

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

In the Matter of:

OGEMAW COUNTY,
Public Employer-Respondent,

Case No. 20-G-1146-CE

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.

APPEARANCES:

Foley & Mansfield, PLLP, by Melinda A. Balian, for Respondent

Dwight Thomas, for Charging Party

DECISION AND ORDER

On March 9, 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.

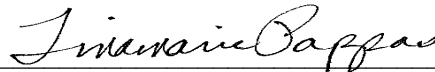
The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

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 either of the parties.

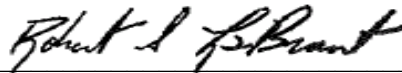
ORDER

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



Tinamarie Pappas, Commission Chair



Robert S. LaBrant, Commission Member

Issued: April 30, 2021

¹ MOAHR Hearing Docket No. 20-013026

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

In the Matter of:

OGEMAW COUNTY,
Respondent-Public Employer,

-and-

Case No. 20-G-1146-CE
Docket No. 20-013026-MERC

TEAMSTERS LOCAL 214,
Charging Party-Labor Organization.

APPEARANCES:

Foley & Mansfield, PLLP, by Melinda A. Balian, 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 Ogemaw County. 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 employees of the 82nd District Court in Ogemaw County, the Ogemaw Probate Court and the Ogemaw Friend of the Court, excluding elected court officials, court administrators, and confidential and temporary employees. The charge, which was filed on July 27, 2020, alleges that Ogemaw County breached its obligation to bargain in good faith in violation of Section 10(1)(e) of PERA by failing to honor a verbal promise made during the course of bargaining.

On September 8, 2020, Respondent filed a motion for summary disposition in which it asserted that the charge involves an issue of contract interpretation which should be resolved through the grievance procedure. Charging Party's response to the motion was due by the close of business on September 18, 2020. Prior to that date, Charging Party's representative requested an

extension of time in which to file a response to the motion. I granted the extension and ordered Charging Party to file its response by October 2, 2020. To date, Charging Party has not filed a response to the motion or sought to obtain an additional extension of time in which to file such a response.¹

Facts:

The following facts are derived from the unfair labor practice charge, the motion for summary disposition and the sworn affidavit attached to Respondent's motion. The prior collective bargaining agreement between the parties was in effect from October 1, 2015, to September 30, 2018. Under that agreement, the County provided health insurance coverage for employees and their dependents. During negotiations for a successor contract, Respondent made a proposal concerning single subscriber health insurance for newly hired employees. Craig Scott and Pete Hennard were members of the Ogemaw County Board of Commissioners and served on Respondent's negotiating team. According to the affidavit of Scott filed by Respondent in this matter, the County's stated position at the bargaining table was that single subscriber coverage would apply to members of Charging Party's bargaining unit hired on or after October 1, 2018. The affidavit further avers that neither Scott nor Hennard ever agreed, verbally or otherwise, to a provision restricting the County's ability to contract with non-unit employees regarding health care benefits.

A tentative agreement on a new contract was reached and subsequently signed by the parties. According to the Scott affidavit, Charging Party drafted and prepared the finalized agreement which covers the period October 1, 2018, through September 30, 2021. Article 1.2 of that agreement defines the terms "employee" and "employees" for purpose of the contract as referring to and including only those regular full-time employees and regular part-time employees in the collective bargaining unit. With respect to health insurance, Article 16 of the agreement provides, in pertinent part:

The Health Insurance shall be the Michigan Conference of Teamsters Welfare Fund (MCTWF) benefit package 1170. Effective October 28, 2018, the benefit plan shall be package 1293 per the terms of the Participation Agreement. Current employees shall be eligible for health insurance after 30 days of employment. New Employees hired on or after October 1, 2018, shall receive single coverage only after ninety (90) days of employment.

¹ This is not the first time that Teamsters Local 214 has filed a charge with the Commission only to abandon the matter by failing to respond to a motion for summary disposition. In *Van Buren County Mental Health Authority*, 33 MPER 32 (2019), Teamsters Local 214 filed a similar charge asserting that the employer had violated PERA by failing to adhere to verbal assurances made during contract negotiations. That employer filed a motion for summary disposition and the Union's representative agreed during a telephone conference call to submit his response to the motion by April 30, 2019. I subsequently issued a written order reflecting that agreement. As in the instant case, the Union failed to file a response to the motion. Moreover, subsequent attempts by my office to contact the Union's representative were unsuccessful. Such repeated conduct is inappropriate. Abandoning a case in this manner, rather than simply withdrawing the charge, burdens the process by requiring that this tribunal render a decision unnecessarily, thereby delaying the resolution of other matters which actually warrant Commission review.

Articles 6 and 7 of the parties' contract set forth a four-step grievance procedure culminating in final and binding arbitration. The contract also contains a zipper clause, Article 20.2, which states:

The parties acknowledge that during the negotiations which resulted in the Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject to [sic] matter not removed by law from the area of collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and Union, for the life of this Agreement each voluntarily and unequivocally waive the right, and each agrees that the other shall not be obligated, to bargain collective [sic] with respect to any subject or matter referred to, or covered in this Agreement . . . even though each subject matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

On or about April 30, 2020, Respondent entered into an individual employment contract with Timothy J. Dolehanty for the position of County Administrator, a non-bargaining unit position. That agreement, which covers the period May 18, 2020, through May 18, 2023, obligates Respondent to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for Dolehanty and his dependents at a level equal to that which is provided to all of other County employees.

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).

Charging Party's failure to respond to the motion for summary disposition notwithstanding, 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. Charging Party contends that the County acted "in bad faith to what was negotiated and agreed to by the parties" by later obligating itself to pay for health insurance for Dolehanty and his dependents. According to Charging Party, Respondent "explained in negotiations that all individuals hired by the County going forward would be covered by the [single subscriber plan]." The collective bargaining agreement signed by the parties, however, sets forth the terms and conditions of employment for members of the Charging Party's bargaining unit only. That agreement provides that unit members

hired after October 1, 2018, will receive single subscriber coverage. There is no language in the contract restricting the County's ability to provide different coverage for non-unit employees. Accordingly, I find that the allegations set forth in the charge constitute an attempt to change by parol evidence the written document that the Union accepted and signed. In so holding, I note that the contract contains a zipper clause pursuant to which the parties voluntarily and unequivocally agreed to waive the right to negotiate over matters not covered within the agreement.

Dismissal of the charge is also warranted based upon the Union's failure to present documentary evidence establishing the existence of a material factual dispute. Respondent's motion was supported by a sworn affidavit from Commissioner Scott who avers that the County's stated position at the bargaining table was that single subscriber coverage would apply to employees newly hired into bargaining unit positions. Moreover, Scott asserts in his affidavit that it was Charging Party which drafted the written tentative agreement and collective bargaining agreement. Given that the Union failed to respond to the Respondent's motion with its own affidavit(s) contradicting Scott's claims, it is proper and appropriate to grant summary disposition in favor of the moving party. See e.g. *Abbott v John E Green Co*, 233 Mich App 194, 197-198 (1998).

Despite having been given a fair and full opportunity to do so, Teamsters Local 214 has failed to set forth any factually supported claims which, if true, 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 Teamsters Local 214 against Ogemaw County in Case No. 20-G-1146-CE; Docket No. 20-013026-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: March 9, 2021