STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (PENSION BUREAU)
Public Employer-Respondent,

MERC Case No. 20-C-0512-CE

-and-

LENNIE JACKSON,
An Individual Charging Party.
_____/

APPEARANCES:

Lennie Jackson, appearing on his own behalf

Jacqueline C. Sobczyk, by VanOverbake, Michaud & Timmony, P.C., for Respondent

DECISION AND ORDER

On April 7, 2020, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order[1] in the above matter, finding that Respondent did not violate § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ found that the Charging Party failed to state a claim upon which relief could be granted and recommended that the charge be dismissed without a hearing.

On April 7, 2020, Charging Party submitted exceptions to the ALJ's Decision and Recommended Order and, on April 18, 2020, a 2nd Amended Exception[2].

[1] MOAHR Hearing Docket No. 20-005146

[2] Charging Party's Exceptions and 2nd Amended Exception fail to comply with Rule 176 of the Commission's General Rules. As we recently explained in *Grand Rapids Employees Independent Union*, Case No. CU18 E-009 (Nov. 12, 2020), we have previously considered non-compliant exceptions filed by pro se parties—at least "to the extent we were able to discern the issues on which the excepting party has requested review." Because Jackson filed his exceptions and amended exceptions without the benefit of counsel we have followed that practice here. But, as we emphasized in our recent *Grand Rapids Employees Independent Union* decision, in the future we reserve the right to reject exceptions filed by a party represented by legal counsel where the exceptions fail to comply with the requirements of the rule, regardless of whether we are otherwise able to discern the issues on which review is requested. As we understand it, in his exceptions, Charging Party argues that the ALJ erred when he failed to find that the Pension bureau breached its contractual obligations by unilaterally instituting a policy that would deprive an employee of his right to vest his service credit in a pension benefit plan at the time he resigned from the services of the City of Detroit. Charging Party further contends that the ALJ's "decision regarding the

On April 21, 2020, Respondent submitted a Response to Charging Party's Exceptions[3].

After reviewing Charging Party's exceptions and 2nd Amended Exception, we believe they are without merit and agree that Charging Party failed to state a claim upon which relief can be granted.

Factual Summary:

On March 3, 2020, Lennie Jackson filed an unfair labor practice charge against Respondent City of Detroit (Pension Bureau) alleging that the City of Detroit bargained in bad faith by "utilizing an unlawful and unenforceable contractual clause to unilaterally modify and alter a mandatory bargaining subject." According to the Charging Party, Respondent improperly denied him certain pension benefits in February 2020 to which he was entitled based on his prior employment with the City of Detroit.

The unfair labor practice charge was amended on March 26, 2020 and on March 27, 2020 and continued to allege that Respondent bargained in bad faith with AFSCME Local 229 in violation of the duty to bargain in good faith under Section 15 of PERA. Charging Party further alleged that Respondent's actions were a violation of the Michigan Constitution.

On March 27, 2020, Charging Party filed a motion for summary disposition and two written interrogatories.

In a Pretrial Order issued on March 31, 2020, the ALJ directed Charging Party to show cause why his charge should not be dismissed for failure to state a claim under PERA. The Order specified that Charging Party's motion for summary disposition was taken under advisement pending his response to the Order to Show Cause and that the interrogatories were stricken on the ground that the Commission does not allow discovery except in extraordinary circumstances.

Charging Party filed a response to the Order to Show Cause on April 2, 2020. In his response, Jackson argued that the allegations set forth in the charge are within the scope of the

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discovery rule is erroneous." In his 2nd Amended Exception, Charging Party argues that the ALJ violated his due process rights by disposing of his unfair labor practice claim summarily without an oral hearing and without affording him the right to present evidence. We will focus on those determinations in our opinion.

[3] In its Response, Respondent argues that the City of Detroit (Pension Bureau) is not and was not Charging Party's employer or a labor organization that represented him. In view of the fact that this argument was not raised as an exception or cross-exception to the ALJ's Decision and Recommended Order under Rule 176 of the Commission's General Rules, however, we will not consider the argument. See *Grand Rapids Community Schools*, 29 MPER 67 (2016). Although Respondent filed its Response under Rule 792.10132 of LARA's Administrative Hearings Rules, this rule does not apply to proceedings held before the Michigan Employment Relations Commission.

