JD(ATL)-40-08
Detroit, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
ATLANTA BRANCH OFFICE
DIVISION OF JUDGES

HARTFORD HEAD START AGENCY, INC.

and Case 7-CA-51106

LOCAL 517M, SERVICE EMPLOYEES
INTERNATIONAL UNION

Jennifer Y. Brazeal, Esq. for the General Counsel.
Jason Harcourt Harrison, Esq. (The Harrison Law Law Firm), of Detroit, MI, for the Respondent.
Howard F. Gordon, Esq., of Lansing, MI, for the Charging Party.

DECISION

Statement of the Case

JOHN H. WEST, Administrative Law Judge. This case was tried in Detroit, Michigan, on July 28-31, 2008. The original charge was filed by Local 517M, Service Employees International Union (Union) on March 6, 2008[1] against Hartford Head Start Agency, Inc. (Respondent), and the complaint was issued on May 29, 2008. The complaint alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (Act), by (1) without prior notice to the Union and without affording the Union a meaningful opportunity to bargain with respect to this conduct and the effects of this conduct on the unit, (a) on about February 14, 2008, after failing and refusing the Charging Union's request to bargain collectively and in good faith regarding this matter, implementing its October 2007 proposal to reduce the work schedules of unit employees[2] from 12 months to 10 months and pay Unit employees 10 months' wages over a 12-month period, and (b) about February 1, unilaterally implementing changes to its Unit employees' health insurance prescription plan, (2) with respect to information that is necessary and relevant to the Union's performance of its role as the exclusive collective bargaining representative of the unit, (a) since on or about October 2007 being dilatory in responding to the information request for the existing contract between the Respondent and the City of Detroit regarding providing pre-kindergarten services for the City of Detroit, and (b) failing and refusing to furnish the Union with requested information, namely, information relating to Respondent's claim of a $100,000 increase in health insurance costs, and (3) on or about

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[1] It was amended on May 6, 2008 and again on May 29, 2008.

[2] The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time center administrators, teachers, assistant teachers, family service workers, special needs assistants, cooks, drivers, typists, secretary-receptionist, learning specialists, and parent aides employed by Respondent at its various facilities in the Detroit Metropolitan area; but excluding the Director, Assistant Director, coordinators, assistant coordinators, accounting clerk, secretary-receptionist (Executive Director), confidential employees, and guards and supervisors as defined in the Act.

February 29, 2008 bypassing the Union by announcing to unit employees that they would not be eligible for unemployment compensation as a result of its implementation of the changes described in paragraph (1)(a) above. Respondent denies violating the Act as alleged in the complaint.[3]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Counsel for General Counsel[4] and Respondent, I make the following

Findings of Fact

I. Jurisdiction

At the outset of the trial herein, General Counsel and Respondent entered into the following stipulations:

> At all material times, Respondent, a non-profit corporation, with an office and facility located at 14000 West Seven Mile Road, Detroit, Michigan, and other facilities in the Detroit … metropolitan area, has been engaged in the operation of a free pre-kindergarten program for children of low-income families, pursuant to a contract with the City of Detroit and pursuant to Federal Head Start rules and regulations.
>
> ….
>
> During the calendar year of 2007, Respondent, a non-profit corporation, with offices located at 14000 West Seven Mile Road, Detroit … and other facilities located in the Detroit metropolitan area, for the operation of the 2007/2008 fiscal year, received a contract from the City of Detroit in the amount of $5.9 million to operate a federal Head Start program which receives funds from the federal government. [Transcript pages 7-12]

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[3] At one point during the trial herein Respondent's attorney, Jason Harrison, made the following statement:

> Part of our defense … is that there was deadlock, that there was [sic] issues relevant to whether or not there was an amicable relationship before, or I shouldn't say before, while Mr. Tucker was the chief negotiator, and whether or not the issue of wages, which is in the charge, were unilaterally changed …. Part of our response to that as I indicated in the opening statement, is there are exceptions to unilateral changes. One of them … obviously is exigent circumstances, but before there could be exigent circumstances there would have to be some form of some listing of factors that indicate that there is an impasse. One of them is a written letter from Hartford Head Start Agency, Inc. that says, guess what, there's impasse, but there's other factors that you can look at as well …. [Transcript page 285]

Subsequently Harrison indicated that Respondent did not, in its answer to the complaint, raise the defense of impasse and he did not deny the assertion of Counsel for General Counsel that Respondent also did not raise any affirmative defenses including anything regarding exigent circumstances in his answer to the complaint. Counsel for General Counsel is correct. If in the above quote Harrison meant to leave the impression that there is a written letter from Respondent to the Union declaring impasse, no such letter was produced at the trial herein.

[4] Counsel for General Counsel's unopposed motion, submitted with her brief, to correct the transcript is granted and it is received in evidence as General Counsel's Exhibit 42.

Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

On September 6, 2005 the Union was certified by the National Labor Relations Board (Board) as the exclusive collective-bargaining representative of the above-described unit. General Counsel's Exhibit 2.

By letter dated March 20, 2006, General Counsel's Exhibit 29, Respondent advised Virginia Saleem, the Managing Director of the Department of Human Services in Detroit, that Respondent terminated the Project Manager and appointed an Interim Project Manager, Alfredine Wiley (subject to Saleem's approval); and that a search committee would be looking to retain a permanent Project Director.

William Tucker, who is a member service organizer for the Service Employee International Union, testified that he negotiates contracts and handles grievances and interventions; that the Union represents employees at all of the Respondent's 13 facilities; that he was the lead negotiator for the Union in negotiations with Respondent for a collective-bargaining agreement; that at the time of the trial herein the parties still did not have their first collective-bargaining agreement; that he was replaced as chief negotiator in February 2008; that the other members of the Union's bargaining team were Jacqueline Conley, Sonja Rogers, Phyllis Edwards, Marion Keyes, Cheryl Williams, Wanda Piper, and Donna White; that in 2007 Respondent was represented at negotiations by lawyer Jason Harrison, who was its lead negotiator, Wiley, Deborah Thomas, Gloria Lewis, and Olive Grosse at one session; that at first bargaining sessions were held two or three times a month; that when they were not meeting on a regular basis the Union had to file an unfair labor practice charge (on January 22, 2007) with the Board against Respondent to get back to the negotiating table; that on March 12, 2007 Region 7 of the Board issued a complaint in Case 7-CA-50111 against Respondent alleging that since about October 24, 2006 Respondent has failed and refused to meet with the Union for the purpose of collective bargaining concerning the unit, General Counsel's Exhibit 14 (That matter was settled.); that after that complaint was issued Respondent and the Union met more frequently; that during negotiations the parties did not exchange proposals but rather the Union submitted its proposals to Respondent and Respondent "went off our proposals" (transcript page 160); that General Counsel's Exhibit 16 demonstrates how Respondent's attorney, Harrison, "redlined" or made changes to the Union's proposal by, inter alia, making entries in the margin of the Union's proposal and using a red dash line to indicate what the note referred to; that during 2007 Respondent and the Union did reach tentative agreements on particular sections of the Union's proposal; that the parties initialed tentative agreement sections, sometime writing the date; that while he was chief negotiator Respondent never provided the Union with a written proposal different than what is illustrated in General Counsel's Exhibit 16; that in April 2007 the parties were negotiating mostly non-economic issues such as evaluations, and work time since it is his practice to get the non-economic issues out of the way before dealing with the economic issues; that while he was chief negotiator the employees in the unit worked 12 months and they were paid for 12 months; and that General Counsel's Exhibit 3, which is a "draft" of a memorandum, was emailed to him by Harrison in May 2007. General Counsel's Exhibit 3[5] reads as follows:

[5] As here pertinent, the first three pages of Respondent's Exhibit 1 is the same document

Continued

Management met with the leadership Of Seiu Local 517m On Friday May 11, 2007; a summary of the Agency Budget Reduction Plan was requested. A summary of the Plan is as follows:

Budget Reduction Plan 2006/2007

The Agency Reduction Plan for the 2006/2007 program year consists of a reduction of all employee hours from forty to thirty-six hours per week. This reduction will begin Friday June 22, 2007 through Friday October 26, 2007.

Budget Reduction Plan 2007/2008

The Agency Reduction Plan for the 2007/2008 program year consists of a conversion from a 12 to 10 month grant budget. The Agency administrative staff will remain 12 month employees as required by the Agency's Grantee. The Agency center staff: center administrators, teachers, assistant teachers, family service workers, and special need assistants will become 10 month employees.

….

All Ten Month Employees:

The definition of a full-time employee is ….

The definition of a part-time employee is ….

The current work schedule for Agency employees is defined in the current Personnel Policy and Procedures as follows:

Monday - Thursday
7:00 - 4:00
7:30 - 4:30
8:00 - 5:00

Friday all staff 8:00 - 12:00

For the 2006/2007 Budget Reduction Plan, all employees will work on Monday through Thursday for the period stated above in the Budget Reduction Plan.

For both Plans, all health, dental and disability benefits will remain unchanged.
For the 2007/2008 program year, all center staff can receive unemployment benefits during the two month layoff.
For both plans, all staff will receive all holidays in accordance with the current personnel policy and procedures.

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except that it specifies the number of months using words instead of numbers, and it has "(unless budget reduction by grantee deems otherwise)" at the end of the line reading "For both plans, all health, dental and disability benefits will remain unchanged." Unlike the rest of the document, Respondent used all lower case in this parenthetical expression. Also, at the bottom of page two of Respondent's Exhibit 1 the word "both" between "For" and "plans" is omitted.

> 2006/2007 current salary scale (See Exhibit A)
> 2007/2008 center staff salary budget (10 month) (See Exhibit B)
> [General Counsel's Exhibit 3 has 'Nov. 1 - 10 month' handwritten on the line after '2007/2008' and an asterisk before that line and the line beginning '2006/2007.']
>
> ….
>
> The Hartford Head Start Agency, Inc., management met with the Board of Directors on Tuesday May 8, 2007 for approval of the above Budget Reduction Plans. The Plans were approved.
>
> The Hartford Head Start Agency, Inc. management and board chairperson met with the policy committee on Thursday May 10, 2007 for approval of the above Budget Reduction Plans. The Plans were approved.
>
> The Hartford Head Start Agency, Inc. management and board chairperson met with the Hartford Head Start Agency, Inc. employees on Friday May 18, 2007 to give a summary of the plans. [The unnecessary use of the upper case for the first letter of every word in the original was not used here.]

Tucker further testified that he did meet with management on May 11, 2007 at a bargaining session and he did request a summary of the agency budget plan; that Rogers, Keyes, Edwards, Conley and White were also there for the Union and Harrison and Wiley were there for the Respondent; that while he requested the document from Respondent, he never received the budget reduction plan; that Respondent operates on a fiscal year from November 1 to October 31; that before he received General Counsel's Exhibit 3 by email, management notified him at a bargaining session in the beginning of May 2007 that it intended on changing the number of months that bargaining unit employees worked; that prior to May 8 and 10, 2007, respectively, no one in management told him that they were meeting with the Board of Directors and the Policy Committee regarding approval of the budget reduction plans; that prior to May 18, 2007 no one in management told him that they intended to inform employees about the budget reduction plans; that the contents of General Counsel's Exhibit 3 were never discussed in a bargaining session but, as indicated above, management notified him at a bargaining session in the beginning of May 2007 that it intended on changing the number of months that bargaining unit employees worked from 12 months to 10 months; that in basically every bargaining session after it was first brought up sometime after May 8, 2007, there was some general discussion about the bargaining unit becoming 10-month employees but he always said "Let's get back to bargaining," he did not really want to talk about it; that he first heard about Respondent's 10-month proposal in the latter part of May 2007; that when the 10-month proposal was first brought up, Conley, Rogers, Edwards, Piper, and Keyes were at the bargaining session, along with Respondent's representatives Harrison and Wiley; that Wiley was the first to bring up the 10-month proposal, saying 'Would you all like to go 10 months compared to 12 months, and draw unemployment' (transcript page 186); that when Wiley made this statement the union representatives present said that they would discuss it; that Rogers asked Wiley during this session if the employees worked 10 months, would they be able to draw unemployment and Wiley said employees would be able to draw unemployment; that Wiley indicated that employees would be off during the summer months; that the Union did not agree that employee work schedules would change from 12 months to 10 months that day, and no tentative agreements were reached at this bargaining session in May 2007 regarding the 12- to 10-month issue; that between May and September 2007 about three bargaining sessions were held each month and at every bargaining session the 10 months as opposed to 12 months was discussed but he always brought the discussions back to what they were at the table for at that

time, namely non-economic issues like evaluations, the number of union stewards for Respondent's 13 facilities, and how much time union stewards would get off to deal with union issues; that between May and December 2007 Respondent did not present any proposals to the Union regarding changing the months that employees worked from 12 months to 10 months; that from May through September 2007 the Union and Respondent did not agree to anything with respect to employees working 10 months out of the year; and that from May through September 2007 Respondent and the Union reached some tentative agreements regarding non-economic issues.

On cross-examination Tucker testified that he has not engaged in collective bargaining with any other Head Start in the City of Detroit; that he recognized the first three pages of Respondent's Exhibit 1; that he also recognized a sheet included in Respondent's Exhibit 1 headed "Friday May 25, 2007, Union Meeting" with 11 signatures, including his own (also including those of Edwards, Piper, Rogers, and Conley); and that he recognized the page in Respondent's Exhibit 1 which he signed and which reads as follows:

> MR. WILLIAM TUCKER
> 1420 S. MICHIGAN AVENUE
> SAGINAW, MICHIGAN 48602
>
> I WILLIAM TUCKER RECEIVED THE HARTFORD HEAD START AGENCY INC 2007/2008 SALARY SCALE FOR THE TEN MONTH EMPLOYEES. THIS SCHEDULE IS CONFIDENTIAL AND I WILL REVEAL THE SALARY AMOUNT ONLY TO THE EMPLOYEE INTENDED.
>
> _____
> SIGN
> NOVEMBER 27, 2007

Tucker further testified on cross-examination that he recognized that page of Respondent's Exhibit 1 which has four boxes showing the example (1) a $36,000 salary in "11/2/2006," (2) the conversion of that salary by dividing the $36,000 by 12 months to get a monthly salary of $3,000, (3) the further conversion of that salary into 10 months or $3,000 multiplied by 10 equals an annual salary of $30,000 for 2007/2008, and (4) the conversion of the 2007/2008 annual salary of $30,000 divided by twelve months equals $2,500 a month[6]; that the parties did not get past that in that they did not go any further into this document; that he did receive the salary scale for 10 month employees, as indicated by his signature dated November 27, 2007 but he did not look at it; that he would not acknowledge that Respondent's Exhibit 1 was the Respondent requesting the Union to bargain over wages, to change employees from 12 months to 10 months since "[t]he subject of wages didn't never [sic] come up" (transcript page 240); that a wage change is a mandatory subject of bargaining; that he never received notice from Respondent that it wanted to bargain over wages in May 2007; that he received Respondent's Exhibit 1 and he knew that it involved a reduction in pay; that he first realized that wages were something that Respondent was attempting to bargain over when Thomas said that she under budgeted the insurance and that Respondent was going from 12 months to 10 months and Respondent was going to piggyback off the employees; that "yes" (transcript page 242) the parties did engage in bargaining relevant to the 12 month to 10 month change between May and October 2007; that his initials on page 6 of Respondent's Exhibit 9 regarding "ARTICLE 5:

[6] The following then appears on the sheet: "CALCULATION REQUIRED TO CONVERT SALARY TO TEN MONTHS AS REQUIRED BY THE GRANTEE."

