STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization-Respondent

Case No. CU02 L-066

-and-

LINCOLN CONSOLIDATED SCHOOLS,
Public Employer-Charging Party
_____/

APPEARANCES:

Rudell & O'Neill, P.C., by Kevin O'Neill, Esq., for the Respondent

Beier Howlett, P.C., by Michael C. Gibbons, Esq., for the Charging Party

DECISION AND ORDER

On November 20, 2003, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. On December 11, 2003, the Commission received a letter from Charging Party indicating that the dispute underlying the charge had been settled and requesting that the charge be withdrawn. Charging Party's request is hereby approved. This Decision and Order and the Decision and Recommended Order of the Administrative Law Judge will be published in accordance with Commission policy.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

_____
Maris Stella Swift, Commission Member

Dated:_____

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

On December 29, 2002, the Lincoln Consolidated Schools filed the above charge against Teamsters Local 214, the exclusive bargaining representative for bus drivers, bus aides and mechanics employed by the Charging Party Employer. The charge asserts that since August 2002, the Respondent Union has refused to meet to negotiate a collective bargaining agreement unless the Employer rescinds a change in the way it configures bus routes for bidding purposes and allows bus drivers and aides to rebid their routes. The Employer alleges that this refusal constitutes a violation of the Union's duty to bargain in good faith under Section 10(3)(c) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210. The change in bus routes was the subject of an earlier charge by the Union, *Lincoln Consolidated Schools*, 2003 MERC Lab Op ___ (Case No. C02 H-183, decided September 24, 2003).

The Employer's charge was assigned to the undersigned for hearing. On April 3, 2003, the Employer filed a motion for summary disposition under R 423.165(2)(f). Attached to the Employer's notice were six exhibits, including the parties' 1998-2000 contract, the transcript of the hearing in Case No. C02 H-183, a letter from the Employer to the Union dated August 14, 2002, and a letter from the Union to the Employer dated August 19, 2002. The Union filed a response to the motion on May 1, 2003. The Union

attached four exhibits to its response, including a letter from the Union to the Employer dated October 25, 2002, and a letter from the Employer to the Union dated November 19, 2002. The Employer filed a reply to the Union's response on May 16, 2003. Neither party requested oral argument. 1Based on the facts as set forth in the pleadings and documents submitted by both parties, and the arguments contained in the parties' briefs, I make the following conclusions of law and recommend that the Commission issue an order as set forth below.

Standards for Summary Disposition under R 423.165:

R 423.165(1) states:

> The commission or administrative law judge designated by the commission may, on its own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party. The motion may be made at any time before or during the hearing.

R 423.165(2) sets out the various grounds for summary disposition under the rule. Subsection (f) states, "Except as to the relief sought, there is no genuine issue of material fact."

R 423.165 is modeled on MCR 2.116, a similar but more extensive and detailed rule governing summary dispositions in the courts. The grounds upon which a motion for summary disposition may be based under the Court rule include MCR 2.116(C)(10), "except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When judgment is sought based on subrule (C) (10), MCR 2.116(G)(3) requires the filing of affidavits, depositions, admissions or other documentary evidence in support of the grounds asserted in the motion. MCR 2.116(G)(4) sets forth the parties' burden when a motion is filed under subrule (C) (10):

> A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.2

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. The court must consider the pleadings, affidavits, depositions and other documentary evidence available to it. The party opposing summary disposition has the burden of showing that a genuine issue of disputed fact exists. Giving the benefit of reasonable doubt to the nonmoving party, the court must determine

1 Because I held this motion in abeyance pending decision on the charge in Case No. C02 H-183, I notified the parties on September 2, 2003 that if I did not hear otherwise, I would decide the motion without oral argument. Neither party responded to my letter.

2 As noted above, both the Employer's motion and the Union's response were supported by documentary evidence.

whether the kind of record which might be developed will leave open an issue upon which reasonable minds might differ. *Tope v Howe,* 179 Mich App 91, 98 (1989).

Background:

On June 4, 2002, the parties began negotiating a new collective bargaining agreement to replace a contract which was to expire on June 20, 2002. On the first day of negotiations, the Employer gave the Union a list of proposed changes to the old agreement. Among these changes was the deletion of language in the article dealing with route selection. The Employer proposed to delete a sentence stating, "late runs and/or kindergarten runs shall be awarded to the applicant employees on the basis of classification and seniority." In July 2002, the parties agreed to extend the contract on a day-to-day basis while they negotiated.

