

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

In the Matter of:

CITY OF DETROIT,
Public Employer - Respondent,

Case No. C07 J-224

-and-

ASSOCIATION OF MUNICIPAL ENGINEERS,
Labor Organization - Charging Party.

APPEARANCES:

Dwight Thomas, Labor Relations Specialist, for Respondent

Vinod Sharma, President, for Charging Party

DECISION AND ORDER

On October 30, 2007, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition finding that the charge filed by Charging Party Association of Municipal Engineers (Union or AME) against Respondent City of Detroit (Employer or City) fails to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. The charge alleges that the Employer committed an unfair labor practice when, in the middle of negotiations and prior to reaching impasse, it unilaterally stopped collecting union membership dues as required by the collective bargaining agreement. The ALJ found that the contract had expired and that an employer may discontinue dues deduction after contract expiration regardless of whether the parties have reached an impasse in negotiations. Based on this conclusion, the ALJ found that the Employer's actions did not violate PERA and recommended dismissal of the charge.

The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On November 20, 2007, the Union filed exceptions to the ALJ's Decision and Recommended Order. On December 3, 2007, the Employer filed a response to those exceptions.

In its exceptions, the AME alleges that the ALJ erred in finding that the Employer has the right to terminate dues deduction at any time after contract expiration. It asserts that the collection of dues had been a long established practice of the City, and dues deduction was not a proposal discussed during negotiations. The Union argues that the City recognized dues deduction as a condition of employment and that a contract clause provides that employees not wanting to join the Union must as a condition of employment pay a service fee and that employees who fail to pay their dues will be discharged after thirty days' notice. Charging Party also argues that because the parties were not at impasse in their negotiations, the City had no right to stop collecting union dues. We have reviewed Charging Party's exceptions and find them to be without merit.

Factual Summary:

We adopt the factual findings of the ALJ and repeat them only as necessary here.

The collective bargaining agreement between the City of Detroit and the Association of Municipal Engineers, had an expiration date of June 30, 2005. After the contract expired, the parties continued to operate under it on a day to day basis until the City gave notice to the Union that the contract was terminated. Subsequently, the City advised the Union that it was discontinuing the deduction of dues from employees' paychecks as of May 11, 2007. The parties were in negotiations at that time, but had not yet reached impasse. Charging Party filed the unfair labor practice charge in this matter on October 4, 2007.

Discussion and Conclusions:

The law is well-settled that under Section 15 of PERA, a public employer has a duty to bargain in good faith over mandatory subjects as wages, hours, and other terms and conditions of employment and may not take unilateral action on mandatory subjects prior to reaching an impasse in negotiations. See *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). The issue of dues deduction, however, is treated differently and is a firmly established exception to this rule. In our decision in *Waldron Area Sch*, 1997 MERC Lab Op 256, 261, that the ALJ relied on, we explained that an employer may legally discontinue dues deductions after the expiration of the collective bargaining agreement, whether or not the parties are at an impasse. See also *Gibraltar Sch Dist v Gibraltar MESPA-Transp*, 443 Mich 326 (1993); *City of Dearborn*, 1987 MERC Lab Op 61, 63; *Warren Consolidated Sch*, 1975 MERC Lab Op 129, 132.

The Union has provided no reason for us to deviate from these numerous and long-standing holdings. We agree with the ALJ that the charge fails to state a claim upon which relief should be granted and should be dismissed. We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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Charging Party-Labor Organization.

APPEARANCES:

Vinod Sharma, President, for Charging Party

Dwight Thomas, Labor Relations Specialist, for Respondent

**DECISION AND RECOMMENDED ORDER
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 to David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. This matter comes before the Commission on an unfair labor practice charge filed against the City of Detroit on October 4, 2007, by the Association of Municipal Engineers.

In an order issued on October 9, 2007, Charging Party was granted fourteen days in which to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted. Charging Party filed a response to the order to show cause on October 19, 2007.

Discussion and Conclusions of Law:

The charge alleges that Respondent violated PERA by refusing to collect membership dues as required by the parties' 2001-2005 collective bargaining agreement. In its response to the order to show cause, the Union asserts that the contract initially remained in effect on a day-to-day basis following its expiration, but that Respondent subsequently terminated the agreement and stopped collecting dues effective May 11, 2007.¹

¹ In its response to the order to show cause, the AME contends that the cessation of dues deduction by Respondent was in "retaliation" for the Union's refusal to agree to a wage cut during negotiations. This assertion was not set forth in the charge and regardless would not change the outcome in this matter.

Under Section 15 of PERA, a public employer has a duty to collectively bargain in good faith with a union representative over “wages, hours and other terms and conditions of employment.” An employer may not take unilateral action on these mandatory subjects of bargaining prior to reaching an impasse in negotiations. *Detroit Police Officers Ass’n v Detroit*, 391 Mich 44, 54-55 (1974). However, dues deduction and union security are well-established exceptions to this rule. The Commission has repeatedly held that an employer may discontinue dues deduction after contract expiration regardless of whether the parties are at impasse in negotiations. See e.g. *Waldron Area Schools*, 1997 MERC Lab Op 256; *City of Dearborn*, 1987 MERC Lab Op 61; *Warren Consolidated Schools*, 1975 MERC Lab Op 129. See also *Gibraltar Sch Dist v Gibraltar MESPA-Transp*, 443 Mich 325 (1993). Accordingly, the charge fails to state a claim upon which relief can be granted under PERA.

For the above reasons, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____