

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

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C10 A-025

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 25
Labor Organization-Charging Party.

APPEARANCES:

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

DECISION AND ORDER

On March 10, 2010, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

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**

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

-and-

Case No. C10 A-006

SENIOR WATER SYSTEMS CHEMIST ASSOCIATION,
Labor Organization- Charging Party.

APPEARANCES:

Andrew S. Ross, for the Labor Organization-Charging Party

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY JUDGMENT**

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim.

The Unfair Labor Practice Charge:

On January 11, 2010, a Charge was filed in this matter by the Senior Water Systems Chemist Association (Charging Party or Union) asserting that the Union was entitled to a certain number of representatives to attend bargaining on Employer paid time and that the Employer had been dilatory in confirming the granting of release time for bargaining on two occasions, the second of which was regardless cancelled. Pursuant to R 423.165(2)(d), the Charging Party was ordered to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted.

Charging Party was advised that prior to responding to the Order, it should review the Commission case law which holds that an employer has no statutory obligation under PERA to pay union representatives for time spent in negotiations or on other union business during working hours. *City of Detroit (DPW)*, 2001 MERC Lab Op 73; *City of Detroit(Detroit General Hospital)*, 1968 MERC Lab Op 378; *City of Birmingham*, 1974 MERC Lab Op 642. Charging Party was additionally advised that to the extent that it relied on a claimed contractual obligation to allow the Union release time for bargaining, the Charging Party should review the case law holding that if a 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).

Charging Party was expressly cautioned that if it did not timely respond to the Order, a decision recommending that the Charge be dismissed without a hearing would be issued. Charging Party did not file any response to the order to show cause.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Because there is no allegation in the Charge supporting the claim that the Employer violated any cognizable statutory obligation, and because no response was filed to the order to show cause, the charge against the Employer must be dismissed as it fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: February 24, 2010