EMPLOYMENT REQUIREMENT AND CLASSIFICATION" indicate that he tentatively approved Article 5[7]; that, with respect to the "Budget Reduction Plan 2006/2007" entry on page 1 of General Counsel's Exhibit 3, between January 2007 and February 2008 the Union did not agree to a reduction of wages or reduction of time from 40 to 36 hours; that he did not receive Exhibits A and B referred to in General Counsel's Exhibit 3, and "we never did agree to nothing [sic]" (transcript page 302) regarding the 12 months to 10 months; that in May 2007, about the time he received General Counsel's Exhibit 3, he was notified, possibly by union stewards or someone else, that Respondent had a full staff meeting on the 10 month plus unemployment plan; that on page three of General Counsel's Exhibit 3 it is indicated that Respondent met with its employees on "May 18, 2007 To Give A Summary Of The Plans"; that he thought he was notified after that meeting occurred; that he believed that he received General Counsel's Exhibit 3 on the date on the document, May 21, 2007, which obviously was after the staff meeting; that the Union never made a counter proposal to Respondent's 12- to 10-month plan since he never saw Respondent's proposal; that General Counsel's Exhibit 3 is not a proposal in that as indicated on its first page it is a "draft"; that from May 21, 2007 until he was replaced as chief Union negotiator in February 2008 he believed that Respondent was going to stay at 12 months because Respondent never presented a proposal at the bargaining table and General Counsel's Exhibit 3 was nothing but a draft; that Harrison told him that Respondent's contracts with the City of Detroit were for 1-year terms, he understood that wages were paid from the contract, but he was never informed that wages would start November 1, 2007 for the new fiscal year; that he did not call a mediator in because "[w]e never discussed no issue of wages so why should I call a mediator in" (transcript page 312); that when Harrison told him in October 2007 that he, Harrison, was going to Respondent's Board, he, Tucker, did not believe that Harrison was telling him that this was the last best offer; and that he was never informed that Respondent had healthcare in place that would automatically renew for a new one year renewal in December 2007.

On redirect Tucker testified that on page 6 of Respondent's Exhibit 9 he did not know who made the marks under where the "52" is crossed out in paragraph numbers 3 and 4 of that article; and that General Counsel's Exhibit 38 are the proposals that the parties were bargaining over at the bargaining table.[8]

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[7] As here pertinent, the document, which is included with the exhibits but was not received in evidence, has the following printing in Article 5: "3. Full-Year Employee: A person who is employed on a full or part-time basis for 52 weeks per year." The "52" is struck through by the blue ballpoint pen used by Harrison to initial Article 5 and in Harrison's handwriting "10" and something else is written under and to the side of the "52." The same approach was taken for "4. Part-Year Employee: A person who is employed on a full or part-time basis for less than 52 weeks per year." The word "weeks" was not deleted from either number 3 or 4. As Counsel for the Union pointed out, Respondent's Exhibit 9 is Harrison's copy of the tentative agreements and not Tucker's copy of the tentative agreements. Respondent's Exhibit 9 was not turned over to the Union until the trial herein. Tucker subsequently testified that he was not initialing the whole article and while he was the Union's chief negotiator the Union never agreed that the months that employees worked would be reduced from 12 to 10 months or that 10 months wages would be paid over 12 months.

[8] While page 6 of General Counsel's Exhibit 38 shows that Tucker placed his initials in five places on this page (versus two on page six of Respondent's Exhibit 9), printed paragraphs 3 and 4 under Article 5 are not modified in any way. As set forth on page six of General Counsel's Exhibit 38, they read as follows:

> 3. Full-Year Employee: A person who is employed on a full or part-time basis for 52 weeks per year.

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On rebuttal Tucker testified that the first three pages of Respondent's Exhibit 1, which is basically the same, in terms of content, as General Counsel's Exhibit 3, is not a written proposal on wages from Respondent because it is designated at the top of the first page as "Draft" and it is not a proposal.[9]

Conley, who has worked for Respondent since 1998 and who is a Center Administrator/Head Teacher, testified that she has participated in bargaining sessions for a collective-bargaining agreement with Respondent; that she is a bargaining committee member, she is the Union's note taker at bargaining sessions, and steward; that during bargaining sessions Lewis attended as Interim Program Director after February 1, 2008, Thomas attended as the Fiscal Officer, Wiley attended as Interim Program Director from January through October 2007, Grosse, who was Respondent's Program Director from October 2007 to mid-January 2008, attended one bargaining session; and that in 2007 she, White, Rogers, Keyes, Piper, Edwards, Williams, and Tucker were on the Union bargaining team.

Conley testified that on May 18, 2007 Respondent held a full staff meeting for all the staff employed by Respondent, including administrative staff and members of the involved bargaining unit, at Respondent's New Genesis center; that Board members and members of management also attended this meeting; that Wiley was the Respondent's spokesperson at this meeting; that the meeting involved a workshop and another topic discussed was "[t]he possibility that the agency would be reducing our time for work - - our work schedules from 12 months to 10 months; that Wiley and Board Director Allen brought up the work schedules; that employees were given a copy of a draft that indicated the proposed reduction plan and it included the employees' wages; that Wiley said that Respondent would be changing over for the 2007/2008 program year from 12 months to 10 months and the employees' salaries would be perhaps prorated; that at the time bargaining unit members worked 12 months; that she understood her position to be included in the proposal; that July and August were mentioned as the months certain employees would not work; that Piper asked Wiley if the plan went into effect, would employees be able to collect unemployment (for the 2 months they did not work) and Wiley answered yes; and that prior to this meeting Respondent had not said anything during bargaining sessions about reducing the months employees worked; that at the April 20, 2007 bargaining session she made a note about someone mentioning that there might be a 12 percent administrative cut, budget cut, and then the parties went back to the non-economic issues they were discussing.

Piper, who was hired by Respondent in July 1995, is an assistant teacher II, and a Union bargaining team member, testified that in May 2007 Respondent held a full staff meeting at the New Genesis center; that Thomas and Wiley attended this meeting; that Respondent's Board Chairperson Allen was also present; that she and other bargaining unit members attended this meeting; that the purpose of the meeting was not announced before the meeting was held; that at the meeting Wiley said that employees' work schedules would be changed from 12 months to 10 months; that she asked Wiley that if it went to 10 months, would the employees receive unemployment and Wiley said that the employees would receive unemployment; and that prior

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4. Part-Year Employee: A person who is employed on a full or part-time basis for less than 52 weeks.

Harrison's initials appear in the same five places on this page. Initials were used to signify a tentative agreement with respect to the language initialed.

[9] Respondent's Exhibit 1, the "Draft," calls for Family Service Workers to become 10-month employees. Family Service Workers never became 10-month employees.

to the full staff meeting management had not said anything to the Union's bargaining team at a bargaining session about changing the months the employees worked.

Rogers, who was hired by Respondent in 1990 and is a Center Administrator, testified that she is a Union steward, is on the bargaining team, and has attended every bargaining session; that she attended Respondent's full staff meeting in May 2007; that Wiley, Lewis, Thomas, and Allen attended for management; that Wiley told the employees in attendance that as of November 1, 2007 through June 2008 Respondent's employees were going to go from 12 months to 10 months; that before this she had always worked 12 months and she was paid for 12 months; that somebody asked about unemployment and Wiley said that employees would be off for two months and they would draw unemployment during the two months they were off; that somebody even asked about a stretch of pay, management said that there was not going to be a stretch of pay, and if the employee wanted their pay stretched, they would have to do it on their own because the employees were going to collect unemployment[10]; that someone asked about hourly pay and Wiley said that the employees' hourly rate would not be affected; that Thomas said the Respondent could not stretch the employees' pay because they were giving the employees unemployment, and stretching their pay was something the employee could do on their own through their credit union or their bank; that prior to this announcement during this full staff meeting management has not said anything at any of the bargaining sessions about reducing the months that employees would work from 12-month program to a 10-month program; and that there were also a workshop that day.

Edwards, who was hired by Respondent in January 1987, who is a Center Administrator/teacher, and who is a Union steward on the Union bargaining team, testified that she attended Respondent's full-staff meeting on May 18, 2007 at the New Genesis center, which is a school; that management was represented at this meeting by Wiley, Allen, Lewis, Thomas and others; that Wiley was management's spokesperson at this meeting; that the purpose of this staff meeting was not announced in advance of the meeting; that Wiley told the employees that they were going to go from 12 to 10 months, they would keep the same hourly wages, they were going to get unemployment for the two months they were off, and it would affect bargaining unit employees; that bargaining unit employees had been working 12 months and they were paid for 12 months; that Piper asked Wiley if she was sure that employees were going to receive their regular pay for 10 months and get unemployment and Wiley said that was correct; and that prior to this May 18, 2007 full-staff meeting management had not said anything about reducing work schedules in bargaining sessions.

Edwards testified that she did not recall the issue of reducing the months employees worked being discussed in bargaining sessions from May throughout the summer of 2007.

Conley testified that she received General Counsel's Exhibit 3 at the May 25, 2007 bargaining session; that, with respect to page three of General Counsel's Exhibit 3, she was not told by management prior to May 8, 2007 that they were meeting with the Board of Directors on May 8, 2007 to approve the Budget Reduction Plan; that she was not told by management that they and the Board Chairperson were going to meet with the Policy Committee on May 10, 2007 for approval of the Budget Reduction Plans; that she, Tucker, Rogers, Williams, Edwards, Keyes, and Piper were present at the May 25, 2007 bargaining session along with Wiley, Harrison, and Thomas; that Thomas distributed General Counsel's Exhibit 3; that management

[10] Rogers explained that "a stretch of pay" meant that Respondent would put money aside while the employee was working and then the employee would get that money when the employee was off.

told them at this session that "due to budget cuts that they anticipated, there might be a change in our work schedule, and they talked about the issues that are on the draft [General Counsel's Exhibit 3]" (transcript page 388 with emphasis added); that Thomas told the Union bargaining team that Respondent would be looking to change the employees' working schedule from 12 months to 10 months, and this change would take effect on November 1, 2007[11]; that at this bargaining session she and other people on the Union bargaining team indicated that they were opposed to the plan; that they were told that all employees, except secretaries, the family service workers and some contractual workers would be effected by the plan; and that representatives from the City of Detroit were not present at the May 25, 2007 bargaining session.

Piper testified that the first time that the issue of reducing the months that employees worked was discussed in a bargaining session in May 2007 after the above-described full staff meeting; that Harrison, Wiley and possibly Thomas attended this bargaining session for Respondent, and she, Tucker, Keyes, White, Rogers, and Edwards attended this session for the Union; that General Counsel's Exhibit 3 was given to the Union's bargaining team at this bargaining session but it was not discussed at this bargaining session; that she read General Counsel's Exhibit 3 after this bargaining session; that, with respect to page three of General Counsel's Exhibit 3, she was not told by management prior to May 8, 2007 that they were meeting with the Board of Directors on May 8, 2007 to approve the Budget Reduction Plan; that she was not told by management that they and the Board Chairperson were going to meet with the Policy Committee on May 10, 2007 for approval of the Budget Reduction Plans; and that Respondent and the Union did not come to agreement at the May 25, 2007 bargaining session regarding bargaining unit employees' schedules being reduced from 12 to 12 months.

Conley testified that between May 26, 2007 and September 2007 approximately eight bargaining sessions were held, non-economic topics were discussed at these sessions, she did not recall that any tentative agreements were reached during these sessions, and nothing was said by management about reducing the months that employees worked.

Piper testified that between May 26 and September 2007 approximately two bargaining sessions a month were held and during some months the parties did not meet; that she did not attend all of these sessions because she was in school; that non-economic topics were discussed at the sessions she attended but the Union and Respondent did not reach any tentative agreements; that during this period reducing the months that employees worked from 12 to 10 "was discussed but it wasn't bargained on" (transcript page 484); that during this period Tucker asked Respondent for the contract that Respondent had with the City of Detroit and Harrison said that he would get the information but the information was not given to Tucker during this period; and that the contract was not provided to the Union until April 2008.

On cross-examination Piper testified that the request for a copy of the contract between Respondent and the City of Detroit came in the context of a discussion of Respondent's budget by the Union's bargaining team and management; that staffing for classrooms came up during bargaining because the staff was overworked; that for the last two years for the months of June, July, and August the attendance in her classroom stayed basically the same; and that in the last three year for these months in her half day class she noted attendance drops but basically in the full day class the attendance stays the same.

Conley testified that General Counsel's Exhibit 37 is her notes of the July 27, 2007

[11] The proposed change did not take effect on November 1, 2007.

bargaining session which do not refer to anything with respect to a reduction in the months that employees work.

Virginia Burns-Saleem, who is the Director of Child Development at the City of Detroit Department of Human Services, Child Development Division, testified that her department handles Head Start Services; that for the past 13 years she has worked with Respondent; that the City of Detroit provides funds to Respondent, which is a grant through the Federal government; that annually Respondent submits a refunding package (application) to the City of Detroit, which package contains a budget; that the refunding (the money comes from the Federal government to the City of Detroit and then the City of Detroit funds, as here pertinent, Respondent, hence the term refunded or the second step in the funding process) application has to be submitted to the Federal government by August 11 of each year; that the package contains information regarding the number of classrooms, the number of sites, the number of staff, etc.; that in the last three years the City of Detroit has lost some funding and the Respondent has lost some funding[12]; that each of the City of Detroit's delegate agencies, i.e. Respondent, receives funding on a per child basis; that there are seven delegate agencies in the City of Detroit which number has remained static in the last three years; that a delegate's per child funding can change from year-to-year; that the school year for 2007/2008 started in September 2007 and ended in June 2008; that the contract goes from November 1, 2007 to October 31, 2008; that the delegate is informed prior to the commencement of the school year that their budget has been approved; that the budgetary process for the 2007/2008 fiscal year for Respondent begins in April 2007; that the City of Detroit would give final approval to Respondent's program budget in July or August 2007 for the 2007/2008 fiscal year; that the

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[12] Respondent's Exhibit 7 is a letter dated August 16, 2006 from Respondent's Interim Program Director Wiley to Saleem which reads as follows:

> On Friday, August 11, 2006, we received a telephone call from Mrs. Sandra Burns, Assistant Director regarding Hartford Head Start Agency, Inc. submitting a separate 2006 - 2007 Grant Budget for an additional one hundred eighty-seven (187) children at a budget cost of $908,820.
>
> Please let me start off by saying that the Agency would be more than obliged to accept this request, however, there are several concerns that must be addressed prior to the Agency's commitment to this request.
>
> As you know, our Agency's Budget for the 2006 - 2007 was reduced by approximately $2,000,000 and our enrollment reduced by one hundred eighty-seven (187) children. Our Agency closed several Centers, laid-off staff and incurred various other cost to accommodate this budget reduction. One concern with accepting the one hundred eighty-seven (187) children at a budget cost of $908,820 is the impact on our original 2006 - 2007 budget which contains operating the Program with no start-up cost for the additional one hundred eighty seven (187) children.
>
> The salary and fringe cost for the additional one hundred eighty-seven (187) children is $795,000 (at the minimum salary) of the $908,820 budget.
>
> As stated in the past, the Program cost per child is $6,800, our cost per child for the additional one hundred eighty-seven (187) children is $4,860.
>
> Please know that as the Interim Program Director, I do not want to jeopardize the Agency with additional cost that cannot be sustained.
>
> I am requesting a meeting with you at your earliest convenience to discuss this matter. [Italics and the use of unnecessary uppercase deleted]

This letter was carbon copied to a number of people. It was not copied to the Union. And Respondent did not attempt to dispute the Union's assertion that a copy of this letter was never given to the Union until the trial herein.

budget submitted to the City of Detroit has to be approved by the delegate's Board of Directors and its Policy Committee (required by the City of Detroit and by the Federal Head Start law), which approval must occur before the City of Detroit approved Respondent's submission in July-August 2007; that Respondent pays its wages from its program budget; that the City of Detroit is the program grantee and it sets the salary scales of the employees at Respondent; that the salary scale is not a specific amount but rather it is a range; that Federal law requires that the grantee develop a salary schedule; that for the school year 2007/2008 Respondent operates a 10-month program and not a 12-month program; that before the 2007/2008 school year Respondent was a 12-month program; that the salary scale that the City of Detroit provides to a delegate with a 10-month program is a lower scale than the one which would be provided to a delegate with a 12-month program; that the Federal government has some input into these salary scales; that the enrollment for 2007/2008 had dropped by over 100 compared to June 2007; and that would represent a loss of funding for the 2007/2008 year as compared with June 2007.

