to substantiate a claim of inability to pay increased wages may support a finding of a failure to bargain in good faith.
> (Truitt @ 152-153)

The Respondents are unable to show, or even offer evidence, that it approached the 2015 bargaining with the Union with "honest" intent to put its cards on the table and prove that it was suffering the financial hardship leading to bankruptcy, which it outlined in the bogus Project Meyer Report.

The most astonishing testimony came from Mr. Dwayne Seals, the Chief Financial Advisor to the Board of Commissioners, and from Ms. Marcella Cora, the Auditor General for the Wayne County Commission, when they both testified that the Evans' administration, prior to coming into office on January 1, 2015, asked the County Commission to hide $78,000,000.00 in general fund

cash from the Unions, and also during the course of negotiations with the Union, hid additional general fund money totaling somewhere between $145,000,000.00 - $155,000,000.00. Mr. Seals and Ms. Cora testified as follows:

**Dwayne Seals June 12, 2017 Vol. I**

**Page 31, line 21** - "...chief fiscal advisor for Wayne County Commission."
**Page 33, line 9** - ALJ CALD ERWOOD: We'll mark it as Charging Party's Number 1.
Page 34/35, line 25 - Q Resolved, the aforementioned unrestricted retained earnings shall be deposited in the General Fund in the total amount of $78,729,779. Is that correct?
A Yes.
**Page 41, line 11** - Q Okay. To the best of your recollection, what was your response to questions from the commissioners?
A. I—I think someone came - again my recollection, someone came to me and said that we're taking
this off the table. We're going to wait until the next fiscal year to put this.
**Page 44, line 19** - **Q** (Interposing) After January, was there a motion by the County Commission to allocate the 78 million dollars or was there a decision to hold it over until the next fiscal year?
A If I remember correctly, I cannot -- I didn't know about this until Friday, so I didn't get a chance to
look at my notes. But if I remember correctly, not only was it the 78 million dollars, it was another
surplus on top of that that was also added to that.
Q Okay. And that was to put in the 2015-2016.
A 2016.

**Page 48, line 12** - "Facts: I state the County end of fiscal year '13-'14 with a 58 million dollar general fund general purpose operating surplus has revenues over expenditures before transfer."
Q Okay. So when Mr. Evans took over in January of 2015, he had an 82 million dollar surplus to work with?
A Excuse me. No, it says 58.
Q I'm sorry, 58 million dollar surplus to work with.
A From the CAFR.
Q From the financial reports from the County.
A Right, exactly.
Q So we have 58 million dollars in surplus to work with?
A Exactly.

Q Next paragraph.
A That's a snapshot of September 30th, though.
Q Okay. This is your professional judgment after reading the CAFR, and this in fact went to your boss at the
time, didn't it?
A It went to the boss, to all my bosses and probably all officials, too.
Q Okay. Can you just read to yourself the rest of this document and tell me if there's anything else, if there's anything in here at all that you wish to change.
A No.
Q You live with every statement in here?
A Yes.

Page 54, line 22 - Q (By Mr. Akhtar, continuing): Now then, after you received this email you received a telephone call from Mr. Wilson asking you why you're meeting with the Union; do you recall that? Extensive argument followed.

Page 56, line 4 - Q (By Mr. Akhtar, continuing): Go ahead and answer the question.
A Are you speaking of Ken Wilson, or?
Q Yes.
A Did I have a conversation and what was the question? I'm sorry, sir.
Q Did you have a conversation with Mr. Wilson wherein he asked you not to meet with the Union?
A I had a conversation with Mr. Wilson, and I can't remember his exact words, but I didn't met with you,
so.
Q Okay. Did you not meet with us because of the conversation you had with Mr. Wilson?
A I -- I -- again, I can't remember if it was Mr. Wilson or someone else but yes, I didn't meet with you because of a conversation with someone.

Page 61, line 25 - Q Isn't it true that Exhibit 2 is in direct contradiction to what the County executive and his staff is stating publicly?
A Yes, it is.

Page 68, line 11 - Q You felt comfortable with your numbers?
A Right.
Q Did the County commissioners, who are your boss, did they ever tell you to withdraw that communication?
A No.
Q It's still good today?
A Yes.
Q And you've been vindicated based upon the audit for 2015-'16; isn't that correct?
A Exactly.

