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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

VAN BUREN COMMUNITY MENTAL HEALTH AUTHORITY,
Public Employer-Respondent,

MERC Case No. 19-C-0570-CE

-and-

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

APPEARANCES:

Warner Norcross & Judd LLP, by Robert A. Dubault, for Respondent

Dwight Thomas, for Charging Party

DECISION AND ORDER

On August 6, 2019 Administrative Law Judge David M. Peltz issued his Decision and Recommended Order[1] 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

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Issued: OCT 23 2019

[1] MOAHR Hearing Docket No. 19-008163

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

In the Matter of:

VAN BUREN COMMUNITY MENTAL HEALTH AUTHORITY,
Respondent-Public Employer,

Case No. 19-C-0570-CE
-and- Docket No. 19-008163-MERC

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

APPEARANCES:

Warner Norcross & Judd LLP, by Robert A. Dubault, for Respondent

Dwight Thomas, 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 Teamsters Local 214 against Van Buren Community Mental Health Authority. 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), formerly the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (the Commission).

The Unfair Labor Practice Charge and Procedural History:

The charge, which was filed on March 19, 2019, alleges that Respondent violated the Act by failing or refusing to bargain in good faith with respect to the enforcement of licensure requirements for bargaining unit members employed by Respondent as clinicians. Upon receipt of the charge, I scheduled a prehearing conference for April 16, 2019. On April 15, 2019, Respondent filed a motion for summary disposition in which it asserted, in part, that the charge fails to show the existence of any enforceable agreement regarding the licensing of clinicians. The following day, the parties appeared by telephone for the scheduled prehearing conference and agreed that Charging Party would have until the close of business on April 30, 2019, to file its response to the Employer's motion for summary disposition. A written order reflecting that agreement was subsequently issued by the undersigned. To date, Charging Party has not filed any response to the

motion or sought to obtain an extension of time in which to file such a response. Subsequent attempts by my office to contact Charging Party's representative regarding this matter have been unsuccessful.

Facts:

The following facts are derived entirely from the unfair labor practice charge and attachments thereto. Teamsters Local 214 represents a bargaining unit which includes administrative service employees, clinicians, counselors, direct care employees and nurses employed by Van Buren Community Mental Health Authority. During negotiations on the parties' 2015 to 2018 collective bargaining agreement, there were discussions regarding two individuals employed by Respondent in the clinician job classification who did not meet licensing requirements issued by the State of Michigan for that position. According to the charge, Debra Hess, CEO of Van Buren Community Mental Health Authority, indicated to the Union during collective bargaining that the two individuals would have the span of the contract in which to obtain the required licensure to be employed as clinicians.

On August 13, 2015, Hess sent the following memorandum to the two clinicians, Wayne Davis and Hugh Edwards, with a copy to the Union steward, Kelly Bloom:

> In the process of negotiating our Teamsters Collective Bargaining Agreement, employee classifications and the salary scale were reviewed. It was determined that both of you are classified Clinician, yet neither of you have state licensure. We understand that licensure is not currently required for you to work in the New Outlook Program and we do not know if that will change in the future. The Union and Management agrees to take no action that will decrease your classification or rate of pay during the term of [the] new Collective Bargaining Agreement from 10/1/15 – 9/30/18. We cannot commit to ensuring that you will remain at the same classification and/or rate of pay as other Clinicians after 9/30/18. We are sending you this notice to inform you that it will be in your best interest to move toward licensure before negotiations for the next Collective Bargaining Agreement three years from now. We welcome the opportunity to discuss this with you further if you have any questions or concerns about this agreement.

Neither Davis nor Edwards obtained the required certification during the term of the 2015-2018 contract.

The parties began negotiations on a successor collective bargaining agreement on July 9, 2018. During the course of the negotiations, Charging Party made several proposals which called for the demotion of Davis and Edwards for failing to meet the State of Michigan licensing requirements for the clinician classification. However, Respondent rejected each of those proposals. According to the charge, Hess stated that she had no desire to meet and discuss that issue with the Union and that she had no plans of honoring various letters previously sent to the Union regarding the clinician positions.[1] The parties ultimately reached agreement on a successor

[1] The charge does not identify the content of any of these letters. The only letter specifically identified in the charge is the August 13, 2015, letter quoted above.

contract on or about September 20, 2018. The new contract did not include any language requiring the Employer to demote Davis and Edwards. According to the charge, the Union decided to enter into the new contract despite the lack of agreement between the parties regarding the two clinicians because it "did not want to hold up other aspects of the new agreement." The Union now claims that Respondent violated PERA by failing or refusing to demote the clinicians upon the expiration of that agreement in 2018.

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 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 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. As noted, Charging Party has not filed any response to the Employer's motion for summary disposition. For that reason, I recommend that the Commission issue an order dismissing the unfair labor practice charge pursuant to Rule 165(2)(h).

Alternatively, I conclude that dismissal of the charge is warranted based upon the fact that the allegations set forth by Teamsters Local 214 fail to establish a violation of PERA. Under Section 15 of the Act, public employers and labor organizations have a duty to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. MCL 423.215(1); *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). A party violates PERA if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless that party has fulfilled its statutory obligation or has been freed from it. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 317 (1996); *Detroit Bd of Ed*, 2000 MERC Lab Op 375, 377.

Charging Party contends that during negotiations on the parties' 2015 to 2018 contract, the Employer promised to demote Davis and Edwards if they did not obtain the necessary certification at the expiration of that agreement and that Respondent violated the Act by failing or refusing to abide by that obligation. Although the Union claims that Hess made verbal assurances that the two individuals would have until September 30, 2018, in which to obtain the required licensure to be employed as clinicians, there is no allegation that such an agreement was ever put into writing and made a part of the contract. In fact, the letter from Hess to Davis and Edwards which the Union relies upon to support the existence of such an obligation in no way indicates that the Employer ever agreed to demote the clinicians if they failed to meet the licensure requirements. Rather, the letter merely warns that Respondent could not commit to keep Davis and Edwards in the clinician classification upon the expiration of the contract. When the 2015-2018 contract expired, the Charging Party could have bargained for the immediate demotion of the two clinicians. In fact, the Union asserts that it made several proposals to that effect, each of which were rejected by Respondent. Rather than continue to insist on making the demotion of the clinicians a condition precedent to reaching an agreement, the Union instead voluntarily entered into a new contract with

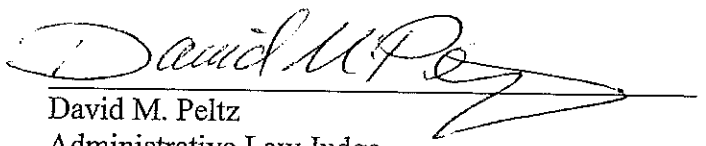
the Employer which lacked any such licensure requirement. There is no allegation that the Union specifically reserved its right to pursue a claim based upon promises allegedly made by the Employer during negotiations on the prior collective bargaining agreement. Accordingly, I conclude that Charging Party waived its right to pursue this claim by entering into the new contract.

Accepting all of the allegations set forth in the charge as true, I find that the Union has failed to establish that Respondent violated its duty to bargain in good faith with respect to enforcing licensure requirements for the clinician classification. 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 Teamsters Local 214 against Van Buren Community Mental Health Authority in Case No. 19-C-0570-CE; Docket No. 19-008163-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: August 6, 2019