STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

LEELANAU COUNTY ROAD COMMISSION,
Public Employer-Respondent,

MERC Case No. C15 F-089
-and- Hearing Docket No. 15-041983

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Michael R. Kluck & Associates, by Thomas H. Derderian and Wendy Hardt, for Respondent

Pinsky, Smith, Fayette & Kennedy, LLP, by Michael L. Fayette, for Charging Party

DECISION AND ORDER

On March 31, 2017, Administrative Law Judge Travis Calderwood 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 either 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: May 18, 2017

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

LEELANAU COUNTY ROAD COMMISSION,
Respondent-Public Employer,

Case No. C15 F-089
Docket No. 15-041983-MERC

-and-

TEAMSTERS LOCAL 214,
Charging Party-Labor Organization.

_____/

APPEARANCES:

Michael R. Kluck & Associates, by Thomas H. Derderian and Wendy Hardt, for the Respondent-Public Employer

Pinsky, Smith, Fayette & Kennedy, LLP, by Michael L. Fayette, for the Charging Party-Labor Organization

DECISION AND RECOMMENDED ORDER

On June 30, 2015, Teamsters Local 214, (Charging Party or Union) filed the present unfair labor practice charge against the Leelanau County Road Commission (Respondent or Employer). Charging Party filed an Amended Charge on February 2, 2016. Pursuant to Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216, the charge was assigned to Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission). Based upon the entire record, including the transcript of hearing, exhibits and post-hearing briefs, I make the following findings of fact, conclusions of law and recommended order.

Unfair Labor Practice Charge and Procedural History:

The Union alleges in its initial filing that the Employer repudiated the parties' collective bargaining agreement by refusing to sign a health insurance Participation Agreement with the Michigan Conference of Teamsters Welfare Fund (Teamsters Fund) despite being obligated to do so under the parties' contract. An evidentiary hearing on this charge was set for August 3, 2015, in Lansing, Michigan. At the same time a telephone pre-hearing conference was scheduled for July 24, 2015.

On July 15, 2015, I received a written request from Robert V. Donick, Business Representative for the Charging Party, to adjourn the July 24, 2015, pre-hearing conference. Donick indicated that he had sought and receive concurrence from Respondent's attorney, Thomas H. Derdarian. Donick also requested that the August 3, 2015, hearing in Lansing be adjourned and instead be held in Detroit on August 17, 2015. I had my secretary contact the parties to inform them that both the pre-hearing conference and evidentiary hearing would be adjourned without date and to request them to confer over dates to reschedule the pre-hearing conference.

The next communication received from either party was a December 17, 2015, notice of appearance filed on behalf of Charging Party by attorney Michael L. Fayette. Then on December 23, 2015, Charging Party requested by letter that this matter be set for hearing as soon as possible. The letter indicated that Respondent's attorney opposed the request. A pre-hearing conference was scheduled for January 14, 2016, and later adjourned to and held on January 19, 2016. Following that conference the matter was set for hearing on March 18, 2016.

On February 2, 2016, Charging Party filed an amended charge adding to its previous allegations that on November 30, 2015, it had again requested that the Employer execute a health insurance Participation Agreement with the Michigan Conference of Teamsters Welfare Fund and that on December 17, 2015, the Employer refused. Furthermore, Charging Party claimed that it had received no response from its request of the Employer to identify how the Participation Agreement failed to conform with the parties' contract.

On March 3, 2016, Charging Party filed a new charge with the Commission, Case No. C16 C-020; Docket No. 16-005066, alleging that the Respondent had failed to respond to a January 29, 2016, information request. Prior to the hearing on March 18, 2016, Respondent's attorney objected to defending against the new charge at that time. That action remains pending and was never consolidated with the present proceeding.

Findings of Facts:

The parties are signatories to a collective bargaining agreement effective July 1, 2014, through June 30, 2017. This was the first contract between the parties as the bargaining unit now represented by Charging Party had been previously represented by the Government Employees Labor Council (GELC).