The parties had approximately four bargaining sessions during June and July 2002, but did not reach agreement on a contract. On August 6, 2002, the parties met for a grievance meeting, followed by a negotiating session. August 6 was also the day before the bus drivers and aides were to select their bus routes for the 2002-2003 school year. Per longstanding practice, the Employer allowed the drivers and aides to examine the routes the day before the bidding. The drivers noticed that, contrary to past practice, the Employer had combined kindergarten runs with elementary and secondary runs for bidding purposes. After the grievance meeting ended, bargaining unit members approached the Union representatives and informed them of the change. At the beginning of the scheduled negotiating session, the Union representatives asserted that the Employer had no right to consolidate the runs without bargaining to impasse, and demanded that the Employer allow the drivers and aides to select kindergarten runs separately as had been done in the past. When the Employer refused, the Union representatives left the meeting. Route selection took place the following day as planned. Because drivers and aides could no longer select the shorter kindergarten runs separately, some drivers and aides who had previously worked full-time were unable to put together a full-time schedule. Some drivers and aides who had previously worked part-time were unable to find any route that did not conflict with their other commitments.

On August 9, 2002, the Union filed the unfair labor practice charge in Case No. C02 H-183. This charge alleged that the Employer violated its duty to bargain under Section 10(1)(e) of PERA by unilaterally implementing a change in the process by which bus drivers and bus aides selected their routes. The Employer maintained that language in the contract permitted it to combine the runs.3

3 The case was assigned to me, and I held a hearing on December 10, 2002. On August 20, 2003, I issued a decision and recommended order finding that the Employer had not committed an unfair labor practice. I concluded that the parties' had a bona fide dispute over the interpretation of the applicable contract language, and recommended that the Commission dismiss the charge. Neither party filed exceptions to my recommended order, and it was adopted by the Commission on September 24, 2003.

On August 14, 2002, Al Widner, the Employer's superintendent, wrote to Les Barrett, the Union's business representative, as follows:

> We have a number of outstanding bargaining issues in our current negotiations that need to be resolved. The management team is available to meet on the following dates to continue discussions relating to those issues.
>
> . . .
>
> Please contact me at your earliest convenience so we can finalize a date and time to resume bargaining the Master Contract for the Lincoln Consolidated Schools' Transportation Department.

Barrett replied by letter dated August 19:

> The Union is very interested in getting back to the bargaining table. Unfortunately, since the School District has elected to bargain in bad faith, we cannot set up additional dates until one of two things occur:
>
> 1. MERC rules on the unfair labor practice charges filed by the Union.
>
> 2. The School District ceases the bad faith bargaining position on the bidding.
>
> When one of these two options occurs, the Union will be ready to set up additional bargaining sessions to complete the contract negotiations.

The parties did not return to the bargaining table.

On October 25, 2002, Barrett sent Widner the following letter:

> As we discussed today, the Union is proposing the following ground rules in order to get negotiations restarted.
>
> 1. The parties will establish dates to negotiate as soon as possible to deal with all open issues including the unfair labor practice charge and grievances filed for arbitration on the bid day.
>
> 2. A new bid date will be established during the first week of the second semester of the

2002/03 school year.

3. On the bid date one of the following will take place:

    a. A bid of runs under the process in effect prior to the expiration of the contract will be conducted; or

    b. A bid of runs under a newly agreed upon system if one if [sic] agreed to in negotiations; or

    c. The bid date will be canceled if it is agreed that the same system used at bid time in August 2002 is agreeable.

If these ground rules are acceptable to the School District, please contact me to set up negotiation sessions.

Per contract and past practice, drivers and aides selected their routes for the entire school year in the late summer. There had been no practice of rebidding routes in the middle of the school year.

Widner replied on November 19, 2002:

I was pleased with our discussion today regarding the possibility of returning to the bargaining table to finish negotiations for the Lincoln Consolidated Schools Transportation Department. As I indicated in our conversation today, management is prepared to return to the table immediately.

I assured you today that we would come to the table in good faith and bargain over any contractual issues that you want to put on the table. I also indicated that if we were not able to resolve our differences on the unfair labor practice charges and did not receive a ruling by the end of the year that we would use the previous procedures for the 2003-2004 school year. If we subsequently receive a ruling in favor of the school district's position, we would rebid the routes according to the conditions stated in the unfair labor ruling.

The Union scheduled a membership meeting to vote on whether the Union should return to the bargaining table under the conditions set forth in Widner's November 19 letter. On December 5, 2002, the unit voted to reject the Employer's offer to return to the bargaining table. The parties had subsequent discussions, but neither changed its position.

Discussion and Conclusions of Law:

The duty to bargain in good faith under both PERA and the National Labor Relations Act (NLRA), 29 USC § 151, et seq, requires the parties to bargain over a mandatory subject of bargaining once it has been proposed by either party. *Police Officers Assn v Detroit*, 391 Mich 44, 54-57 (1974). Neither party may insist to impasse, or condition further negotiations, on agreement to a nonmandatory subject of bargaining. *Detroit Fire Fighters, Local 344 v. Detroit*, 96 Mich App 543, 546, *lv den* 411 Mich 861 (1981); *Ingham Co. and Ingham Co. Sheriff*, 1988 MERC Lab Op 170; *Flint School Dist.*, 1984 MERC Lab Op 336. See also *Associated General Contractors of America, Evansville Chapter, Inc. v NLRB*, 465 F2d 327 (7th Cir, 1972). However, a party may also violate its duty to bargain in good faith by insisting on the other party's agreement on single mandatory subject of bargaining before agreeing to meet on any other issue. See *Kellogg Community College*, 1969 MERC Lab Op 407 (Employer refused to meet and discuss other terms of the contract until the union agreed to the school calendar).

