STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CLAIRMOUNT LAUNDRY, INC.,
Respondent-Employer,

Case No. C01 J-207

-and-

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

APPEARANCES:

Kerr, Russell and Weber, PLC, by Edward C. Cutlip, Esq. and Thomas R. Williams, Esq., for Respondent

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

DECISION AND ORDER

On March 29, 2002, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it 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 23 of Act 176 of the Public Acts of 1939, 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 23 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

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:

Kerr, Russell and Weber, PLC, by Edward C. Cutlip, Esq. and Thomas R. Williams, Esq., for Respondent1

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

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 & 423.23, this case was heard at Detroit, Michigan at approximately 10:35 a.m. on December 18, 2001, before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission (MERC). The hearing was held in Respondent's absence pursuant to Rule 72(1) of the Administrative Procedures Act, MCL 24.272(1), which provides for a hearing and the issuance of a decision in the absence of a party. Based upon the entire record, including the testimony and exhibits submitted at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

1 Counsel for Respondent filed an appearance in this matter on February 26, 2002, approximately two months after the hearing was conducted and more than two weeks after post-hearing briefs were due.

Background:

The instant charge is the third filed by Chicago and Central States Joint Board, UNITE, AFL-CIO against Clairmount Laundry, Inc. In *Clairmount Laundry, Inc.*, 2001 MERC Lab Op 153 (*Clairmount I*), MERC affirmed the conclusion of its ALJ that Respondent violated Section 16(6) of the LMA by refusing to recognize Charging Party as the exclusive representative of its employees, refusing to meet and negotiate in good faith with the Union regarding a new collective bargaining agreement, and unilaterally altering the existing wages and benefits of its employees after the contract expired and prior to reaching impasse. MERC directed Respondent to, among other things: cease and desist from refusing to recognize and bargain with Charging Party as the exclusive representative of its employees; resume making contributions to the Union's insurance and pension funds for all employees at the rate provided for in the expired contract; pay all contributions to its insurance and pension funds for the period after July 1, 2000; and post a notice to employees in a conspicuous place on its premises.

The Commission's decision in *Clairmount I* was issued on June 29, 2001. In August of 2001, Charging Party filed a petition with the Court of Appeals for enforcement of that MERC decision. On October 2, 2001, the Court issued an order granting the Union's petition. Several weeks later, on October 24, 2001, the Union filed a motion with the Court of Appeals requesting that Respondent be held in contempt for failing to comply with the Court's prior order. The Court granted the Union's motion on December 21, 2001, and directed Respondent to pay costs to the Court and compensate Charging Party for its costs in bringing the petition for enforcement, including attorney fees. The Court warned Respondent that failure to comply with its order, and any continued refusal to abide by MERC's order, as enforced by the Court, would result in additional sanctions. Despite this admonition, Respondent failed to pay costs to Charging Party and, according to the Union, persisted in its refusal to comply with the Commission's June 29, 2001 decision, as enforced by the Court. On February 13, 2002, the Court of Appeals issued an order remanding the case to MERC for findings of fact regarding any actual loss or injury suffered by Charging Party as a result of Respondent's noncompliance with the Commission's decision. At present, *Clairmount I* is still pending before MERC on remand.

On February 26, 2002, MERC issued a Decision and Order in *Clairmount Laundry, Inc.*, 2002 MERC Lab Op ___ (Case No. C01 B-31) (*Clairmount II)*, agreeing with the findings of its ALJ that Respondent violated Section 16(3) and 16(6) of the LMA by refusing to allow certain employees to enroll in its insurance program, and by discharging employee Ernestine Addison in retaliation for her protected concerted activity. The Commission ordered Respondent to, among other things: cease and desist from conditioning its employees enrollment in its health insurance program upon the Union's agreement to drop unfair labor practice charges or the employees' agreement to sign a statement that they no longer wished to be represented by a union; offer Addison immediate and full reinstatement to her former position or to a substantially equivalent position; and resume making contributions to Charging Party's insurance funds as required by the MERC order in *Clairmount I*, or permit all employees to enroll in a substantially equivalent health insurance plan.