Article 31 of the contract, entitled "Hospital, Medical and Dental Insurance" sets forth the parties' agreed upon terms with respect to the insurance options available to the unit's members. Section 1 of that article states in part:

> Health Insurance. The Road Commission's contribution towards the cost of providing hospital and medical benefits pursuant to this section will be capped at the following maximum amounts per month:

TYPE OF COVERAGE	
FAMILY COVERAGE	$1,200.00
TWO-PERSON COVERAGE	$1,000.00

SINGLE PERSON COVERAGE	$ 600.00

> Any costs in excess of the amounts as stated above will be paid by employees through payroll deduction. The Employer will agree to implement any health care plan as chosen by the Union, so long as such is permitted by its insurance carriers and the law and does not result in any Employer costs in excess of the contribution amounts as listed in this section.

Section 2 of that article provides in part:

> Dental Insurance. The Employer agrees to contribute up to a maximum of six dollars and forty cents ($6.40) per week, per employee, towards the cost of dental insurance coverage. The dental insurance coverage plan and insurance carrier shall be selected by the parties.

It appears from testimony provided during the hearing that the above two provisions had been part of the contract between the Employer and the GELC in prior years. It was also established during the hearing that Priority Health Care is the health insurance provider utilized by the Respondent to provide and manage the health insurance plan for its employees.

Article 11 of the contract sets forth the parties' grievance procedure culminating in binding arbitration. It is not known whether this Article was a carryover from the prior contract between the Employer and the GELC.

After the parties finalized negotiations over their first contract, Robert V. Donick was assigned by the Union to service this unit.[1] Donick had not been involved in the negotiations over the contract. Donick testified that sometime in the fall of 2014 the Union learned that the unit's health care premiums through Priority Health were going to increase "dramatically." Accordingly, Donick contacted the Teamsters Fund and worked through Curtis Brown to obtain specific rates to cover the unit. Brown had been an employee of the Union sometime in the past but was an employee of the Teamsters Fund at the time that he worked with Donick. According to Donick, Brown worked directly with Joel Nedow, the Employer's Finance Manager, in collecting the census data for the unit in order to allow the Teamsters Fund to calculate rates.

Donick testified that sometime prior to June 30, 2015, the Employer was presented with a Participation Agreement. The purpose and effect of the agreement was the changing of health insurance from the plans provided by and managed by Priority Health to a plan provided by and managed by the Teamsters Fund. While Charging Party was not able to produce a copy of the Agreement as presented to the Respondent, the parties did stipulate to the admission of the standard form Participation Agreement used by the Teamsters Fund. Donick was unable to testify to its specific contents or the method by which it was provided to the Employer. That form document provided had multiple blank spaces for information to be inserted by the parties to the agreement

---

1 Only Donick testified at the hearing. Although Respondent's attorney had suggested that he might testify since many of Charging Party's allegations involved communication directly with him and, even went so far as to have another attorney from his firm attend the hearing to facilitate questioning, he did not take the stand.

which included spots for rates and various tiers for coverage levels along with the duration of term. The insurances rates are separated weekly within a month, however, Paragraph 4 of the agreement requires that employer contributions for each week of any month are due on or before the first day of said month. Charging Party did not provide evidence which, with any specificity establishes when, if, or how the Employer communicated that it would not be signing the Participation Agreement. On June 30, 2015, Donick, on behalf of Charging Party filed the initial unfair labor practice charge.

Donick did testify that he spoke with Respondent's attorney sometime in July of 2015 regarding the Union representative's vacation, but denies or could not recall whether the two discussed the Participation Agreement. Donick further testified that in subsequent phone calls with Respondent's attorney the two did discuss the Teamsters Fund, and that the attorney had indicated that the Employer was open to the idea of switching health care plan providers. To that point, at the hearing Donick claimed that Respondent's attorney did not voice any specific objection to the Teamsters Fund or to the Participation Agreement other than the agreement's length. It is unclear as to the actual length of the first proposed Participation Agreement since it could not be presented at hearing. Donick further testified that Respondent's attorney left a voicemail message for Donick sometime in late September in which the attorney only complained of the length of the participation agreement.[2]

Following receipt of the voicemail, Donick sent Derderian a letter dated September 14, 2015, in which he wrote:

> Over a month ago we had a telephone conversation regarding the implementation of the Teamsters Health and Welfare Fund health insurance for the Teamsters members employed at the Leelanau County Road Commission.
>
> The Union agrees that, pursuant to the contract, the maximum amount the employer will contribute per month is $600.00 for single person coverage, $1,000.00 for two person coverage and $1,200.00 for family coverage.
>
> You advised me that you had "problems" with some items in the Participation Agreement and also with the length of the Agreement. Please advise me what those are so we can address them.