On cross-examination Saleem testified that Respondent submits an application to her department which includes general accounting budget information (GABI), i.e. the number of children, teachers, and sites; that an accountant in her department reviews Respondent's submission; that the GABI submitted by Respondent specifies how many months the employees will work; that the City of Detroit approves a budget based on what is submitted by the delegate; and that a budget for the fiscal year 2007/2008 is approved based on a GABI that is typically submitted to the City of Detroit in July 2007. Saleem then gave the following testimony:

> Q. BY MS. BRAZEAL: Ms. Burns-Saleem, do you recall the GABI that Hartford had submitted in July of 2007?
>
> A. Not off the top of my head, no.
>
> Q. Do you recall what number or how many months Hartford Head Start said it need[ed] funding for employees in the GABI?
>
> A. I don't recall.
>
> Q. You don't recall?
>
> A. No. [Transcript page 714]

Saleem further testified on cross-examination that when the City of Detroit approves the application including the GABI, it does not tell the delegate how the delegate should pay its employees; and that "in some part" (transcript page 715) each delegate has discretion as to the manner as to which employees should be paid.

Tucker testified that during the bargaining sessions in October 2007 the topic of the number of months that employees worked out of the year came up; that at one of the bargaining sessions in October 2007 Harrison, Lewis, and Thomas were present for Respondent and he, Conley, Rogers, Edwards, Keyes, and Piper were present for the Union; that during this October 2007 bargaining session Harrison basically said that there was nothing the Union could do about it, the switch from 12 months to 10 months for bargaining unit employees was going to happen anyway, they put it into play, he had to take it to the Board, and the Board was going to implement it anyway; that he told Harrison that Respondent could not change unit employees to 10 months because of labor laws and it would be a unilateral move; that Harrison indicated during this bargaining session that unit employees would be working for 10 months, their pay

would be spread out over 12 months, and bargaining unit employees would not be able to receive unemployment compensation; that he then told Harrison that if Respondent did that he, Tucker, would file charges; that during this bargaining session Fiscal Officer Thomas had some papers to show Tucker and the union bargaining committee how it would work, and Thomas said that Respondent "didn't budget enough for insurance…. something like $100,000 … and they had to find some kind of way to make up that money" (transcript pages 196 and 197); that he told Thomas "you all is not going to piggyback off my members" (transcript page 197); that Thomas did not specify what type of insurance but she did say that Respondent had to make this change; and that management kept

> telling us this was coming from the Department of Human Service, so I kept asking for documents from the Department of Human Service. I asked for the health care piece to how much it cost, what they over-budgeted, and I kept asking for this document from the Department of Human Service to say that they're going to take it to 10 months. [Transcript page 198]

Also, Tucker testified that at this bargaining session he asked for documentation regarding Thomas' claim that insurance had increased $100,000 and something from the Department of Human Services in Detroit which has a contract with Respondent that the number of months that employees have to work needs to be reduced to 10 months, Harrison told him that he would provide the information, but he never received this information from Harrison; that at this October 2007 bargaining session and numerous times before he requested a copy of the contract between Respondent and the Department of Human Services; that Harrison told him that he would get a copy of the contract for him but while he was chief negotiator for the Union Harrison did not give him a copy of the contract; that during this bargaining session in October 2007 the Union and Respondent did not agree that the employees' schedule would be reduced from 12 months to 10 months or that the pay of bargaining unit employees would be spread over 12 months based on 10 months worth of wages; and that while he was chief negotiator there was never a tentative agreement reached regarding the months that employees worked or the wages that employees were to receive on a yearly basis.

On redirect Tucker testified that when during a bargaining session in October 2007 Harrison said that Respondent was going to change the months employees worked from 12 to 10, employees could not receive unemployment compensation during the months they were off, and Respondent was going to do this and there was nothing that the Union could do about it, he told Harrison that Respondent could not make these unilateral changes without the parties bargaining; that Harrison did not say that he wanted to bargain, "the subject of bargaining never came up" (transcript page 340); that he did keep the Union's attorney, Howard Gordon, apprised about the status of the negotiations; that no one in management directly told him when Respondent was going to implement the wage change; and that after October 2007 the parties held bargaining sessions and the topics covered were non-economic mostly.

Conley testified that she, Tucker, Harrison, Rogers, Edwards, and Wiley (Conley believed) were present for the October 22, 2007 bargaining session; and that at this bargaining session nothing was said regarding the months that employees would work.

Piper testified that at bargaining sessions toward the end of 2007 the issue of employees working 10 months came up but it did not come up often; that then Interim Program Director Lewis told the Union bargaining team during this period that "we would be going to 10 months, but we would not receive unemployment" (transcript page 490); that Harrison made comments to the effect that employees will be converted from 12-month employees to 10-month employees and 10 month wages would be spread over 12 months and the Union could do

nothing about it; that she said that Wiley at the full staff meeting in May 2007 told employees that they would get unemployment; that while the reduction of the number of months that employees worked was discussed, it was never agreed upon; that the Union and Respondent did not agree on the day it was discussed that unit wages would be spread out so that 10 months worth of wages would be paid over 12 months; that Tucker requested a copy of the contract between Respondent and the City of Detroit; and that Harrison said that he would get it.

Rogers, who testified that she attended every bargaining session, testified that after the full staff meeting in May 2007 when Respondent announced its plan to go from a 12-month program to a 10-month program this matter was not brought up at a bargaining session until October or November 2007; that she attended bargaining sessions between May and October 2007 and the issue of the reduction of the number of months the employees worked did not come up until October 2007; that at a October 2007 bargaining session a member of the management team said that Respondent was still going from 12 months to 10 months, the employees' hourly wages would be changed in that it would go down, and the employees were no longer going to get the unemployment and their 10 months pay would be spread out over 12 months; that she asked management why and management said that "[t]he insurance … went up $100,000 so they were not going to be able to give us that unemployment" (transcript page 555); that while she could not remember who on he management team made these statements, she was sure Harrison and Lewis attended this session but she was not sure if Thomas was there; that she, Tucker, Conley, Piper, and Edwards were there on the Union team but she was not sure if Keyes or White were there; that in responding to management's statements, Tucker said that they were in he middle of trying to get a contract finished and management could not make any changes and if management made these changes, he was going to file charges (said more than once); that Tucker asked for all the documents pertaining to how the operations of Respondent is run; that Harrison said that they would give him all of the information that he needed; that management kept saying that they wanted to make the changes on November 1 and Tucker kept reminding them that they could not change any wages or anything; and that at this bargaining session the Union did not enter into any tentative agreement whatsoever regarding the reduction of the number of months that employees worked or spreading 12 months wages over 10 months.

Edwards testified that about two bargaining sessions were held in October 2007; that during the October 2007 bargaining sessions Harrison said that management was going to change employees' work schedule on November 1, 2007 (she thought) from 12 to 10 months and management had to spread the pay out so that employees would be paid 10 months of wages over 12 months; that management was represented at this meeting by Harrison, Lewis, and Thomas; that Tucker asked Harrison for proof from DHS or the City of Detroit, Tucker wanted to see the official documents on changing the wages; that Harrison asked Lewis to make sure that the Union bargaining team had the documents at the next meeting; that when Harrison said that management was going to change the wages Tucker told him that management could not do that would be a unilateral change and the Union would file charges; and that Tucker did not say that he wanted to bargain about wages.

With respect to bargaining sessions in November 2007, Tucker testified that one was held on November 27, 2007; that he was present at this session, along with Conley, Piper, Rogers, and possibly Keyes; that Respondent was represented at this session by Harrison, Lewis, and Thomas; that while the months that employees worked was discussed at this session, the parties never agreed to anything on that subject; that when Harrison, at this session, said that he was going to implement the 12 to 10 month change, he read the riot act to Harrison and he, Tucker, telephoned Harrison the next day and read the labor law to him on the telephone; that what Harrison said at the bargaining session was that Respondent was putting

the 10-month schedule in place, the wages would be spread over 12 months, and there was nothing the Union could do about it because it was going forward; that Harrison did not say at that time when the change would become effective; that he told Harrison that putting the 10-month schedule in place and spreading the wages over 12 months is something the Union did not agree to and there would be a labor charge; that the members of the Union bargaining committee were upset and they said they would not accept it; that during the November 27, 2007 bargaining session he again asked for Respondent's contract with the Department of Human Services and information regarding Respondent's claim about the cost of insurance increasing $100,000; that he never received this information while he was chief negotiator; that when he telephoned Harrison on November 28, 2007 and read to Harrison over the telephone the labor law regarding unilateral changes Harrison did not respond; and that during this telephone conversation with Harrison he did not agree with Harrison that bargaining unit employees' work schedules would be reduced from 12 to 10 months and they would receive 10 months wages spread over 12 months.

Conley testified that she could not recall attending a bargaining session in November 2007; and that while she was at the bargaining table at some unspecified time Harrison said the 12 month to 10 month wage change was going to happen and there was nothing the Union could do about it. On redirect Conley testified that when Harrison said the 12 month to 10 month wage change was going to happen and there was nothing the Union could do about it Tucker "reminded Harrison that we needed to bargain that issue and it had not been proposed and put on the table." (transcript page 462)

Piper testified that she attended one of the two bargaining session in November 2007; that she, along with Tucker, Keyes, Rogers, Edwards, Lewis, Thomas, and Harrison attended this session; and that she did not believe that the number of months that employees worked was discussed at this November 2007 bargaining session; and that there may have been another session in November 2007 that she did not attend.

Rogers testified that at a November 2007 bargaining session management (Harrison, Lewis and Thomas) presented the Union bargaining team (her, Tucker, Conley, Keyes, Edwards, and maybe Piper) with a diagram (in Respondent's Exhibit 1) of how the conversion would go from 12 months to 10 months when they changed it over; that management took $36,000 and showed how they were going to stretch it so that it could be paid over 12 months; that this meeting was very heated and the Union and management did not enter into any tentative agreement regarding spreading bargaining unit employees' 10 month wages over 12 months; that she worked for Respondent for 18 years and she was appalled that the Respondent would reduce her hourly rate and then stretch it out over 12 months when there was a union and management was supposed to bargain; that at the session she asked the representatives of management "what gave them the right, knowing that … [the employees] had a union, … to not bargain fairly" (transcript page 561); that, as set forth, her hourly rate went down from $23 an hour down to $18; that management's stated justification was the $100,000 health care issue; that she asked management what did the health care issue have to do with management changing the employees' hourly rate; and that Lewis said that family service workers, who are in the bargaining unit, would continue as 12-month workers.

Edwards testified that a bargaining session was held on November 27, 2007; that she, Tucker, Conley, Piper, Rogers, and Keyes attended this session for the Union; that management was represented by Harrison, Lewis, and Thomas at this session; that Tucker requested official documents from DHS and Thomas presented a conversion pay scale (See the unnumbered page in Respondent's Exhibit 1 titled "HARTFORD HEAD START AGENCY, INC., TEN MONTH SALARY CALCULATION, NOVEMBER 1, 2007."), which she said is what DHS

had sent; that the conversion chart was something that Thomas just made up in the computer; that when Tucker received the chart he said this is not what I am talking about, I'm talking about an official document not something that you all just made up on your computer; that management said that the reason the employees were going to have to take a cut in salary was because management had to pay for health insurance; that at this bargaining session the Union and Respondent did not reach a tentative agreement regarding either the months that employees worked or to spread 10 months worth of wages over 12 months; that at no time prior to November 2007 had the employer and union reached a tentative agreement regarding either the number of months that employees would work or to stretch 10 months wages over 12 months; and that no agreement was reached on these two subjects because

> Well, we never really discussed it that much. And when Jason [Harrison] and Deborah Thomas always came to the bargaining team if they mentioned it, it was already - - they were saying like it was already in place. [Transcript page 612]

Edwards further testified that Harrison told the Union bargaining team "we're [(management)] going to change the wages and there's nothing you all can do about it" (Id.); and that Harrison said the same thing in other bargaining sessions.

Conley testified that on or about January 18, 2008 she and other bargaining unit members attended a full staff meeting; that Grosse and other coordinators were there; that Grosse introduced two representatives from the new insurance company, Employee Health Insurance Management, Inc. (EHIM); that the employees were told at this meeting that the new prescription drug plan would take effect February 1, 2008; that before this she had the Blue Care Network prescription drug plan through Respondent; that at this meeting she was given a small booklet summarizing the benefits, General Counsel's Exhibit 39, and a handout explaining what the new company, EHIM, would cover, General Counsel's Exhibit 6; that on February 1, 2008 her prescription drug plan changed; that prior to the January 18, 2008 staff meeting management had never told the Union's bargaining team during any bargaining session that it was going to change the prescription drug plan for bargaining unit employees; that she did not recall anything ever being said about Respondent's prescription drug plan for bargaining unit employees and no proposals were exchanged prior to January 18 or February 1, 2008 between Respondent and the Union regarding prescription drug plan for bargaining unit employees; that prior to February 1, 2008 the Union did not agree that the prescription drug plan for bargaining unit employees should be changed; and that General Counsel's Exhibit 19(b) is the sign in sheets for the January 18, 2008 staff meeting and she signed on page 13 of this exhibit.

Piper testified that she attended a full staff meeting in January or February 2008 regarding a health care insurance change; that Grosse represented management and there were representatives from the insurance company present; that other bargaining unit members attended this meeting; that Grosse told the employees that their insurance would changed over to this new health care carrier; that prior to this unit employees had Blue Care Network and they were switched to EHIM the following month; that she remembered employees asking whether co pays would stay the same but she did not remember anyone in management responding to the question; that she remembered receiving a small packet, General Counsel's Exhibit 6, during this meeting but she did not remember seeing General Counsel's Exhibit 39; that before this full staff meeting health care had not been a topic of negotiations between Respondent and the Union during bargaining sessions and management had not said that health care insurance would change for bargaining unit employees; and that at no time since January 2008 had management rescinded the EHIM health care coverage plan.