The Unfair Labor Practice Charge:

The instant charge was filed by Chicago and Central States Joint Board, UNITE, AFL-CIO on October 22, 2001 and amended on November 8, 2001. As amended, the charge alleges that Respondent Clairmount Laundry, Inc. violated the LMA by discharging employee Linda Hendrix because of her protected concerted activity, including her participation at MERC hearings in *Clairmount I* and *II*, and by calling the police to have her removed from the premises following her termination. In addition, the charge asserts that Respondent failed to respond to various information requests filed by the Union.

A hearing on the charge was scheduled for 10:00 a.m. on December 18, 2001. On November 1, 2001, a notice of hearing was sent by certified mail to Respondent's last known address. The notice was not returned as undeliverable, nor was an adjournment of the hearing requested. The return receipt indicates that delivery of the notice of hearing was accepted on November 5, 2001. On November 26, 2001, Respondent filed a handwritten answer to the Union's amended charge. In the answer, Respondent admitted that it fired Hendrix on November 2, 2001, but denied that the termination was unlawful:

> B. [Hendrix] was not fired "because of her protected concerted activity and her participation at MERC." We know that would be illegal. If we were to have fired her due to her participation in the suit against us we would have done it a long time ago. Ms Hendrix was due to retire in May of 2000. When we told her in April of 2000 that we were not going to sign a new union contract in June of 2000 she informed us that she was not going to retire because she wanted to stay on so she could help the union fight us.

As noted, Respondent did not send a representative to the December 18, 2001 hearing in this matter, nor did Clairmount Laundry file a written brief following the conclusion of that hearing.

Findings of Fact:

I. Termination of Linda Hendrix

Linda Hendrix was employed as a full-time shirt presser at Clairmount Laundry from 1990 until her termination in November of 2001. Hendrix was a member of the bargaining unit represented by Charging Party and served as shop steward for five years prior to her discharge. In May of 2000, Hendrix informed Phillip Bowles that she was thinking of quitting her job. However, she later told Bowles that she had decided to postpone her plans so that she could take part in negotiations on a new collective bargaining agreement between the Union and the Employer.

On October 19, 2000, Hendrix appeared as a witness for Charging Party at the MERC hearing in *Clairmount I*. She again testified on the Union's behalf at the August 23, 2001, hearing in *Clairmount II*.

On October 29, 2001, Hendrix began a previously scheduled vacation, which was due to continue until November 7. On November 2, Hendrix stopped at Clairmount Laundry to pick up her paycheck, as well as a paycheck which she had agreed to cash for co-worker LaVerne Adams. Hendrix received the checks directly from Philip Bowles, co-owner of the laundry. She then took

the checks to a nearby bank and returned to Clairmount Laundry approximately 20 minutes later to give Adams her money. As Hendrix got back in her car to leave, she was stopped by Phillip Bowles, who told her, "Linda, this is your last check." When Hendrix asked what he meant, Bowles stated, "You can file Unemployment." Hendrix said, "Okay" and left the premises.

After consulting with Union officials, Hendrix remained unsure of her employment status and decided to return to Clairmount Laundry on November 7, her next regularly scheduled workday. Upon her arrival, Hendrix went to punch in for work but discovered that her time card was missing. She asked the manager about the missing card. The manager indicated that he did not know what had happened to the card. After making a phone call, the manager told Hendrix, "Phil said you are history. You don't work here any more. You're fired. He fired you on Friday." Hendrix told the manager that she would wait for Phillip Bowles to arrive. The manager made another phone call and then told Hendrix that she would "have to get out of the building." Hendrix refused to leave. Several minutes later, two City of Berkeley police officers arrived and ordered Hendrix to vacate the premises. Finally, Hendrix left the building.