Commission's jurisdiction because Respondent's actions constituted a repudiation of its collective bargaining obligation which had a significant impact on the bargaining unit.

On April 3, 2020, Respondent filed a motion for summary disposition, as well as a motion for a protective order barring Charging Party's requests for discovery.

On April 7, 2020, as noted above, the ALJ Peltz issued his Decision and Recommended Order, in which he recommended that the charge against the City of Detroit (Pension Bureau) be dismissed without a hearing because 1) an individual bargaining unit member has no standing to assert that a public employer breached its duty to collectively bargain in good faith and 2) a charge alleging a violation of the State Constitution is beyond the jurisdiction of the Commission. The ALJ further noted, in Footnote 1 of his decision, that, given the issuance of his March 31, 2020 Order and April 7, 2020 Decision and Recommended Order, Respondent's motions were essentially moot.

Discussion and Conclusions of Law:

Charging Party argues that the ALJ violated his due process rights by disposing of his charge summarily without a hearing at which he could present evidence. In *City of Detroit (Department of Transportation)*, 33 MPER 48 (2020), however, we recently held that:

> Adams contends that he should have been given the opportunity to have an evidentiary hearing. But Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS R 423.165, authorized the ALJ to summarily dispose of the case. As the Supreme Court explained in *Smith v Lansing Sch Dist*, 428 Mich 248, 250-251, 255-259 (1987), the Administrative Procedures Act, MCL 24.201 - 24.328, "does not require a full evidentiary hearing when, for purposes of the proceeding in question, all alleged facts are taken as true." Smith, 428 Mich at 257. That is the procedure Judge Peltz followed here.

In the present case, there were no material issues of fact in dispute at the time the ALJ ruled. The decision in this case depends purely on the resolution of issues of law. Consequently, as in *City of Detroit (Department of Transportation),* an evidentiary hearing was not necessary.

In his exceptions, Charging Party further contends that the ALJ's decision regarding his request for discovery was erroneous. In *Saginaw Valley State University*, 30 MPER 6 (2016), however, we held:

> In her exceptions, Ross also argues that the ALJ should have issued an order allowing for full discovery, including interrogatories and the taking of depositions. Contrary to Ross' contentions, proceedings before the Commission are administrative proceedings governed by the Michigan Administrative Procedures Act, PERA, and the administrative rules of the Commission and the Michigan Administrative Hearing System (MAHS). Neither PERA nor the administrative rules of the Commission or MAHS provide for discovery in an unfair

> labor practice case except in extraordinary circumstances not present here. See e.g., *Wayne Cmty Sch,* 1970 MERC Lab Op 445. See also, *Kalamazoo Pub Sch,* 1977 MERC Lab Op 771, 779. Consequently, the ALJ correctly concluded that she did not have the authority in this case to order Respondent to answer interrogatories or participate in the taking of depositions.

Contrary to Charging Party's contention, the ALJ in the present case correctly concluded that he did not have the authority to order Respondent to answer interrogatories and that Charging Party was not entitled to discovery under the circumstances involved in the case.

In his exceptions, Charging Party also argues that the ALJ erred when he failed to find that the Pension bureau breached its contractual obligations in violation of its duty to bargain under PERA. In *Grand Rapids Employees Independent Union*, 31 MPER 62 (2018), however, we held that an individual charging party does not have standing to file a charge alleging a violation of the duty to bargain under § 10(1)(e) of PERA:

> ...Charging Party does not have standing to file such a charge because the City's duty to bargain is with the Union and not with an individual employee. See *Coldwater Comm Schs*, 1993 MERC Lab Op 94; *Detroit Pub Schs*, 25 MPER 77 (2012); *Detroit Pub Schs*, 23 MPER 47 (2010) (no exceptions); *Detroit Bd of Educ*, 1999 MERC Lab Op 269 (no exceptions); City of Detroit, 7 MPER 101 (1994).

