STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF PONTIAC,
Public Employer-Respondent,

Case No. C11 B-023

-and-

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

APPEARANCES:

Giarmarco, Mullins and Horton, P.C., by John C. Clark, for Respondent

Wayne A. Rudell P.L.C., by Wayne A. Rudell, for Charging Party

DECISION AND ORDER

On October 13, 2011, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Motion for Summary Disposition in the above matter finding that Respondent, City of Pontiac, did not violate its duty to bargain under § 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e). The ALJ determined that Respondent's actions in laying off employees and subcontracting bargaining unit work were not a repudiation of its collective bargaining agreement with Charging Party, Teamsters Local 214. The ALJ determined that the matter is covered by the parties' collective bargaining agreement and that they have a bona fide dispute over the interpretation of Article II § 3 and Article IV § 6(c) of that agreement, which should be resolved by the grievance mechanisms provided for in their contract. The ALJ recommended that the unfair labor practice charge be dismissed. The Decision and Recommended Order of the ALJ was served on the interested parties in accordance with § 16 of PERA.

Charging Party requested and received an extension of time to file its exceptions to the ALJ's Decision and Recommended Order. Its exceptions were filed with a supporting brief on December 7, 2011. Respondent was granted its first request for an extension of time to file its response to the exceptions and upon showing good cause was granted a second extension. On January 25, 2012, Respondent filed its brief in support of the ALJ's Decision and Recommended Order.

In its exceptions, Charging Party argues that the ALJ erred by ruling on Respondent's oral motion for summary disposition at the July 18, 2011 hearing. Charging Party asserts that it was forced to respond to the motion without prior notice and without an evidentiary hearing. Charging Party also disagrees with the ALJ's findings that there was no repudiation of the parties' collective bargaining agreement and that this matter involves a good faith dispute over contract interpretation.

We have considered the arguments made in Charging Party's exceptions and find them to be without merit.

Factual Summary:

We adopt the findings of fact as set forth in the ALJ's Decision and Recommended Order and will not repeat them here, except as necessary.

Article II, § 3 of the collective bargaining agreement between Charging Party and Respondent addresses the issue of subcontracting as follows:

> The rights of contracting or subcontracting are vested in the City; however they will not be used for the purpose or intention of undermining the Union or to discriminate against any of its members. The City will notify the Union in writing at least ten days in advance of its desire to contract bargaining unit work. The parties may meet within this period to discuss any concerns that the Union may have with the announced subcontracting. The City of Pontiac shall however be permitted to enter into the announced subcontract within twenty (20) days of its notice to the Union.

The parties' contract addresses layoffs in Article V, § 6, which states in relevant part:

> The Union shall be notified twenty-eight (28) days in advance, if conditions allow, of any layoffs to allow them to work closely with the City and/or department to correctly align the determining conditions of the layoff. If employees are to be laid off, a fourteen (14) day written notice shall be given of the date when their services shall no longer be required, with a copy to the Chief Steward.

On September 10, 2010, Respondent sent layoff notices to members of the bargaining unit represented by Charging Party, but did not send copies of these notices to Charging Party until October 21. Around October 13, 2010, Respondent's emergency financial manager, Michael Stampfler, provided Charging Party with a copy of an agreement between Respondent and the Oakland County Sheriff's Office indicating that Respondent intended that the Sheriff's Office would perform certain services that were currently being provided by members of the bargaining unit represented by Charging Party. Charging Party requested negotiations over the subcontracting and issues arising therefrom and the parties met on December 2, 2010.

On December 7, and December 30, 2010, Respondent notified Charging Party of its plans to contract out additional services performed by members of Charging Party's bargaining unit. Charging Party subsequently demanded bargaining over all subcontracting and related issues and the parties met on February 15, and February 24, 2011.

Respondent provided layoff notices to members of the bargaining unit represented by Charging Party on January 18, February 3, and February 11, 2011. However, Charging Party asserts that it did not receive copies of those notices in a timely fashion.

