

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

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C01 L-247

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES COUNCIL 25
AND ITS LOCALS 25, ET AL,
Charging Party-Labor Organizations.

APPEARANCES:

City of Detroit Law Department, by Valerie Colbert-Osamuede, Esq., for the Public Employer

Miller Cohen, P.L.C., by Richard G. Mack Jr., Esq., for the Charging Party

DECISION AND ORDER

On October 15, 2002, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. On November 25, 2002, the Commission received a letter from Charging Party requesting that the charge be withdrawn prior to the issuance of a decision by the Commission and without publication of the Commission's decision. On December 17, 2002, the Commission received a second letter from Charging Party reiterating the previous request and indicating that Respondent joins in Charging Party's request.

The parties' request to withdraw the charge is hereby approved. This Decision and Order and the Decision and Recommended Order of the Administrative Law Judge will be published in accordance with Commission policy.

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:

City of Detroit Law Department, by June C. Boyd, Esq., for the Public Employer

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan on March 6, 2002, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 *et seq.* Based upon the record, I make the following findings, conclusions of law and recommended order pursuant to Section 16(b) of PERA:

Charge and Motion to Dismiss:

On December 21, 2001, Charging Party American Federation of State, County and Municipal Employees Council 25 and its affiliated Locals 23, 26, 62, 207, 214, 229, 273, 312, 457, 542, 836, 1023, 1206, 1220, 1227, 1642, 1863, 2394, 2779, and 2920 (“the Union”) filed this charge against Respondent City of Detroit. The Union claims that Respondent repudiated the language and intent of an April 12, 2001, memorandum of understanding that provided for all eligible AFSCME-represented employees to receive a one-percent cash incentive following a meeting with their supervisors that Respondent agreed to facilitate by June 30, 2001. Charging Party asserts that Respondent exhibited bad faith in bargaining over the agreement’s implementation and exhibited union animus and contempt for the Union’s exercise of its rights under PERA.

At the onset of the hearing, Respondent made a motion to dismiss because the Union failed to appear. A notice of hearing setting forth the date, time and place of the hearing was sent to the Union on January 4, 2001. The notice was not returned and the Union did not make a request to postpone the hearing. Moreover, a few days before the hearing, Charging Party represented to a Commission court reporter that it would attend the hearing.

Section 72(1) of the Michigan Administrative Procedures Act, MCL 24.272, states that if a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of a party. I find that the Union was properly served with the notice of hearing; it failed to appear at the time and date scheduled for the hearing; and did not produce evidence to support the allegations made in the charge. I conclude, therefore, that the Union failed to meet its burden of proving that the Respondent committed an unfair labor practice. I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____