As Hendrix stood on the sidewalk talking to the officers, Phillip Bowles pulled up and jumped out of his car. Hendrix asked Bowles why he called the police. Bowles told her, "You're fired. You don't work here any more. I fired you Friday. I want you off my premises, and if you step foot on my premises again, I will call the police again." At that point, Hendrix left.

At the time of her discharge, Hendrix had the most seniority of anyone in the bargaining unit and had never been disciplined by Respondent. To date, Clairmount Laundry has provided no explanation regarding why Hendrix was fired.

II. Information Requests

On June 11, 2001, following issuance of the Commission's decision in *Clairmount I*, John G. Adam, counsel for Charging Party, wrote to Phillip Bowles and demanded that the Employer "recognize the Union, restore the status quo, and make the employees' [sic] whole." In addition, Adam asked, "Will you recognize the Union? Will you meet and bargain? Will you honor MERC's decision."

On August 10, 2001, Adam again wrote to Bowles requesting information concerning whether the Employer intended to comply with MERC's decision in *Clairmount I*. In the letter, which was sent to the Employer via certified mail, Adam asked, "Will you make employees whole? Will you pay the unpaid medical bills that would have [sic] covered by the insurance fund? Will you meet and bargain with the union?" At the end of the letter, Adam indicated that the Union would seek enforcement of the Commission's June 29 order in the Court of Appeals if Respondent failed to reply promptly to its requests for information.

In a letter to Bowles dated August 28, 2001, Adam repeated his request that Respondent meet to bargain with the Union. In addition, Adam demanded that the Employer provide Charging Party with the following information:

1. Names, addresses, job classifications, and wage rates for all employees employed

by Clairmount laundry [sic] since July 1, 2000 to the present, including those who were discharged, quit or laid off.

2. Provide the names of all employees who are receiving medical insurance within the Union's bargaining unit.

3. Names and addresses of all shareholders and officers of Clairmount Laundry.

4. State whether any efforts have been made to transfer assets of Clairmount Laundry to any other business, since July 1, 2000.

5. State the full name of Clairmount Laundry.

The August 28 letter was sent by Adam via regular mail and was never returned as undeliverable.

On September 12, 2001, Adam wrote Bowles a one-sentence letter asking, "Are you going to respond to my letters and request for information?" Approximately one month later, on October 8, 2001, Adam contacted Bowles by telephone and asked whether he intended to comply with the Court of Appeals' order enforcing MERC's decision in *Clairmount I*. Bowles responded, "No comment" and immediately hung up the phone. The following day, October 9, 2001 Adam hand-delivered a letter to Clairmount Laundry. In the letter, which was addressed to both Phillip Bowles and Erica Bowles, Adam again inquired as to whether Respondent had taken any steps to comply with the Court's order. Attached to the hand-delivered letter were copies of prior correspondence from Adam to Philip Bowles dated July 10, August 10, August 28, and September 12. Adam gave the letter to an employee working at the laundry's front desk, who indicated that he would pass it on to Phillip Bowles.

In a subsequent letter to Mr. and Mrs. Bowles dated November 7, 2001, Adam referenced the upcoming MERC hearing in *Clairmount* II and wrote, "Are you ever going to reply to our letters and request for information? Have you hired any employees since October 1?" The November 7, 2001, letter was sent via regular mail and never returned to Adam as undeliverable.

On November 14, 2001, Adam sent a letter to Mr. and Mrs. Bowles regarding the recent discharge of Linda Hendrix. In the letter, Adam requested a copy of Hendrix's personnel file and "all documents relating to the reason or basis for her discharge." In addition, Adam demanded that Respondent meet with the Union and "review" her discharge. Adam repeated those requests in a letter which he hand-delivered to Clairmount Laundry on December 12, 2001. In the December 12 letter, Adam also inquired as to whether Respondent intended to comply with the recently issued Decision and Recommended Order in *Clairmount II*. Once again, Adam handed the letter to an employee working at the laundry, who promised to forward the letter to Philip Bowles. Adam never received a response from the Employer to this or any of the above-referenced information requests.

