

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

In the Matter of:

EASTERN MICHIGAN UNIVERSITY,
Public Employer-Respondent,

Case No. 21-C-0697-CE

-and-

UNITED AUTO WORKERS AND ITS TECHNICAL,
OFFICE & PROFESSIONAL LOCAL 1976,
Labor Organization- Charging Party.

APPEARANCES:

Dickinson Wright PLLC, by George P. Butler III and Jared A. Christensen, for Respondent

Brian Filipiak, Administrative Associate, for Charging Party

DECISION AND ORDER

On June 4, 2021, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order¹ 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 charge and complaint.

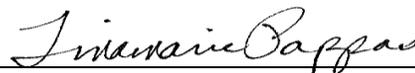
The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

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.

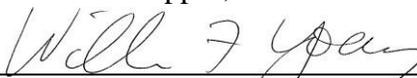
ORDER

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



Tinamarie Pappas, Commission Chair



William F. Young, Commission Member

Issued: July 23, 2021

¹ MOAHR Hearing Docket No. 21-007437

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

In the Matter of:

EASTERN MICHIGAN UNIVERSITY,
Respondent-Public Employer,

-and-

Case No. 21-C-0697-CE
Docket No. 21-007437-MERC

UNITED AUTO WORKERS AND ITS TECHNICAL,
OFFICE & PROFESSIONAL LOCAL 1976,
Charging Party-Labor Organization.

APPEARANCES:

Dickinson Wright PLLC, by George P. Butler III and Jared A. Christensen, for Respondent

Brian Filipiak, Administrative Associate, for Charging Party

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Technical, Office and Professional Local 1976 against Eastern Michigan University (EMU). 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 for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (the Commission).

The Unfair Labor Practice Charge and Procedural History:

Charging Party is the exclusive bargaining representative of all full-time and regular part-time non-academic and/or non-faculty professional technical and administrative employees of EMU. The charge, which was filed on March 26, 2021, alleges that EMU breached its obligation to bargain in good faith in violation of Section 10(1)(e) of PERA. Specifically, the charge asserts:

The Employer, Eastern Michigan University[,] through James Smith, has committed an unfair labor practice by unilaterally attempting to impose conditions, and through bad faith contract negotiations:

- a. The Employer during negotiation[s] stated they were not looking for concessionary bargaining.
- b. The Employer refuses to offer wage increases comparable to other bargaining units who recently agreed to a contract in 2020 or had existing contracts in place.
- c. The Employer unilaterally imposed terms and conditions the Employer was not able to negotiate during contract negotiations.

On May 5, 2021, Respondent filed a motion for summary disposition in which it asserts that the charge should be dismissed because it fails to describe with any particularity the allegations set forth against EMU. In the motion, Respondent argues that to the extent that the charge is decipherable, it fails to state a claim upon which relief can be granted under the Act. EMU contends that it engaged in good faith negotiations with Charging Party and that during the course of bargaining, it offered wage proposals which would have improved the status quo for members of the unit. In support of this contention, Respondent attached to its motion various proposals and other communications between the parties. Lastly, the University denies that it unilaterally imposed any terms and conditions of employment on Charging Party's members. Rather, EMU asserts that the changes complained of by the Union in this matter are the result of the prior contract having expired. According to the Employer, the prior agreement obligated the University to provide three separate wage increases, one for each year of the contract's term. Therefore, upon expiration of that agreement, Charging Party's members were no longer eligible for any additional wage increases. In addition, EMU asserts that pursuant to MCL 423.215b, it is obligated to pay and provide wages and benefits at levels and amounts that are no greater than those which were in effect when the prior agreement expired.

Charging Party's response to the motion was due by the close of business on May 19, 2021. To date, Charging Party has not filed a response to the motion or sought to obtain an extension of time in which to file such a response.

Discussion and Conclusions of Law:

The Commission does not investigate unfair labor practice charges filed with it. Charges that allege a violation of PERA and conform to the Commission's rules are set for hearing before a MOAHR administrative law judge. Rule 151(2)(c), R 423.151(2)(c), of the General Rules and Regulations of the Employment Relations Commission, which govern practice and procedure in administrative hearings conducted by MOAHR, provides that a charge shall include "a clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charging party who engaged there and the sections of the LMA or PERA alleged to have been violated." Rule 151(5) allows the Commission to reject a charge that fails to include the required information.

Although Charging Party alleges in very general terms that the University breached its duty to bargain in good faith, the allegations set forth by UAW Local 1976 in its charge do not constitute a "clear and complete" statement of facts to properly put Respondent on notice as to the nature of the claims made against it. For example, the Union fails to indicate what terms or conditions of

employment were implemented by the University, the circumstances pursuant to which those changes were made or even when the allegedly unlawful implementation occurred. In fact, the charge does not specify the dates of any of the particular acts which the Union claims constituted a violation of PERA. To the extent that they can be understood, the allegations do not even appear to state a valid claim under the Act. The duty to bargain in good faith does not require the parties to reach agreement or make concessions, *Bay City Education Ass'n v. Bay City Public Schools*, 430 Mich 370, 382 (1988), nor is there any requirement that a public employer offer the same or similar benefits to each of the labor organizations representing its employees.

In its motion, the University asserted that the charge should be dismissed on summary disposition because it does not comply with Rule 151(2)(c) and because the charge fails to state a cognizable claim under PERA. As noted, Charging Party did not file a response to that motion. Pursuant to Rule 165(1) of the Commission's rules, 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 the failure by the charging party to "respond to a dispositive motion or a show cause order." Rule 165(2)(h). See also *Detroit Federation of Teachers*, 21 MPER 3 (2008), in which the Commission recognized that the failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. For the reasons set forth above, I find that dismissal of the charge is warranted pursuant to Rules 151(5), 165(2)(d) and (h).

Despite having been given a fair and full opportunity to do so, Charging Party has failed to set forth any factually supported allegations which would establish a violation of PERA. For this reason, and based upon the fact that Charging Party did not file a response to the Employer's motion for summary disposition, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge filed by UAW and its Technical, Office and Professional Local 1976 against Eastern Michigan University in Case No. 21-C-0697-CE; Docket No. 21-007437-MERC, is hereby dismissed in its entirety on summary disposition.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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

Dated: June 4, 2021