STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer - Respondent,

Case No. C06 B-037

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 517M,
Labor Organization - Charging Party.
_____/

APPEARANCES:

City of Detroit Law Department, by Andrew Jarvis, Esq., for the Respondent

DECISION AND ORDER

On December 4, 2006, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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 any 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

_____
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
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CITY OF DETROIT,
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SERVICE EMPLOYEES INTERNATIONAL UNION,
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Charging Party-Labor Organization.
_____/

APPEARANCES:

Andrew Jarvis, for the Respondent

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

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 for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Findings of Fact:

These findings of fact are derived from the charge and supporting documentation submitted by Charging Party, with those allegations taken in the light most favorable to Charging Party.

Charging Party, Service Employees International Union (SEIU), Local 517M, filed a charge on February 23, 2006 asserting that the Employer had violated the Act by failing to recall a laid off individual upon a vacancy being created by the resignation of another employee. The charge asserted that a grievance over the dispute was pending. Charging Party provided a copy of the current collective bargaining agreement between the parties, which reflects that the grievance procedure culminates in binding arbitration. The Union also provided, as an exhibit to the charge, a copy of the Employer's answer to the grievance, in which the Employer asserted a contractual right to choose not to fill the position.

The matter had originally been set for hearing before Administrative Law Judge David Peltz on June 22, 2006, but was adjourned by agreement of the parties. On November 8, 2006, a new notice of hearing was sent to the parties, scheduling the matter for hearing before Administrative Law Judge Doyle O'Connor at 10:00 a.m. on November 30, 2006. The Employer's counsel, and its witnesses, appeared pursuant to that notice. Charging Party did not appear at the time and place set for hearing.

At 10:35 a.m., I contacted the offices of Local 517M in an attempt to determine the reason for the failure to appear. At 10:56 a.m., with Charging Party having neither appeared nor offered any explanation for the delay, the hearing commenced. The Employer moved for the dismissal of the charge based on Charging Party's failure to appear. The Employer additionally moved for dismissal based on the assertion that the charge on its face raised no issue within the jurisdiction of the Commission and, therefore, failed to state a claim upon which relief could be granted.

Discussion and Conclusions of Law:

As the Charging Party has the burden of proof, their failure to appear for a hearing, or to properly seek an adjournment, in itself requires the dismissal of the charge. Additionally, accepting the allegations in the charge as true, the Employer's motion to dismiss for failure to state a claim is well grounded. On its face, and without further evidence, the charge merely asserts a dispute over the interpretation of the parties' contract.

The Commission does have the authority to interpret the terms of a collective bargaining agreement where necessary to determine whether a party has breached its collective bargaining obligations. *University of Michigan,* 1978 MERC Lab Op 994, 996, citing *NLRB v C & C Plywood Corp,* 385 US 421 (1967). However, if the term or condition in dispute is "covered by" a provision in the collective bargaining agreement, and the parties have agreed to a grievance resolution procedure ending in binding arbitration, the details and enforceability of the provision are generally left to arbitration. *Port Huron Ed Ass'n v Port Huron Area Sch Dist,* 452 Mich. 309, 317-321 (1996). As the Commission stated in *St Clair Co Road Comm,* 1992 MERC Lab Op 533 at 538:

> Where there is a contract covering the subject matter of the 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 present.

Here, the dispute is a narrow one, regarding the handling of a single layoff-recall dispute, and there is no assertion that the Employer has refused to comply with the ordinary grievance machinery.

With the Union's allegations taken in the light most favorable to Charging Party, I find that, at most, what has been pled is that the parties had a bona fide dispute over the meaning of their contract, which could have been resolved through the contractual grievance arbitration procedure. I conclude, therefore, that the charge does not state a claim upon which relief could be granted under the Act.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated:_____