**Page 70, line 1** - Q And prior to the MacDonald settlement, what was a GASB 45 number as it related to post-retirement medical?
A It was probably before the settlement, it was probably 1.4, 1.5 billion. I think it was --
Q 1.4, 1.5 billion.
A Yes.
Q And after the settlement in the spring of 2015, what was the GASB 45 accrued liability?
A I -- I don't remember exactly. It dropped significantly.
Q Somewhere around the 400 million dollar figure?
A Yes, I think so. It was like a half billion if I remember correct.
Q So the financial condition of Wayne County in the spring of 2015 improved by almost a billion dollars as
it relates to an accounting requirement under GASB 45?
A Exactly.

**Page 71, line 18** - Q But it did move the 1.8 -- 1.5 billion dollar GASB 45 accrued liability down to around 400 million.
A Because of stipend payments, yes.
Q And that improved the County's financial position considerably.
23 A Yes.

**Page 85, line 9** - Q And prior to May of 2015, was that 78 million - was that 150 million dollars still sitting in the general fund?
A I think it was still sitting in the general fund.
Q So prior to May 15th, there was 150 million more or **less**?
A Give or take. I mean, it could be 145 million, 155 million, but it was a significant amount of money that
was sitting there.
Q Was there any restrictions as to how that money could **be** used?
A The only restrictions -- no. I mean, once it's - once it's moved over in general fund, then it's up to the
Commission to decide how that money is used.
Q Could that money have been used for employee benefits?
A It could be used for anything.

**Page 104 - Line 21** - Q Okay. And did it also concern you that when the great recession began in 2006 that property tax collections went way down?
A Yes.
Q Okay. And Wayne County still has not recovered from that loss of property collections; is that correct?
A It has not from the heyday, I would say, of collecting taxes in Wayne County.
Q Okay. Meaning that the Wayne County collects less now in property taxes than it did in 2006, correct?

A I would think that's a -- yes, I think so. I mean, I don't have my data in front of me, though, but it has
started going up. But I think 2006-2007 was kind of like the heyday for Wayne County, so yes.

Page 111, Line 17 - Q Okay. It has happened. Did that happen under CEO Ficano?
A Yes, it did.
Q Okay. And did that hide the -- the actual amount of **general** fund dollars available? Do you know what I mean by that question?
A Yes. I don't know if it really -- it hid. I mean, we're all -- I mean, those who understand finances
could tell very easily that they were using money they shouldn't've been using. It just allowed -- it allowed **the** cash flow for the County to use. So most of the money was because of simply cash flow. It wasn't really hidden. I mean, we pretty much knew.

## Cora Testimony October 2, 2017 Vol.III

Page 31, line 16 - Q Is there anything here that you disagree with?
A I would say no at the time it was put to me.

Page 45, line 4 - Q And what is the bottom line for fiscal year 2014 as it 5 relates to the structural deficit?
A surplus of 71.8 million.
Q So your office presented to the Chairman of the Board of Commissioners and the members of the Commission a document that stated that there would be a surplus for the year ending September 30th, 2014; is that correct?
A Correct.
Q Not a deficit?
A Correct.
Q And you also make reference in the last paragraph on page 10: "Despite transfers from the DTRF to eliminate the General Fund deficit, the County liquidity position will continue to deteriorate in the next 12 to 24 months without drastic action." What does that mean?
A Unless action is taken, the liquidity of the cash in the County will deteriorate, won't be available.
Q How will it deteriorate?
A Won't be available.
Q Not enough money coming in?
A Money coming in and money going out.
Q Why do you make reference to the delinquent tax revolving fund as it relates to the liquidity?
A Because the delinquent tax revolving fund has transfers to the general fund.