Rogers testified that she attended Respondent's full staff meeting on January 18, 2008;

that in the past the Respondent had Blue Care Network coverage for prescription drugs; that presently Respondent uses EHIM for the employees' prescription drug coverage; that she was told of this change at the January 18, 2008 full staff meeting Respondent held; that the new program director, Grosse, presided at this meeting; that Grosse said that with the $100,000 insurance increase, Respondent, to save money, was switching the prescription drug coverage to another company; that Grosse said that Respondent already suffered a loss of $100,000 and that was causing Respondent to change the prescription drug coverage to another company; that General Counsel's Exhibit 6 is the EHIM coverage document that was handed out at this meeting; that she did not recall receiving any other documents; that before this full staff meeting, the topic of health care coverage had never been negotiated during bargaining sessions; that the full staff meeting was the first time she heard that health care prescription drug coverage changed; that before this full staff meeting the Union and Respondent had not entered into any agreements regarding health care coverage; and that employees still have EHIM coverage.

Edwards testified that she attended Respondent's staff meeting on January 18, 2008; that management was represented at the meeting by Grosse, Thomas, and Lewis; that the topic of the meeting was not announced before the meeting was held; that Grosse told them that Respondent was going to change their prescription drug insurance effective February 1, 2008 from Blue Care Network to EHIM; that EHIM's representatives gave a presentation, passed out one handout (General Counsel's Exhibit 6), and told the employees that they would be getting generics instead of brand names; that she did not recall receiving anything else at this meeting; that health care coverage was previously mentioned at a bargaining session when management talked about a $100,000.00 increase in health care insurance in justifying the pay reduction, and Tucker asked for the documentation in support of this assertion; that management said that Respondent was going to have to decrease the employees' pay because the insurance was going to go up; that before January 18 the Union and Respondent had not exchanged any proposals regarding health care; and that she first received notice that prescription drug coverage would change for bargaining unit employees on January 18, 2008.

General Counsel's Exhibits 40 and 41 were received pursuant to a stipulation entered into by Counsel for General Counsel and Respondent. The former is the Blue Care Network Member Handbook and the latter is the prescription plan agreement between Respondent and EHIM.

Tucker testified that he was replaced as chief negotiator in February 2008; that he was present for the February 5, 2008 bargaining session along with Conley, Edwards, Rogers, Piper, Harrison, Lewis, and Thomas; and that at this meeting he was pretty sure that Thomas gave him General Counsel's Exhibit 7 which reads as follows:

HHAS AND SEIU
BARGAINING
FEBRUARY 5, 2008
WAGES

BACKGROUND

July, 2007: HHSA requests approval of 10 month employee plan from SEIU
November, 2007: HHSA informs SEIU 12 month payroll scale will be used; SEIU disapproves
November, 2007 through February, 2008: HHSA incurs $33K deficit

DIAGRAM

PLAN A	PLAN B (NOT POSSIBLE)
10 month salary	10 month salary
Employee receives over 12 months	Employee receives over 10 months
OTHER TERMS UNION INTERESTED IN	Why not possible: Unexpected health care costs HHSA currently running a deficit for payroll HHSA obligation to City to honor Budget that includes 10 month salaries (over 12 months)

Tucker testified that at the February 5, 2008 bargaining session when Harrison, Lewis, and Thomas brought up working 10 months instead of 12 months, Harrison said that General Counsel's Exhibit 7 was the plan that Respondent was going with; that he told Harrison that the Union would not because the Union never agreed to anything like what was presented in General Counsel's Exhibit 7; that at this meeting the Union was effectively presented with one option, namely plan A; that the Union did not agree to plan A as presented on General Counsel's Exhibit 7; that during the time he was chief negotiator the health care coverage was not negotiated in that it was never a topic of negotiations; that February 5, 2008 was the last negotiating session he attended; that he was aware of a Head Start program in Grand Rapids, Michigan (whose employees were represented by the Union) which have 10-month employees in their labor contract; that Respondent (a) never presented him with an official tentative agreement to initial on 10 months work with pay spread over 12 months and this issue never went beyond discussion, (b) never declared an impasse at the bargaining table over this issue, (c) never requested a mediator be brought in to help negotiate this issue, and (d) never gave the Union official notice of Respondent's intent to make the change on any specific date or that Respondent needed to make the change on a specific date; that he was told a couple of times during negotiations that Respondent was going to make this change and there was nothing the Union could do about it; that Harrison did say that there was an immediate need for action due to a sudden change in funding and Respondent needed to make this 12 to 10 month schedule change when Respondent indicated that it under budgeted for the insurance, they needed to make up that money, and this was how they were making it up; that at the time he told Respondent that it was not going to piggyback off unit employees' back; and that there was never a proposal out there regarding the 12- to 10-month schedule change in that it was just general discussion.

On redirect Tucker testified that during the time he was chief negotiator the Union never agreed that the months that employees worked could be reduced from 12 to 10, or that 10 months wages could be spread over 12 months; that the parties held bargaining sessions after October 2007 and he attended them up until the time he was replaced as chief negotiator in February 2008; that while at the bargaining table, Respondent never gave him (1) a copy of Federal Regulation 1305.8, Respondent's Exhibit 6, (2) any attendance figures, (3) any dollar figures surrounding attendance, (4) any total population of student figures, (5) the costs of property, (6) any formal notice of Respondent's intent to change wages, and (7) the date or an amount that Respondent intended to change the wages; that from May to November 2007 he requested a copy of the contract Respondent had with the City of Detroit; that if Respondent actually proposed to the Union 10 months plus unemployment, which it did not, he would have had to have the membership vote on such a proposal before the Union could accept it and he could not make that decision himself; that Respondent never made such a proposal and he did

not take any such proposal, which was not made, to the membership for a vote; and that Harrison did not discuss with him at the bargaining table the funding source of wages or the source of the money for funding for wages as it pertains to Respondent. On recross Tucker testified that he did receive information on 10-month employees from Respondent in writing.

Conley testified that the next bargaining session after the one in October 2007 was on February 5, 2008; that she, Lewis, Tucker, Harrison, Edwards, Rogers, and Piper were present for the February 5, 2008 bargaining session; that she first saw General Counsel's Exhibit 7, described above, at this bargaining session; that the bargaining team was told that Respondent would be changing the program year from 12 to 10 months and the 10 months wages would be spread over 12 months; that management was told that the employees were not accepting this; that there was no agreement on this proposal; that the Union's bargaining team was told that the wage reductions would go into effect with the employees' next paycheck; and that the Union bargaining team told the Respondent that it could not do that. On cross-examination Conley testified that average daily attendance was occasionally brought up by management at the bargaining table relevant to funding. On redirect Conley testified that while she was on the bargaining team the Union and Respondent never reached a tentative agreement regarding reducing the months that bargaining unit employees worked or that 10 months wages should be spread over 12 months, which issue the Union never had the opportunity to bargain.

Rogers testified that she attended a bargaining session in February 2008 along with Tucker, Conley (described in the transcript at page 571 as Donley), Piper, Edwards, Harrison, and Lewis; that management told the Union bargaining team that Respondent was going to reduce the employees' months and instead of getting unemployment Respondent was going to stretch the pay over 12 months; that at the February 5, 2008 bargaining session Thomas gave her a copy of the above-described General Counsel's Exhibit 7; that the Union bargaining team told management that the Union was not in agreement with any of what was in General Counsel's Exhibit 7; and that the Union and Respondent did not reach any tentative agreement at this bargaining session with respect to either reducing the number of months that bargaining unit employees worked or spreading 10 months worth of wages over 12 months.

Edwards testified that she attended the February 5, 2008 bargaining session; that Thomas passed out a copy of what has been received in this proceeding as General Counsel's Exhibit 7 to the Union bargaining team; that Harrison said that there was one plan (A) since (B) was described as "NOT POSSIBLE"; that the management representatives said that the employees would not receive unemployment because Respondent did not have the money to pay into unemployment and Respondent had $100,000 in insurance it had to pay; that she told management representatives that the employees were not going to take this because it was a Federal and state law that you get unemployment; that Harrison said that there was no other choice; and that no one in management said exactly when the changes in employee pay were going to take place.

Rogers testified that after February 2008 she attended bargaining sessions and the Union and Respondent did not enter into any tentative agreements at these sessions regarding reducing the number of months that employees worked from 12 to 10 months; that at no time while she served on the Union bargaining team did the Union and Respondent reached any tentative agreement regarding reducing the number of months that employees worked; that the reduction from 12 to 10 months and the stretching of pay over 12 months was done without the Union; and that she told Harrison at a meeting

> they were not bargaining fairly. How they changed things without including the union. And I remember very well attorney Harrison saying, 'We have an agency to run.' 'We do

> not have the time to bargain with you or' - - Let me see, how did you say it, You said 'We have an agency to run, and we're not going to always have time to sit down with the union and bargain over matters that are going on with this agency. We have an agency to run.' I remember that so well because I remember saying 'We have a union.' And that's part of the union is for the agency to bargain with us on everything. You have to take the time out to share these things with us. But you [Harrison] said we [management] didn't have to do that. You didn't have time. [transcript page 575 and 576]

Rogers further testified that she was not sure if this exchange occurred at the February 5, 2008 bargaining session or at another session.

On about March 2, 2008, according to the testimony of Conley, she received General Counsel's Exhibit 5 which is on Respondent's letterhead and which reads as follows:

> February 11, 2008
>
> To: Hartford Head Start Staff
>
> RE: Hartford Head Start Agency, Inc. (HHSA), 10 Month Employees/Payroll
>
> Dear employee:
>
> Thank you for all of the hard work you do for the children of the Hartford Head Start program.
>
> I am writing this letter to inform you that HHSA is beginning the ten (10) month salary discussed with employees in May, 2007, by Chairman Allen, Program Director Alfredine Wiley and Ms. Deborah Thomas, Fiscal Officer. The ten (10) month payroll will be paid until the end of HHSA's Fiscal year on October 31, 2008.
>
> Employees will not be allowed to collect unemployment compensation because the HHSA is paying a $100,000.00 increase for all HHSA Employees' Health Care benefits.
>
> Please email Ms. Thomas at dthomas@hartforeheadstart.org or alewis@hartfordheadstart.org with questions or concerns. Thank you in this regard.
>
> Sincerely,
>
> Gloria Lewis
> Interim Project Manager
>
> Cc: Charles Allen, Chairman
> Vonetta Nimocks, Policy Committee Chair
> Jason H. Harrison, Counsel to HHSA

Conley testified that her pay was reduced in the paycheck she received on February 29, 2008; that her hourly rate in the February 29, 2008 paycheck was $15 while her hourly rate before that was $19; that from the February 29, 2008 paycheck to the time she testified at the trial herein her wages had not changed; that she believed that management had the authority to set wages; and that throughout her employment she had never received any document from the City of Detroit or the Department of Human Services regarding her wages. On redirect Conley testified that nowhere in the February 11, 2008 above-described letter does she see any reference to

average daily attendance.

Piper testified that her pay changed in February 2008 in that her salary was reduced by about $4.00 an hour; that she did receive a letter, General Counsel's Exhibit 5, from management about her pay reduction after her pay had been reduced; and that before her pay reduction her pay was $15.67 an hour and after the pay reduction her pay was $12.30 an hour.

Rogers testified that she received General Counsel's Exhibit 5 with her pay on February 28, 2008; that this letter from Respondent does not make any reference to average daily attendance but rather states "[e]mployees will not be allowed to collect unemployment compensation because the HHSA is paying a $100,000.00 increase for all HHSA Employees' Health Care benefits"; that with this reduction in her pay she went from earning $22.71 an hour (General Counsel's Exhibit 8) to $18.92 an hour (General Counsel's Exhibit 9), which is a 16.68 percent reduction; that from the end of February 2008 to the time she testified at the trial herein her hourly rate had not changed; that before her pay reduction in February 2008 she brought home $1,400.00 every two weeks and after her pay reduction she brought home $1,190 every two weeks; and that family service workers, who are in the bargaining unit, were not reduced from 12 to 10 months with stretched pay; that administrative personnel were not changed from 12 month to 10 month schedules with spread pay (General Counsel's Exhibit 3); that some of the administrative staff are in the bargaining unit; that she did not receive advance warning as to exactly when the change in pay was going to occur so she did not have enough money in the bank to cover normal payments taken out of her account; and that as a bargaining team member she has never seen or received a written proposal from management in terms of making these wage reductions and spread pay formulas before her pay was reduced.

Edwards testified that when she received her paycheck on February 29, 2008 she noticed that her pay had changed; that about three days later she received a letter in the mail, General Counsel's Exhibit 5, which indicated that her pay had changed; that there is no reference in the letter to average daily attendance but the letter does indicate "[e]mployees will not be allowed to collect unemployment compensation because the HHSA is paying a $100,000.00 increase for all HHSA Employees' Health Care benefits"; and that, with this change, her hourly wages went from $19.80 to $16.50.

Saleem testified that in February 2008 she became aware that Respondent changed the wages of some employees when she received anonymous phone calls. Then she gave the following testimony:

> Q. Did anyone from Hartford Head Start management notify you in about February 2008 that they were going to change the wages of employees that worked there?
>
> A. There was discussion that there were changes because I informed then that I had been receiving anonymous calls regarding the changes.
>
> JUDGE WEST: So this is after the fact, then?
>
> THE WITNESS: Yes.
>
> Q. BY MS. BRAZEAL: It was after the fact. Did you direct Hartford Head Start to make changes to employees' wages in February 2008?
>
> A. No.

Q. No? Do you have knowledge of anyone in your department directing Hartford Head Start to change wages of employees?

A. I don't have that knowledge. [Transcript pages 715 and 716]

Saleem testified further on cross-examination that there is a 10-month salary schedule and there is a 12-month salary schedule; that with respect to those delegates utilizing a 10-month salary scale, she is not aware of any who are spreading the 10-months salary payments over 12 months; that she is aware that since February 2008 Respondent has been on a spread pay schedule where the 10 months is spread over 12 months; that she does not know of any other delegate that does this; that she learned about Respondent spreading 10 months of pay over 12 months from anonymous telephone calls and the sharing of the information she received in anonymous calls; that she learned about spreading 10 months of pay over 12 months from anonymous calls and then she verified it with Respondent; and that the February 2008 wage change at Respondent did not come to her first for her approval. Saleem then gave the following testimony:

Q. …. Did Hartford Head Start seek your prior approval before making the wage scale change in February 2008 or did they act on their own?

A. There was some discussion regarding the 10-12 month change. Yes, there was discussion. There was information submitted. There was information reviewed.

Q. Did Hartford Head Start have to have DHS approval before it made that change - - that mid-budget change?

MR. HARRISON: What budget change?

MR. GORDON: Mid - - the mid-budget change.

MR. HARRISON: In what month, your Honor?

MR. GORDON: February 2008.

MR. HARRISON: Thank you, Judge.

Q. BY MR. GORDON: Did they have to seek your approval and did you give that review and approval in February 2008 prior to making the change? I'm not asking about discussions. Did you have to sign off on that change before it was made?

A. No. No. [Transcript pages 722 and 723]

On redirect Saleem testified Respondent would have been approved for the 10-month program for the 2007/2008 year when their refunding package was compiled from April until the end of July 2007; that the final approval from the City of Detroit of Respondent's 10-month program application for the 2007/2008 year would have come in August 2007 for the submission of the refunding package; that she would agree that the approval of Respondent's 10-month program would have occurred in August 2007 and not in February 2008; and that if Respondent's 10-month program was approved in August 2007, Respondent would not have had to come back to her in February 2008 for another approval.

Saleem subsequently gave the following testimony:

JUDGE WEST: Was a 10-month program for [the] specified employees approved in August '07?

MR. HARRISON: Yes.

THE WITNESS: It was?

