STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

Case No. C01 B-31

CLAIRMOUNT LAUNDRY, INC.,
Respondent-Private Employer,

-and-

CHICAGO AND CENTRAL STATES JOINT BOARD,
UNITE, AFL-CIO,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Martens, Ice, Geary, Klass, Legghio, Israel & Gorchow, P.C. by John G. Adam, Esq., for Charging Party

DECISION AND ORDER

On November 30, 2001, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent Clairmount Laundry, Inc. violated Section 16(3) and 16(6) of the Labor Relations and Mediation Act (LMA), 1939 PA 175 as amended, by refusing to allow certain employees to enroll in its insurance program and by refusing to bargain collectively with its employees' collective bargaining representative.

On December 26, 2001, Respondent filed timely exceptions to the Decision and Recommended Order of the ALJ. By letter dated December 26, 2001, the Commission sent notice to Respondent that its exceptions did not comply with the Commission's rules, particularly the requirement that Charging Party file a proof of service verifying timely service of the exceptions on Charging Party and the requirement that Respondent file an original and four copies of the exceptions. Enclosed with the letter was a booklet containing a copy of the LMA and the Commission's rules. Charging Party Chicago and Central States Joint Board, UNITE, AFL-CIO, filed a timely motion to strike the exceptions on January 7, 20021. On January 23, 2002, the Commission's December 26, 2001 letter was returned to our office by the United States Postal Service with a notation that it had been "refused" by Respondent. The letter and the enclosed booklet were re-mailed, by certified mail, to Respondent on January 24, 2002, and were delivered on January 28, 2002. As of the date of this Decision and Order, Respondent has still failed to comply with the Commission's rules.

1 It is evident from the arguments made in Charging Party's motion that Charging Party did receive a copy of Respondent's exceptions.

Even if Respondent's exceptions had been properly filed and served, the results would be no different. Respondent's exceptions merely dispute the ALJ's findings of fact. The exceptions allege certain facts in an attempt to rebut the evidence in the record which supports the ALJ's Decision and Recommended Order. However, Respondent failed to take advantage of its opportunity to offer evidence in support of those allegations when this matter was heard by the ALJ. As indicated in the ALJ's Decision and Recommended Order, the Respondent did not appear at the August 23, 2001 hearing. Consequently, the Respondent introduced no evidence and waived its opportunity to do so. Respondent has failed to offer any valid reason for its failure to appear at the August 23, 2001 hearing and has offered no authority that would permit reopening the record at this late date.

For the reasons set forth above, we find Respondent's exceptions to be without merit and adopt the ALJ's findings of fact and conclusions of law.

ORDER

Pursuant to Section 23 of the LMA, the Commission adopts as its order the order recommended by the ALJ.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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APPEARANCES:

John G. Adam, Attorney, for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 16 and 23 of the Labor Mediation Act, (LMA), 1939 PA 176, as amended, MCL 423.16 and 423.23, this case was heard in Detroit, Michigan on August 23, 2001, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Respondent did not send a representative to the hearing. The notice of the hearing sent to Respondent's last known address on June 18, 2001, was not returned by postal officials as undeliverable. The hearing was held in Respondent's absence pursuant to Rule 72(1) of the Michigan Administrative Procedures Act that provides for a hearing in the absence of a party. This proceeding was based upon an unfair labor practice charge filed by Charging Party Chicago and Central States Joint Board, UNITE, AFL-CIO, against Respondent Clairmount Laundry, Inc. on February 1, 2001. Based upon the record and a post-hearing brief filed by Charging Party on October 8, 2001, I make the following findings of fact, conclusions of law, and recommended order:

The Unfair Labor Practice Charge:

The unfair labor practice charge as amended on April 19, 2001, alleges that Respondent violated the LMA by refusing to allow employees to enroll in a medical insurance plan it unilaterally implemented (after it illegally withdrew recognition from UNITE); telling employees and the union representative that employees cannot get insurance unless they get rid of the union or the union disclaims the bargaining unit; refusing to bargain in good faith over this cancellation of the Employer imposed insurance; and firing Ernestine Addison on or about March 2001, in retaliation for the MERC charges and being present at the MERC hearing; refusing to honor the grievance and arbitration process; and refusing to meet with the Union over Addison's termination.