Q Please turn to page 14 -- I'm sorry -- 13. Are you there?
A Yes.
Q And at the bottom of the page there's a bullet point. That states in FY 2014 the DTRF had an unrestricted fund balance of 85.4 million, 91.6 million was transferred to the general fund. So is it safe to say that somewhere there is a resolution passed by the Board of Commissioners transferring the $91.6 million into the general fund?
A Yes.
Q And that was done during the 2013-2014 fiscal year?
A Yes.
Q And going on to page 14, in the middle of the page it states: "At the November 25th, 2014 meeting of the County Ways and Means -- on Ways and Means, the Wayne County Treasurer presented the delinquent tax revolving fund status report. In this report the Treasurer identified $78 million that was available for distribution to the general fund. At the November 25th, 2014 meeting of the Committee of Ways and Means the following two items were approved. A resolution authorizing the transfer of $78 million to the general fund for fiscal year '14-15 from the delinquent tax revolving fund unrestricted retained earnings, and 2, a budget adjustment certifying additional revenue in the delinquent tax unpledged fund." What does 1 and 2 mean?
A That a resolution was passed and we transferred the $78.7 million to the general fund from the delinquent tax revolving fund. That the budget adjustment was completed to certify the revenue.
Q And that was for the fiscal year that ended September 30th, 2015?
A Correct.
Q Okay. And so during that fiscal year there was some $78,729,779 that was to be added to the 2014-15 fiscal year; is that correct?
A It authorized the transfer of the 78-.
Q Authorized the transfer. Then the next paragraph says, "At the December 7, 2014 full Board meeting both of the above items were referred back to Committee of Ways and Means." What does that mean?
A The items were referred back to the Committee of Ways and Means.
Q Does that mean the $78 million was not transferred into the budget?
A The items were not taken up by the full Board.
Q Does that mean the money was not transferred into the budget?
A Yes, because it wasn't approved by full Board.
Q So there still, as of December 4th, $78 million that could have been put into the County budget in 2015 that wasn't as of that date?
**A Based on this action, yes.**

<u>Page 55, line 17</u> - Could you please take a look at Exhibit 2 again? That's the Office of Fiscal Agency, the report dated May 15th, 2015. You there?
A I don't see a date. Okay.
Q You previously testified you had no disagreement with the figures on this report; do you recall that?

JUDGE CALDERWOOD: You can answer that one.
A Correct; yes.

Page 64 – Line 17 - JUDGE CALDERWOOD: Mr. Cox, so the question is do you dispute that the DTRF had $151 million available in it as of February 28, 2015.
MR. COX: No. My objection was the use of available.
JUDGE CALDERWOOD: Correct.
MR. COX: Meaning available to the CFO and the CEO.
JUDGE CALDERWOOD: Right. Okay. So we can do this? Any reason to dispute that the DTRF had a balance of 151.5 million?
MR. COX: No. We'd stipulate to that.
JUDGE CALDERWOOD: He stipulates to it as of February 28, 2015. Okay. So, now, piggybacking off of
that, what's the next question?

Page 67, line 2 - So the fifth bullet point of the next paragraph says or states, "In an FY 2014 the DTRF had an unrestricted fund balance of 85.4 million. 91.6 million was transferred to the general fund." Now, if it had a balance of $85 million, how did it transfer 91 million?
A Not having the detail here, in fiscal year 2014 there could have been $85.4 million and the part of the 2015 may had funds that were available to be transferred as surplus.
Q Say that again now.
A Not having the detail there, in fiscal year 2014 there could have been unrestricted fund balance of $85.4 million. In this year, in 2015, there could have been earnings made available to be transferred to come up with the 91.6-.

Page 68, line 22 - Q The paragraph underneath the draft states: "The accumulated deficit as amassed from 2008 to 2013 was substantially eliminated using extraordinary transfers from the DTRF of 91.6 million in 2013-14 and 180 million in fiscal year 2014-15." That would -- 2014-15 would be October the 1st, 2014 to September 30th, 2015; is that correct?
A Correct.
Q So there's $180 million transferred into the general fund during the 2014-15 fiscal year?
A Correct.
Q From where?
A Delinquent tax revolving fund.
Q Does that mean that the Treasurer would have had to declare that in the surplus in order for the County to transfer it?
A Yes.

Page 73, line 8 - Q Is this the press release that you were making reference to?
A Yes.

Q And this states that the accrued liability that you had to put on the books in 2014 was $1,325,000,000; right?
A According to this, yes.
Q And you relied upon this -- is that correct? -- in your report?
A Yes, the article.
Q And, now, to just 471 million, so almost a billion dollars was saved by this change?
A Reduction in the liability, yes.
Q Yes. What does that mean to your bond rating?
A It could mean that our bond rating could increase due to the reduction in liability.
Q Your bond rating could go up?
A Right.

**Page 74, line 9 –** Q Now, then, so the County's economic picture improved whenever this agreement went into effect; is that correct? You could go to Wall Street and say, "Look what we did. We wiped out almost a billion dollars in GASB 45 reporting liability;" is that true?
A The economic picture better?
Q Yeah.
A Yes.