Discussion and Conclusions of Law:

Charging Party contends that Respondent violated the LMA by failing to respond to its

requests for information.2 It is well-established under both the LMA and the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.201 *et seq.*, that an employer must supply in a timely manner requested information which will permit the labor organization to engage in collective bargaining and to police the administration of the contract. *Battle Creek Police Dep't*, 1998 MERC Lab Op 684, 687 (PERA); *Wayne County*, 1997 MERC Lab Op 679 (PERA); *Pearson Drywall Inc*, 1983 MERC Lab Op 131 (LMA). Where the information sought concerns the wages, hours or working conditions of bargaining unit employees, the information is presumptively relevant and will be ordered disclosed unless the employer itself rebuts the presumption. *Battle Creek, supra*; *City of Detroit, Department of Transportation*, 1998 MERC Lab Op 205, 207 (PERA). The standard applied for relevancy is a liberal discovery-type standard. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Battle Creek, supra; SMART*, 1993 MERC Lab Op 355, 357 (PERA).

Much of the information requested by Charging Party pertains to the Union's attempt to determine the identity of the bargaining unit members and the wages, hours and working conditions of those employees. I find that such information is clearly relevant and necessary to the performance of the Union's collective bargaining obligations. In *Clairmount I*, MERC found that Respondent had violated the LMA when it stopped recognizing Charging Party as the exclusive bargaining representative of its employees and unilaterally altered fringe benefits and other terms and conditions of employment. In light of the Employer's unlawful conduct, Charging Party must be able to determine which of Respondent's employees are in the bargaining unit and whether those employees are being compensated properly for their work. I also conclude the Union was entitled to information relating to whether Respondent was in compliance with MERC's order in *Clairmount I* regarding restoration of its insurance and pension funds. It is well-established that an employer's obligation to bargain in good faith under Section 16(6) of the LMA requires it to supply, upon demand, the collective bargaining agent of the employees with necessary information relating to fringe benefit contributions. See e.g. *Orchard Equipment Co*, 1982 MERC Lab Op 265, 270-271; *Gunther Excavating, Inc*, 1977 MERC Lab Op 527.

The remaining information sought by Charging Party does not pertain directly to members of the bargaining unit and, thus, is not presumptively relevant. Nevertheless, I find that the Union made a sufficient showing of relevance to warrant the conclusion that the Respondent has an obligation to furnish the information. In its August 28 letter, the Union asked for the names and addresses of all of Respondent's shareholders and officers, as well as information relating to "efforts . . . to transfer assets of Clairmount Laundry to any other business." The general purpose for which the Union sought this information was to investigate allegations that bargaining unit work was being diverted to another business owned by the father of Phillip Bowles. Preservation or diversion of bargaining unit work is generally a mandatory subject of bargaining, and an employer may have a

2 Although the Union introduced into evidence numerous letters documenting its attempts to obtain information from Respondent, Charging Party apparently relies solely on the letters dated August 10 and 28, September 12 and October 9, 2001, in support of its contention that Respondent violated its duty to provide information under Section 16(6) of the LMA. Therefore, I will not address whether the Employer unlawfully refused to disclose information requested by the Union on November 14, 2001, concerning the discharge of Linda Hendrix.

duty to disclose information pertaining to non-unit employees where diversion of work is an issue in the case. See e.g. *Wayne County*, *supra* at 683, and cases cited therein. In order to establish the relevance of such information, the Union must demonstrate a reasonable, objective basis for believing that an alter ego or double-breasted relationship exists. See e.g. *Shoppers Food Warehouse*, 315 NLRB 258, 147 LRRM 1179 (1994); *Blue Diamond Co*, 295 NLRB 1007; 131 LRRM 1752 (1989); *Boyers Construction Co,* 267 NLRB 227; 114 LRRM 1008 (1983).