In this case, Charging Party's Employer was obligated to bargain with his Union and not with him or any other individual employee. Consequently, the ALJ properly concluded that Charging Party did not have standing to assert that his employer breached its duty to collectively bargain in good faith.

Moreover, PERA does not authorize generalized claims of unfair treatment and an employee's allegation of a contract violation, without more, does not state an actionable PERA claim. In *City of Detroit (Department of Transportation)*, supra, we noted:

> PERA does not, however, authorize generalized claims of unfair treatment. See *Wayne County Sheriff and Police Officers Association of Michigan*, 33 MPER 25 (2019); *City of Detroit, Dept of Transp*, 30 MPER 61 (2017); *Ann Arbor Sch*, 16 MPER 15 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75. And an employer's breach of a collective bargaining agreement is not per se an unfair labor practice under Section 10 of PERA. See *City of Detroit*, 23 MPER 98 (2010); *Detroit Bd. of Ed.,* 1995 MERC Lab Op 75, 78; *City of Monroe,* 1994 MERC Lab Op 638 (no exceptions).

Although Charging Party alleges that his Employer violated some unspecified provision of the AFSCME Local 229 collective bargaining agreement, such is not sufficient to state a cause of action under PERA.

In view of the foregoing, we believe the ALJ properly found that Charging Party failed to meet his burden of proving that Respondent violated PERA and properly recommended that the Commission dismiss the charge.

We have also considered all other arguments submitted by the Parties and conclude that they would not change the result in this case.

ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Samuel R. Bagenstos, Commission Chair

Robert S. LaBrant, Commission Member

Tinamarie Pappas, Commission Member

Issued: December 8, 2020

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

Case No. 20-C-0512-CE

CITY OF DETROIT (PENSION BUREAU), Docket No. 20-005146-MERC
Respondent-Public Employer,

-and-

LENNIE JACKSON,
An Individual Charging Party.
_____/

APPEARANCES:

Lennie Jackson, appearing on his own behalf

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on March 3, 2020, by Lennie Jackson against the City of Detroit (Pension Bureau). 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 charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (Commission).

The unfair labor practice charge, which was amended on March 26, 2020, and again on March 27, 2020, alleges that Respondent failed or refused to bargain in good faith by "utilizing an unlawful and unenforceable contractual clause to unilaterally modify and alter a mandatory bargaining subject." Charging Party contends that Respondent's actions constitute a violation of the duty to bargain in good faith under Section 15 of PERA and a violation of the Michigan Constitution.

On March 27, 2020, Charging Party filed a motion for summary disposition and two interrogatories. In an Order issued on March 31, 2020, I directed Charging Party to show cause why his charge should not be dismissed for failure to state a claim under PERA. The Order specified that Charging Party's motion for summary disposition was being held in abeyance pending Jackson's response to the Order to Show Cause and that the interrogatories were stricken on the ground that the Commission does not allow discovery except in extraordinary circumstances. See e.g. *Saginaw Valley State Univ*, 30 MPER 6 (2016); *St Clair ISD*, 1994 MERC Lab Op 1167; *Lake Shore Board of Ed*, 1991 MERC Lab Op 228 (no exceptions);

Kalamazoo Pub Sch, 1977 MERC Lab Op 771; *Wayne Community Sch Dist*, 1970 MERC Lab Op 445.

Charging Party filed a response to the Order to Show Cause on April 2, 2020. In his response, Jackson argued that the allegations set forth in the charge are within the scope of the Commission's jurisdiction because Respondent's actions constituted a repudiation of its collective bargaining obligation which had a significant impact on the bargaining unit.[1]

Discussion and Conclusions of Law:

Pursuant to Rule 165(1), R 423.165(1), of the General Rules and Regulations of the Employment Relations Commission, which govern practice and procedure in administrative hearings conducted under PERA by MOAHR, the ALJ may "on [his] own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party." Among the various grounds for summary dismissal of a charge is a failure by the charging party to state a claim upon which relief can be granted. See Rule 165(2)(d). Accepting all of the allegations set forth by Jackson as true, dismissal of the instant charge is warranted.