**Page 105, Line 8 -** Q Would you agree that people, personnel costs the County upwards of 85 to 90 percent of their overall budget?
A I believe pretty close to it, yeah.

*Skip to Page 105, line 22*

Q So it's a measure of the County's ability to pay its bills; correct?
A Correct.
Q And let me pull back for a second. From your vantage point in being the auditor and CPA being there for 20 years, given that 85, 90 percent of the costs are people, what are the factors that anyone coming into the County -- what are the big pieces that anyone coming into the County would have to work on in order to reduce cost structure?
A Personnel costs and fringe benefits.
Q Okay. And if you break up personnel costs and fringe benefits, what are those?
A Pension, and health care and salaries.
Q So salaries, pension and health care; correct?
A Correct.
Q And health care has two aspects, both active and retiree; correct?
A Correct.
Q Okay. Now, let's get back to liquidity. And let me ask you first, did you assign a ratio for Wayne County's liquidity in Exhibit Number 6 from the summer of 2015?
A I know there's one in here. Yes.

Q What was the number you assigned?
A 2014 current ratio was .9 and .89 was a quick ratio.
Q Is that good? Bad? What is that?
A It means for every dollar there's 90 cents available.
Q From your vantage point is that -- I'm sorry. Are you looking at June 29 of 2015?
A Yes, page three.
Q I'm sorry?
A Page three.
Q From your vantage point, is that a good liquidity ratio for -- was that a good liquidity ratio for Wayne County at the time?
A It was better than it was in the past.
Q Well, did you do analysis of, for instance, Wayne County versus Oakland County versus --
A Yes.
Q And how did Wayne County compare to Oakland and Macomb at the time?

*Skip to Page 107, line 15*

A They're considerably lower to Oakland County. For '14 we didn't have the information from Macomb County.
Q I'm sorry?
A They were lower than Oakland County, but we didn't have information available from Macomb County.
Q Would it be safe to say that the liquidity, the ability to pay its bills was 10 times better in Oakland County based on the ratios than Wayne County?
A You compare .9 to 5.35.
Q So that would be 5 times better?
A Correct.
Q Okay. I'm sorry. Nonetheless, would you have agreed that given your opinion on page four that Wayne County was in a weak position as far as liquidity goes?
A Yes, compared to Oakland County, yes.
Q And why is that a worry?
A You won't be able to meet your obligations as they come due.

**Page 112, Line 10 -** Q But you told us earlier it can't help a structural deficit issue; correct?
A Correct.
Q Because the cost structure isn't changing; correct?
A Correct.
Q And the cost structure is primarily driven by personnel costs; correct?
A Correct.

**Page 133, Line 11 -** Q Okay. We discussed liquidity and you said you used .9 as a factor. What does that mean?
A .9 was a ratio and you determine based on current assets, current liabilities.

Q Now, in 2015 if the County had transferred the $78 million would you have a positive number for liquidity or would you still have .9?
A It's always going to be a positive number, but it could have been higher than .9.
Q Higher? What's the maximum number where you're dollar for dollar? Is that 10?
A 1.0.
Q 1.0? So if you had the $78 million, you could have had the 1.0 instead of the .9; is that correct?
A Correct.

*Skip to Page 135, Line 10*

Q If the County had in fact in January transferred the $78 million from the Treasurer to the general fund, would you still have had a liquidity problem seeing it was at .9 already?
A You would have more in current assets, your liquidity would have been higher ratio.
Q And higher is better?
A Higher is better.
Q And it could have almost 1.0, dollar for dollar?
A Could have been.
Q Would have been if you added $78 million; isn't that true?
A Could have been above 1.0.
Q Could have been? So you could have been in a positive cash, a positive liquidity position?
A Cash and liquidity is not the same thing.
Q So you would have been in a positive liquidity position where you had more money coming in than going out?
A You would have had more current assets available compared to short term obligations.

*Skip to Page 136, Line 11*

Q If the County allocated the $78 million to the general fund that the Treasurer identified as being available, would you have had a liquidity problem for the year 2014-2015?
A Your current assets would have been higher, so your liquidity would have higher.
Q So answer my question, please.
A Your liquidity would have been higher.