The instant charge is the second of three filed by Charging Party Chicago and Central States Joint Board, UNITE, AFL-CIO, against Clairmount Laundry. The first charge, *Clairmount Laundry, Inc.* 2001 MERC Lab Op 153 (June 29, 2001), hereafter referred to as "*Clairmount I,*" was filed on August 2, 2000.[2] Charging Party alleged in *Clairmount I* that in May 2000, Respondent announced that it had no further obligation to bargain with Charging Party when their contract expired on June 30, 2000; unlawfully refused to meet or bargain with it over the terms of a new contract; made unlawful unilateral changes in bargaining unit members' terms and conditions of employment; and dealt directly with bargaining unit members concerning wages, hours, and terms and conditions of employment in violation of its duty to bargain under section 16 of the LMA.

In *Clairmount I,* the Commission affirmed the findings of fact and conclusions of law contained in a January 22, 2001, Decision and Recommended Order of the Administrative Law Judge (ALJ). The ALJ found that Respondent violated section 16(6) of the LMA. In a modified order, the Commission directed Respondent to, among other things, cease and desist from refusing to recognize and bargain with Charging Party; upon demand, meet with Charging Party to negotiate a new contract to replace the contract which expired on June 30, 2000; and cease and desist from unilaterally altering the employees' wages, hours or terms and conditions of employment, including offering insurance benefits without bargaining. Respondent was also ordered to resume making contributions to Charging Party's insurance and pension funds and pay contributions owed for periods after July 1, 2000; to make employees whole, with interest, for any losses they may have suffered because of its failure to pay the required contributions; and to post a notice to employees in conspicuous places on its premises.

Findings of Fact:

Respondent Clairmount Laundry, Inc. operates a shirt laundry and dry cleaning establishment in Berkley, MI. Charging Party and Respondent are parties to a collective bargaining agreement that expired June 30, 2000. Erica and Phillip Bowles are the sole officers and proprietors of Clairmount Laundry.

On October 19, 2000, a contested case hearing was held in *Clairmount I*. Four of the five bargaining unit employees – Union steward Linda Kay Hendricks, Ernestine Addison, Laverne Adams and Tina Carpenter - employed by Respondent attended the October 19 hearing. During the hearing, Phillip Bowles testified that the employees could enroll in a health insurance program that he secured to replace the plan that had been negotiated with the Union.

The next day, October 20, 2000, the employees asked Phillip Bowles if they could sign up for health insurance benefits under the new insurance plan. Bowles told the employees who attended the hearing that they could not sign up for the health insurance unless the Union dropped the charge in *Clairmount I,* and the employees signed a paper stating that they no longer wanted to be in the Union. Willie Mae Johnson, the employee who did not attend the October 19 hearing was the only employee that Bowles permitted to enroll in the unilaterally created health insurance program. Aretha Tucker, the Union's business representative, testified that bargaining unit member Johnson is not sympathetic to the Union. On November 17, 2000, Tucker sent Respondent a letter regarding its

[2] Charging Party filed a third charge on October 22, 2001.

refusal to provide health insurance to employees. The Employer did not respond to the letter.

Several months later, on March 13, 2001, Respondent terminated Ernestine Addison, an employee since 1992. According to Addison, on the morning of March 13, she, consistent with Respondent's policy that requires employees to call if they expect to be late for work, telephoned Respondent and advised the office manager that her van would not start and that she would be late. Shortly thereafter, while Addison was attempting to start her van, Phillip Bowles left a message at her home advising Addison that she was fired. When Addison returned Bowles' call, he confirmed her termination, but he did not explain why, then or later. The day after Addison was fired, Respondent hired John Paul, who, according to Union steward Hendricks has not joined the Union because Phillip Bowles told Paul to talk to him, and not Hendricks. On April 3, Addison filed a grievance protesting her discharge. Respondent refused to respond to the grievance or to meet with Charging Party to process the grievance.