Receiving no response, Donick sent Respondent's attorney another letter, dated September 30, 2015, in which he wrote:

> Since we are not connecting via the telephone, I would ask that you put in writing the specifics of your concerns with the Participation Agreement. Also, please advice me as to how long you want the agreement to be in effect.

Donick claims he did not receive any response from the attorney regarding either of his letters.

Donick then worked with the Teamsters Fund to modify the Participation Agreement. By letter dated November 30, 2015, Donick sent the Participation Agreement along with a memorandum of understanding to Nedow. This Participation Agreement, which Charging Party did produce at

---

2 Charging Party was not able to provide the date of the alleged voicemail nor did it attempt to introduce any further evidence in support of his claim.

hearing, provided weekly rates for four different tiers of coverage, employee only, employee plus children, employee plus spouse, and family. The Agreement also provided that participation in the fund would continue for the remaining term of the parties' collective bargaining agreement set to expire in mid-2017. In the letter, Donick requested that the Employer sign both documents so that the unit members could participate in the health care plan provided by and administered by the Teamsters Fund. Once again however, what modifications were made to this Participation Agreement as opposed to the earlier agreement are unknown.

On December 17, 2015, Nedow responded by letter to Donick, stating:

> Thank you for your letter. Your request was brought up and discussed at our December 15, 2015[,] Board meeting, the first available meeting following receipt of your letter.
>
> Please be advised that until our negotiating representative, Tom Derderian advises the Road Commission Board that he is satisfied with the revised terms and conditions he had requested, the Board declines to take action on this matter.
>
> I ask that any further correspondence regarding this matter be directed to Mr. Derderian's attention. [Emphasis in original].

No further communication from the Employer or from Derderian regarding the Participation agreement was received by Charging Party. On January 29, 2016, Charging Party filed its first amended charge, in which it alleged that the Employer violated PERA by refusing to execute the most recent Participation Agreement and by refusing to identify what issues it had with respect to the Participation Agreement.

On March 3, 2016, Charging Party filed Case No. C16 C-020; Docket No. 16-005066 as describe above.

As stated above Donick was the only witness to testify. Respondent's attorney made several assertions during his opening statement involving various conversations he had with Donick regarding the Teamsters Fund, the Participation Agreement, and the Employer's position as to both.

Discussion and Conclusions of Law:

The present dispute centers on the parties' respective readings of Article 31, Section 1 of their contract, with both sides claiming that the language is clear and unambiguous. Secondary to the contract language issue is whether the Employer failed to fulfill its duty with respect to the Union's request for information.

Under Section 15 of PERA, a public employer is required to bargain collectively with the representatives of its employees over "wages, hours, and other terms and conditions of employment." Once a specific subject has been classified as a mandatory subject of bargaining, neither party to a collective bargaining relationship may take unilateral action on the subject absent an impasse in negotiations. *Central Michigan Univ. Faculty Ass'n v Central Michigan University*, 404 Mich 268, 277 (1978). A party may satisfy its obligation to bargain over a mandatory subject of bargaining when it negotiates a contract provision that fixes the parties' rights with respect to that subject, for

the term of that agreement. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 318 (1996). Agreement on such a subject enables both parties to rely on the language of that agreement as the statement of their obligations regarding that topic as covered by the agreement.

The Commission does not police or enforce collective bargaining agreements. Instead, when a term or condition of employment is covered by a provision in a current collective bargaining agreement, and the parties have agreed to a grievance resolution procedure ending in binding arbitration, the details and enforceability of such provision are generally left to arbitration. *Port Huron Ed Ass'n*, 317-321. However, even when a collective bargaining agreement covers a subject in dispute between the parties and that contract includes a grievance and arbitration procedure, an employer's conduct or actions may still give rise to an unfair labor practice charge if it constitutes repudiation. A party's repudiation of a provision or provisions of its collective bargaining agreement may be tantamount to a rejection of its duty to bargain. The Commission has defined repudiation as an attempt to rewrite the parties' contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501; *Redford Twp Bd of Ed*, 1992 MERC Lab Op 894. An alleged breach of contract will be considered a repudiation when (1) the contract breach is substantial and has significant impact on the bargaining unit and, (2) no bona fide dispute exists over interpretation of that contract. See *Plymouth Canton Community School District*, 1984 MERC Lab Op 894.

