STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C06 J-257

-and-

ASSOCIATION OF MUNICIPAL ENGINEERS,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Dwight Thomas, Labor Relations Specialist, for the Respondent

Vinod Sharma, President, Association of Municipal Engineers, for the Charging Party

DECISION AND ORDER

On December 19, 2006, Administrative Law Judge Doyle O'Connor (ALJ) issued his Decision and Recommended Order on Order to Show Cause in this matter finding that Charging Party, Association of Municipal Engineers (AME), failed to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379 as amended. The ALJ held that Charging Party's contention, that Respondent, City of Detroit (City), violated PERA by engaging in subcontracting, constitutes, at most, an issue that should be left to the contractual grievance arbitration procedure. The ALJ held that Charging Party's second claim was part of a charge previously before our agency, causing it to be duplicative. In addition, the ALJ concluded the Charging Party failed to state a claim for which relief could be granted. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

On January 9, 2007, Charging Party filed exceptions to the ALJ's Decision and Recommended Order. In its exceptions, Charging Party alleges that the ALJ erred in finding that the second allegation of its charge involves the same issue that has already been decided by the Commission. Charging Party asserts that the earlier charge concerned the lack of bargaining over layoffs, while the charge in this case alleges a violation of the master agreement. Respondent did not file a response to the exceptions.

We have reviewed Charging Party's exceptions and find them to be without merit.

Factual Summary:

AME filed a charge on October 26, 2006 asserting that the City violated PERA and the Master Agreement between the City and AME by not bargaining in good faith with AME. Charging Party claims that because of contracting and subcontracting, some members of AME were laid off or demoted, and the City falsely represented that lack of funds was the reason. AME attached to the charge language from its collective bargaining agreement that reserves to the City the right to subcontract work, but requires that, prior to contracting out such work, the City notify AME of the nature and scope of the work involved and the reason for subcontracting the work.

By an Order to Show Cause, issued on October 27, 2006, AME was directed to provide sufficient facts to support the charge, specifying when the alleged subcontracting occurred, when bargaining either occurred or was refused, when allegedly false information was given, and when employees were laid off.

AME responded by offering a March 20, 2006 newspaper article as evidence of subcontracting and by asserting that some of its members were laid off or demoted on May 8, 2006. AME claims that the layoffs were improper because there was no budget shortfall in the City's water department. AME's response did not assert that it had made a bargaining demand or that the City had rejected its demand for bargaining.

The City responded by moving for dismissal of the charge, claiming that it was indistinguishable from a prior charge that has already been heard in MERC Case No. C06 E-104, in which AME asserted that the City committed an unfair labor practice "by not consulting with the Association in laying off/demoting its seven members." In that case, AME claimed that the layoffs at issue were effective May 6, 2006/May 8, 2006.[1]

Discussion and Conclusions of Law:

Rule 151 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.151 directs that a charge must provide a clear and complete statement of the facts which allege a violation of PERA, including the date of occurrence of each particular act, the names of each charged party who engaged therein, and the sections of PERA alleged to have been violated. The charge, here, fails to disclose the dates of the alleged violations or the names of the employees alleged to have been improperly laid off. The charge also fails to identify the section(s) of PERA claimed to have been violated. Furthermore, Charging Party's complaint regarding subcontracting of work, at best, asserts a violation of the contract between the parties. That contractual grievances are pending over the layoffs is not disputed.

[1] A Decision and Order was issued by this Commission in Case No. C06 E-104 on June 18, 2007. A motion seeking reconsideration in that case was filed on June 20, 2007. Reconsideration was denied by the Commission in a Decision dated August 9, 2007.

In the absence of any claim or showing that a bargaining demand was made and rejected, we are unable to find that the City has repudiated its agreement or has otherwise violated PERA. Because the allegation that the City gave false information about the reason for layoff/demotions in May 2006 is part of the previously decided charge in Case No. C06 E-104, a second duplicative charge fails to state a claim upon which relief can be granted. Any relief to which AME might have been entitled would have been provided in the previous case.

ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Dwight Thomas, for the Respondent

Vinod Sharma, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE

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, supporting documentation submitted by Charging Party, and the responses by the respective parties to an order to show cause, with the allegations taken in the light most favorable to Charging Party.

Charging Party, Association of Municipal Engineers (AME), filed a charge on October 26, 2006 asserting that:

> The City of Detroit violated Article 3 (SUB-CONTRACTING) of the Master Agreement between City of Detroit and Association of Municipal Engineers (AME) by not bargaining in good faith with AME. As a result of contracting and subcontracting the work some members of AME got laid off/demoted.

> The employer gave false information about the supposed lack of funds as the reason for layoff/demotion.

The Union also provided, as an exhibit to the charge, a copy of a portion of its collective bargaining agreement with the City, which addressed the topic of subcontracting, reserved to the City the right to subcontract work, and which required that the City notify the Association and discuss the matter with it, prior to contracting out work.

An order to show cause why the matter should not be dismissed for failure to state a claim was issued on October 27, 2006. The AME was directed to provide a proper factual basis for the charge, including when the alleged subcontracting occurred, when bargaining either occurred or was refused, when allegedly false information was given, and when employees were laid off.

AME responded to the order to show cause on November 13, 2006. AME asserted that the City had unilaterally subcontracted work, and attached a newspaper article of March 20, 2006 as evidence of such subcontracting. AME additionally asserted that some of its members were laid off or demoted on May 8, 2006. AME asserted that the layoffs were improper as there was allegedly not an actual budget shortfall in the City Water Department. AME's response did not assert that a demand to bargain had been made, or that it had been rejected.

The City responded on November 30, 2006, and moved for dismissal of the charge on the basis that the present charge was indistinguishable from a prior charge, which had already been heard on September 15, 2006 in MERC Case C06 E-104. In that charge, AME asserted:

> Here comes the Association of Municipal Engineers and charges the City of Detroit of having committed an unfair labor practice by not consulting with the Association in laying off/demoting its seven members. The effective date of layoff/demotion is May 6, 2006/May 8, 2006 as per the notices received by the seven members of AME (one notice is attached). The City of Detroit held no negotiations with the AME before or after the layoffs and demotions.

On December 4, 2006, the AME replied to the City's response, and objected, in conclusory terms, to the City's motion to dismiss.

Discussion and Conclusions of Law:

As the Charging Party, AME has the burden of minimal compliance with the pleading requirements of R423.151, which direct that the charge must provide a clear and complete statement of the facts which allege a violation of PERA, including the date of occurrence of each particular act, the names of the alleged wrongdoers, and the sections of PERA allegedly violated.

On its face, the initial charge merely asserts a dispute over the interpretation of Article 3 of the parties' contract regarding the subcontracting of unit work. No assertion is made that any particular section of PERA was violated. No dates of the alleged violations were provided. No names of the employer agents alleged to have engaged in improper conduct were provided.

Charging Party's several responses to the order to show cause did not cure the defects in the initial charge. Taken as a whole, Charging Party's allegations regarding subcontracting of work at best assert a violation of the contract between the parties. Additionally, AME does not dispute the City's assertion that contractual grievances are pending over the same disputed layoffs. 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.

With the Union's allegations with respect to the subcontracting issue taken in the light most favorable to Charging Party, I find that 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.

With respect to the allegation that employer gave false information about a lack of funds being the reason for layoff/demotions in May 2006, I find that this claim is part of the previously pending, and already heard, charge in MERC Case C06 E-104. The second duplicative charge fails to state a claim upon which relief could be granted, as any appropriate relief to which AME is entitled would be provided in the initial case.

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:_____