Discussions and Conclusions of Law:

The Motion for Summary Disposition

On exceptions, Charging Party contends that the ALJ erred in granting Respondent's motion for summary disposition following oral argument on July 18, 2011. Charging Party asserts that it did not have adequate notice that a dispositive motion was going to be addressed at the July 18, 2011 hearing and contends that the matter should be remanded for an evidentiary hearing.

We find no merit in Charging Party's argument that it was not provided with adequate notice of Respondent's motion for summary disposition. Rule 161(5) of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.161(5) provides, "All motions made at hearing shall be made in writing to the administrative law judge or stated orally on the record." Rule 165(1), covering motions for summary disposition, provides:

> The commission or administrative law judge designated by the commission may, on its own motion or on a motion by any party, order dismissal of the charge or issue a ruling in favor of the charging party. The motion may be made at any time before or during the hearing.

The Commission's rules do not require advance notice of an oral motion for summary disposition. This matter was originally scheduled for hearing on March 29, 2011. The hearing was adjourned twice and was finally scheduled for July 18, 2011. At the July 18 hearing, Respondent's motion was made orally on the record and asserted that the charge failed to state a claim upon which relief could be granted. Charging Party was given an opportunity to present oral argument opposing the motion and did so at length. Accordingly, we find no error in the ALJ's actions in deciding the oral motion for summary disposition at the July 18, 2011 hearing.

Charging Party argues that the ALJ erred by granting Respondent's motion for summary disposition and not holding an evidentiary hearing in this matter. In *Smith* v *Lansing Sch Dist,* 428 Mich 248, 250-251 (1987), the Supreme Court reviewed the issue of whether the Commission may grant summary disposition in a case where the charge does not state a claim upon which relief can be granted. The Court held that MERC could dismiss such a case without holding an evidentiary hearing but required that the charging party in that case be given an opportunity for oral argument. See also *Central Michigan Univ*, 1995 MERC Lab Op 113, 116.

Here, no material facts are in dispute; there are only legal issues to be resolved. Therefore, summary disposition is appropriate.

Respondent's Duty to Bargain

The charge alleges that Respondent refused to bargain over layoffs and subcontracting of bargaining unit positions. Charging Party argues that Respondent's duty to bargain precluded Respondent from deciding to subcontract bargaining unit work before providing Charging Party with notice and an opportunity to bargain about that decision.

Under Section 15 of PERA, a public employer has a duty to bargain in good faith with respect to mandatory subjects of bargaining. The subcontracting of bargaining unit work may constitute a mandatory subject of bargaining under PERA. See *Detroit Police Officers Ass'n v Detroit*, 428 Mich 79, 96 (1987). However, the duty to bargain over subcontracting is met if the parties enter a contract that specifies the circumstances under which subcontracting may occur. *Univ of Michigan*, 23 MPER 50 (2010), *Pontiac Sch Dist*, 2002 MERC Lab Op 20; 15 MPER 33025 (2002); *Central Michigan Univ*, 1995 MERC Lab Op 113, 117. Here, Article II, § 3 of the parties' contract sets forth the circumstances under which Respondent may subcontract bargaining unit work. Thus, as the ALJ found, the duty to bargain over subcontracting was met by including that provision in the collective bargaining agreement.

Charging Party contends that the language of Article II, § 3 of the collective bargaining agreement does not cover all aspects of subcontracting and further bargaining is necessary. Even if we were to read Article II, § 3 as Charging Party wishes, we would disagree with its assertion that the language requires further bargaining. Where, as here, the contract provisions cover the matter in dispute and those provisions may reasonably be relied on for the action at issue, the parties' dispute must be resolved by their contract's grievance arbitration procedures. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 321-322; 550 NW2d 228, 236 (1996). See also *City of Royal Oak*, 23 MPER 107 (2010).

Charging Party contends that Respondent had an obligation to provide the Union with notice that it was considering subcontracting bargaining unit work before it made any decision on the matter. Charging Party contends that it was entitled to a meaningful opportunity to bargain about Respondent's decision over whether to subcontract particular bargaining unit work before Respondent made any decision on the matter. Further, Charging Party contends that Respondent repudiated the terms of the contract by failing to provide advance notice of its desire to subcontract and by presenting each subcontracting decision to the Union as a *fait accompli*.

