STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GENESEE COUNTY and GENESEE COUNTY PROBATE COURT and GENESEE COUNTY PROSECUTOR and 7TH JUDICIAL CIRCUIT COURT and 67TH JUDICIAL CIRCUIT COURT,
Public Employer - Respondent,

Case No. C12 K-222
Docket No. 12-001855-MERC

-and-

AFSCME COUNCIL 25 and AFSCME LOCAL 496.00,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Keller Thoma, P.C., by Richard W. Fanning, Jr., for Respondent

Kenneth J. Bailey, Staff Attorney, for Charging Party

DECISION AND ORDER

On February 27, 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:

GENESEE COUNTY and GENESEE COUNTY PROBATE COURT and GENESEE COUNTY PROSECUTOR and 7TH JUDICIAL CIRCUIT COURT and 67TH JUDICIAL CIRCUIT COURT,
Respondents-Public Employers,

Case No. C12 K-222
Docket No. 12-001855-MERC

-and-

AFSCME COUNCIL 25 and AFSCME LOCAL 496.00,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Kenneth J. Bailey, Staff Attorney, for Charging Party

Keller Thoma, P.C., by Richard W. Fanning, Jr., for Respondents

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 *et seq*, this case was assigned to Administrative Law Judge David M. Peltz, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

On November 15, 2012, AFSCME Council 25 and its affiliated Local 496.00 filed an unfair labor practice charge with MERC asserting that Respondents Genesee County, Genesee County Probate Court, Genesee County Prosecutor, 7th Judicial Circuit Court and 67th Judicial Circuit Court violated PERA by unilaterally imposing increased employee health insurance contributions following the renewal of the parties' collective bargaining agreement.

In an order issued on January 11, 2013, I directed the Union to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted under PERA. Charging Party was cautioned that a timely response to the Order must be filed to avoid dismissal of the charge without a hearing. Pursuant to the Order,

Charging Party's response was due by the close of business on February 1, 2013. To date, Charging Party has not filed a response to the Order or sought to obtain an extension of time in which to file such a response.

Discussion and Conclusions of Law:

The failure to respond to an order to show cause may, in itself, warrant dismissal of an unfair labor practice charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, I conclude that the charge, as written, fails to raise any issue cognizable under PERA.

Under Section 15 of PERA, the parties have a general duty to bargain in good faith over "wages, hours and other terms and conditions of employment." MCL 423.215(1). Section 3 of 2011 PA 152, MCL 15.563, mandates that public employers "shall pay no more" than a statutorily set dollar amount for health insurance during a "medical benefit plan coverage year beginning after January 1, 2012". Section 4, MCL 15.564, gives the employer the discretion to comply with the Act by requiring employees to pay 20% or more of the total costs of all the benefit plans it offers or contributes to for its employees and elected officials.

The charge asserts that the Employer unilaterally imposed changes to health care contributions. The Union appears to contends that the parties' collective bargaining agreement remained in effect at the time the changes were made because neither party gave notice of a desire to modify the agreement at least sixty days prior to September 30, 2012, the date upon which the contract was due to expire. It is true that Section 5(1) of 2011 PA 152, MCL 15.565(1), delays implementation of the Act where an existing collective bargaining agreement was in place when the Act was implemented and "until the contract expires". However, Section 5(1) further provides that the requirements of Sections 3 and 4 of the 2011 PA 152 apply to "any extension or renewal of the contract."

The alleged conduct by the Employers described in the charge would appear to be in compliance with, and in fact mandated by, 2011 PA 152. See for example *Decatur Public Schools*, Case Nos. C12 F-123 & C12 F-124, issued December 20, 2012, in which Administrative Law Judge Doyle O'Connor recommended dismissal of unfair labor practice charges in which the unions had asserted that the school district violated its duty to bargain in good faith under PERA by imposing hard caps on health insurance upon expiration of the parties' contract. While recognizing the existence of a duty to bargain generally over the nature of health insurance options notwithstanding the passages of 2011 PA 152, the ALJ concluded that a public employer has no obligation to propose or demand bargaining over how it will comply with the Act's mandate of health insurance cost-shifting upon expiration of a pre-existing collective bargaining agreement. Finding no assertion that the unions ever made a timely demand to bargain over any specific health insurance issue, the ALJ granted summary disposition in favor of the employer.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation which, if true, would establish that the Employers breached their obligation to bargain in good faith under Section 10(1)(e) of PERA by unilaterally imposing increased employee health insurance contributions following expiration and/or renewal of the parties' collective bargaining agreement. Although Charging Party asserts that it filed a grievance challenging the increased deductions on August 14, 2012, approximately 45 days before the contract was due to expire, there is no allegation that the Union demanded to bargain the impact of 2011 PA 152 or that it ever presented the Employers with any specific proposal concerning how the parties would comply with the requirements of the new legislation. Under such circumstances, I conclude that the charge must be dismissed for failure to state a claim upon which relief can be granted under PERA.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge 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: February 27, 2013