Conclusions of Law:

Charging Party claims that Respondent violated the LMA by refusing to allow employees who attended the October 19, 2000, MERC hearing to enroll in a unilaterally created health insurance program unless the Union dropped the charge in *Clairmount I* and the employees signed a paper stating that they no longer wanted to be in the Union. Section 16(3) of the LMA provides that it shall be unlawful for an employer to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in any labor organization. The elements of a *prima facie* case of discrimination under section 16(3) of the LMA are: (1) union or other concerted activity; (2) employer knowledge of that activity; (3) union animus or hostility; (4) evidence that the protected activity was a motivating cause of the Employer's actions. *Flint Neighborhood Improvement and Preservation Project, Inc.*, 1996 MERC Lab Op 249, 268.

The record reflects that bargaining unit members Hendricks, Addison, Adams, and Carpenter engaged in protected activity by attending the October 19, 2000, contested hearing in *Clairmount I.* Phillip Bowles knew of their activity. He was present at the hearing and testified that employees could enroll in a health insurance program that offered better benefits that the insurance that had been negotiated with the Union. However, the next day, he refused to permit the four bargaining unit members who attended the hearing to enroll in the insurance plan unless they signed a document indicating they no longer wanted to be in a union and the Union withdrew the unfair labor practice charge in *Clairmount I*. Willie Mae Johnson, the only bargaining unit member who did not attend the October 19 hearing and who was described by the Union's representative as unsympathetic to the Union was the only employee permitted to enroll in Respondent's health insurance program. I find that the record supports an inference that the attendance at the October 19 hearing by Hendricks, Addison, Adams, and Carpenter and their refusal to disavow interest in union representation was a motivating factor in the Employer's decision to deny them health insurance benefits.

I also find sufficient evidence on the record to support an inference that Ernestine Addison's protected activity was a motivating factor in Phillip Bowles' decision to terminate her employment several months later on March 13. Although Addison followed the Employer's policy of calling in to report that she would be late for work, she was terminated without being provided with an explanation. Moreover, Phillip Bowles refused to discuss or process the grievance protesting

Addison's termination, and advised the employee hired to replace Addison not to talk to the Union steward about joining the Union. Further, Addison was discharged less than two months after the instant unfair labor practice charge was filed.

Respondent's conduct in refusing to allow employees to enroll in its insurance program violates Section 16(3) of the LMA and its failure to process Charging Party's grievance contesting Addison's discharge violates its obligation to bargain collectively with his employees' collective bargaining representative as required by Section 16(6) of the LMA.

Based on the above discussion, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

Respondent Clairmount Laundry, Inc., its officers and agents shall:

1. Cease and desist from:

   a. Conditioning its employees enrollment in its health insurance program upon the Union's agreement to drop unfair labor practice charges or employees' agreement to sign a statement that they no longer wished to be represented by a union.

   b. Refusing to recognize and bargain with Charging Party Chicago and Central States Joint Board, UNITE, AFL-CIO.

   c. Discharging or discriminating against its employees in any manner because of their exercise of rights to engage in protected activity as described in Section 8 of the LMA.

2. Take the following affirmative action to effectuate the policies of the Act:

   a. Offer Ernestine Addison immediate and full reinstatement to her former position or to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed, and make her whole for any loss of pay, plus interest at the statutory rate, that she may have suffered because of Respondent's unlawful activity, less interim earnings.

   b. Immediately resume making contributions to Charging Party's insurance funds as required by the Commission order in *Clairmount I,* or permit all employees to enroll in a substantially equivalent health insurance plan.

   c. Post the attached notice to employees in conspicuous places on Respondent's premises, including all places where notices to employees are usually posted, for 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____