

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

In the Matter of:

PITTSFIELD TOWNSHIP,
Respondent-Public Employer in Case No. C07 E-103,
Charging Party in Case No. CU07 E-026

Consolidated Cases

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Charging Party-Labor Organization in Case No. C07 E-103,
Respondent in Case No. CU07 E-026.

APPEARANCES:

Martha M. Champine, Esq., Assistant General Counsel, for Police Officers Association of Michigan

Keller Thoma, P.C., by Dennis D. Dubay, Esq., for Pittsfield Township

DECISION AND ORDER

On November 20, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above-entitled matter, finding that both Respondents have engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Martha M. Champine, Assistant General Counsel,
for Police Officers Association of Michigan

Dennis B. Dubay, Keller Thoma, PC, for Pittsfield Township

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION**

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, these consolidated cases were assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission (MERC).

The Charge and Findings of Fact:

On May 16, 2007 a charge in this matter was filed by the Police Officers Association of Michigan (POAM, the Union) against Pittsfield Township (the Employer) in which it is alleged that the Employer acted unlawfully in refusing to execute a collective bargaining agreement reflecting the terms agreed upon in negotiations. On May 23, 2007 a charge was filed by the Employer asserting that it was the Union which had acted unlawfully in refusing to execute a collective bargaining agreement reflecting the terms agreed upon in negotiations.

The parties and counsel appeared on September 6, 2007, the day scheduled for hearing in this matter, and in lieu of a hearing the parties engaged in a conference, pursuant to R 423.172, which clarified the issues in dispute between the parties. It was established that extensive contract negotiations, in apparent good faith, occurred between the authorized

individuals for the respective parties with the aid of a mediator assigned by MERC. On December 21, 2006, the respective bargaining teams agreed to submit a tentative settlement agreement proposal for ratification and votes were taken by the Union membership on January 8, 2007 and by the Township Board on January 9, 2007.

The parties stipulated to the admission of certain joint exhibits. Joint Exhibit 1 is the prior 2004-2006 collective bargaining agreement between the parties. Joint Exhibit 2 is a December 21, 2006, written tentative settlement agreement which reflects specific changes to clearly identified language in the prior collective bargaining agreement. Joint Exhibit 3 is the Union's letter of January 8, 2007 advising the Employer that the Union had "ratified the proposed collective bargaining agreement". Joint Exhibit 4 is the minutes of the Township Board meeting of January 9, 2007, reflecting the unanimous adoption of a motion to approve the tentative agreement as ratified by the Union. The parties acknowledged that Joint Exhibit 2 was the basis of their respective ratification votes, agreed that there was no other relevant documentary evidence reflecting the mutual understandings of the parties at the point of their respective ratification votes, and proffered no further relevant testamentary evidence on the question of the parties' mutual understandings as contained in Joint Exhibit 2. The parties acknowledge that a new collective bargaining agreement has not been mutually executed by the parties.

This matter had been scheduled for a second day of hearing, but in lieu of holding that hearing, and pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, an order to show cause granted the parties an opportunity to file written statements explaining why a decision in this matter should not be issued without further hearing. A timely response was filed. Neither party objected to the issuance of a decision without an evidentiary hearing, based on the existing record and exhibits, and neither party requested oral argument on the matter.

I find that there is no genuine dispute of material fact and that, therefore, issuance of a decision without further proceedings is proper under Commission Rule R 423.165 (f). I further find that the parties, after holding their respective ratification votes, failed to execute a written agreement which comports with the express and unambiguous terms of the written tentative agreement.

Discussion and Conclusions of Law:

Once the parties have reached a tentative contract settlement the duty to bargain requires a party to "act expeditiously and decisively to accept or reject a tentative agreement." *Teamsters State, Co, and Municipal Workers, Local 214*, 1998 MERC Lab Op 72, 77, citing *Saginaw Intermediate Sch Dist*, 1981 MERC Lab Op 914 and *Royal Oak Twp*, 1973 MERC Lab Op 59 (no exceptions). Here, both parties acknowledge that their tentative agreement, as expressed in Joint Exhibit 2, was ratified pursuant to their own respective procedures. Where the parties have negotiated and ratified an agreement, the duty to bargain includes the obligation to execute a contract which reflects the terms which were negotiated. *Tuscola County Medical Care Facility*, 2001 MERC Lab Op 110. The signing or execution of a written agreement is a mere ministerial act, and, consequently, the failure to execute an

agreement under such circumstances is a violation of the duty to bargain. *City of Battle Creek*, 1994 MERC Lab Op 440; *City of Brighton*, 1990 MERC Lab Op 329.

The Commission Rules, at R 423.165 (2), allow for the granting of summary judgment on charges where there is no legitimate dispute of material fact. In both representation cases and in unfair labor practice cases, factual hearings need not be held where there are no material disputes of fact which need to be resolved. *Stage Manager Group v MERC*, (unpublished, CA # 229608, July 2, 2002); *Teamsters Local 214*, 16 MPER 74 (2003). The exhibits introduced and the responses of the parties make clear that there is in fact no legitimate dispute of material fact warranting the taking of further evidence.

I find that the parties mutually bargained in good faith, reached a written tentative settlement, and that each side agreed to submit for ratification the written proposal submitted as Joint Exhibit 2. Precisely because it is a written proposal, the terms of which I find to be unambiguous, it is unnecessary to take further evidence regarding the subjective intentions of any of the participants in the negotiation or ratification process. Joint Exhibit 2 was ratified by the Union membership and by the Township Board. The parties consequently have a mutual duty to execute a written contract reflecting their agreement, as expressly spelled out in Joint Exhibit 2. While this dispute should perhaps not have needed a formal decision to direct the parties to carry out their statutory obligations, because of the unusual circumstances, with each side asserting that the other had improperly failed to execute the agreement, and because of the mutual nature of the relief ordered, the posting of a notice will not be recommended.

RECOMMENDED ORDER

The POAM and Pittsfield Township, and their respective officers, agents, and representatives shall:

1. Cease and desist from refusing to bargain collectively in good faith by failing to execute a negotiated and ratified collective bargaining agreement.
2. Take the affirmative action necessary to effectuate the purposes of the Act by executing a collective bargaining agreement which fully reflects the ratified terms as expressly set forth in Joint Exhibit 2.

Because of the unusual nature of the dispute and the mutual nature of the relief recommended, the posting of a notice is not recommended.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Dated: _____

Doyle O'Connor
Administrative Law Judge