MR. HARRISON: Yes. [Transcript page 725]

On recross Saleem gave the following testimony:

Q. BY MR. GORDON: You just responded to Mr. Harrison that the '07/'08 budget would have been approved sometime in August of '07. And that a 10-month provision was part of that in August of '07, is that correct?

A. Correct.

Q. Was a spread pay where the 10-months pay would be spread over 12 months, was that part of that August '07 provision that was approved?

A. I don't recall that. [Transcript page 727]

And on redirect Saleem testified that Detroit Public Schools is a delegate and the Detroit Public Schools do not have spread pay to her knowledge.

General Counsel's Exhibit 20 is the job description or qualifications, duties, and required tasks for a Project Director. When called as a 611(c) witness by Counsel for General Counsel Lewis testified that Project Director is synonymous with Program Director; that General Counsel's Exhibit 18, Respondent's organizational chart, reflects the positions held and the organizational hierarchy of Respondent at the time of the trial herein; that she is and she is listed on the chart as Interim Program Director from "1/08 - Present"; that she reports to the Board of Directors, the Policy Committee, and the City of Detroit; that the supervisor of the employees in the involved unit report to her; that General Counsel's Exhibit 20 accurately describes the duties that she is required to perform as interim Program Director[13]; that the fiscal officer is responsible for fiscal management; that on June 5, 2008 she, as Interim Program Director, signed the 2007 Federal corporate tax return for fiscal year November 1, 2006 to October 31, 2007, General Counsel's Exhibit 17; that General Counsel's Exhibits 26, 27, and 28 are May and June 2008 employee applications for vacation approval that she signed on the approved by line; that as a result of her signing these three applications, the employees' vacation requests were approved; that she has the authority to approve or deny vacation requests including those of bargaining unit employees; that she has recommended employees for hire but the parent policy committee can reject the recommendation; that she has disciplined

[13] The duties are as follows:

To be in charge of a Head Start Program and for the program meeting its Performance Standards and objectives in accordance with federal regulations and guidelines, HSD guidelines and various other licensing standards. To be responsible for the program's financial management; developing policies and procedure for program operations; coordinating and supervising the work activities of Head Start staff and to perform related work as required.

employees, including bargaining unit employees, in her capacity as Interim Program Director; that as Interim Program Director she has conducted staff meetings attended by bargaining unit employees; and that Grosse was a Program Director at Respondent, and Grosse's duties and responsibilities are the same as hers.[14]

In response to questions of Respondent's counsel, Lewis testified that she has worked for Respondent since September 1997; that before becoming Interim Program Director she was a Social Services Coordinator; that Respondent is funded through the City of Detroit by what is called a refunding package; that she cannot personally approve a program budget, which includes wages and health care, in that the City of Detroit approves the program budget; that the budget is put together by all of Respondent's coordinators and Respondent's fiscal officer and it needs to be approved by the parent policy committee, which is a part of the contract with the City of Detroit, is required by the Head Start performance standards, and is a Federal mandate; that the budget and the refunding package as a whole is one package; that after the parent policy committee approves the plan, it is taken to Respondent's Board of Directors, along with the refunding package for approval; that the package is then submitted to the City of Detroit; that the package is resubmitted to the City of Detroit three times; that after the City of Detroit, the package is submitted to Region 5 of the United States Department of Human Resources; that attendance is directly related to funding in that 45 C. F. R. 1305.8, Respondent's Exhibit 6, of the Federal Head Start regulations indicates "you always have to be at 85 percent, which means they allow 15 percent for erroneous things that could happen, [b]ut you have to be at 85" (transcript page 110)[15]; that if Respondent does not comply with the 85 percent requirement it would be "defunded" (transcript page 114); that she does not have the authority to recommend a budget to the Board that violated this regulation; and that she did not believe that she recommended a refunding package and program budget that was in violation of this Federal regulation for the fiscal year 2007 to 2008.

On further examination by Counsel for General Counsel Lewis testified that as Interim Program Director she has the responsibility to administer the provisions that are in the budget as approved; that she has held the position of Interim Program Director since February 2008, and since then she has administered or followed the budget that had been approved; that she

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[14] General Counsel's Exhibit 21 is a letter from Respondent to Grosse dated September 13, 2007 indicating that she had been selected to fill the position of Program Director starting October 1, 2007. General Counsel's Exhibits 22(a) and (b) are at will employment contracts collectively covering the period from October 1, 2007 to October 31, 2008. General Counsel's Exhibit 23 is an employee 2007 application for vacation approval which was signed by Grosse on the "Approved by" line and dated "11/20/07."

[15] As here pertinent, 45 C. F. R. 1305.8 reads as follows:

> (a) When the monthly average daily attendance rate in a center-based program falls below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis must include a study of the pattern of absences for each child, including the reasons for absences as well as he number of absences that occur on consecutive days.
>
> ….
>
> (c) In circumstances where chronic absenteeism persists and it does not seem feasible to include the child in either the same or a different program option, the child's slot must be considered an enrollment vacancy.

49 C.F.R. 1305.10 reads as follows:" A grantee's failure to comply with the requirements of this Part may result in a denial of refunding or termination in accordance with 45 C.F.R. part 1303." Tucker testified that Respondent never gave him a copy of these rules at the bargaining table.

oversees the fiscal officer, who makes sure that the budget is complied with; and that it is a part of her responsibility to make sure that bargaining unit employees are paid pursuant to the budget that has been approved for 2007/2008 according to the salary scale that Respondent gets from the City of Detroit. On further examination by Respondent's counsel Lewis testified that the salary scale from the City of Detroit is from the "Department of Human Services, that tells us what is the minimum that we have an employee can be paid and what the maximum that an employee can be paid." (transcript page 118); and that she does not set wages as Interim Director for the employees of Respondent.

After Lewis testified, the parties entered into the following stipulations:

> We've stipulated that Olive Grosse held the position of program director from about October of '07 until about the end of January of '08.
>
> We've also stipulated that Alfredine Wiley held the position of interim program director from about June '06 until about the end of September '07.
>
> It's also stipulated that Gloria Lewis has held the title of program director since February 2008.
>
> We also have entered into a stipulation that Grosse, Lewis and Alfredine Wiley, at the times that hey have been program director, have had the authority to suspend, assign work, reward work, discipline, schedule and/or grant time off, direct work, and evaluate the work of bargaining unit employees. [Transcript page 121] [[16]]

When called as a 611(c) witness by Counsel for General Counsel Deborah Thomas testified that she began her employment with Respondent in 1994 as Respondent's Fiscal Officer, a position she currently holds; that her position as Fiscal Officer is also referred to as accountant; that General Counsel's Exhibit 30 is her job description (titled qualifications, and required tasks for an Accountant)[17]; that she has performed the duties described in General Counsel's Exhibit 30; that from 1994 to the time of the trial herein her job duties are accurately reflected in General Counsel's Exhibit 30; that she has the authority to effectively recommend that an employee be disciplined[18]; that she reports to the Program Director; that she attended collective-bargaining sessions with the Union during 2007/2008; that she was on the Respondent's bargaining team as the Fiscal Officer; that she assisted in drafting the proposals that Respondent presented to the Union during the collective bargaining sessions in 2007 and 2008; and that as Fiscal Officer she signed two employment contracts between Respondent and the employees who are in the bargaining unit, General Counsel's Exhibits 10 and 15, as a witness to the signatures thereon.[19]

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[16] Grosse, Lewis, and Wiley are supervisors under Section 2(11) of the Act and their actions are imputed to Respondent, which makes them statutory agents under Section 2(13) of the Act. *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006)

[17] Deborah Thomas is described in the complaint as a Fiscal Officer, supervisor of Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

[18] General Counsel's Exhibit 31 is a memorandum to an employee from Thomas indicating to the employee that the employee was violating an agency work rule and it could result in disciplinary actions.

[19] Thomas is a supervisor under Section 2(11) of the Act and her actions are imputed to Respondent, which makes her a statutory agent under Section 2(13) of the Act. *Oakwood*

Continued

When called by Respondent Thomas testified that as financial officer of Respondent she is in part responsible for putting together a budget for Respondent, which budget contains information on wages; that she did this for the fiscal year 2007/2008; that the budget is submitted to Respondent's Board of Directors, Respondent's parent committee, and the City of Detroit for approval ; that the City of Detroit approved Respondent's program budget for 2007/2008 in August 2007; that she does not arbitrarily set the wages for employees since Respondent gets a wage scale from the City of Detroit; that she was a member of Respondent's negotiating team; that the subject of wages came up in negotiations with the Union in November 2007; that Respondent's first staff meeting where wages were discussed was in May 2007 at the New Genesis center; that Respondent receives its program funding from the City of Detroit; that Respondent submits a budget as part of its proposed contract to the City of Detroit; that the City of Detroit has the authority to approve or disapprove that budget; that it has not been her experience that the City of Detroit has disapproved items in Respondent's budget; that there have been situations where funding was not reimbursed to Respondent, namely the 2005/2006 fiscal year, in that Respondent lost funding for 187 children; that Respondent had its funding decreased in 2007/2008[20]; that for fiscal year 2007/2008 she helped prepare a 10-month budget program; that this was the first time she prepared budget for a 10-month program, and it was a 12-month in the prior fiscal year; that the change to a 10-month program was precipitated by enrollment and funding from the City of Detroit; that there was a reduction in funding from the City of Detroit of approximately $200,000 for 2007/2008; that Respondent's Exhibit 1 is a memorandum that Respondent drafted to Union members about Respondent's staff meeting in May 2007 regarding converting the program from 12 months to 10 months because of the reduction in funding; and that "[y]es" (transcript page 742) this became part of bargaining from May 2007 on.

On cross-examination Thomas testified that she, Harrison, and Wiley participated in drafting the memorandum which is part of Respondent's Exhibit 1; that the Union did not participate in drafting the first three pages of Respondent's Exhibit 1; that on the first page of Respondent's Exhibit 1 where it indicates 'Budget Reduction Plan 2007/2008' the employees described therein who will become 10-month employees are members of the involved bargaining unit; that Respondent prepared a budget proposal and sent it to the City of Detroit in April 2007, which budget proposal was a 10-month program; that it was decided by those who worked on the budget to submit a proposal with a 10-month plan because Respondent was not able to sustain a 12-month program based on the funding; that those who participated in preparing the budget included herself, the administrative staff, the Program Director, and a parent who sits on our budget committee; that administrative staff includes the content area, a health coordinator, and nutrition; that while the Union and Respondent talked about the budget, the preparation of the 2007/2008 budget was not discussed at any bargaining session; that the City of Detroit approved Respondent's 2007/2008 budget in August 2007, which budget included a 10-month program for bargaining unit employees; that with respect to the third page of the memorandum included in Respondent's Exhibit 1, she did not specifically tell anyone on the Union's bargaining team that management and a board chairperson met with the policy committee on May 10, 2007 for approval of the budget reduction plan; that she did not give anyone advance notice that management was going to meet with the Board of Directors on May 8, 2007 for their approval of the budget reduction plan; that as of November 1, 2007 the

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Healthcare, Inc., 348 NLRB 686 (2006)

[20] The Union's attorney objected to this line of questioning, pointing out that Respondent never brought any of these statistics to the bargaining table before it made the unilateral changes described above.

involved employees' salaries were a 10-month program according to Respondent's grant contract but the salaries were not converted until February 2008; that Respondent had to convert the salaries because Respondent was in noncompliance with the city contract of 10 months; that Respondent had to convert at some point in fiscal year 2007/2008, the fiscal year began November 1, 2007, and that was when Respondent was supposed to convert to a 10-month program; that the employees' wages did not change in November 2007 because Respondent was "still bargaining with the bargaining unit and we thought that we would come to some agreement by November 1st through our bargaining process. But that didn't take place" (transcript page 751); that management wanted "a signed contract completing what salaries or whatever our negotiations were" (Id.); that as of August 2007 the City of Detroit approved a budget and funded for only a 10-month program; that there was a written proposal submitted to the Union's bargaining team from Respondent with respect to wages; that at the November 2007 bargaining session Respondent gave a copy of its budget to the Union's bargaining team; that after August 2007 when the budget was approved by the City of Detroit that designated unit employees as 10-month employees, there was no opportunity to convert back to a 12-month program for those employees; that the bargaining unit employees' prescription drug coverage insurance changed on February 1, 2008 from Blue Care Network to EHIM; that she thought that prior to this change, the issue regarding changing bargaining unit employees' prescription drug coverage insurance was discussed at the bargaining table; that she believed that there was a written proposal from Respondent to the Union to change the prescription drug coverage insurance before this change occurred; that such a proposal could have been presented by Respondent's to the Union when Respondent's previous Program Director, Grosse, attended some of the bargaining sessions, but she, Thomas, was not sure; that in February 2008 Respondent changed the wages of some of the bargaining unit employees; that the wages of family service workers, who are in the bargaining unit, were not altered in February 2008 in that they remained 12-month employees[21]; that she did not notify anyone at the City of Detroit in February 2008 before some bargaining unit members' wages were changed; that the City of Detroit had "marked us out of compliance for not converting the salaries at November 1. We should - - and that was - - so they were notified. They monitor our program" (transcript page 762); that she did not know why family service workers' wages were not changed in February 2008; that the budget submitted to the City of Detroit in April 2007 had a 10-month budget but the submission to the City of Detroit did not allow for the spreading of the pay of the 10-month employees over a 12-month period; that 10-month employees' pay is spread over 12 months; and that, to her knowledge, management never obtained voluntary written approval from individual employees permitting the spreading of their pay.

On redirect Thomas testified that normally three drafts were submitted to the City of Detroit, namely the first in April 2007, the second in late May, and the third in late June or early July; that Respondent did not submit a final proposal until around July 2007; that "yes," "yes," "yes" (transcript page 768) bargaining was going on relevant to wages between May and July 2007; that she could not personally file a budget with the City of Detroit but rather under Federal Regulations Respondent needs approval from Respondent's Board of Directors, the Program Director, and Policy Committee; and that "yes" (transcript page 770) Respondent's proposal regarding wages is in Respondent's Exhibit 1 under Exhibit A,[22] which was given to the Union "I know" (Id.) in November 2007. Thomas then gave the following testimony in response to questions asked by Respondent's counsel:

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[21] According to the first page of the three page-draft memorandum in Respondent's Exhibit 1, under the "Budget Reduction Plan 2007/2008," (emphasis in original) family service workers "will become ten month employees." (needless upper case deleted)

[22] Thomas testified that the salary scale was prepared by the City of Detroit.

Q. Was it given anytime before then? I see May dates.

A. I believe - - yeah, I believe it was May too. It was a couple - - we had to give that to them a couple times.

Q. So it would be fair to say that this information at least some of this information was given to the Union in May of 2007?

A. Yes.

Q. And correct me if I'm wrong, that was before a final budget proposal was submitted to the City of Detroit?

A. Oh, yes.

Q. And that budget proposal contained a proposal that also contained wages and how wages would be paid that you submitted to the City of Detroit, is that correct?

A. Yes. [Transcript pages 770 and 771]

Thomas further testified on redirect that she played no role in authorizing a health care prescription change in February 2008; and that this change occurred because "[i]ncreased cost in the health care prescription under our plan," (Id.) and "[w]e were looking to kind of reduce our costs because we were having issues with the health care increases" (Id.). Thomas then gave the following testimony on redirect:

Q. Would it be fair to say that a contract renewal occurred in February of 2008? An automatic renewal?

A. In December. It was in December '07.

Q. And that just happened because that was part of the contract that was in place for health care for Hartford Head Start?