Repudiation occurs where the party's actions amount to a rewriting of the contract or show complete disregard for the contract as written. *Gibraltar Sch Dist*, 16 MPER 36 (2003); *Central Michigan Univ*, 1997 MERC Lab Op 501, 507. There is no repudiation where the alleged contract breach results from a bona fide dispute over interpretation of the parties' contract. *Gibraltar Sch Dist*, 18 MPER 20 (2005). Charging Party's allegations do not indicate that Respondent's actions constitute a rewriting of the contract or a complete disregard of its terms. Instead, it is evident from Charging Party's arguments that Charging Party's interpretation of Article II, § 3 of the parties' collective bargaining agreement differs from that of Respondent.

This Commission has repeatedly held that there is no breach of the duty to bargain under § 10(1)(e) of PERA when the parties have a good faith dispute over contract interpretation. *Wayne Co*, 19 MPER 61 (2006); *Eastern Michigan Univ*, 17 MPER 72 (2004); *Village of Romeo*, 2000 MERC Lab Op 296, 298. The Commission will not exercise jurisdiction over a bona fide dispute over contract interpretation where, as here, the parties' contract provides a mandatory binding procedure for dispute resolution. *Plymouth-Canton Cmty Sch*, 1984 MERC Lab Op 894, 898. See also *City of Royal Oak*, 23 MPER 107 (2010); *Central Michigan Univ*, 1995 MERC Lab Op at 118; *Village of Constantine*, 1991 MERC Lab Op 467, 471; *City of Muskegon*, 1984 MERC Lab Op 857. Inasmuch as Charging Party has not alleged facts indicating that the parties' dispute results from anything more than a difference in contract interpretation, this matter should be resolved through the grievance resolution procedures provided in their collective bargaining agreement.

We have considered all other arguments presented by the parties and conclude that they would not change the results in this case. The ALJ's Decision and Recommended Order is affirmed.

ORDER

The charges in this case are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Edward D. Callaghan, Commission Chair

_____
Nino E. Green, Commission Member

_____
Robert S. LaBrant, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF PONTIAC,
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APPEARANCES:

Giarmarco, Mullins and Horton, P.C., by John C. Clark, for Respondent

Wayne A. Rudell, for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

On February 7, 2011, Teamsters Local 214 filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the City of Pontiac pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216 Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

Charging Party represents a bargaining unit of nonsupervisory employees of Respondent. The charge alleges that on and after November 1, 2010, Respondent unlawfully refused to bargain with Charging Party over the subcontracting of bargaining unit work and the layoff of bargaining unit employees. The charge as filed also alleged that Respondent violated its duty to bargain under PERA by failing to provide Charging Party with certain information it requested about the subcontracting.

On March 7, 2011, Respondent filed an answer to which it attached certain documents, including excerpts from the parties' collective bargaining agreement and copies of correspondence between the parties. A hearing was scheduled for July 18, 2011. At the commencement of the hearing, Respondent moved for summary dismissal of the first allegation. At the conclusion of oral argument, I granted the motion on the record. Charging Party then withdrew the allegation that Respondent had violated its duty to bargain by refusing to provide information.

Based on facts not in dispute, and on the arguments made by the parties during oral argument, I make the following conclusions of law and recommend that the Commission issue the following order. [1]

Facts:

Respondent has been declared by the State of Michigan to be in a state of financial emergency, and Michael Stampfler has been appointed by the State Treasurer to be its emergency financial manager.

The parties have a collective bargaining agreement covering the term July 1, 2009 through June 30, 2012. Article II, Section 3 of the collective bargaining agreement, entitled Subcontracting, states:

> The rights of contracting or subcontracting are vested in the City; however they will not be used for the purpose or intention of undermining the Union or to discriminate against any of its members. The City will notify the Union in writing at least ten days in advance of its desire to contract bargaining unit work. The parties may meet within this period to discuss any concerns that the Union may have with the announced subcontracting. The City of Pontiac shall however be permitted to enter into the announced subcontract within twenty (20) days of its notice to the Union.