In the instant case, Linda Hendrix testified that she became suspicious when, around the time of the hearing in *Clairmount II*, the amount of business conducted by Respondent suddenly dropped off sharply. According to Hendrix, "it was like the work just disappeared." Hendrix testified that this abrupt decrease coincided with a decision by Phillip Bowles to put his father in charge of picking up laundry at various stops and bringing it back to Respondent to be cleaned. According to Hendrix, Bowles' father also owns a dry cleaning business, MGM Cleaners, which is located approximately one and a half miles from Clairmount Laundry. Hendrix relayed this information to Charging Party on or around August 23, 2001. Given Hendrix's testimony, as well as Respondent's general attitude toward unionization, as expressed here and in the prior two cases involving these parties, I conclude that that the Union had a reasonable basis for believing that bargaining unit work may have been diverted to MGM Cleaners. Accordingly, an order is warranted under Section 16(6) of the LMA based upon Respondent's refusal to supply the information requested by the Union.3

Next, Charging Party contends that Respondent violated the LMA by terminating Linda Hendrix in retaliation for her protected activity. Section 16(3) of the LMA makes it 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." In order to establish a prima facie case of discrimination under the LMA, a party must show: (1) employee, union, or other protected activity; (2) employer knowledge of that activity; (3) union animus or hostility toward the employee's protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory actions. *Flint Neighborhood Improvement and Preservation Project, Inc*, 1996 MERC Lab Op 249, 253.

In the instant case, the record establishes that Hendrix served as union steward since 1996 and played an active role in the negotiation of contracts between Charging Party and the Employer. In May of 2000, Hendrix informed the Employer that, rather than quit, she intended to remain on so that she could participate in the negotiation of a new collective bargaining agreement. Later that year, on October 19, Hendrix testified as a witness for the Union at a hearing before MERC in *Clairmount I*. Both Phillip and Erica Bowles were in attendance at that hearing. The following year, Hendrix again testified on behalf of the Union in *Clairmount II*. Although Respondent failed to send a representative to the August 23, 2001, hearing, Hendrix's testimony was noted in a post-

3 While there may have been some ambiguity with respect to how the Union phrased items 3-5 of the August 28, 2001 information request, that does not excuse Respondent's blanket refusal to comply. "It is well-established that an employer may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information." *Keauhou Beach Hotel,* 298 NLRB 702; 134 LRRM 1245 (1990). See also *National Steel Corp*, 335 NLRB No. 60 (2001); *Barnard Engineering Co*, 282 NLRB 617; 124 LRRM 1107 (1987).

hearing brief filed by Charging Party and served on the Employer. Based on these facts, I conclude that Hendrix engaged in protected activity of which Respondent was aware.

There is also substantial evidence of Respondent's animosity toward protected concerted activity. The record in this case establishes that Phillip and Erica Bowles have steadfastly avoided dealing with the Union. Respondent refused to reply to any of the Union's requests for information, and when Charging Party's attorney contacted Phillip Bowles by telephone and asked whether he intended to comply with the Court of Appeals' order enforcing MERC's decision in *Clairmount I*, Bowles responded, "No comment" and immediately hung up the phone. Union animus may also be inferred from Respondent's conduct as documented in the two prior MERC cases, as well as the Employer's failure to comply with the Commission's decision in *Clairmount I*, as enforced by the Court of Appeals. See *Tama Meat Packing Corp v NLRB*, 575 F2d 661; 98 LRRM 2339 (CA8, 1978), enforcing as modified 230 NLRB 116 (1997) (employer's history may be considered where there is other supporting evidence of animus). See also *Stark Electric*, 327 NLRB 518; 166 LRRM 1198 (1999); *Viracon, Inc*, 736 F2d 1188; 116 LRRM 3124 (CA7 1984). I find the prior cases particularly relevant here because the events giving rise to those proceedings occurred over the same general period of time as the conduct under consideration in the instant case and, taken together, demonstrate a continuing, egregious violation of Respondent's obligations under the LMA. See e.g. *H.B. Zachry*, 332 NLRB No. 110; 165 LRRM 1351 (2000); *J.P. Stevens & Co., Inc*, 244 NLRB 407, 408; 102 LRRM 1039 (1979) enforced 668 F2d 767 (CA 4 1980), vacated on other grounds, 458 US 1118 (1982).