A. Yes.

Q. It wasn't because you or anyone else at Hartford Head Start decided to instantly make a change in the December of 2007 for health care?

A. No. [Transcript pages 771 and 772]

Thomas further testified on redirect as follows:

Q. BY MR. HARRISON: You were asked the question, Ms. Thomas, regarding your involvement with spread-pay relevant to 2007/2008 fiscal year.

A. Uh-huh.

Q. Was spread pay approved by the City of Detroit?

A. Yes, we did receive approval. Yes. [Transcript page 775] [23]

On recross Thomas testified that all three of Respondent's budget proposals submitted to the City of Detroit in the spring and summer of 2007 provided for a 10-month program; that there were some discussions regarding wages in bargaining sessions; that she could not say that there were no tentative agreements reached between the union and employer regarding wages between May and July of 2007; and that there were tentative agreements "[i]t could have been wages. I don't know - - remember." (transcript page 776)

When called as a 611(c) witness by Counsel for General Counsel, Wiley testified that she is a member of Respondent's Board of Directors; that she began her employment with Respondent in March 2006 as interim Program Director and she held that position until mid-2007[24]; that General Counsel's Exhibit 20 accurately describes the job duties of a Program Director and as Program Director she performed the duties stated in the second paragraph on page one of the exhibit.

In response to questions of Respondent's counsel, Wiley testified that Respondent's Exhibit 7 is a letter dated August 16, 2006 she, as Respondent's Interim Program Director, sent to Saleem in the City Department of Human Services in Detroit about Respondent's reduction; that this letter was written "[b]ecause the City of Detroit prepares our budget, gives us out allotment for funds to use. We have to check with them about our funding" (transcript page 145);

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[23] As noted above, Saleem testified that she was not aware of any other delegate which uses a 10-month scale spreading 10 month salary payments over 12 months; and that she first became aware of this practice on the part of Respondent when she received anonymous telephone calls that this was occurring and she subsequently verified it with Respondent. Saleem also testified that this was not part of the contract which the City of Detroit approved in August 2007. Thomas testified that the budget submitted to the City of Detroit in April 2007 had a 10-month budget but the submission did not allow for the spreading of the pay of 10 month employees over a 12-month period. I find it hard to believe that the City of Detroit would approve the spreading of pay of 10-month employees over a 12-month period - something no other 10-month program delegate did - on a mid-contract basis and Respondent would not have anything in writing to show that this occurred, and Saleem, who should know, had no knowledge of this. I do not credit this testimony of Thomas. In view of the equivocal testimony Wiley, who was the Interim Program Director - Respondent's chief administrative officer at the time - about whether Respondent submitted its first 10-month program to the City of Detroit in April 2007, and in view of Saleem's changing testimony regarding whether Respondent filed a budget for a 12- or 10-month program for 2007/2008 (Saleem testified that she did not recall how many months Respondent indicated in its July 2007 budget submission that it needed for funding employees, and later Saleem was first not sure and then - after coaching from Harrison - she agreed that the a 10-month provision was part of the August 2007 contract.) Thomas' testimony about there being a 10-month program in the contract approved in August 2007 by the City of Detroit becomes questionable. On the one hand, Respondent did not move to have the 2007/2008 contract received in evidence. On the other hand, neither the Union, which had a copy since April 29, 2008, nor Counsel for General Counsel introduced a copy to demonstrate that the August 2007 contract approved by the City of Detroit did not approve a 10-month budget. As noted below, (a) Respondent is asserting an affirmative defense, and (b) the burden of proof with respect to an affirmative defense is on the Respondent.

[24] It is noted that Wiley was carbon copied as Interim Program Director on a letter dated September 13, 2007 from the Board Chairperson of Respondent. General Counsel's Exhibit 21.

that the subject of this letter is funding; that within the confines of General Counsel's Exhibit 20 she does not have the authority to craft and implement a budget as the Interim Program Director, without any approvals; that she needed approvals from Respondent's Board of Directors and the City of Detroit; that Respondent's Exhibit 7 reads, in part, "… for the 2006 - 2007 [the Agency's budget] was reduced by approximately $2,000,000 and our enrollment reduced by one hundred eighty -seven (187) children"; that as Interim Program Director she did not have the authority to go out and seek funding from any other source other than the City of Detroit; and that while she was the Interim Program Director the $2,000,000 was not refunded by the City of Detroit.

When called by Respondent Wiley testified that currently she is a board member of Respondent and a prior Interim Program Director; that she was Interim Program Director and, therefore, Respondent's chief administrator officer from March 2006 to October 2007; that as interim Program Director she was involved in the filing of program budgets with the City of Detroit; that she oversaw the process and worked with staff, the Fiscal Officer, and the Board of Directors in putting the budget together; that during this period she was also on Respondent's bargaining team and she attended bargaining sessions, missing a few; that she never received a response to Respondent's Exhibit 7, which is her August 16, 2006 letter to Saleem as described above; and that Respondent had not recovered from the shortfall described in the letter by the time she left her job.[25]

On cross-examination Wiley gave the following testimony:

Q. [By Ms. Brazeal] … my question was is that isn't it true then the budget proposal that was submitted in April 2007, it provided for a 10-month program for bargaining unit employees?

A. I'm really going to have to say - -

Q. Do you know?

A. I'm not sure.

Q. You're not sure?

A. I'm really not sure. [Transcript page 789]

Wiley further testified that she could not recall whether at the time when the budget proposal was drafted the Union and Respondent were holding bargaining sessions; that she did not remember going to union meetings in March and April 2007; that the last (third) draft of Respondent's budget for 2007/2008 was submitted in June 2007 and the Union meetings had just started; that she could remember Harrison bringing information to the Union, namely the budget, information about our deficit, information about the 10-month program, and she did remember that being discussed at the Union meeting; and that the Union's bargaining team was not part of the drafting of the budget in April 2007.

General Counsel's Exhibits 34 and 35 were received pursuant to a stipulation between

[25] As here pertinent, Counsel for the Union pointed out that the Union never received this document at the bargaining table and, therefore, the Union was not given the opportunity to consider the content of this letter.

Respondent and General Counsel. The former is Respondent's payroll register dated February 15, 2008, and the latter is the payroll register for February 29, 2008.

Howard Gordon, who is a staff attorney with the Union, testified that in February 2008 he replaced Tucker as chief negotiator for the Union in negotiations for a collective bargaining agreement with Respondent; that he has attended three bargaining sessions with Respondent's representatives, namely April 15, 24, and 29, 2008; that he does not consider a subject a proposal until it is in writing and he told Tucker to take this approach; that he was not aware that there was any proposal on reducing the number of months the involved employees worked from 12 to 10; that he knew that there was a dialogue on that but there was no bargaining since there was no written proposal; that without bargaining, there could not be any tentative agreement regarding a reduction of the number of hours that the involved employees worked; that Tucker would have discussed any reduction in the employees' pay with him before Tucker entered into a tentative agreement; that he first saw General Counsel's Exhibit 5 sometime between the date on the letter, February 11, 2008, and the first bargaining session in April 2008; that, to his knowledge, before he saw General Counsel's Exhibit 5 no one in management provided the Union with written notice that management intended to implement a reduction in the months the employees worked, spread their 10 months pay over 12 months, and deny them unemployment; that these issues had never reached bargaining since they were never put in writing; and that after he received notice that the employees' pay was reduced, he filed an unfair labor practice charge with the Board on March 6, 2008.

With respect to the April 15, 2008 bargaining session, Gordon testified that he, Conley, Rogers, Piper, and maybe Keyes attended for the Union, and Harrison, Lewis, and maybe Thomas attended for management; that during this session Harrison said regarding Article 5 that it is the subject of litigation; that there was a mention of "$97,000.00 … deficit due to health care. But if - - through the litigation process, if they're ordered to pay, then they'll pay" (transcript page 640); that Harrison said during this session that there will never be another 12-month employee again; that management said that there would be a $300,000.00 cost if the employees went on unemployment; that regarding the 12 to 10 month issue, there was no discussion about a tentative agreement; that the parties did tentatively agree to a few things on April 15, 2008 but nothing regarding the 12 to 10 month issue; that the parties began a review of what had been tentatively agreed to (TA'd) and what had not been TA'd; that prior to this meeting Harrison sent him a summary of what Harrison believed to be the status of different articles or where the parties stood in the bargaining of certain articles of the proposed agreement; that he questioned some of Harrison's summary and they discussed these matters at this session; that there was some agreement and some disagreement as to whether certain articles (or portions thereof) had been TA'd or not; and that the parties disagreed regarding whether the 12 to 10 month issue had been TA'd, it was said that this was the subject of litigation, and he disagreed that the Union had TA'd on he 12 to 10 month issue. With respect to whether management believed that the Union had TA'd the 12 to 10 month issue, Gordon gave the following testimony:

> Q. Okay. Let me just ask more directly, did Mr. Harrison or anyone else in management <u>say</u> that there was a TA regarding reducing the months that employees worked from 12 to 10 months?
>
> A. I <u>believe</u> that he <u>thought</u> there is, yes.
>
> Q. Did he <u>say</u> he thinks there is? Do you recall?
>
> A. I don't know if he - - I don't know - - I <u>think</u> he did.

Q. Okay. Okay.

JUDGE WEST: What was actually said with respect to whether or not there was a TA - -

THE WITNES: I think he thought that there was a TA and in reviewing our documents, I didn't believe there was.

Q. BY MS. BRAZEAL: Okay.

A. Because there were things - - the TAs reflect significantly different information, the union' copy versus the employer's. And you have to remember that I wasn't the chief spokesperson TA'ing that issue.

Q. That would have TA'd that issue?

A. That would have TA'd that issue. It was Mr. Tucker. And I'm looking - - I had conversations with Mr. Tucker and I looked at that and then I had clarifying discussions with him after that bargaining meeting to make sure that my understanding of what had happened and what had not happened in his view was clear. And Mr. Harrison made his position clear to me also. And I think at that point there was a disagreement but that was what was the subject of litigation and we were kind of done with that. [Transcript pages 646 and 647; emphasis added]

Gordon further testified that as indicated by his initials and the date "4/15/08" there were some topics that the parties were able to agree on during this session; that he requested information from Respondent on either April 15 or April 24, 2008 or at both bargaining sessions; and that he verbally requested at least the contract and he thought a seniority list.

Gordon testified that in late April 2008 Harrison sent him a copy of what Harrison believed to be the common agreements, the status of bargaining, and those proposals up to that particular time, General Counsel's Exhibit 13; that at the outset of bargaining he informed Harrison that he was not interested in using the "redline" copy[26] approach because he found it very confusing; that Harrison sent him a redline copy, General Counsel's Exhibit 13, anyway; that there was a question as to exactly which proposed provisions had been TA'd ["we had TAs with his initials on it that he didn't have. He had information written on his TA copy that we didn't have," (transcript page 651)] and Harrison's submission was his attempt to resolve this question; that with respect to Article 5, he did not have a clear understanding of what the boxes in the margin contain other than that they are Harrison's thoughts; that bargaining contracts with the redline approach creates confusion; that the comments in the boxes are Harrison's thoughts; and that there are no initials signifying approval of a TA on this copy.

On cross-examination Gordon testified that the first page of General Counsel's Exhibit 13 includes the following from Harrison "The document I sent you contains all of the most recent T.A.'s subsequent to the July, 2007 T.A. document I have in my possession."

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[26] This describes a procedure where Harrison took the Union's proposed collective-bargaining agreement, made notes in boxes in the right margin of the proposal, and then drew a red dash line from the notes in the margin into the body of the Union's proposal.

As noted above, Respondent provided a copy of the contract between it and the City of Detroit to the Union in April 2008. Also, as noted above, the original charge was filed by the Union against Respondent on March 6, 2008. In other words, the contract was not provided until after the Union filed a charge with the Board against Respondent. It is noted that the original charge did not mention the fact that Respondent did not yet provide a copy of the contract. And it is noted that the amended charge filed by the Union on May 29, 2008 does allege that Respondent dilatorily provided the contract on April 29, 2008.

Gordon testified that at the April 29, 2008 bargaining session Harrison provided him with the then current DHS contract (for 2007 - 2008) and a seniority list; that he believed that the contract he received is the same as the contract between Respondent and the City of Detroit; that this contract was management's main justification for why management could not bargain wages; that the contract was relevant to the union's duty as exclusive collective-bargaining representative; that from January 31, 2008 when he was made the chief negotiator until he testified at the trial herein the Union and Respondent never agreed to anything with respect to the number of months that employees worked or anything regarding employees' wages because no proposals were ever made on wages and the parties had not gotten to that point yet; that, to his knowledge, the prescription drug plan which Respondent put into effect on February 1, 2008 is still in effect; that during the time he has been chief negotiator no representative from the City of Detroit has come to a bargaining session and he was not aware or this occurring prior to the time he became chief negotiator; that he first saw General Counsel's Exhibit 7 (the above-described Respondent's February 5, 2008 memorandum on wages) after he was ordered by the Executive Director of the Local on January 31, 2008 to take over the bargaining; and that during the bargaining sessions he attended, the content of General Counsel's Exhibit 7 were not discussed in that Harrison said that this was the subject of litigation.

Respondent's Exhibit 2 is a letter dated June 23, 2008 from Respondent to the Deputy Mayor of the City of Detroit requesting a meeting to discuss, inter alia, the funding allocation formulas used by the City of Detroit to issue a program grant to the Respondent for fiscal years 2006 through 2008.

Analysis

Paragraphs 16(a), 17, and 18 of the complaint collectively allege that in about October 2007 and on about November 27, 2007 the Charging Union orally requested that Respondent furnish it with the existing contract between the Respondent and the City of Detroit regarding providing pre-kindergarten services for the City of Detroit; that this information is necessary for, and relevant to, the Charging Union's performance of its role as the exclusive collective bargaining representative of the unit; and that Respondent was dilatory in responding to the information request by failing to provide the requested information until about April 29, 2008.

On brief Counsel for General Counsel contends that Tucker requested a copy of the 2007/2008 contract Respondent had with the City of Detroit on numerous occasions in October and November 2007; that Respondent did not give a copy of the contract to the Union until late April 2008, which was many months after it was requested and two months after Respondent implemented the unlawful wage reduction; that employers are obligated to provide information that is potentially relevant and that would be useful to the union in discharging its collective bargaining responsibilities; that the test for relevance is a liberal discovery-type standard; that information pertaining to wages is presumptively relevant, and should be provided, *Pfitzer, Inc.*, 268 NLRB 916, 919 (1984), enfd. 763 F.2d 887 (7th Cir. 1985); that the Board has found that

employers are required to provide information to a union, where the union needs the information to evaluate the employer's proposal during collective bargaining, *E.I. Dupont, Co.*, 276 NLRB 335 (1985); that by providing the information several months after the union requested the information, and only after the Respondent implemented the wage change, Respondent was dilatory and it violated its obligation to provide the information, *Woodland Clinic*, 331 NLRB 735 (2001); and that the contract was necessary for the Union to evaluate Respondent's wage proposals.

Respondent on brief argues that "[n]one of the Petitioner's witnesses presented proofs of written requests made to Respondent regarding the contract with the City of Detroit, Grantee …. To this end, the testimony of Petitioner's witnesses alone is insufficient to meet their burden in this matter." Respondent's brief, page 7.