Here, the Union asserts that the Employer has mistakenly accused it of being intransigent and unwilling to return to the bargaining table when, in fact, the Employer placed conditions on the negotiations. According to the Union, after August 2002 the parties discussed ways to get back to the bargaining table, and both parties made proposals which were unacceptable to the other. The Union asserts that in its October 25, 2002 letter, the Union offered to meet as soon as possible and deal with all open issues. According to the Union, the Employer then set conditions for its return to the bargaining table which were unacceptable to the Union's membership.

I find no dispute here as to any material fact, and I conclude that an evidentiary hearing in this case is not required. I find that the Union has mischaracterized both its own position and that of the Employer, as set forth in their correspondence. The parties agree that on August 6, 2002, Union representatives walked out of a contract negotiating session after the Employer refused to rescind its decision to consolidate kindergarten runs with other runs for route selection purposes. On August 14, 2002, the Employer proposed dates for additional bargaining sessions in a letter to the Union. On August 19, the Union replied that it would not meet until the Employer changed its position on the consolidation of the kindergarten runs, or the Commission ruled on the unfair labor practice charge it had filed over the change. As a result, the parties did not recommence bargaining. On October 24, the Union wrote to the Employer offering to meet to discuss "all open issues." However, the Union conditioned its offer on the Employer agreeing to rebid the routes at the beginning of the next semester using the "process in effect prior to the expiration of the contract," unless the parties agreed otherwise. That is, the Union refused to return to the bargaining table until the Employer (1) acceded to its demand that the routes be rebid in the middle of the school year and, (2) agreed that the kindergarten runs could be selected separately unless the parties agreed otherwise before the date of the rebid. In its November 19 reply, the Employer agreed to discuss all issues the Union wanted to raise, including the kindergarten run issue. The Employer also stated that if the Commission had not decided that the Employer had the right to make the change by the beginning of the 2003-2004 school year, the Employer would allow the drivers and aides to select kindergarten runs separately until the Commission ruled. However, the Employer rejected the Union's demand that the routes be rebid at the beginning of the second semester. The Union continued to insist on the conditions set forth in its October 24, 2002 letter, including its demand that the routes be rebid.

I conclude that the Union unlawfully refused to bargain when it conditioned its return to contract

negotiations on resolution of an issue outside the scope of these negotiations, i.e. whether the Employer had the right under the existing contract to combine the kindergarten runs with other runs for bidding purposes. I also conclude that the Union unlawfully insisted, as a condition of resuming negotiations, that the Employer rescind its decision to combine the runs and allow routes to be rebid in the middle of the school year. As noted above, the Employer expressed its willingness to discuss the kindergarten runs as part of the contract negotiations. However, the Union insisted that the negotiations be held hostage to an immediate resolution of the dispute in its favor. I conclude that Union's demand that the Employer capitulate on this issue before it would even agree to meet was inconsistent with its obligation to negotiate with an open mind and a sincere desire to reach agreement, and that the Union bargained in bad faith. Based on the motion, response, and documents submitted by the parties, I conclude that no genuine issue of material fact exists, and that the Employer's motion for summary disposition should be granted.

In accord with the discussion and conclusions of law set forth above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Teamsters Local 214, its officers and agents, are hereby ordered to:

1. Cease and desist from insisting, as a condition of its return to the bargaining table, that the Lincoln Consolidated Schools rescind its decision to combine bus runs for bidding purposes and agree to allow employees to rebid routes in the middle of the school year.

2. Upon demand, meet and bargain in good faith with the above Employer over the terms of a new collective bargaining agreement.

3. Post, at the Union's business offices and in places on the Employer's premises where Union notices are customarily posted, a copy of the attached notice for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, ***TEAMSTERS LOCAL 214*** *has been found to have committed an unfair labor practice in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order,*

WE HEREBY AFFIRM THAT:

WE WILL NOT *insist, as a condition of our return to the bargaining table, that the Lincoln Consolidated Schools rescind its August 2002 decision to combine bus runs for bidding purposes and agree to allow employees to rebid routes in the middle of the school year.*

WE WILL, *upon demand, meet and bargain in good faith with the above Employer over the terms of a new collective bargaining agreement.*

TEAMSTERS LOCAL 214

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission/Bureau of Employment Relations,

Cadillac Place, 3026 W. Grand Blvd., Suite 2-750, PO Box 02988, Detroit, MI 48202-2988. Phone: (313) 456-3510.