

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

In the Matter of:

TOWNSHIP OF CHESTERFIELD,  
Public Employer-Respondent

MERC Case No. 20-A-0046-CE

-and-

CHESTERFIELD PART-TIME FIREFIGHTERS,  
Labor Organization-Charging Party.

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APPEARANCES:

Shifman Fournier Law, by Brandon Fournier, for Respondent

Josef Kotermanski, for Charging Party

**DECISION AND ORDER**

On April 3, 2020, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order<sup>1</sup> 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.

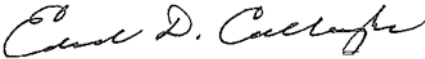
The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service, and no exceptions have been filed by either of the parties.

**ORDER**

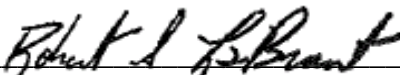
Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

  
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Samuel R. Bagenstos, Commission Chair

  
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Edward D. Callaghan, Commission Member

Issued: July 31, 2020

  
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Robert S. LaBrant, Commission Member

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<sup>1</sup> MOAHR Hearing Docket No. 20-000823

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

In the Matter of:

TOWNSHIP OF CHESTERFIELD,  
Respondent-Public Employer,

-and-

Case No. 20-A-0046-CE  
Docket No. 20-000823-MERC

CHESTERFIELD PART-TIME FIREFIGHTERS,  
Charging Party-Labor Organization.

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**APPEARANCES:**

Shifman Fournier Law, by Brandon Fournier, for the Respondent

Josef Kotermanski, for the 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 Chesterfield Part-Time Firefighters against the Township of Chesterfield. 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:**

The charge, which was filed on January 8, 2020, by Josef Kotermanski, on behalf of the Chesterfield Part-Time Firefighters, alleges that Respondent Township of Chesterfield acted unlawfully by refusing to meet with each of the bargaining unit members during negotiations on a successor collective bargaining agreement. In addition, the charge asserts that Kotermanski was not given the opportunity to vote on whether to ratify the contract.

A telephone prehearing conference was scheduled for February 28, 2020. The conference did not occur due to technical difficulties. On March 3, 2020, I issued an Order requiring Charging Party to show cause in writing why the charge should not be dismissed without a hearing on summary disposition. Charging Party filed a response to the motion on March 25, 2020.

Facts:

The following facts are derived from the unfair labor practice charge, as well as Charging Party's response to the Order to Show Cause and the attachments thereto, all of which are accepted as true for purposes of this Decision and Recommended Order.

Charging Party represents a bargaining unit consisting of two part-time firefighters employed by the Township of Chesterfield: Joseph Kotermanski and another firefighter who will be referred to for purposes of this decision as Unit Member #2. The bargaining unit is affiliated with the Police Officers Labor Council (POLC). Prior to the events giving rise to this matter, the Township changed from having separate police and fire departments to having a unified public safety department. Under the new structure, Captain Brian McNair is responsible for making the work-schedules for the part-time fire fighters. McNair is a POLC board member.

In 2019, the parties began negotiations on a new collective bargaining agreement. Charging Party's bargaining team consisted of Unit Member #2 and POLC representative Chet Kulesza. Due to scheduling conflicts, Kotermanski was not able to attend any of the bargaining sessions. He asked Unit Member #2 to keep him informed as to the status of negotiations. However, according to Kotermanski, Unit Member #2 was being treated for a medical issue at the time and was under the influence of prescription pain medication during the bargaining sessions.

Kotermanski was not provided information regarding the negotiations by either Kulesza or Unit Member #2 until December 17, 2019, when he learned that a tentative agreement had been reached which would be submitted to the Township Board for ratification later that day. Kotermanski contacted Kulesza and asked for the Township vote to be delayed. In a text message, Kulesza told Kotermanski to speak with Bradley Kersten, the Township's public safety director. In that text message, Kulesza referenced various issues which Kotermanski had raised:

Just got off the phone with Brad. He wants you to contact him and discuss any issues you have. He is also trying to set up a meeting with all the on call guys to talk about any problems they are having. In regards to your schedule, he says that they asked for a schedule where you marked all the days where you would be available and that's how they would pick your days. But they say you haven't sent them a list. On the other subject of uniform Brad said again that if you need something come in and he'll pay for it. He states they have money set aside to cover uniforms.

It is unclear from the record whether Kotermanski ever contacted Kersten to discuss the agreement or the issues he had raised with Kulesza. The contract was ultimately ratified by the Township board.

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 state a claim upon which relief can be granted. Rule 165(2)(d).

Although the charge in this matter was purportedly filed on behalf of the Chesterfield Part-Time Firefighters, it is clear that the gravamen of this dispute is Kotermanski’s claim that he was not permitted to take part in bargaining a new contract and his assertion that POLC representative Kulesza and Unit Member #2 failed to keep him informed regarding the status of the negotiations. Charging Party asserts that he did not learn of the agreement until the day it was voted on by the Township Board for ratification and that he never would have agreed to allow Unit Member #2 to take part in the negotiations had he known that his co-worker was on prescription pain medication at the time.

Under Section 15 of PERA, public employers and labor organizations have a duty to bargain in good faith over “wages, hours and other terms and conditions of employment.” For this reason, a public employer is required to meet with the bargaining representative of its employees. The Act does not, however, obligate an employer to meet with each and every member of the bargaining unit. Moreover, PERA does not set standards for internal union democracy or mandate that a contract be submitted to the union's membership for ratification before becoming effective. *Lansing Sch Dist*, 1989 MERC Lab Op 210. In the instant case, the allegations set forth by Charging Party, which are accepted as true for purposes of this decision, establish that Respondent negotiated with Kulesza and Unit Member #2 and reached an agreement on a new contract. The fact that Kotermanski did not play an active role in the negotiations and was not asked to ratify the contract does not establish a violation of the Act by the Township of Chesterfield.

In its response to the Order to Show Cause, Charging Party raises, for the first time, a claim that it is a conflict of interest for Captain McNair to be responsible for creating the work schedules for the part-time firefighters while, at the same time, serving as a member of the POLC board. Given that Charging Party did not move to amend the charge to include this allegation, the issue is not properly before the Commission. Nevertheless, Charging Party has not set forth any factually supported claim which, if true, would establish a PERA violation on the part of the Township with respect to the duties and responsibilities assigned to McNair.

Accepting all of the allegations set forth in the charge and response to the Order to Show Cause as true, I find that the Charging Party has failed to establish that Respondent violated its duty to bargain in good faith with respect to negotiations on a new contract with the Chesterfield Part-Time Firefighters. For this reason, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge filed by Chesterfield Part-Time Firefighters against the Township of Chesterfield in Case No. 20-A-0046-CE; Docket No. 20-000823-MERC, is hereby dismissed in its entirety on summary disposition.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "David M. Peltz". The signature is written in black ink and is positioned above a horizontal line.

David M. Peltz

Administrative Law Judge

Michigan Office of Administrative Hearings and Rules

Dated: April 3, 2020