

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

In the Matter of:

CITY OF DETROIT,  
Public Employer-Respondent,

-and-

AFSCME LOCAL 312,  
Labor Organization-Charging Party.

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Case No. C13 B-026  
Docket No. 13-000157-MERC

APPEARANCES:

Scheff, Washington & Driver, by George B. Washington, for Charging Party

**DECISION AND ORDER**

On December 14, 2015, Administrative Law Judge Julia C. Stern issued her 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 charge.

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 either 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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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: January 25, 2016

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

In the Matter of:

CITY OF DETROIT,  
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**APPEARANCES:**

Scheff, Washington & Driver, by George B. Washington

**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE**

On February 13, 2013, AFSCME Local 312 filed the above unfair labor practice charge against the City of Detroit with the Michigan Employment Relations Commission (the Commission), pursuant to §10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to §16 of PERA, the charge was initially assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System. On September 13, 2013, the charge was reassigned to ALJ Julia C. Stern.

**The Unfair Labor Practice Charge and Procedural History:**

Charging Party represents a bargaining unit of bus drivers employed by the City of Detroit in its Department of Transportation. The charge alleges that on or about February 6, 2013, Respondent violated its duty to bargain in good faith by announcing that it planned to unilaterally cut the workweek of employees in Charging Party's bargaining unit by imposing unpaid furlough days.

In 2012, Respondent entered into a consent agreement with the State of Michigan under the Local Government and School District Fiscal Accountability Act, 2011 PA 4. This statute provided that a local government operating under a consent agreement pursuant to the statute was not subject to an obligation to bargain with representatives of its employees under §15(1) of PERA for the term of the consent agreement. In August 2012, 2011 PA 4 was rejected by the voters, although a similar statute, the Local Financial Stability and Choice Act, was adopted later that year.

According to the charge, Respondent and the Financial Stability Board appointed in connection with the consent agreement certified to the Federal Government that Respondent's duty to bargain with Charging Party had not been suspended by the consent agreement because of a protective agreement entered into between Respondent and the Federal Government as a condition of Respondent's receiving federal funds pursuant to the Urban Mass Transit Act, 49 USC §5301 et seq.

A hearing was scheduled, but was adjourned without date in April 2013 so that the parties could discuss settlement. On July 18, 2013, Respondent filed a bankruptcy petition in federal court and an automatic stay was issued covering this and other claims. On November 7, 2014, the U.S. Bankruptcy Court issued an oral order confirming Respondent's Plan of Adjustment.

On August 26, 2015, I sent the parties a letter indicating my intention to place the case back on my active docket. The letter instructed a party to notify me if it took the position that placing the case on the active docket would be in contravention of the order issued by the U.S. Bankruptcy Court. On September 15, 2015, Respondent submitted a letter asserting that the claims set forth in the charge were claims that arose before the "effective date" of the Plan of Adjustment, or December 10, 2014, and were therefore subject to the discharge provision in Bankruptcy Court's Order Confirming the Eighth Amended Plan for the Adjustment of Debts of the City of Detroit. Respondent asserted that the Bankruptcy Court's order explicitly required all such claims be "withdrawn or dismissed with prejudice."

On October 15, 2015, I issued an order directing Charging Party to respond to Respondent's letter or withdraw the charge on or before November 2, 2015. The order stated that if Charging Party did not respond, I would issue an order recommending that the charge be dismissed on the grounds that the charge constituted a "claim that arose before the effective date of the Plan" and that the Bankruptcy Court's order therefore required that it be dismissed. Charging Party did not file or request an extension to file a response.

In accord with my October 15, 2015 order, I conclude that the charge in this case filed on February 13, 2013, constituted a claim that arose before the effective date of the Bankruptcy Court's Order Confirming the Eighth Amended Plan for Adjustment. I also find that for this reason and in accord with the Bankruptcy Court's order, the charge must be dismissed. I recommend, therefore, that the Commission issue the following order.

**RECOMMENDED ORDER**

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: December 14, 2015