**Page 138, Line 20 -** Q You have in front of you Exhibit 8. It's a news release -
A Okay.
Q -- dated February 2016. Will you read the first full paragraph that starts, "Detroit, February 2, 2016?"
A "A part of the comprehensive recovery plan to stabilize Wayne County finance and eliminate deficit --" I think I might be missing words here. "County Executive Warren C. Evans' administration dramatically reduced its total retiree

health care liability by 64 percent, by 1.325 billion in 2014 to just 471 million in 2015. Retiree health care liabilities were expected to spike in 2015 to 1.8 billion if no remedial measures were taken."
Q Okay. So it went from 1.325 billion, 1,325,000,000, down to 471 million; is that correct?
A According to this news release, yes.

**Page 140, Line 1 -** Q As it relates to the County's fiscal picture from July of 2014 to July of 215 when the MacDonald settlement was finalized was the County in a better financial position or a worse financial position? And I'm not just talking about medical, I'm talking about overall.
A From '14 to '15 including OPEB liability, we had a better financial position.

**Page 141, Line 3 -** Q From September 30th, 2014 to September 30th, 2015 was the 4 County's overall financial position the same, in worse condition or in better condition?
A '14 to '15, they were -- the fund balance of the general fund was in better condition.
Q By how much?
A About $84 million.
Q How much?
A About $84 million. The general fund deficit was reduced by $84 million.

**Chairman of the Board of Commissioners, Gary Woronchak 10-2-17 Vol II.**

Gary Woronchak, the Chairman of the Wayne County Commission, testified that he has personal knowledge of the request by the County Executive not to include the $78,000,000.00 in the Respondent budget, and that this request was made prior to Evans taking office on January 1, 2015.

Further, Woronchak was questioned as to his letter to the state treasurer, dated June 30, 2015, explaining that the Evans' request for the appointment of a receiver by the State of Michigan, under the provisions of Act 436 PA 2012, were not accurate and should be verified prior to the state appointing a receiver to handle the Respondent's finances (Exhibit 5).

On October 2, 2017, Gary Woronchak, Chairman of the Wayne County Board of Commissioners, testified as follows:

**Page 148, Line 17 -** Q Are you aware of the fact that -- are you aware that Mr. Evans through either his direct contact with the County Commission or through one of his associates, prior to taking office in January of 2015 requested that $78 million of delinquent tax revolving fund money not be placed in the budget.
A I am aware that -- well, placed in the budget? You're probably referring to transferred over from the delinquent tax revolving fund to the County's general fund.
Q Yes, I am.
A I was aware that that was their desire, yes.
Q And how were you aware of that?
A I asked them.
Q Who did you ask?
A I don't recall.
Q And what did they tell you?
A Probably easier if I just explain the process. The funds were available to be transferred over to the County's general fund. The Wayne County Commission could have done that in December of 2014. With a new administration coming in I inquired, and I don't entirely recall through whom or to whom, if the new administration would prefer to wait until they were in place in order to transfer those funds and the answer came back yes, they would prefer that.
Q Isn't it true that those funds were not transferred into the County's 2015 budget until the 2016 budget went into effect?
A I'm not sure of the timing.

**Page 151, Line 13 -** Q So we have 82 million and 30 million that were transferred to the 2014-15 budget?
A Correct.
Q And why did you wait until after the start of the 2016 fiscal year to transfer this money?
A I don't recall.
Q Were you requested to do so by the County Executive?
A To not transfer this money until the new budget started?
Q Yes.
A No. That's not to say that that may not -- they may have been how they submitted it to the Wayne County Commission through our normal channels for processing such things, but, no, no one asked me.

**Page 152, Line 17 -** Q The next bullet point says the County has not recognized the $78 million from the delinquent tax revolving fund. Is that money that the

Treasurer has indicated is available, and is that the $78 million that the Treasurer indicated is available and Mr. Evans requested that it not be included in
the budget?
A Assuming that that's the amount that matches up with the figure that we had in December of 2014, I would assume that it's the same amount that the incoming administration had indicated that they prefer not be in the -- oh, wait a minute. That had not transferred during the end of the previous administration.

**Page 154, Line 20 -** And what are ad valorem taxes predicated upon?
A Property values.
Q Property value?
A Yes.
Q So taking into consideration Headlee, would this tell you that Wayne County will receive more in 2015 than it did in 2014 --
A Yes.
Q -- in ad valorem taxes?
A Yes.
Q So the County would be better off financially by whatever that amount is?
A Yes.
Q And this is April of 2015?
A Yes.
Q So assuming a 2.2 percent reduction for Headlee, that would in fact give the County 2.34 percent increase in ad valorem taxes; would that be fair?
A I don't concur with your assessment of that.
Q Why?
A Proposal A of 1994 limits the increase of taxable value of property to the rate of inflation or five percent, whichever is less. The rate of inflation would be the amount by which the, in general terms, the County's revenues would increase. But the rate of inflation I don't believe has topped one
percent for these purposes in any of the recent years.
Q But there would be an increase?
A Yes.

