STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF INKSTER,
Public Employer-Respondent,

Case No. C14 F-067
-and- Docket No.14-013020-MERC

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

APPEARANCES:

Allen Brothers, PLLC, by James P. Allen, for Respondent

Wayne A. Rudell, PLC, by Wayne A. Rudell, for Charging Party

DECISION AND ORDER

On August 19, 2015, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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 either 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: October 29, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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Wayne A. Rudell, PLC, by Wayne A. Rudell, for the Labor Organization-Charging Party

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on June 17, 2014, by Teamsters, Local 214 against the City of Inkster. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Administrative Law Judge Travis Calderwood of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission).

The Unfair Labor Practice Charge and Procedural History:

On June 17, 2014, Teamsters, Local 214 (Union or Charging Party) filed the present unfair labor practice charge with the Commission against the City of Inkster (City or Respondent) alleging that the Respondent violated PERA by refusing to negotiate with the Union. The charge in its entirety reads as follows:

> The Employer is failing to respond to requests for negotiations.
>
> Wherefore, this Local Union requests the commission order the Employer to negotiate with the Union.

On June 19, 2014, I directed Charging Party, pursuant to Rule 423.162 of the Commission's General Rules, 2002 AACS, R 423.162, to file a more definite statement, which at a minimum must describe who did what and when they did it, and explain why such actions constituted a violation of

PERA. On July 2, 2014, Charging Party, in response to my direction, provided specific instances, which it alleged constituted requests to bargain made to Respondent of which Respondent did not respond.

On July 21, 2014, Respondent filed a Motion for Summary Disposition on the basis that the Local Financial Stability And Choice Act, Public Act 436 of 2012 (PA 436), suspended Section 15(1) of PERA for employers subject to a consent agreement, including consent agreements entered into pursuant to the Act's predecessor, Public Act 4 of 2011 (PA 4). The motion and attachments thereto indicated that pursuant to PA 4 the City and the State of Michigan had entered into a consent agreement on February 28, 2012.

During a telephone conference held on July 24, 2014, Charging Party indicated that they were no longer proceeding under a failure to bargain theory, but rather under a theory of unlawful coercion. On July 24, 2014, I directed Charging Party to file a written response to the motion to dismiss as well as an amended charge incorporating its new theory of the case. On August 19, 2014, I received Charging's Party responses to my directive. On August 28, 2014, I received Respondent's Response to the Amended ULP Charge and Renewed Motion for Summary Disposition. On September 26, 2014, Charging Party filed its response to the Renewed Motion for Summary Disposition.

On October 15, 2014, the parties appeared for oral argument before the undersigned. After considering both the pleadings and arguments made by each party on the record and assuming all facts set forth by Charging Party were true, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition was appropriate pursuant to Commission Rule R 423.165 (1). See also *Detroit Public Schools*, 22 MPER 19 (2009) *and Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a decision from the bench, finding that Charging Party had failed to state a valid claim under PERA.

Findings of Fact:

The following facts are either not in dispute or taken in the light most favorable to the non-moving party.

Charging Party represents a bargaining unit comprising of the City's police officers, including patrolmen and detectives, but excluding sergeants, lieutenants and other command officers. The parties were covered by a collective bargaining agreement (CBA) that ran from July 1, 2010, through June 30, 2013. Sometime in October of 2013, the parties entered into an agreement modifying and extending the CBA through June 30, 2014.

In November of 2011, the State Treasurer conducted a preliminary review of the City's financial records and determined that probable financial stress existed in the City. The State Treasurer recommended that a Financial Review Team, as authorized by the Section 12 of PA 4 be appointed by the Governor. The Governor appointed such on December 2, 2011. On February 29, 2012, the City and the Financial Review Team executed a consent agreement pursuant to PA 4. Citing Section 14a(10) of PA 4, the consent agreement provides that "the duty to bargain pursuant to Section 15 of Public Act 336 of 1947, the Public Employment Relations Act, ceases beginning 30 days after the effective date of this Consent Agreement."

In a letter dated January 29, 2014, the City's Labor Counsel, James P. Allen, notified Charging Party that the City wished to "commence collective bargaining regarding a new collective bargaining agreement" and wished to "bargain over both economic and non-economic terms." The letter closed by requesting a response so that the parties could "discuss a mutually-convenient schedule for negotiations."

At some point after the January 29, 2014, letter, some semblance of a bargaining schedule was agreed upon. One such date scheduled was April 7, 2014, which was cancelled. On June 4, 2014, Charging Party demanded in writing that the City provide a "date to commence negotiations for a new Collective Bargaining Agreement." As of June 17, 2014, the date the present charge was filed with the Commission, no date had been provided by the City, nor did the City communicate in any way its reason for not doing so.

Discussion and Conclusions of Law:

Section 15(1) of PERA, creates the obligation that parties must bargain in good faith over "wages, hours and other terms and conditions of employment." MCL 423.215(1). Section 15(1) of PERA provides:

> The public employer shall bargain collectively with the representatives of its employees as described in Section 11, and may make and enter into collective bargaining agreements with those representatives, except as otherwise provided in this section. For purposes of this section, to bargain collectively is to perform a mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached, if requested by either party, but this obligation does not compel either party to agree to a proposal or to make a concession.