I also conclude that Charging Party introduced sufficient evidence to support an inference that Hendrix's protected concerted activity was a motivating factor in Respondent's decision to terminate her employment. Hendrix was discharged on November 2, 2001, approximately two months after she testified against the Employer in *Clairmount II*, one month after Respondent received an adverse ruling from the Court of Appeals in *Clairmount I*, and just 14 days after the Union filed its initial charge in the instant case. Just prior to the discharge, the Union had filed a motion with the Court of Appeals requesting that it hold Respondent in contempt for refusing to comply with its enforcement order. To date, Respondent has not provided any explanation with respect to why Hendrix was terminated. At the time of her discharge, Hendrix had the most seniority of anyone in the bargaining unit and had never been disciplined by Respondent. Based on these facts, I conclude that Respondent's termination of Linda Hendrix violated Section 16(3) of the LMA.

Because Respondent's misconduct was egregious and demonstrated an overall disregard for the fundamental, statutory rights of its employees, a broad cease-and-desist order is appropriate. *Hickmott Foods*, 242 NLRB 1357 (1979) (broad injunctive relief warranted for repeat statutory violations or to remedy egregious or widespread misconduct). See also *NLRB v Windsor Castle Heath Care Facilities, Inc*, 13 F3d 619; 145 LRRM 2220 (CA 2, 1994), enforcing 310 NLRB 579; 144 LRRM 1200 (1993). Charging Party is not, however, entitled to attorney fees and costs. In Michigan, the recovery of attorney fees is governed by the "American rule." *Popma v ACIA*, 446 Mich 460, 474 (1994); *Goolsby v Detroit*, 211 Mich App 214, 224 (1995). Under this rule, attorney fees are not recoverable unless authorized by statute, court rule, or a recognized common-law exception. *Popma, supra* at 474. In *Goolsby*, *supra*, the Court of Appeals reversed MERC's decision awarding attorney fees to the individual charging parties on the ground that such fees were

not specifically authorized by PERA. *Id.* at 224-225. In the instant case, Charging Party argues that *Goolsby* is distinguishable because that case arose under PERA, whereas the instant charge asserts a violation of the LMA. Given that both statutes are essentially identical with respect to the Commission's authority to remedy unfair labor practices, I find this to be a distinction without a difference. Compare MCL 423.23(2)(b) and MCL 423.216(b).

Although I decline to award attorney fees and costs in this case, I do so only because the Commission is constrained from granting such relief by the Court's decision in *Goolsby*. See *POLC*, 1999 MERC Lab Op 196, 202 (in which MERC expressed its belief that *Goolsby* was wrongly decided and urged the Court of Appeals to revisit the issue). The remedial relief sections of the LMA and PERA provide that the Commission has the power to "take such affirmative action . . . as will effectuate the policies" of those statutes. MCL 423.23(2)(b); MCL 423.216(b). Section 10(c) of the National Labor Relations Act (NLRA), 29 USC '160, contains virtually identical language, and the National Labor Relations Board (NLRB) has construed that language as sufficiently specific to justify an award of litigation expenses. *Teamsters Local 122*, 2001 NLRB LEXIS 608 at slip op p 17; 334 NLRB No. 137; ___ LRRM ___ (2001); *Alwin Manufacturing Co,* 326 NLRB 646, 647; 162 LRRM 1120 (1998), enforced 192 F3d 133 (DC Cir 1999).4 But see *Unbelievable, Inc v NLRB*, 118 F3d 795 (DC Cir, 1997) (refusing to enforce the portion of a Board order which directed the respondent to pay the litigation expenses of the General Counsel and the charging party). Similarly, I would find the broad delegation of authority to MERC set forth within Sections 23(2)(b) of the LMA and 16(b) of PERA to constitute a legislative authorization for fee shifting in appropriate cases.