**Page 158, Line 23 -** Q Did you read this report before it was sent to the State?
A Yes.
Q Did you concur in its findings?
A I assume I must have.
Q And would you adopt this paragraph as your own statement now that you stated that you reviewed it and you would adopt it?
A Paragraph 4 on page 2 of 11?
Q Yes. Do you have any reason to disagree with it?
A Except for whether it was slightly higher, any of these numbers would be slightly higher or lower, I would agree that my understanding of the County's

financial position was that the fund balance would have been in positive territory had that money been transferred as part of the 2014-15 budget.

Page 160, Line 13 - Q It states, "The amount of accumulated --" next paragraph. "The amount of accumulated deficit reflects conscious choice by the administration. Before the end of 2014 the Wayne County Treasurer declared a surplus (excess of unrestricted retained earnings) of approximately 78.7 million from the delinquent tax revolving fund, and the previous administration proposed that it be applied to the accumulated deficit, and, in fact, it was placed in the budget approved by the Commission. At the request of the incoming administration in mid-December 2014, this revenue was not certified or allocated at that time. Had it been applied as approved, the CAFR would have reflected that the FY 2013-14 general fund accumulated deficit had been 4.1 million named not 82.8 million."
What is that all about?
A Could you be more specific?
Q Sure. Going into January of 2015 the Evans administration because the delinquent tax revolving fund money was not transferred in could claim they inherited an $82.8 million deficit; is that correct?
A That is correct.

**D: Respondent's attorney, Michael Cox Confirmed that the Evans Administration, Based Upon the Cash Flow Report, Was Hiding $151,000,000.00 from Local 3317.**

One of the most telling events that took place at trial was during the testimony of the county's Auditor General, Marcella Cora, as it relates to the February 28, 2015 cash flow report. Based upon questioning from Judge Calderwood, Mr. Michael Cox, the attorney for respondent Wayne County, stated that the County Executive had $151 million available in the delinquent tax revolving fund as of February 28, 2015. The exchange between Judge Calderwood and Mr. Fox is as follows:

124716 WAYNE COUNTY VOL 2, (Pages 64:11 to 65:3)

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JUDGE CALDERWOOD: That's more rhetorical. So the question is that has been asked right now, do you have any reason to dispute that the cash flow report -- I'm sorry -- that the DTRF had $151 million available, is that your

question?
MR. AKHTAR: Yes.
JUDGE CALDERWOOD: Mr. Cox, so the question is do you dispute that the DTRF had $151 million available in it as of February 28, 2015.
MR. COX: No. My objection was the use of available.
JUDGE CALDERWOOD: Correct.
MR. COX: Meaning available to the CFO and the CEO.
JUDGE CALDERWOOD: Right. Okay. So we can do

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this? Any reason to dispute that the DTRF had a balance of 151.5 million?
MR. COX: No. We'd stipulate to that.

### E. The Respondent Withheld Vital Economic Information From its Chief Negotiator, Mr. Kenneth Wilson.

At the hearing held on October 3, 2017, Mr. Kenneth Wilson, the Respondent's Chief Labor Negotiator, testified that the Evans administration withheld from him the fact that $78,000,000.00 in General Fund Cash was being hidden by the Respondent. The testimony is as follows:

124725 WAYNE COUNTY VOL 3, (Pages 81:18 to 84:17)

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Q When did you first because aware that the Evan's administration prior to taking office requested the County Commission not to transfer $78 million into the 2015 general fund?
A I was never aware of that; never aware of that.
Q Never? Never discussed it?
A No, they never discussed that with me. I mean I don't think I was aware -- I don't think I was aware of any discussions.

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I still don't know what the discussions were until I'm thinking around with you and your ULP. I mean I was not privy to that kind of thing. I wasn't aware of those kinds of discussions. I knew there was some debate as to what would be done with the monies in the DTRF, but I was not involved in those discussions whatsoever.

