

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

In the Matter of:

CITY OF PONTIAC,
Public Employer-Respondent,

-and-

PONTIAC HOUSING COMMISSION,
Public Employer-Respondent,

-and-

AFSCME COUNCIL 25,
Labor Organization-Charging Party.

Case No. C07 I-211

APPEARANCES:

Clark Hill, P.L.C., by Reginald M. Turner, Jr., Esq., and Anne-Marie Vercruysse Welch, Esq., for Respondent City of Pontiac

Shirley A. Rand, Esq., for Respondent Pontiac Housing Commission

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

DECISION AND ORDER

On October 1, 2009, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were 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. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

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Shirley A. Rand, Esq., for Respondent Pontiac Housing Commission

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

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTIONS FOR SUMMARY DISPOSITION**

On September 18, 2007, AFSCME Council 25 filed the above charges with the Michigan Employment Relations Commission (the Commission) against the City of Pontiac (the City) and the Pontiac Housing Commission (the Housing Commission) alleging that both Respondents violated Sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212 by refusing to meet with Charging Party “concerning the terms and conditions of their AFSCME-represented employees.” The charge, as amended on October 11, 2007, asserts that one or both Respondents refused to meet with Charging Party on six specific occasions between June 15 and September 12, 2007. Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, administrative law judge for the State Office of Administrative Hearings and Rules.

At the time this charge was filed, a consolidated case involving these same parties was pending before Administrative Law Judge (ALJ) David Peltz (Case Nos. C05 F-128 and C07 C-

049). Charging Party represents a bargaining unit of nonsupervisory employees of the City. After the April 2005 layoff of eight AFSCME-represented employees at the Housing Commission, Charging Party filed a charge alleging that the City had violated its duty to bargain by unilaterally subcontracting their work. One of the issues in that case was whether the City was a co-employer, with the Housing Commission, of the employees in question. I held the instant charge in abeyance pending a decision in that case.

On May 21, 2009, the Commission issued its decision in *City of Pontiac and Pontiac Housing Comm*, 22 MPER 46 (2009). The Commission affirmed the finding of ALJ Peltz that after the passage of 1996 PA 338, MCL 125.655(3), in June 1996, the Housing Commission was the sole employer of its employees. The Commission adopted his recommendation that the refusal to bargain charge filed against the City be dismissed on the basis the City had no duty to bargain with Charging Party over the terms and conditions of employment of Housing Commission employees because it was not their employer. The Commission also adopted the ALJ's finding that the Housing Commission had no continuing duty to bargain with Charging Party as a "successor employer" to the City because, after the April 2005 layoffs, only one individual continued to work for the Housing Commission in classifications previously represented by AFSCME. The Commission noted that it does not recognize bargaining units consisting of a single individual.

The Commission's decision in *City of Pontiac and Pontiac Housing Comm* was not appealed to the Court of Appeals. On July 7, 2009, after the period for filing an appeal had expired, the City filed a motion for summary disposition in the instant case pursuant to Rule 165(2)(d) and (f) the Commission's General Rules, 2002 AACRS, R 423.165. The City asserts that the charge fails to state a claim upon which relief could be granted and that, except as to the relief sought, there is no genuine issue of material fact because the Commission has already determined that, at all times relevant, the Housing Commission, and not the City, was the employer of the employees Charging Party "is attempting to protect." On July 15, 2009, the Housing Commission filed a motion for summary disposition of the charge against it. The Housing Commission also asserts that the charge fails to state a claim against it or that there is no genuine issue of material fact because of the findings of the Commission in *City of Pontiac and Pontiac Housing Comm*.

After being granted several extensions, Charging Party filed a response opposing the motions on September 28, 2009. Charging Party denies that its charge that the City and the Housing Commission "refused to meet with AFSCME concerning the terms and conditions of their AFSCME-represented employees," fails to state a claim against the Respondents under PERA. Charging Party also denies that the instant charge is related to the charges in *City of Pontiac and Pontiac Housing Comm*, although it provided no additional details about the charge to support this assertion.

There is no dispute that Charging Party is the exclusive bargaining representative for certain employees of the City. In 2007, the City had a general obligation to bargain with Charging Party over the terms and conditions of employment of these employees. However, as discussed above, in *City of Pontiac and Pontiac Housing Comm* the Commission held that, after June 1996, the City was not, as a matter of law, the employer under PERA of employees at the

Housing Commission and that it had no obligation under PERA to bargain with Charging Party over the terms and conditions of their employment. Whether the City was an employer and whether it had an obligation to bargain with Charging Party over these employees were issues actually litigated in that case, and Charging Party is precluded by the doctrine of res judicata from relitigating them. Charging Party seems to suggest that it sought to meet with the City between June and September 2007 to bargain over some other matter. If this is the case, Charging Party should have explained, in its response to the motion, the actual basis of its charge. Since it did not do so, I assume, as Respondents apparently did, that the meetings Charging Party sought between June 12 and September 6, 2007 concerned Housing Commission employees. I agree with the City that summary dismissal of the charge against it in this case is appropriate based on the Commission's findings in *City of Pontiac and Pontiac Housing Comm.*

The Commission held in *City of Pontiac and Pontiac Housing Comm* that the Housing Commission was the employer under PERA of employees at the Housing Commission. However, the Commission found, as matter of fact, that after Housing Commission employees were laid off in April 2005 only one individual remained employed in classifications represented by Charging Party. It also found, as a matter of law, that the Housing Commission had no obligation thereafter to bargain with Charging Party because its bargaining unit had ceased to exist. The parties are bound by these findings under the doctrines of res judicata and collateral estoppel. Charging Party has not, in its response to the motions, asserted any basis for finding that the Housing Commission had an obligation to meet or bargain with Charging Party between June and September 2007. I find that summary dismissal of the charge against the Housing Commission in this case is appropriate based on the Commission's findings in *City of Pontiac and Pontiac Housing Comm.* I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____