Section 9 of PERA protects the rights of public employees to form, join or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. The types of activities protected by the Act include filing or pursuing a grievance pursuant to the terms of a union contract, participating in union activities, joining or refusing to join a union, and joining with other employees to protest or complain about working conditions. Sections 10(1)(a) and (c) of the Act prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities described above. PERA does not, however, prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for a breach of contract claim asserted by an individual employee. The Commission's jurisdiction with respect to claims brought by individual employees against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in, or refusal to engage in, union or other concerted activities protected by PERA.

In the instant case, none of the allegations set forth by Charging Party provide a factual basis which would support a finding that Jackson was subjected to discrimination or retaliation for engaging in, or refusing to engage in, protected activities in violation of the Act during the six-month period preceding the filing of the charge.

With respect to Charging Party's claim that Respondent violated its bargaining obligation under PERA, it is well established that the duty to bargain is between the public employer and

[1] On April 3, 2020, as this Decision and Recommended Order was being prepared for issuance, Respondent filed a motion for summary disposition, as well as a motion for a protective order barring Charging Party's requests for discovery. Given the issuance of the March 31, 2020, Order and this decision, Respondent's motions are essentially moot.

the labor organization acting in its capacity as the employees' exclusive bargaining representative. For that reason, the Commission has consistently and repeatedly held that an individual bargaining unit member has no standing to assert that a public employer breached the duty to collectively bargain in good faith, as such a claim can only be brought by the designated bargaining representative. See e.g. *City of Detroit (Bld. & Safety Engineering),* 1998 MERC Lab Op 359, 366; *Oakland University,* 1996 MERC Lap Op 338, 342-343; *Detroit Fire Dep't,* 1995 MERC Lab Op 604, 613-615; *AFSCME Council 25,* 1994 MERC Lab Op 195; *Detroit Pub. Sch.,* 1985 MERC Lab Op 789, 791-793; *Oakland County (Sheriff's Dep't),* 1983 MERC Lab Op 538 542, enf'd, Mich. App. Docket No. 72277 (12-6-84). This includes an allegation that an employer has repudiated its contractual obligations, as such a claim is premised upon an employer's duty to bargain in good faith under Section 15 of the Act. See e.g. *Shelby Twp*, 28 MPER 77 (2015) (no exceptions); *Wayne State Univ*, 28 MPER 17 (2014); *Kent County*, 25 MPER 29 (2011) (no exceptions); *Coldwater Cmty Schs*, 1993 MERC Lab Op 94.

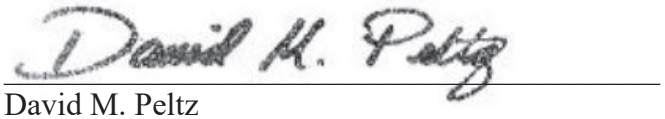
Similarly, a charge alleging a violation of the State Constitution is beyond the jurisdiction of the Commission. The Commission must decide matters before it based on the language of PERA and its amendments. *Waverly Cmty Sch*, 26 MPER 34 (2012). Thus, any constitutional issues that the parties wish to raise must be brought elsewhere. *City of Detroit*, 27 MPER 6 (2013). See also *Interurban Transit Partnership*, 33 MPER 38 (2019) (no exceptions); *Michigan State Univ*, 17 MPER 75 (2004); *Garden City/Dearborn Pub Sch Adult Education Consortium*, 7 MPER 25 (1994). Accordingly, I conclude that the charge against Respondent must be dismissed without a hearing. For that reason, Charging Party's motion for summary disposition is hereby denied.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to meet his burden of proving that Respondent City of Detroit (Pension Bureau) violated PERA. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Lennie Jackson against the City of Detroit (Pension Bureau) in Case No. 20-C-0512-CE; Docket No. 20-005146-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



David M. Peltz
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: April 7, 2020