The collective bargaining agreement also contains a provision, Article V, Section 6, which covers the order in which layoffs are to be made within the unit, bumping, and recall. Article IV, Section 6(C) states, in pertinent part:

> The Union shall be notified twenty-eight (28) days in advance, if conditions allow, of any layoffs to allow them to work closely with the City and/or department to correctly align the determining conditions of the layoff. If employees are to be laid off, a fourteen (14) day written notice shall be given of the date when their services shall no longer be required, with a copy to the Chief Steward.

On September 10, 2010, Respondent sent layoff notices to employees in Charging Party's bargaining unit. These layoffs were not the result of subcontracting, and Charging Party does not assert that these notices were not given to employees at least fourteen days prior to their effective date as required by Article IV, Section 6(C). However, Respondent did not send copies of these notices to Charging Party until October 21.

On or about October 13, Charging Party received from Stampfler a copy of a memorandum agreement between Respondent and the Oakland County Sheriff's Office signifying the intent of these parties to have the Sheriff's office provide Respondent with certain

[1] The pertinent facts are set out in the charge, in a more definite statement of the charge filed by Charging Party on March 28, 2011, and in Respondent's answer.

services, including services provided by members of Charging Party's unit. Stampfler offered to meet with Charging Party to discuss what he characterized as a proposed action, including the concerns of the employees.

On November 1, Charging Party sent Stampfler a letter requesting negotiations over the privatization, contracting out of positions, transfer of work, elimination of positions, and layoff of its bargaining unit members. On November 4, Charging Party received notice of a second round of layoffs of its members to be effective November 18. On November 8, Respondent's counsel replied to the November 1 request with a letter offering to set up a meeting, indicating that he had attempted to reach Charging Party by phone on November 4. On November 17, Charging Party sent what it labeled a second request to negotiate to Stampfler. The parties met on December 2.

On December 7, Stampfler sent Charging Party a "notice of intent to contract out the services provided by the Building Safety Engineering Division." As Charging Party later learned when it obtained a copy, Respondent had issued a request for proposals (RFP) for this contract dated October 22, 2010. On December 20, Charging Party made a written request to "negotiate over the decision to subcontract the Building and Safety Engineering Division and the layoff of the City employees in that same division." On December 29, Respondent's counsel replied with an offer to meet to "negotiate regarding the effects of the decision to subcontract, pursuant to Article II, Section 3, Subcontracting, of the collective bargaining agreement."

On December 30, Respondent gave Charging Party written notices of its intent to contract out the services provided by its Parking and Water/Wastewater Divisions. As Charging Party later learned, Respondent had already issued RFPS for contracts for these services, although Respondent subsequently decided not to subcontract the Parking Division work. On January 6, 2011, Charging Party sent Respondent a letter demanding to bargain over all subcontracting, privatization, contracting out of positions, transfer of work, elimination of positions and the layoff of any Teamsters Local 214 bargaining unit members. The demand stated that it applied to every department and position. It also stated, "If the City is anticipating affecting any employee represented by the Teamsters in any function in the City of Pontiac, please contact me for dates to hold these negotiations." Respondent's counsel responded to this request on January 19 with an invitation to meet, and the parties met on February 15 and again on February 24.

Respondent sent layoff notices to employees in Charging Party's unit on January 18, February 3, and February 11, 2011. It is not clear whether these layoffs were related to Respondent's subcontracting of unit work. Charging Party does not assert that Respondent failed to provide employees with notice of their layoff as required by Article IV, Section 6(C) of the contract. However, according to Charging Party, copies of these notices were not sent to it in a timely fashion as required by that section.

Discussion and Conclusions of Law:

A public employer violates its duty to bargain under PERA, and commits an unfair labor practice, if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless the employer has fulfilled its statutory obligation or has been freed from it.

