STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF PETOSKEY,
Respondent-Public Employer,

Case No. C01 H-151

-and-

TEAMSTERS STATE, COUNTY AND MUNICIPAL WORKERS, LOCAL 214,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Roberts, Betz, & Bloss, P.C., by Marshall W. Grate, Esq., for the Respondent

Pinsky, Smith, Fayette & Hulswit, by Michael L. Fayette, Esq., for the Charging Party

DECISION AND ORDER

On December 11, 2001, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION TO DISMISS

On August 2, 2001, Teamsters State, County and Municipal Workers, Local 214, filed the above charge against the City of Petoskey. The charge alleged that Respondent violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, by discharging a member of Charging Party's bargaining unit without just cause. Charging Party asserted that by this act Respondent unilaterally altered existing terms and conditions of employment as set forth in the recently expired collective bargaining agreement.

On August 29, 2001, Respondent filed a motion for summary disposition, asserting that the charge failed to state a claim under PERA. Charging Party filed a response to the motion on September 18. In its response Charging Party made a second argument. It alleged that the collective bargaining agreement had not expired, but rather had been automatically extended by operation of the contract language. Charging Party argued that Respondent unlawfully repudiated the contract by maintaining that it had no obligation to arbitrate.

On September 24, 2001, I notified the parties that I would decide the motion before scheduling an evidentiary hearing, and that if Charging Party desired oral argument on the motion it should file a request before October 5. Charging Party did not respond. I conclude, therefore, that Charging Party waived its right to oral argument on the motion for summary dismissal.

Based on the arguments and the undisputed facts set forth in the pleadings, I make the following conclusions of law and recommend that the Commission issue the following order.

Background:

Charging Party represents a bargaining unit of certain employees of Respondent's Department of Public Works (DPW). Respondent and Charging Party were/are parties to a collective bargaining contract with a stated expiration date of March 31, 2000. Sections 8.4 and 8.5 of this contract describe circumstances under which the contract term may be extended beyond this date.

The contract contains a grievance procedure culminating in binding arbitration and the following provision:

> Section 1.15 Discipline and Discharge – Discipline and discharge shall be with just cause. Unless circumstances warrant otherwise, the City will endeavor to give at least one (1) written warning to an employee, with a copy to the Union Steward, prior to applying the discharge penalty.
>
> The City agrees with the principle of progressive discipline, except the City has the discretion to immediately apply the discharge penalty, without any prior written notice, in the following circumstances: loss of license, commission of a crime, theft, dishonesty, falsification of records, drunkenness, substance abuse, fighting, insubordination, serious abusive and/or harassing behavior toward the general public, co-workers, or City staff, or on-duty recklessness.

In February 2001, the parties were negotiating a new collective bargaining agreement. Neither party had proposed changes to Section 1.15. On February 23, 2001, Respondent discharged a member of the bargaining unit, Donald A. Nowland, for allegedly physically assaulting a citizen during the course of his employment. The alleged offense occurred on or about February 16, 2001. Respondent cited the following as reasons for Nowland's termination: possible commission of a crime, fighting, and serious abusive, harassing conduct toward the general public. Charging Party grieved the discharge, and the grievance was processed through the steps of the grievance procedure. After Charging Party filed a demand for arbitration, Respondent told Charging Party that it would arbitrate the grievance, but that it intended to present the issue of arbitrability to the arbitrator. That is, Respondent contended that the contract had expired on March 31, 2000, prior to the time the events leading to Nowland's discharge occurred. Therefore, Respondent argued, it had no obligation to arbitrate the grievance. Respondent agreed, however, to permit the arbitrator to decide whether the contract had been automatically extended by operation of Sections 8.4 and 8.5 of the agreement. At the time the Respondent filed its motion for summary disposition, an arbitrator was scheduled to hear this matter on October 6, 2001.

Discussion and Conclusions of Law:

Respondent contends that it had just cause for terminating Nowland in this case. It also argues that the charge is "repugnant" to the Michigan Supreme Court decisions in *Ottawa Co v Jaklinski*, 423 Mich 1 (1985), and *Gibraltar School District v MESPA*, 443 Mich 326 (1993). In *Jaklinski,* the Court held that an Employer cannot be compelled to arbitrate after the expiration of the collective bargaining agreement containing the parties' agreement to arbitrate except as to rights that the parties have agreed will accrue or vest during the life of the agreement. The Court held that the right not to be discharged except for just cause is not the type of right which can be said to accrue or vest during the life of the agreement. The Court concluded that the employer in that case was not obligated to arbitrate a grievance concerning a discharge that occurred after the contract expired. An employer's statutory duty to bargain requires it to continue existing terms and conditions of employment after the contract expires, until it and the union reach either agreement or impasse. *Detroit Police Officers Assn v Detroit,* 391 Mich 44, 54-55 (1974). In *Gibraltar,* however, the Court held that arbitration is an exception to this rule, and that an Employer does not violate its duty to bargain under PERA by refusing to arbitrate a grievance arising after the contract has expired.

Charging Party argues that even if Respondent has no obligation to arbitrate Nowland's grievance, Respondent violated its statutory duty to continue existing terms and conditions of employment by discharging Nowland without just cause. Even if Respondent did not have just cause to discharge Nowland, however, it does not follow that Respondent unilaterally altered employees' existing terms and conditions of employment. In *Grass Lake CS*, 1978 MERC Lab Op 1186, 1190, the Commission held that the transfer of an individual teacher was not a unilateral change, even though that transfer might have constituted a breach of the expired contract, since the transfer did not "have a continuing impact on the bargaining unit." Similarly, in *City of Westland*, 1988 MERC Lab Op 853, the Commission found that two reprimands issued to union officers for alleged misuse of union release time were isolated incidents, and it refused to find a violation of the duty to bargain without evidence that the employer had unilaterally altered its policy with respect to union release time. In this case, Respondent maintains that it had just cause for terminating Nowland. There is no indication in the facts as set out in Charging Party's pleadings that Respondent has altered its standards for discharge. I conclude that the facts alleged do not support a finding that Respondent unilaterally altered existing wages, hours or working conditions when Respondent terminated Nowland.

Charging Party also argues that Respondent unlawfully "repudiated" the contract by asserting that the contract was not automatically renewed. I find no basis for this claim. The undisputed facts indicate that the parties have a bona fide dispute over whether their contract was extended by action of Sections 8.4 and 8.5 of that agreement. The Commission has repeatedly held that an unfair labor practice proceeding is not the proper forum for resolving good faith disputes over the interpretation of contract language, and it has refused to find a "repudiation of contract" in these circumstances. See, e.g., *Village of Romeo,* 2000 MERC Lab Op 296; *City of Detroit,* 1999 MERC Lab Op 218.

For reasons set out above, I conclude that no violation of Section 10(1)(e) can be found on the facts asserted by the Charging Party. In accord with the discussion and conclusions of law above, I find that the Respondent's motion for summary disposition should be granted. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge herein is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____