Here Article 31, Section 1, is clear and unambiguous, it is not without limitations. That Section clearly provides that the Employer will implement any health care plan chosen by the Union, but only if the plan chosen meets several requirements, the first of which is that the plan is permitted by the Employer's insurance carriers. As argued by the Employer, the contract does not grant to the Union the right to choose an insurance provider, rather it grants the right to choose an insurance plan, so long as it meets the limitations set forth therein. The dichotomy between Section 1 and Section 2 of Article 31, which requires both the Employer and the Union to agree upon the selection of a dental plan and insurance carrier for that plan, further supports the position as set forth by the Employer. Accordingly, it is my finding that the Employer did not repudiate the collective bargaining agreement by refusing to execute the Participation Agreement either when first presented with it in the summer of 2015 or again in December of that same year.

Charging Party's remaining allegations, as contained within its amended charge filed on January 29, 2016, claim that the Employer refused to provide information. Under PERA, an employer satisfies its bargaining obligation if it supplies, in a timely manner, requested information which will permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne County*, 1997 MERC Lab Op 679. An employer's refusal or an unreasonable delay in supplying requested information is an unfair labor practice. *Detroit Public Schools*, 15 MPER 33047 (2002). Information sought that relates to the wages, hours or working conditions of bargaining unit employees is presumptively relevant and will be ordered disclosed unless the employer rebuts the presumption. *36th District Court*, 28 MPER 40 (2014). The standard applied under PERA is a liberal discovery-type standard; the employer has a duty to disclose the requested information so long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne Co; 36th District Court*. In situations where a union's request may be ambiguous or overbroad, an employer cannot simply refuse to comply and instead must request clarification and/or comply with the request to the extent it encompasses

necessary and relevant information. *In re Lexus of Concord, Inc*, 330 NLRB 1409, 1417 (2000). Information pertaining to matters of managerial prerogative is not presumptively relevant. *Pontiac School District*, 22 MPER 51 (2009) (no excpetions).

Charging Party's requests, while not artfully worded, made it clear that it sought an explanation as to why the Employer would not sign the participation agreement.

This request for an explanation of the Employer's actions is akin to seeking justification of a managerial prerogative and in no way request actual documents in the Employer's possession. An employer has no duty under PERA to respond to an inappropriate request for information or to provide information that does not exist. *State Judicial Council*, 1991 MERC Lab Op 510, 512. Accordingly, it is my finding that the Employer's silence in response to Charging Party's September 14 or September 30 letters did not violate PERA.[3] Had the request to change insurance providers been made as part of bargaining proposal, the Respondent's silence could give rise to an actionable claim, however, as stated above, under the terms of the contract the choice of insurance provider was the Employer's alone, and the Employer was under no obligation to bargain over such during the pendency of the contract. Furthermore, the record does reveal that when presumptively relevant information was requested, i.e., the census data, the Employer complied and provided that information.

I have considered all other arguments as made by the parties, including Respondent's claim that the charge was brought it bad faith together with its request that attorney's fees and costs be assessed against Charging Party, and conclude that such does not warrant a change in the result.[4] For the reasons set forth above I recommend that the Commission issue following order:

RECOMMENDED ORDER

The unfair labor practice charge filed by Teamsters Local 214 is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: March 31, 2017

3 Whether Donick made a request for information other than the two letters in September during any phone conversations or otherwise could not be established by his testimony, accordingly there is no way of determining whether any such request, if made, sought presumptively relevant information.

4 While I make no findings with respect to Respondent's claims regarding the charge being brought in bad faith, I must note that the Commission has refused to authorize an award of attorney fees and costs. See e.g. *Pontiac Sch Dist*, 28 MPER 34 (2014).