Q When did you become aware that the Evans administration after it took office requested the County Commission not to book into the 2015 $30 million from the delinquent tax revolving fund?
A I don't think I was ever aware of that, again, until years after the fact discussing these proposals. And I don't think I was aware of that. Maybe I was a little oblivious sometimes, but I cannot remember having those discussions with anyone. I do remember discussions generally as to the DTRF being an if-come revenue and that they would be treating it as an if-come revenue for purposes of determining a structural deficit. But as to the specifics of the transfers, I was not privy to any of those discussions.
Q Do you agree that $100 million in cash that could be used for anything allowed under the general fund was a significant amount of money?
A I would agree that $100 million is a significant amount of money, but whether that's as far as it goes, whether $100



million could be used and how it should be used is far -- simply is not within my bailiwick. But I would agree that $100 million is a lot of money.
Q Would you agree that as the chief labor negotiator, a position created by charter and who reports only to the County Executive under the charter should have complete knowledge of the County's finances when it sits down at the bargaining table with the unions?
A I was not privy to all those decisions made, so in that regard I did not have full knowledge. I think I had a pretty good knowledge of the structural deficit. I think I had a strong knowledge of our pension issues, and a pretty good knowledge of our OPEB liability and retiree health care issues. But as for the decision making, I was not a part of that in terms of how to handle possible DTRF transfers. I had nothing to do with that.
Q Isn't it true that by April of 2015 you knew that a deal had been struck between the County Executive and the attorneys for the MacDonald settlement as it relates to OPEB benefits?
A I'm sorry. What time frame is this?
Q April.
A If not April, shortly thereafter, by May or June I would have known about it.
Q And you knew that there was approximately $800 million of OPEB approved costs taken off the books?

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A You mean OPEB liabilities?
Q OPEB, yeah, liability.
A I didn't know. I mean this is before an actuarial analysis was done. I did not know how much of our OPEB liability would be extinguished or reduced as a result of that. I knew that it would be, but I would not be able to give you the figure. I think I first learned of that figure sometime after the settlement. There was an actuarial analysis done by I think the group was called Nyard, N-y-h-a-r-d, and they did an actuarial analysis that included the impact of the settlement on our OPEB liabilities. It could have been mentioned in -- there could have been some mention of it in some documents, but I'm trying to -- it's hazy. I would not have learned about that at the time that it was done. It would have sometime thereafter. It may have been before the Nyhard analysis or after, but it would have been probably late in 2015.

In **Napoleon School Dist.**, 1982 MERC Lab Op 1567, 1576-1579 the Commission ruled that it was an act of bad faith bargaining for the respondent employer to fail to provide its negotiators with authority to reach an agreement and repudiate a tentative collective bargaining agreement without providing reasons for its rejection.

As a general rule an employer must furnish a union with sufficient data to enable it to prepare for negotiations, bargain understandably, and police the administration of the contract. **Saginaw Board of Education,** 1970 MERC Lab Op 127, **Taylor School District,** 1976 MERC Lab Op 1006. Budget data has generally been found to be relevant to the collective bargaining process, particularly where the employer raises the argument of inability to pay. Edwardsburq Public Schools, 1968 MERC Lab Op 927, **NLRB v. Truitt, Manufacturing Company** 351 US 149 (1956)

In this case, it is obvious that not only did the respondent, through its executives, refuse to provide Wilson with the authority, let alone the knowledge as to what he had authorization to bargain as to economics, the respondent also, intentionally, willfully and in bad faith, withheld vital information from its Director of Labor Relations, Mr. Kenneth Wilson, which would allow him to meet with the Unions with the full knowledge as to where the Respondent's financial condition stood. Taking $150,000,000.00 in cash off the bargaining table without providing its chief negotiator with full and complete knowledge, constitutes an act of bad-faith bargaining.

As far as Local 3317 can determine from review of the MERC reported case law, this is a matter of first impression. Is it bad-faith bargaining for an employer to tell the Union, at the bargaining table, that its chief negotiator is vested with apparent, if not actual, authority to reach tentative agreements subject to final approval by the County Executive, when the chief negotiator has willfully been denied the economic information needed to meet and bargain with the union? Local 3317 would state that based upon the totality of bargaining history between the parties and the totality of the conduct of the respondent relating to this unfair labor practice charge, that the respondent has violated Sections 10, 15 and 16 of the Act.

