STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ST. CLAIR COUNTY,
Public Employer - Respondent,

Case No. C04 B-048

-and-

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

APPEARANCES:

Fletcher Clark Tomlinson Fealko & Monaghan, P.C., by Gary A. Fletcher, Esq., for the Public Employer

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq. for the Labor Organization

DECISION AND ORDER

On June 23, 2005, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent, St. Clair County, did not violate its duty to bargain in good faith when it refused to reverse its unilateral decision to change retiree health care benefits and refused to process a grievance filed by Charging Party on behalf of retirees. The ALJ found that Respondent had not violated Section 10(1)(a) or (e) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(a) or (e), as alleged in the charges, and recommended that the charges be dismissed. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. After filing a timely request, Charging Party was granted an extension until August 17, 2005 to file exceptions to the ALJ's Decision and Recommended Order. On August 17, 2005, Charging Party filed its exceptions and a brief in support of the exceptions. After filing a timely request, Respondent was granted an extension until September 30, 2005 to file cross exceptions to the ALJ's Decision and Recommended Order. On September 30, 2005, Respondent filed timely cross exceptions and a brief in support. Charging Party filed its timely response to Respondent's cross exceptions and a supporting brief on October 13, 2005.

In its exceptions, Charging Party contends that the ALJ erred in finding that Respondent was not required to give notice and a meaningful opportunity to bargain over a change in retiree health care benefits and in finding that Respondent was not obligated to process Charging Party's grievance. In its cross exceptions, Respondent argues that the ALJ erred when he failed

to find that Charging Party waived any right it may have had to bargain over a change in retiree health care benefits based on the terms of the parties' collective bargaining agreement. Respondent also contends that the ALJ erred when he failed to find that Respondent did not have a duty to bargain because Charging Party did not demand to bargain over retiree health care benefits. In its response to Respondent's cross exceptions, Charging Party contends that it did not waive any bargaining obligation of the employer and that it was not required to demand bargaining. Upon reviewing the record carefully and thoroughly, we agree with the findings and conclusions of the ALJ.

Factual Summary:

Respondent and Charging Party are parties to a series of collective bargaining agreements regarding a bargaining unit consisting of all employees of the St. Clair County Juvenile Center, except teachers, supervisors, and standby and confidential employees. The agreement covering the period between January 1, 2000 and December 31, 2004 contains language in Article 23 providing that, as of their date of hire, all full-time employees become members of the St. Clair County Employees Retirement Plan. Article 23 also provides that retirees with 20 years of service credit are eligible for health care coverage, the cost to be borne by the retirement plan. The collective bargaining agreement describes the health care benefits for active employees but does not describe retiree health care benefits. Health care benefits for retirees are described in the document establishing the retirement plan. Article 23, Section 1 of the collective bargaining agreement states in relevant part: "Specific terms and conditions of retirement not herein defined are subject to the terms and conditions provided by the retirement plan custodians and shall not be subject to nor require separate Union approval."

Effective January 1, 2004, Respondent amended the retirement plan and changed the level of medical coverage for retirees. Charging Party filed a grievance protesting the change. When Respondent refused to process the grievance, Charging Party filed an unfair labor practice charge alleging that Respondent violated PERA when, without bargaining, it unilaterally changed the level of benefits for retirees, and when it refused to process the grievance protesting the change.

Discussion and Conclusions of Law:

The collective bargaining agreement does not describe retiree health care benefits, but leaves the determination of those benefits to the retirement plan custodians. As the ALJ pointed out, the language of Article 23, Section 1 of the collective bargaining agreement constitutes a waiver of Charging Party's right to bargain retiree health care benefits. Accordingly, we agree with the ALJ's conclusion that Respondent did not violate its duty to bargain when it unilaterally changed the health care coverage in the retirement plan.

The ALJ concluded that Respondent was not obliged to process a grievance filed to protest changes in health care coverage for retirees because retirees are not employees, citing *Village of Holly*, 17 MPER 48 (2004) (no exceptions); *City of Grosse Pte Park*, 2001 MERC Lab Op 195, 198 (no exceptions); *Woodhaven Sch Dist*, 1990 MERC Lab Op 221; *Mona Shores Bd of Ed*, 1989 MERC Lab Op 414 (no exceptions); *West Ottawa Ed Assn v West Ottawa Bd of Ed*,

126 Mich App 306 (1983), aff'g 1982 MERC Lab Op 629. The ALJ's reliance on the cases cited is misplaced, as these cases stand for the proposition that an employer is not required to *bargain* with regard to retirees or others who are not current employees. However, these cases do not address the issue of whether an employer may refuse to process a grievance filed on behalf of retirees. The fact that retirees are not members of the bargaining unit does not necessarily determine whether the union representing that bargaining unit may prosecute a grievance on behalf of the unit and the retirees. See *Cleveland Elec Illuminating Co v Utility Workers Union of America*, 440 F.3d 809, 815 (CA 6, 2006), where the court specifically rejected the argument that the grievance procedure does not apply to retirees because they are not part of the bargaining unit. However, we find it unnecessary in this case to reach the question of whether a union may grieve on behalf of retirees.

As to the claim that Respondent violated PERA when it refused to process the grievance protesting changes in health care benefits for retirees, we note that the changes were made by Respondent as the retirement plan custodian. The retirement plan has no contractual relationship with Charging Party and no obligation to process a grievance protesting its decision to change the benefits of plan participants. A complaint against Respondent as plan custodian is a matter to be determined by a court of competent jurisdiction, and the record indicates that a civil action has been filed to protest changes in health care benefits for retirees. Respondent did not violate PERA when it refused to process a grievance protesting a decision that it made as plan custodian.

ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on July 6, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and post-hearing briefs filed by November 2, 2004, I make the following findings of fact and conclusions of law.

The Unfair Labor Practice Charge:

On January 28, 2004, Charging Party Teamsters Local 214 filed an unfair labor practice charge alleging that Respondent St. Clair County violated Section 10(1)(a) and (e) of PERA by taking steps designed to reduce retiree' health care benefits and unilaterally reducing benefits without notice or a meaningful opportunity to bargain. Charging Party also alleges that the Employer repudiated the contract's grievance procedure by refusing to meet and discuss a grievance and by refusing to reverse its unilateral decision to change retiree health care benefits. Charging Party also claims that as late as January 26, 2004, Respondent maintained its position rendering further attempts to resolve the issue without litigation futile.

In its February 26, 2004 answer, Respondent admitted most of the allegations set forth in the charge, but denied that it was obligated to maintain the level of health care benefits for retirees because, among other things, retirees are not bargaining unit members.

Findings of Fact:

The essential facts are undisputed. Respondent St. Clair County and Charging Party Teamsters Local 214 have been parties to a number of collective bargaining agreements. The latest covers the period January 1, 2000, through December 31, 2004. Charging Party is the exclusive bargaining representative of all employees of the St. Clair County Juvenile Center, except teachers, supervisors, and standby and confidential employees.

Article 23 of the parties' agreement covers retirement. Section 1 provides that on their date of hire, all full-time employees become members of Respondent's retirement plan. The agreement establishes criteria for eligibility for health care coverage by retirees, but does not contain any language regarding specific coverage. Rather, the specifics of health care benefits are defined in the retirement plan and are unilaterally determined by the Board of Commissioners.

In the fall of 2002, Respondent began studying ways to reduce the cost of providing health care benefits. On August 26, 2003, after learning of Respondent's plans, Charging Party's business agent telephoned Respondent's chief negotiator and informed him that a change in hospitalization benefits for retirees was a mandatory subject of bargaining that could not be unilaterally changed. On August 26, Charging Party also wrote a letter to Respondent and indicated that Respondent's plans to impose greater deductibles and co-pays for all retirees violated the current as well as prior collective bargaining agreements and were mandatory subjects of bargaining that could not be unilaterally changed. Charging Party warned that it would enforce the contract and take whatever legal means necessary to convince the Board to reconsider its actions. Charging Party reiterated its position during meetings of the St. Clair County Board of Commissioners and the Retirement Pension Board.

On November 12, 2003, Respondent approved a resolution, effective January 1, 2004, to amend its retirement system and change the level of medical coverage for retirees. A month later, in response to an earlier information request, Respondent provided Charging Party with a copy of its November 12, resolution. Thereafter, Charging Party filed a grievance and an unfair labor practice charge. Respondent refused to process the grievance and informed Charging Party that, among other things, retirees were not bargaining unit members and, therefore, they had no standing to file a grievance.

Conclusions of Law:

Charging Party advances several arguments that primarily focus on its claim that retirement benefits are mandatory subjects of bargaining. It is well-established that issues relating to individuals who are not employees, including retirees, are permissive subjects of bargaining, and that an employer has no obligation to bargain concerning such matters unless they "vitally affect" the terms and conditions of bargaining unit members. In *Allied Chemical & Alkali Workers of America v Pittsburgh Plate Glass Co*, 404 US 157 (1971), the leading case regarding this issue, the Supreme Court concluded that because retirees were not "employees" within the meaning of Section 2(3) of the National Labor Relations Act, and their benefits did not "vitally affect" the terms and conditions of employment of bargaining unit employees, the

retirees' insurance benefits were not a mandatory subject of bargaining. In reaching this conclusion the Court stated that "the future retirement benefits of active workers are part and parcel of their overall compensation and, hence, a well-established statutory subject of bargaining." 404 US 157, 180.

In this case, I find that Respondent was not legally obligated to bargain with Charging Party prior to adopting a resolution to change the level of medical coverage for retirees since the change did not "vitally affect" the terms and conditions of employment of bargaining unit employees. *Village of Holly*, 17 MPER 48 (2004); *City of Grosse Pte Park*, 2001 MERC Lab Op 195, 198; *Woodhaven School District*, 1990 MERC Lab Op 221; *Mona Shores Bd of Ed*, 1989 MERC Lab Op 414; *West Ottawa Ed Assn v West Ottawa Bd of Ed*, 126 Mich App 306 (1983), aff'g 1982 MERC Lab Op 629.[1] To satisfy the 'vitally affects' test, the effect on active employees must be established with certainty. Mere speculation about the impact of retiree benefits on active employees is insufficient. *Pittsburgh Plate Glass*; *Village of Holly*.

I also find that Respondent did not violate PERA by refusing Charging Party's request to process a grievance. A refusal to consider or process grievances has been found to constitute a refusal to bargain and a repudiation of the collective bargaining agreement, *Lake Co Sheriff*, 1981 MERC Lab Op 1; *City of West Branch (Police Dept)*, 1978 MERC Lab Op 352. However, grievance procedures are designed to resolve disputes between employer and employees with respect to interpretation, application or enforcement of bargaining agreement. Since retirees are not employees, *Village of Holly; City of Grosse Pte Park; Mona Shores Bd of Ed*, Respondent was not obligated to process a grievance filed by Charging Party on their behalf.

I have carefully considered all other arguments advanced by Charging Party and conclude they do not warrant a change in the result. I, therefore, find that Respondent did not violate Section 10(1)(a) and (e) of PERA and recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:

[1] *Village of Holly* involved a charge filed by the Charging Party in this case that was summarily dismissed.