

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

In the Matter of:

DISTRICT HEALTH DEPARTMENT NO. 2,  
Public Employer - Respondent,

-and-

PROFESSIONAL MANAGEMENT ASSOCIATION,  
Labor Organization - Charging Party.

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Case No. C12 H-162  
Docket No. 12-001405-MERC

**APPEARANCES:**

Cohl, Stoker & Toskey, P.C., by Sherry L. Hedrington, for Respondent

Debra Baumann, President, Professional Management Association, for Charging Party

**DECISION AND ORDER**

On January 9, 2013, Administrative Law Judge David M. Peltz issued a Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Robert S. LaBrant, Commission Member

Dated: \_\_\_\_\_

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

DISTRICT HEALTH DEPARTMENT NO. 2,  
Respondent-Public Employer,

-and-

Case No. C12 H-162  
Docket No. 12-001405-MERC

PROFESSIONAL MANAGEMENT ASSOCIATION,  
Charging Party-Labor Organization.

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**APPEARANCES:**

Cohl, Stoker & Toskey, P.C., by Sherry L. Hedrington, for Respondent

Debra Baumann, President, Professional Management Association, for Charging Party

**DECISION AND RECOMMENDED ORDER  
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on August 17, 2012, by the Professional Management Association (PMA) against District Health Department No. 2. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

**The Unfair Labor Practice Charge and Background Facts:**

The following facts are derived from the unfair labor practice charge and are accepted as true for purposes of this Decision and Recommended Order on Summary Disposition. On November 22, 2010, the Employer voluntarily recognized Charging Party as the collective bargaining representative of a unit of administrative employees of the health department. The Employer's travel policy provides for salary and mileage reimbursement for employees traveling on health department business.

On October 27, 2011, the Employer filed a petition for unit clarification seeking to exclude two employees from the bargaining unit. ALJ Julia C. Stern held a hearing on the petition on June 14, 2012. In attendance at the hearing were four members of the PMA bargaining unit, along with a health officer, a member of the Employer's board and various staff members from another labor organization, the American Federation of State, County and Municipal Employees (AFSCME). Following the hearing, the Employer reimbursed the health

officer, the board member and the AFSCME staff members for expenses associated with attendance at the hearing, including time, travel and lodging. The Employer refused to provide similar compensation to the four PMA members who attended the hearing.

On August 17, 2012, the PMA filed the instant charge, asserting that the Employer violated PERA by failing or refusing to reimburse PMA members for their expenses in connection with a MERC hearing while, at the same time, compensating other employees for their attendance at the same hearing. In an order issued on November 18, 2012, I directed Charging Party to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted under PERA. The response to the order to show cause was due by the close of business on December 19, 2012. To date, no response has been received, nor has Charging Party requested an extension of time in which to file such a response.

#### Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, accepting all of the allegations in the charge as true, dismissal of the charge on summary disposition is warranted.

It is well-settled that a public employer has no statutory duty to compensate employees for union activity, including time off work for the purpose of testifying at a Commission hearing. *City of Detroit*, 23 MPER 54 (2010); *City of Detroit*, 14 MPER 32 (2001); *City of Detroit (Detroit General Hospital)*, 1968 MERC Lab Op 378; *City of Birmingham*, 1974 MERC Lab Op 642. Moreover, the Commission has previously held that an employer is permitted to compensate employees who testify on its behalf, while at the same time refusing to subsidize legal action directed against it, without violating any PERA protected right. *St Joseph Dist Ct*, 11 MPER 29 (1998); *County of Oakland*, 1986 MERC Lab Op 866; *Univ of Michigan*, 1989 MERC Lab Op 720, 724. The right to seek compensation for attendance for union activity arises, if at all, by contract or other agreement.

In the instant case, Charging Party has set forth no factually supported allegation which, if true, would establish that the parties have entered into a collective bargaining agreement which, by its express terms, requires the Employer to compensate PMA members in connection with their appearance at a Commission hearing, nor has the Union adequately explained how the Employer's decision to compensate board members and other employees for their appearance at a MERC hearing constitutes unlawful discrimination in violation of PERA.

Despite having been given ample opportunity to do so, Charging Party has failed to set forth any facts which, if proven, would establish that Respondent violated PERA. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge filed by the Professional Management Association against the District Health Department No. 2 in Case No. C12 H-162; Docket No. 12-001405-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: January 9, 2013