In accordance with the findings of fact, discussion and conclusions of law set forth above, I recommend that the Commission issue the following order.

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4 In awarding litigation expenses, including attorney fees and costs, the Board has repeatedly relied in part upon the "bad faith" exception to the American Rule. See *Teamsters Local 122*, *supra* at slip op pp 17-23; *Alwin, supra* at 647-648; *Lake Holiday Associates, Inc*, 325 NLRB 469; 157 LRRM 1209. Under that exception, attorney fees and costs may be assessed when the losing party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Alyeska Pipeline Service Co v Wilderness Society,* 421 US 240, 258-259; 95 S Ct 1612; 44 L Ed 2d 141 (1975). Based on Respondent's conduct throughout these proceedings, including its failure to comply with the Commission's decision in *Clairmount I*, as enforced by the Court of Appeals, its failure to comply with MERC's rules regarding service in *Clairmount II*, and its failure to appear for scheduled hearings, I would find bad faith sufficient to warrant an order requiring Respondent to reimburse the Union for its fees and costs. Exceptions to the American Rule, however, are narrowly construed, *Scott v Hurd-Corrigan Moving & Storage Co*, 103 Mich App 322, 347 (1981), and to recover attorney fees under a common-law exception, that exception must be recognized in Michigan. See *Rafferty v Markovitz*, 461 Mich 265, 271, n 5 (1999); *McAuley v General Motors Corp*, 457 Mich 513, 519, n 7 (1998). Although our Supreme Court has noted the existence of the bad faith exception under federal common law, see *Nemeth v Abonmarche Consultants, Inc*, 457 Mich 16, 40 (1998) citing *Alyeska Pipeline*, *supra*, it does not appear that any Michigan authority exists permitting the assessment of attorney fees and costs pursuant to that exception. Accordingly, I reluctantly decline to assess fees and cost on the basis of an application of the bad faith exception.

RECOMMENDED ORDER

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

1. Cease and desist from

   a. Discriminating against employees in regard to hire, terms or other conditions of employment because of their activities on behalf of Chicago and Central States Joint Board, UNITE, AFL-CIO, or other concerted activities protected under Section 8 of the LMA.

   b. Refusing to bargain with Chicago and Central States Joint Board, UNITE, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to provide the Union with information relevant and necessary to its role as the collective bargaining representative of the unit employees.

   c. In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 8 of the LMA.

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

   a. Offer to Linda Hendrix unconditional reinstatement to her former or substantially equivalent position without prejudice to any rights and privileges enjoyed and make her whole for all wages lost as a result of her unlawful discharge on November 2, 2001, to the date of offer of reinstatement, less interim earnings, together with interest thereon at the statutory rate.

   b. On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

   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 a period of thirty (30) consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, Clairmount Laundry, Inc., has been found to have committed an unfair labor practice in violation of the Michigan Labor Mediation Act. Pursuant to the terms of the Commission's order

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT discharge or otherwise discriminate against employees because of their activities on behalf of Chicago and Central States Joint Board, UNITE, AFL-CIO, or other activities protected by Section 8 of the Labor Mediation Act.

WE WILL reinstate Linda Hendrix to her former or a substantially equivalent position and make her whole for all wages lost as a result of her unlawful discharge on November 2, 2001, to the date of offer of reinstatement, less interim earnings, together with interest thereon at the statutory rate.

WE WILL bargain with Chicago and Central States Joint Board, UNITE, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and provide the Union with information relevant and necessary to its role as the collective bargaining representative of the unit employees.

ALL our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 8 of the Labor Mediation Act.

CLAIRMOUNT LAUNDRY, INC.

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Michigan Plaza Building, 14th Floor, 1200 6th Street, Detroit, Michigan 48226. Telephone: (313) 256-3540.