The employer can fulfill its statutory duty by bargaining about a subject and memorializing resolution of that subject in the collective bargaining agreement. *Port Huron Educ Ass'n, MEA/NEA v Port Huron Area School Dist*. 452 Mich 309, 317-318 (1996). The Court also discussed, at 321-322, the role of the Commission when a charge is filed alleging an unlawful unilateral change and the parties have a collective bargaining agreement in effect:

> The MERC does not involve itself with contract interpretation when the agreement provides a grievance process that culminates in arbitration. *Sanilac Co Bd of Comm'rs,* 1993 MERC Lab Op 750, 755; *Police Officers Ass'n of Michigan* 1992 MERC Lab Op 170. When the unfair labor charge is the failure to bargain, however, it is often necessary for the MERC, like the NLRB, to review the terms of an agreement to ascertain whether a party has breached its statutory duty to bargain. See *Detroit Fire Fighters Ass'n v Detroit,* 408 Mich 663, (1980); Edwards, *Deferral to arbitration and waiver of the duty to bargain: A possible way out of everlasting confusion at the NLRB,* 46 Ohio St L.J. 23, 24 (1985) (describing a similar requirement for the NLRB). In reviewing an agreement for any PERA violation, the MERC's initial charge is to determine whether the agreement "covers" the dispute. If the term or condition in dispute is "covered" by the agreement, the details and enforceability of the provision are left to arbitration.
>
> Where there is a contract covering the subject matter of a dispute, which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the Commission finds that the contract controls and no PERA issue is presented. *St Clair Co Rd. Comm,* 1992 MERC Lab Op 533, 538.

The exception is where a party's actions constitute a repudiation of the collective bargaining agreement manifesting a disregard for the party's collective bargaining obligations. The Commission has described repudiation as a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ* 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960. The Commission has held that in order for it to find repudiation: (1) the contract breach must be substantial, and have a significant impact on the bargaining unit, and (2) there must be no bona fide dispute over interpretation of the contract. *Gibraltar Sch Dist,* 16 MPER 36 (2003); *Crawford Co*, 1998 MERC Lab Op 17, 21; *Plymouth-Canton Cmty Schs*, 1984 MERC Lab Op 894, 897.

The subcontracting of bargaining unit work is, in most circumstances and for most public employees, a mandatory subject of bargaining under PERA. However, when a public employer enters into a collective bargaining agreement with a clause covering subcontracting, it satisfies its duty to bargain over a decision regarding the subcontracting of bargaining unit work during the term of the contract. While the employer's repudiation of a subcontracting clause may violate its duty to bargain, there is no repudiation, and no unfair labor practice, if the parties have a bona fide dispute over whether the clause permits the employer to subcontract the work under the circumstances of the case. *Village of Romeo,* 2000 MERC Lab Op 296, 298.

As indicated by its counsel during oral argument, Charging Party interprets Article II, Section 3 of the parties' contract as requiring Respondent to notify Charging Party of its desire to subcontract any particular work at least ten days prior to its making an actual decision to subcontract, and to meet and negotiate over the decision before it enters into the contract. According to Charging Party, Respondent had already decided to enter into the contracts in this case before it gave Charging Party notice, as evidenced by the fact that it issued RFPs or entered into agreements to contract before it notified Charging Party of its desire to subcontract the work. Therefore, according to Charging Party, Respondent failed to comply with terms of Article II, Section 3. Moreover, according to Charging Party, Respondent could not lawfully lay off any employee after subcontracting their work unless the subcontracting was permitted by the contract. As Respondent interprets Article II, Section 3, however, that provision gives Respondent the right to subcontract work without bargaining over the decision. According to Respondent, Article II, Section 3 requires Respondent to give Charging Party notice of its decision to subcontract before it enters into the contract to allow for discussions of the impact of the subcontracting on employees before the contract goes into effect. Respondent asserts that it fully complied with the Article II, Section 3 by giving Charging Party notice of its intention to subcontract and by its willingness to meet with Charging Party to discuss any issue relating to the contracts.

I find subcontracting, notice to the union of subcontracting, and notice of layoff to be matters covered by the parties' collective bargaining agreement. I also find that the parties have a bona fide dispute, as set out above, over the interpretation of Article II, Section 3 of their contract. I also find that the parties have a bona fide dispute over the circumstances under which Respondent is required to give Charging Party advance notice of layoffs under Article IV, Section 6(C) of the contract. I conclude, therefore, that Respondent did not repudiate its collective bargaining obligations in this case, that Respondent did not commit an unfair labor practice, and that the parties' dispute should be resolved by the grievance mechanisms provided for in their contract. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: _____