First, there is no requirement that a request for information be in writing, and Respondent does not cites any precedent for this assertion. The request for information can be verbal. Second, neither Respondent's witnesses nor its chief negotiator, Harrison - who is also its legal representative in this proceeding, even attempted to refute the testimony of the Union's witnesses that the requests were made. Third, Respondent does not even attempt to explain why this information was not provided to the Union during negotiations before Respondent unilaterally implemented the wage and schedule reduction. Fourth, this was not just a dilatory tactic on Harrison's part. He failed and refused to provide the information, notwithstanding his oral commitments to provide it, until a charge was filed with the Board.[27] Fifth, as pointed out by Counsel for General Counsel on brief, information pertaining to wages and work schedules is presumptively relevant, and employers are required to provide this information to a union where the union needs the information to evaluate the employer's proposal during collective bargaining. And sixth, as pointed out by Counsel for General Counsel on brief, the contract was necessary for the Union to evaluate Respondent's wage and schedule proposals. Apparently the contract does not call for the spreading of the employees' 10 months of pay over 12 months, the contract apparently does not speak to denying employees unemployment compensation, and the contract apparently does not speak to Respondent exercising discretion and having some of the involved employees work 12 months while others work 10 months. The word apparently is used here because the Respondent, notwithstanding the fact that it belatedly asserts an affirmative defense (Respondent did not plead an affirmative defense in its response to the complaint.) and therefore has the burden of proof with respect to its affirmative defense, chose not to introduce the contract at the trial herein. Respondent violated the Act as alleged in paragraphs 16(a), 17, and 18 of the complaint.

Paragraphs 16(b), 17, and 19 of the complaint collectively allege that on about November 27, 2007, the Charging Union orally requested that Respondent furnish it with information relating to Respondent's claim of a $100,000 increase in health insurance costs; that this information is necessary for, and relevant to, the Charging Union's performance of its role as the exclusive collective bargaining representative of the unit; and that Respondent has failed and refused to furnish the Charging Union the requested information.

On brief Counsel for General Counsel contends that during the October and November

[27] It is noted that the Union's original March 6, 2008 charge with the Board did not cite Respondent's failure and refusal to provide the 2007/2008 contract, and the dilatory allegation was made in the amended May 29, 2008 charge. It is also noted that, before he agreed to provide the information on more than one occasion, Harrison did not ask for the request to be put in writing.

2007 bargaining sessions Tucker orally requested that Respondent furnish it with information relating to Respondent's claim of a $100,000 increase in health care costs, and Respondent never furnished the Union with this information; that the health care cost information is presumptively relevant to the Union's collective bargaining responsibilities, namely the Union's responsibility to bargain about the wage reduction that Respondent wanted to impose on the employees; and that the health care information was necessary for the Union to evaluate Respondent's wage proposal.

Respondent on brief argues, as indicated above with respect to the contract, that there were no written requests, and testimony alone is insufficient to meet the burden; and that "[f]urthermore the Respondent presented testimony demonstrating its contract with its health-care provider automatically renewed in December, 2007, not due to any action by Respondent or its agents."[28] (Emphasis added)

As noted above, (a) there is no requirement that a request for information be in writing, and Respondent does not cites any precedent for this assertion (The request for information can be verbal.), and (b) neither Respondent's witnesses nor Harrison even attempted to refute the testimony of the Union's witnesses that the requests for documentation regarding the $100,000 were made. What Harrison does do, as he did so many times at the trial herein, is attempt to side step the real issue. As already noted, the issue is not whether the contract with the health care provider automatically renewed in December 2007 or whether Respondent had an alternative. The real issue is whether Respondent was telling the truth when it told the Union that a justification for the wage and schedule reduction and refusal to allow unemployment compensation, which meant that Respondent was going back on its word, was that "HHSA is paying a $100,000 increase for all HHSA Employees' Health Care benefits." General Counsel's Exhibit 5.[29] In *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149, 153 (1956) the Court indicated:

> Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims …. If … 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.

As pointed out on page 921 of *The Developing Labor Law* (5th ed. 2006),

> Disclosure of relevant information is integral to the bargaining process. It encourages mutual respect between the negotiators and makes the American collective bargaining system, which so heavily relies on cooperation and open exchange, a viable approach to fashioning 'a generalized code' establishing 'a system of industrial self-government.'545 As the Fourth Circuit noted, unions cannot be expected to represent employees in an effective manner where they do not possess information that 'is necessary to the proper discharge of their duties of the bargaining agent.'546

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[28] Apparently Harrison believes that while "testimony" is not good enough for the Union, "testimony" - for some reason which is not given by Harrison - should be treated differently for the Respondent than the Union. Respondent did not demonstrate by introducing a document that the health care contract automatically renewed or, for that matter, that Respondent could not have chosen an alternative. What Harrison cites on brief is his leading questions (transcript pages 771 and 772) to Thomas. But whether or not the health care contract automatically renewed or Respondent had an alternative is not the issue.

[29] This document memorializes what Respondent had been telling the Union for some time in negotiations; this matter was not first brought up by Respondent in February 2008.

545 *Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 578, 580, 46 LRRM 2416, 2418 (1960).
546 *NLRB v. Whitin Machine Works,* 217 F.2d 593, 594, 35 LRRM 2215 (4th Cir. 1954), *cert. denied*, 349 U.S. 905, 35 LRRM 2730 (1955).

Counsel for General Counsel correctly points out on brief that (a) health care cost information is presumptively relevant to the Union's collective bargaining responsibilities, and (b) here the health care information was also necessary for the Union to evaluate Respondent's wage and schedule proposal, using health care costs as a justification, to drastically reduce the employees' wages. Respondent violated the Act as alleged in paragraphs 16(b), 17, and 19 of the complaint.

Paragraphs 12, 13, 14, and 15 of the complaint collectively allege that on about February 14, 2008, Respondent unilaterally implemented changes to its unit employees' health insurance prescription plan without prior notice to the Charging Union and without affording the Charging Union a meaningful opportunity to bargain with respect to this conduct and the effects of this conduct on the unit; and that this subject relates to terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

On brief Counsel for General Counsel contends that Respondent implemented a change in the unit employees' prescription health care coverage without first notifying the Union and providing it with an opportunity to bargain about the change; that health insurance for current employees is a mandatory subject of bargaining, *Allied Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co.,* 404 U.S. 157 (1971); and that the implementation of this unilateral change from Blue Care Network to EHIM in the midst of collective bargaining violated the Act.

Respondent on brief argues that "… IT DID NOT UNILATERALLY CHANGE THE HEALTHCARE BENEFITS OF UNIT EMPLOYEES." Respondent's brief, page 6.[30]

A unilateral change in the unit employee's prescription drug coverage occurred in February 2008. That unilateral change occurred without prior notice to the Union and without Respondent providing the Union an opportunity to bargain about the change. As pointed out by Counsel for General Counsel on brief, health insurance, including - as here pertinent - prescription drug coverage, for current employees is a mandatory subject of bargaining. It is a per se refusal to bargain if, during the course of negotiations with a Union, an employer makes a unilateral change in a matter that is a mandatory subject of bargaining without giving the Union prior notice and an opportunity to bargain about the change. *NLRB v. Katz*, 369 U.S. 763 (1962). Respondent violated the Act as alleged in paragraphs 12, 13, 14, and 15 of the complaint. Thomas' equivocal testimony alleging prior notice to the Union is not credited.

Paragraph 20 of the complaint alleges that on or about February 29, 2008, Respondent bypassed the Charging Union by announcing to unit employees that they would not be eligible for unemployment compensation as a result of its implementation of its proposal to reduce the work schedules of unit employees from 12 months to 10 months, and pay unit employees 10 months' wages over a 12-month period.

[30] Respondent's reference on page 7 of its 9-page (excluding attachments) brief to the alleged automatic renewal of its health care contract in December 2007, mentioned above, cannot be relevant to the situation at hand in that here Respondent did change insurers in February 2008 with respect to prescription drug coverage.

On brief Counsel for General Counsel contends that on February 29, 2008 Respondent notified employees by letter that they would not be eligible for unemployment compensation; that this notification occurred without prior notice to the Union; and that Respondent violated the Act by notifying employees of Respondent's unilateral changes without the agreement and consent of the Union, *Detroit Edison Co.*, 310 NLRB 564 (1993).

Respondent on brief does not specifically address this allegation.

Not only is the bypassing of the Union in the situation at hand evidence of bad faith, but the refusal of Harrison to accord the Union its rightful role as collective bargaining representative of the involved employees was intended to undermine the Union's authority among the employees whose interests the Union represents. The frustration of at least one employee on the Union's bargaining team, Rogers, can be heard in her question to Respondent's bargaining team representatives when she asked "what gave … [management] the right, knowing that … [the employees] had a union, … to not bargain fairly." (transcript page 561) Neither Harrison nor any of Respondent's witnesses denied (a) that Harrison told the Union bargaining team members that the wage and schedule reduction changes (drastic) were going to be put into effect and there was nothing the Union could do about it, and (b) the following testimony of Rogers regarding what she and Harrison said at a bargaining session:

> they [the representatives of management] were not bargaining fairly. How they changed things without including the union. And I remember very well attorney Harrison saying, 'We have an agency to run.' 'We do not have the time to bargain with you or' - - Let me see, how did you say it, You said 'We have an agency to run, and we're not going to always have time to sit down with the union and bargain over matters that are going on with this agency. We have an agency to run.' I remember that so well because I remember saying 'We have a union.' And that's part of the union is for the agency to bargain with us on everything. You have to take the time out to share these things with us. But you [Harrison] said we [management] didn't have to do that. You didn't have time. [Transcript page 575 and 576]

These are but a few examples of Harrison's flagrantly dismissive approach. While management representatives told the Union bargaining team during negotiations that employee would not receive unemployment because Respondent did not have the money to pay into unemployment and Respondent had a $100,000 increase in health insurance it had to pay, the Union did not agree to the denial of unemployment compensation. It is also noted that Respondent had changed its position on unemployment compensation in that originally Respondent indicated that employees would receive unemployment insurance, and this was done verbally by Interim Program Director Wiley and in print in Respondent's "draft" memorandum, General Counsel's Exhibit 3. Since Respondent had changed its position once, the possibility that Respondent might change its position on this issue again was not beyond the realm of possibility, especially if the Respondent was unwilling or unable to show with documents the validity of the justification it gave for this action. Although the Union asked for documentation supporting Respondent's assertion that Respondent had to pay a $100,000 increase for health insurance, that documentation was never given to the Union. As noted above, that was a violation of the law. The Union had no involvement with and it did not consent to Respondent's letter announcing its changed position on unemployment compensation to the involved employees. Respondent violated the Act as alleged in paragraph 20 of the complaint.

Paragraphs 10, 11, 12, and 14 of the complaint collectively allege that in about October 2007, the Charging Party (Union) requested that Respondent bargain collectively about

Respondent's proposal to reduce the work schedules of unit employees from 12 months to 10 months, and to pay unit employees 10 months' wages over a 12-month period, which subjects relate to terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining; that Respondent has failed and refused to bargain collectively and in good faith about its proposal; and that on about February 14, 2008, Respondent implemented its above-described October 2007 proposal.

On brief Counsel for General Counsel contends that the Board has held that an employer violates Sections 8(a)(1) and (5) of the Act by altering the status quo regarding mandatory subjects of bargaining during collective bargaining absent the parties reaching impasse, *Daily News of Los Angeles,* 315 NLRB 1236 (1994); that wage issues are mandatory subjects of bargaining, *NLRB v. Katz*, 369 U.S. 736 (1962); that work schedules are mandatory subjects of bargaining, *Raven Government Services*, 331 NLRB 651 (2000); that impasse occurs whenever negotiations reach that point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless, *Grosvenor Report,* 336 NLRB 613, 617 (2001); that here the parties had not reached impasse regarding wages and work schedules in that when Respondent implemented wage and work schedule reductions the parties had not begun to negotiate economic terms such as wages, they had not even exchanged written proposals regarding work schedules or wages, and therefore the parties could not have exhausted the prospects of concluding an agreement on these issues; that, with respect to Respondent's apparent argument that economic exigencies compelled prompt action, the Board has held that even in those circumstances employers must provide the union with adequate notice and an opportunity to bargain about the change, *RBE Enterprise of S.D., Inc.*, 320 NLRB 80, 82 (1995) and *Bottom Line Enterprises,* 302 NLRB 373 (1991); that the Board has limited the circumstances that would qualify as sufficient exigencies as those that are extraordinary events that are unforeseen and have a major economic effect, requiring the employer to take immediate action, *Hankins Lumber Co.*, 316 NLRB 837, 838 (1995) and *Angelica Healthcare Services,* 284 NLRB 844, 852-853 (1995); that when the economic exigencies are not unforeseen, the Board holds that the exigencies do not permit employers to implement unilateral changes, *Harmon Auto Glass*, 352 NLRB No. 24 (February 21, 2008); that while Respondent argued that the 2007/2008 contract with the City of Detroit, which allegedly contains the 10-month program provision, was an exigent circumstance that permitted Respondent to unilaterally implement reduced work schedules and wages, Respondent failed to move that the 2007/2008 contract be admitted into evidence and, therefore, all testimony regarding the contract is hearsay; that even if the 2007/2008 contract does contain a 10-month program provision, this would not be an economic exigency in that it was not unforeseen since Respondent presented the 2007/2008 budget to the City of Detroit before it notified the Union of any reduction in work schedules; that here Respondent created its own exigent circumstances and it was clearly foreseeable that Respondent would need to change the employees' wages and months that they worked to conform to the approved budget; that Respondent claimed that the $100,000 increase in health care insurance, not the purported limitations in the contract, was the reason why it reduced the months and wages that employees worked; that the increase in health care insurance costs was the only reason relied upon by Respondent in its letter to bargaining unit employees included with their first radically reduced paychecks and received on February 29, 2008; that in view of the fact that Respondent maintained family service workers as 12-month employees despite the alleged 10-month limitation in the contract it had with the City of Detroit, it follows that Respondent was not mandated by the City of Detroit to change the months and wages of bargaining unit employees; that Respondent's use of discretion in this regard indicates that the contract was not an economic exigency that left it with no other choice but to change the months that certain bargaining unit employees worked and their wages; that assuming arguendo that the alleged 10-month provision qualified as a sufficient economic exigency, Respondent still had a duty to provide the Union with an opportunity to bargain before

implementing the work schedule and wage reduction; that Respondent has continually refused to bargain with the Union regarding this issue since October 2007; and that Respondent's reliance on 45 C.F.R. 1305.8 is misplaced in that these regulations, which deal primarily with the action a head start program must undertake when dealing with student absenteeism, are irrelevant to the issues in this case.