Public Act 4 of 2011, enacted by the Legislature and effective March 16, 2011, had the stated purpose of placing financial checks and balances on public employers in a state of financial stress or emergency. Under PA 4, once a state of emergency has been declared in a local governmental unit, the State Treasurer is authorized to enter into a consent agreement with the local governmental unit for a period necessary to achieve the goals and objectives of that agreement. Section 14a of PA 4, provided that after a period of 30 days following the execution of a consent agreement and unless directed otherwise by the State Treasurer, the local governmental unit's obligation to bargain under Section 15(1) of PERA is suspended.

A petition seeking a public referendum on PA 4 was filed with the Secretary of State on February 20, 2012. PA 4 was suspended on August 12, 2012, pending the outcome of the referendum initiative. At the November general election in 2012, a majority of voters rejected PA 4. On November 26, 2012, the state board of canvassers certified the vote and PA 4 was officially repealed.

Following the repeal of PA 4, the state legislature enacted and the Governor signed into law Public Act 436 of 2012 (PA 436). PA 436, also known as the Local Financial Stability and Choice Act took effect on March 28, 2013. Like its predecessor PA 4, PA 436 authorizes the State Treasurer to enter into a consent agreement with a local government in a state of financial stress or emergency for a period necessary to achieve the goals and objectives of that agreement. Section 8(11) of PA 436, MCL 141.1548(11), suspends the duty to bargain set forth in Section 15(1) of PERA for employers subject to a consent agreement. Notably, Section 4(6) of PA 436 provides, in pertinent part:

> All proceedings and actions taken by the governor, the state treasurer, the superintendent of public instruction, the local emergency financial assistance loan board, or a review team under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72 before the effective date of this act are ratified and are enforceable as if the proceedings and actions were taken under this act, and a consent agreement entered into under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72 that was in effect immediately prior to the effective date of this act is ratified and is binding and enforceable under this act.

As was established by the ALJ in *City of Inkster*, 27 MPER 35 (2013), and adopted by the Commission, under the clear and unambiguous language of Section 4(6) of PA 436, the Consent Agreement which had been entered into between the City and the State Treasurer on February 28, 2012, under PA 4, was in full force following PA 436 taking effect on March 28, 2013.

By nature of the consent agreement, the City was under no obligation to bargain with Charging Party pursuant to Section 8(11) of PA 436. As such, Charging Party's initial charge seeking an order directing the City to bargain fails to state a claim under PERA because the duty to bargain had been suspended. Accordingly, absent Charging Party's filing of its amended charge on August 19, 2014, the present matter would be concluded and no further discussion is necessary. However, such is not the case.

Charging Party's revised theory of the case alleges that the City's actions, i.e., requesting to bargain while under a consent agreement and then failing to actually follow through on that request, constituted a violation of Section 10(1)(a) of PERA in so far as it interfered with, restrained or coerced Charging Party's members in the exercise of their rights under PERA.

Section 10(1)(a) of PERA makes it unlawful for a public employer to interfere with, restrain or coerce public employees in the exercise of those rights guaranteed to public employees under Section 9 of the Act, including the right to engage in "concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection." While anti-union animus is not a required element to sustain a charge based on a Section 10(1)(a) violation, a party must still demonstrate that the complained of actions by an employer have "objectively" interfered with that party's exercise of protected concerted activity. *Huron Valley Sch*, 26 MPER 16 (2012); *Macomb Academy*, 25 MPER 56 (2012).

In order to test whether a violation has occurred under Section 10(1)(a) of PERA, it is not the employer's motive for the proscribed conduct or the employee' s subjective reactions to it, but rather, whether the employer's actions tend to interfere with the free exercise of protected employee rights. Section 10(1)(a) does not require proof of anti-union animus. See *Midland Co Rd Comm*, 21 MPER 42

(2008); *New Buffalo Bd of Ed*, 2001 MERC Lab Op 47; *City of Greenville*, 2001 MERC Lab Op 55; *City of Detroit (Water & Sewerage Dep't)*, 1988 MERC Lab Op 1039; *City of Detroit (Fire Dep't)*, 1982 MERC Lab Op 1220. Both the content of the employer's statement and the surrounding circumstances must be examined. See *Michigan State Univ (Police Dep't)*, 26 MPER 36 (2012).

In the instant matter, had the conduct complained of by Charging Party, that the City offered to bargain and did not follow through, occurred at such a time that the City was under a duty to bargain, i.e., pre-consent agreement, such actions could amount to a breach of that duty. The fact remains however, that no such duty existed at any time relevant to this matter and Charging Party's attempt to reframe its displeasure of the impolite conduct of the City as a violation of Section 10(1)(a), is made without legal or factual support

Having considered all other arguments of the parties and concluding such does not warrant any change in the result, it is the opinion of the undersigned that Charging Party has failed to state a claim upon which relief can be granted under PERA. As such and in accord with the conclusions of law set forth herein, I recommend that the Commission grant Respondent's motion for summary disposition and that it issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 19, 2015