

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization - Respondent,

Case No. CU10 I-041

-and-

ARENAC COUNTY ROAD COMMISSION,
Public Employer - Charging Party.

APPEARANCES:

William P. Borushko, for Charging Party

DECISION AND ORDER

On May 18, 2012, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Derdarian, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

TEAMSTERS LOCAL 214,
Respondent-Labor Organization,

Case No. CU10 I-041

-and-

ARENAC COUNTY ROAD COMMISSION,
Charging Party-Public Employer.

APPEARANCES:

William P. Borushko for Charging Party

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on September 24, 2010 by Arenac County Road Commission against Teamsters Local 214. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charges were assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge and Background Facts:

According to the charge, Arenac County Road Commission and Teamsters Local 214 are parties to a collective bargaining agreement covering the period 2006-2009. Section 31.4 of that contract limits the Employer's payroll contribution to the Municipal Employees' Retirement System (MERS) pension plan to 21 percent, based upon the annual actuarial valuation, with the employees bearing the costs of any increase in the payroll percentage contribution. In January of 2010, the Union filed a grievance challenging an increase in the annual actuarial valuation and later attempted to advance that grievance to arbitration.

In the instant charge, the Employer alleges that the grievance challenging the employee payroll percentage contribution amount was frivolous and that the filing of the grievance establishes that the Union never had any intention of honoring Section 31.4 of the contract. In an order issued on November 1, 2010, I directed Charging Party to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted under PERA. The response to the order to show cause was due by the close of business on November

21, 2010. To date, no response has been received, nor has Charging Party requested an extension of time in which to file such a response.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, accepting all of the allegations in the charge as true, dismissal of the charge on summary disposition is warranted.

The gravamen of this dispute is Charging Party's contention the Union is refusing to abide by Section 31.4 of the parties' collective bargaining agreement. The Commission has consistently held that an alleged breach of contract will not constitute an unfair labor practice unless a repudiation can be demonstrated. A finding of repudiation cannot be based on an insubstantial or isolated breach of contract. *Oakland County Sheriff*, 1983 MERC Lab Op 538, 542. Repudiation exists when 1) the contract breach is substantial, and 2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Comm Sch*, 1984 MERC Lab Op 894, 897. The Commission will find a repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960. In the instant case, the Employer has failed to plead facts which, if proven, would establish that this dispute is anything other than an ordinary disagreement over the meaning and interpretation of the parties' contract; i.e. the proper method of calculation of the annual actuarial valuation.

Despite having been given ample opportunity to do so, Charging Party has failed to set forth any facts which, if proven, would establish that Respondent violated PERA. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge filed by Arenac County Road Commission against Teamsters Local 214 is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: May 18, 2012