

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

In the Matter of:

CITY OF PONTIAC,
Public Employer-Respondent,

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.

Case No. C07 J-242

APPEARANCES:

Keller Thoma, P.C., by Bruce M. Bagdady, Esq., for Respondent

Rudell & O'Neill, P.C., by Kevin J. O'Neill, Esq., for Charging Party

DECISION AND ORDER

On July 1, 2009, Administrative Law Judge David M. Peltz issued his 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

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Respondent-Public Employer,

-and-

TEAMSTERS LOCAL 214,
Respondent-Labor Organization.

APPEARANCES:

Keller Thoma, P.C., by Bruce M. Bagdady, for the Public Employer

Rudell & O'Neill, P.C., by Kevin J. O'Neill, for the Labor Organization

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on November 1, 2007 by Teamsters Local 214 against the City of Pontiac.¹ 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 (ALJ) for the State Office of Administrative Hearings & Rules, acting on behalf of the Michigan Employment Relations Commission.

The charge asserts that Respondent breached its duty to bargain in good faith by laying off bargaining unit members in violation of the terms of a last best offer which the City imposed on or about July 29, 2007. On June 2, 2008, Respondent moved for summary dismissal of the charges on the ground that there was never any imposition and that the parties have continued to operate pursuant to the terms of their expired contract. The City's motion was supported by the affidavit of its Director of Human Resources and Labor Relations, Larry Marshall. Charging Party filed a response to the motion for summary disposition on July 2, 2008. In its response, the Union did not contest any of the assertions of material fact set forth in the City's motion and accompanying affidavit.

¹ Teamsters Local 214 filed a second charge against the City on January 3, 2008. In Case No. C08 A-002, the Union asserted that the City violated PERA by unlawfully assigning bargaining unit work to non-unit employees. These matters were initially consolidated and scheduled to be heard together. By subsequent agreement of the parties, however, the cases were severed for purposes of both hearing and decision.

Findings of Fact:

Charging Party represents a bargaining unit of nonsupervisory clerical, technical and professional employees of the City of Pontiac. The most recent collective bargaining agreement between the parties expired on June 30, 2004. The parties reached a tentative agreement on a successor contract in November of 2005. However, that agreement was rejected by the members of Charging Party's unit on two separate occasions and bargaining continued. The parties engaged in mediation and fact finding, with the latter culminating in a report issued by fact finder, Thomas L. Gravelle, on April 10, 2007. The parties continued to bargain following the issuance of the fact finder's report, but the negotiations did not result in an agreement on a new contract.

On July 12, 2007, Marshall sent a letter to the Union's business agent, David Sutton, in which he announced Respondent's intention to declare impasse and implement its last best offer "as amended through negotiations by the parties following the issuance of the fact finder's report." The letter specified that the imposition would be effective July 29, 2007 "or as soon as thereafter possible." The City's last best offer included language prohibiting the layoff of any bargaining unit employee for a one-year period beginning in July of 2007.

On October 16, 2007, the City notified Sutton in writing that ten members of the unit were to be laid off effective November 2, 2007 due to continuing budget problems. Three days later, Sutton wrote a letter to Marshall in which he argued that the layoffs were "in violation of the impasse offer that was imposed on this bargaining unit effective July 29, 2007." The letter asserted that the Union would consider any unilateral changes to the imposed conditions as an unfair labor practice.

Respondent's last best offer was presented to the Pontiac City Council for approval on or about March 6, 2008. The council voted against imposing the terms of the last best offer. No portion of the City's last best offer was ever implemented and the parties continued to operate pursuant to the terms and conditions set forth in their expired agreement.

Discussion and Conclusions of Law:

The gravamen of the charges is that Respondent violated the terms of its last best offer when it laid off ten bargaining unit members on or about November 2, 2007.² Although the City announced its intention to implement its last best offer effective July 29, 2007 "or as soon as thereafter possible", it is undisputed that none of the terms and conditions set forth therein were ever actually imposed upon the members of Charging Party's unit. Rather, the parties continued to abide by the terms of the collective bargaining agreement which expired in June of 2004. The

² In its response to the City's motion for summary disposition, the Union also complains about the fact that it took approximately eight months for the City Council to vote on whether to approve implementation of the last best offer. The Commission has held that "the duty to bargain collectively requires that a party to negotiations act expeditiously and decisively to accept or reject a tentative agreement." *Teamsters Local 214*, 1998 MERC Lab Op 72, 77, citing *Saginaw Intermediate Sch Dist*, 1981 MERC Lab Op 914. However, a last best offer is neither a tentative agreement, nor a contract.

Union does not contend that the layoffs were in any way prohibited under the terms of the expired collective bargaining agreement. I find that there are no material facts in dispute and that where no unilateral change in conditions of employment is alleged, Charging Party has failed to state a claim upon which relief can be granted under PERA. Accordingly, the charge is subject to dismissal on summary disposition pursuant to Rule 165, R 423.164, of the General Rules and Regulations of the Employment Relations Commission.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge in Case No. C07 J-242 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: July 1, 2009