Respondent on brief argues that it presented a wage proposal to the Union on May 11, 2007; that Respondent's witnesses and exhibits demonstrate exigent circumstances were present when the Respondent changed wages; that the decrease in funding that Respondent experienced before the 2007/2008 contract constitutes an exigent circumstance since it was an extraordinary event which was an unforeseen occurrence, *Angelica Health Services*, 284 NLRB 844, 852-853 (1997); that "[t]he NLRB's claim the Respondent did not meet its duty to bargain is false and is directly contradicted by the … testimony …. [that] Wiley facilitated an agency-wide meeting to discuss potential changes to the Respondent's Program …."[31]; that "bargaining regarding Respondent's wage proposal negotiations began in May, 2007 and continued through December, 2007 (See Petitioner's Complaint, Averment 10 & 11)" (emphasis in original)[32]; that the memorandum given to the Union in May 2007 explained Respondent's proposed conversion of its program from 12 to 10 months[33]; that Thomas testified that Respondent's grant from the City of Detroit was not approved until August 2007 after the Union and Respondent had negotiated for three months[34]; that in *NLRB v. Katz*, 369 U.S. 763 (1962) the Court held that an employer can enact unilateral changes to wages when (1) the union is given notice of the wage changes and an opportunity to respond, and (2) the wage change implemented by the employer is not significantly different than the wage proposal implemented; and that

> The testimony by Ms. Thomas demonstrates the union was given notice of the Respondent's proposed wage changes in May 2007, and the union was also given an

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[31] Respondent's brief, page 4. This assertion on brief by Respondent's attorney raises the question whether he even understands the basic obligation in the situation at hand, namely that the statutory obligation is to deal with the employees through the union rather than to deal with the union through the employees.

[32] It is not clear what the "Petitioner's Complaint" is. If Respondent's attorney is referring to the complaint involved herein, the complaint was issued by the Regional Director of Region 7 of the Board based on charges filed by the Union.

[33] As noted above, this "draft" included family service workers in the 10-month group, it indicated that "For the 2007/2008 program year, all center staff can receive unemployment benefits during the two month layoff," and the "draft" did not indicate anything about employees working for 10 months but having their wages for the 10 months of work spread out over 12 months. It is also noted that Respondent at page 5 of its brief asserts "… Respondent must sign a CONTRACT with the City of Detroit in August of each year, otherwise, the Respondent will not be funded." (emphasis in original) It would appear that the 10-month schedule issue was a fait accompli in August 2007. Respondent's lawyer, Harrison, with his flagrantly dismissive approach, put the cart before the horse. How could Respondent meaningfully bargain with the Union about the 10-month program after it assertedly signed the contract in August 2007 with the City of Detroit which contract assertedly approved Respondent's budget for a 10-month program?

[34] It is noted that Thomas also testified at pages 753-755 of the transcript that after August 2007 when the budget was approved by the City of Detroit, there was no opportunity to convert back to a 12-month program for the unit employees, and she could not adequately explain - on cross-examination - what Respondent's objective was in discussing wages after the City of Detroit approved Respondent's submitted 10-month program budget in August 2007.

> opportunity to respond throughout the next three months **until** August, 2007, when the Respondent, pursuant to its contractually agreed to budget processes, received approval from the City of Detroit for its 2007 - 2008 budget, including wages (See also *Winn-Dixie v. NLRB*, 567 F.2d 1343, 97 L.R.R.M. 2866 (BNA)(1978)). [Respondent's brief, page 6 with emphasis added]

It appears that Respondent's attorney on brief concedes that after August 2007 the Union was not given an opportunity to respond to what Respondent indicated it was going to do with respect to wages and schedules, at least to the extent these subjects were provided for in the contract Respondent entered into with the City of Detroit. Respondent did not plead an affirmative defense in its answer to the complaint. Respondent has the burden of proof regarding an affirmative defense. For the first time at the trial herein Respondent raised the defense of exigent circumstances. Yet, Respondent did not even introduce at the trial herein the 2007/2008 contract it has with the City of Detroit.[35] Respondent did not give the Union the information it needed to represent the bargaining unit.[36] The funding decrease which Respondent describes occurred before Respondent submitted its 2007/2008 budget. This information was not shared with the Union before the trial herein. Respondent now claims on brief that the funding decrease was not foreseeable and it "inevitably, required the Respondent go change its program from a twelve (12) month program to a ten (10) month program." Respondent's brief, page 9. And as noted above, Respondent argues that that the decrease in funding that Respondent experienced before the 2007/2008 contract constitutes an exigent circumstance since it was an extraordinary event which was an unforeseen occurrence. Without getting into to what extent - if at all - it may have been subsequently remedied, the funding decrease which Respondent refers to occurred before August 16, 2006. Respondent's Exhibit 7. Respondent has not shown how something which occurred before August 16, 2006 constitutes an exigent circumstance and an unforeseen occurrence which justifies taking unilateral action in February 2008. If Respondent's position is accepted, without giving the Union prior notice and an opportunity to bargain Respondent submitted a budget which reduced the work schedules of unit employees from 12 months to 10 months to the City of Detroit for program year 2007/2008 in April 2007. In April 2007 the alleged decrease in funding which occurred prior to August 16, 2006 would not constitute an exigent circumstance or an unforeseen occurrence. Then without giving the Union prior notice and an opportunity to bargain, Respondent had Respondent's Board of Directors and Respondent's Policy Committee approve Respondent's plan to, as here pertinent, reduce the work schedules of bargaining unit employees from 12 months to 10 months. The approval of the Board of Directors and the Policy Committee was required before the City of Detroit could approve Respondent's budget for a 10-month program. The City of Detroit allegedly approved Respondents budget with its 10-month program in August 2007. Respondent's attorney concedes the obvious on brief, namely that once the City of Detroit approved the Respondent's 10-month schedule for bargaining unit members there was no opportunity to convert back to a 12-month program for bargaining unit employees. But it appears that the 2007/2008 contract between Respondent and the City of Detroit did not specifically provide for (a) the spreading of the payments over 12 months to bargaining unit employees who work 10 months, (b) the denial of unemployment compensation to bargaining unit employees, or (c) the exercising of discretion on the part of Respondent to have some bargaining unit members work 10 months and other bargaining unit members work 12 months.

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[35] Respondent also did not introduce at the trial herein documentation from the City of Detroit covering the funding reduction which allegedly occurred before August 16, 2006.

[36] As noted above, Respondent did not even provide the contract to the Union until after a charge was filed with the Board, which was well after Respondent implemented the drastic wage reductions.

Again, it is not in evidence so we do not know for sure.

In *Pleasantville Nursing Home*, 335 NLRB 961, 962 (2001) the Board indicated as follows:

> The general rule is that when parties are engaged in negotiations for a new agreement an employer's obligation to refrain from unilateral changes encompasses a duty to refrain from implementation unless and until an overall impasse has been reached in bargaining for the agreement as a whole. *Bottom Line Enterprises*, 302 NLRB 373 (1991). In *Bottom Line*, the Board recognized only two exceptions to that general rule: when a union engages in bargaining delay tactics and 'when economic exigencies compel prompt action.' Id. at 374. The second exception is at issue here.
>
> The Board has limited the economic considerations which would trigger the *Bottom Line* exceptions to 'extraordinary events which are an unforeseen occurrence, having a major economic effect [requiring] the company to take immediate action.' *Hankins Lumber Co.* 316 NLRB 837, 838 (1995). In *RBE Electronics*, [320 NLRB 80 (1995)] the Board made clear that '[a]bsent a dire financial emergency, economic events such as … operation at a competitive disadvantage … do not justify unilateral action.' Id. at 81, citing *Triple A Fire Protection*, 315 NLRB 409, 414 (1994).
>
> However, in *RBE Electronics,* the Board also found that there may be other economic exigencies that although not sufficiently compelling to excuse bargaining altogether, should be encompassed within the exigency exception. In those cases, the employer will 'satisfy its statutory obligation by providing [the union] with adequate notice and an opportunity to bargain over the changes it proposes to respond to the exigency and by bargaining to impasse over the particular matter. In such time sensitive circumstances, however, bargaining, to be in good faith, need not be protracted.' Id. at 82 See generally *Naperville Ready Mix, Inc.*, 329 NLRB 174, 182-184 (1999)
>
> In defining the less compelling type of economic exigency, the Board in *RBE Electronics* made clear that the exception will be limited only to those exigencies in which time is of the essence and which demand prompt action. The Board will require an employer to show a need that the particular action proposed be implemented promptly. Consistent with the requirement that an employer prove that its proposed changes were 'compelled,' the employer must also show the exigency was caused by external events, was beyond its control, or was not reasonably foreseeable. Id.

What is clear here is that there was no overall impasse. Additionally, Respondent's refusal to furnish relevant information to the Union before implementing the drastic wage reductions constitutes a failure to bargain in good faith and precludes the parties from reaching genuine impasse. That being the case, Respondent has not shown that there was impasse over the particular matters involved herein, namely the reduction of work schedules from 12 to 10 months, the spreading of 10 months pay over 12 months, and the denial of unemployment compensation when Respondent implemented the wage reduction changes in late February 2008. What is also clear here is that Respondent implemented these changes after engaging in a number of unfair labor practices, including - as noted - failing and refusing to give to the Union the documentation supporting its alleged justification for the wage reduction changes before implementing those changes. Respondent has not shown that any alleged funding decrease which occurred before August 16, 2006 was (a) not foreseeable in February 2008 or April or May 2007, or (b) beyond Respondent's control in February 2008 or April or May 2007, or (c) was caused by external events in February 2008 or April or May 2007. As pointed out at page

861 of *The Developing Labor Law* (5th ed. 2006), "[t]he duty imposed by the Act contemplates a *bilateral* procedure through which the employer and the bargaining representative *jointly* attempt to set wages and working conditions for the employees." (footnote omitted with emphasis in original) That did not occur here. And the reasons Respondent gives for why it did not occur have no merit. Respondent violated the Act as alleged in paragraphs 10, 11, 12, and 14 of the complaint.

Conclusions of Law

By (1), without prior notice to the Union and without affording the Union a meaningful opportunity to bargain with respect to this conduct and the effects of this conduct on the unit, (a) on about February 14, 2008, implementing its October 2007 proposal to reduce the work schedules of unit employees from 12 months to 10 months and pay Unit employees 10 months' wages over a 12-month period, and (b) about February 1, unilaterally implementing changes to its Unit employees' health insurance prescription plan, (2), with respect to information that is necessary and relevant to the Union's performance of its role as the exclusive collective bargaining representative of the unit, (a) since on or about October 2007 being dilatory in responding to the information request for the existing contract between the Respondent and the City of Detroit regarding providing pre-kindergarten services for the City of Detroit, and (b) failing and refusing to furnish the Union with requested information, namely, information relating to Respondent's claim of a $100,000 increase in health insurance costs, and (3) on or about February 29, 2008 bypassing the Union by announcing to unit employees that they would not be eligible for unemployment compensation as a result of its implementation of the changes described in paragraph (1)(a) above, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. General Counsel requests that Respondent take the following affirmative action:

(a) Rescind the changes in terms and conditions of employment described above, restore the status quo ante, and make unit employees whole for any loss of wages or benefits suffered by them as a result of the above-described changes, with interest thereon computed on a quarterly compound basis.

(b) Upon request, bargain collectively and in good faith with the Charging Union as the exclusive collective-bargaining representative of the unit with respect to wages, hours, and other terms and conditions of employment.

(c) Furnish the Charging Union with the information relating to Respondent's claim of a $100,000 increase in health insurance costs.

(d) Post appropriate notices.

(e) Provide a designated Respondent official to read the "Notice to Employees" aloud to all unit employees or designate a Respondent official to be present while the notice to employees is read at its 14000 W. Seven Mile, Detroit, Michigan facility, and compensate those employees not scheduled to work that day for their travel expenses to

attend the reading of the notice.

In my opinion, Counsel for General Counsel has shown that each of her requests, except for computing interest on a quarterly compound basis - which approach the Board has not yet taken, is warranted in the circumstances of this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[37]

ORDER

The Respondent, Hartford Head Start Agency, Inc., of Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Implementing, without prior notice to the Union and without affording the Union a meaningful opportunity to bargain with respect to this conduct and the effects of this conduct on the unit, (1) Respondent's proposal to reduce the work schedules of unit employees from 12 months to 10 months and pay Unit employees 10 months' wages over a 12-month period, and (2) unilateral changes to its Unit employees' health insurance prescription plan.

(b) Being dilatory in responding to the information request for the existing contract between the Respondent and the City of Detroit regarding providing pre-kindergarten services for the City of Detroit, and failing and refusing to furnish the Union with requested information relating to Respondent's claim of a $100,000 increase in health insurance costs, when the contract and information on health insurance costs are necessary and relevant to the Union's performance of its role as the exclusive collective bargaining representative of the unit.

(c) Bypassing the Union by announcing to unit employees that they would not be eligible for unemployment compensation as a result of its implementation of the changes described in (1)(a)(1) in the second preceding paragraph above.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the changes in terms and conditions of employment described above, AND restore the status quo ante.

(b) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) On request, bargain with the Union as the exclusive representative of the employees

[37] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time center administrators, teachers, assistant teachers, family service workers, special needs assistants, cooks, drivers, typists, secretary-receptionist, learning specialists, and parent aides employed by Respondent at its various facilities in the Detroit Metropolitan area; but excluding the Director, Assistant Director, coordinators, assistant coordinators, accounting clerk, secretary-receptionist (Executive Director), confidential employees, and guards and supervisors as defined in the Act.

(d) Furnish the Charging Union with the information relating to Respondent's claim of a $100,000 increase in health insurance costs.

(e) Provide a designated Respondent official to read the "Notice to Employees" aloud to all unit employees or designate a Respondent official to be present while the notice to employees is read at its 14000 W. Seven Mile, Detroit, Michigan facility, and compensate those employees not scheduled to work that day for their travel expenses to attend the reading of the notice.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facilities in Detroit, Michigan, copies of the attached notice marked “Appendix.”[38] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 2007.

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[38] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. , November 12, 2008.

_____
John H. West
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT, without prior notice to LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION and without affording LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION a meaningful opportunity to bargain with respect to this conduct and the effects of this conduct on you, implement our proposal to reduce your work schedules from 12 months to 10 months and pay you 10 months' wages over a 12-month period, and WE WILL NOT unilateral change your health insurance prescription plan.

WE WILL NOT be dilatory in responding to the information request from LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION for the existing contract between us and the City of Detroit regarding providing pre-kindergarten services for the City of Detroit, and WE WILL NOT fail and refuse to furnish LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION with requested information relating to our claim of a $100,000 increase in health insurance costs, when the contract and information on health insurance costs are necessary and relevant to the performance of LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION in its role as your exclusive collective bargaining representative.

WE WILL NOT bypass LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION by announcing to you that you would not be eligible for unemployment compensation as a result of our implementation of the changes resulting in the reduction of your work schedules from 12 months to 10 months and your being paid 10 months wages over a 12-month period.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the changes in terms and conditions of employment described above, and restore the status quo ante.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of the discrimination against you, in the manner set forth in the remedy section of the decision.

WE WILL on request, bargain with LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION as your exclusive representative concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time center administrators, teachers, assistant teachers, family service workers, special needs assistants, cooks, drivers, typists, secretary-receptionist, learning specialists, and parent aides employed by Respondent at its various facilities in the Detroit Metropolitan area; but excluding the Director, Assistant Director, coordinators, assistant coordinators, accounting clerk, secretary-receptionist (Executive Director), confidential employees, and guards and supervisors as defined in the Act.

WE WILL furnish LOCAL 517M, SERVICE EMPLOYEES INTERNATIONAL UNION with the information relating to our claim of a $100,000 increase in health insurance costs.

WE WILL provide one of our officials to read the "Notice to Employees" aloud to you or we will designate one of our officials to be present while the notice to employees is read at our 14000 W. Seven Mile, Detroit, Michigan facility, and WE WILL compensate you if you are not scheduled to work that day for your travel expenses to attend the reading of the notice.

Hartford Head Start Agency, Inc.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300

Detroit, Michigan 48226-2569

Hours: 8:15 a.m. to 4:45 p.m.

313-226-3200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.