**Part IV. - Remedy:**

The MERC, in its City of Springfield decision, adopted Judge Julia C. Stern's decision and recommended order which included returning the parties

to status quo based upon the respondents bad-faith bargaining. The commission's decision in part included:

> A. *"Upon demand, meet and bargain in good faith with the above labor organization regarding the wages, hours and working conditions of the employees represented by that labor organization. Respondent shall withdraw its March 1998 proposal, and bargain in good faith over any issue remaining between the parties." (1999 MERC Lab Op 399).*

In addition to the commission's determination in the **City of Springfield,** as above set forth, the commission has on several occasions, upon finding the respondent was guilty of bad-faith bargaining, ordered the parties to be **"returned to the status quo"** wherein the terms and conditions of the expired contract were to be reinstated until such a time as a new contract could be bargained for.

In the commission's decision in **"City of Highland Park;"** 17MPER P86 adopted Judge Julia Stern's decision and recommended order which returns the parties to their status quo position, which was the collective bargaining agreements in effect prior to the respondents violating Sections 10 and 16 of the PERA. The commission adopted Judge Stern's decision and recommended order as follows:

> *"RECOMMENDED ORDER*
>
> *Respondent City of Highland Park, its officers and agents, are hereby ordered to:*
>
> *1. Cease and desist from subcontracting bargaining unit work performed by PSOs represented by Charging Party Police Officers Labor Council without giving [*56] this labor organization notice and an opportunity to engage in meaningful bargaining over this decision.*

*2. Cease and desist from repudiating its obligations to fire fighters/ PSOs represented by Charging Party Police Officers Labor Council under the collective bargaining agreement expiring June 30, 2003.*

*3. Upon demand, bargain with Charging Party over the subcontracting of police work.*

*4. Rescind all agreements with third parties to perform police work for the City of Highland Park pending satisfaction of Respondent's obligation to bargain over the subcontracting of this work.*

*5. Make the fire fighters/ PSOs whole by paying them all sums, including wages, due them under the collective bargaining agreement since December 14, 2001, including interest at the rate of 3% per annum, computed monthly, but less any amounts they received in wages or benefits during this period.*

*6. Post the attached notice to employees in conspicuous places on the Respondent's premises where notices to employees are customarily posted, for a period of 30 consecutive days.*

*MICHIGAN EMPLOYMENT RELATIONS COMMISSION"*

The MERC, in its March 23, 1988 decision in the matter of Wayne County and Michigan AFSCME 25, upon finding an unfair labor practice in violation of Sections 10, 15 and 16 of the PERA, ordered that the parties shall be "**returned to the status quo"** position, which was in fact the collective bargaining agreement prior to the Respondent committing an unfair labor practice.

See also **Lansing Fire Dep't,** 1983 MERC Lab Op 97, 101, aff'd sub nom **Lansing Firefighters, Local 421 v Lansing,** 133 Mich App 56, 118 LRRM 3306 (1984); **Centerline School Dist**, 1983 MERC Lab OP 30, 37 and 1982 MERC Lab Op 756, 764, Aff'd Mich App No. 69188 (6-21-84, unpublished).

The Michigan Court of Appeals, in the **Lansing Firefighter' case**, specifically held that "the status quo remedy" requires that the Respondent

rescind the decision to remove the work from the bargaining unit, return the work to the bargaining unit, and make whole persons who lost pay and benefits because of the work being taken from the bargaining unit.

**Part V. Award of Attorney Fees:**

Lastly, Local 3317 request that this Honorable ALJ recommend to the commission that the Union be awarded its attorney fees, which are permissible in accordance with the commission's decision in **Detroit Dep't of Transportation**, 184 MERC Lab Op 937, 939 Aff'd Sub Nom, ATUV Detroit, 150 Mich App 605 (1985).

**Part VI. Conclusion:**

Wherefore, for all the reasons stated above, plaintiff requests that this honorable Administrative Law Judge find that the Respondent bargained in bad faith in violation of Sections 10, 15 and 16 of the PERA. The Union requests a specific finding that the actions of the defendants constitute regressive bargaining, which utilizing previous commission's decisions, has been overwhelmingly proven by Local 3317 and a return to the status quo, wherein the parties are to retroactively reinstate the terms and conditions of the collective bargaining agreement, which were in effect as of April 2015; further,

Local 3317 requests its costs and attorney fees.

Dated: January 2, 2018

Respectfully submitted,

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