STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

MERC Case No. C09 I-166

-and-

VINOD SHARMA,
An Individual Charging Party,

-and-

ASSOCIATION OF MUNICIPAL ENGINEERS,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Vinod Sharma, for the Charging Parties

Dwight Thomas, Labor Specialist, and Valerie Colbert, Deputy Director Labor Relations, for Respondent

DECISION AND ORDER

On June 2, 2011, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charge. The ALJ's Decision and Recommended Order was served on the interested parties in accord with Section 16 of the Act.

After requesting and receiving an extension of time, Charging Parties filed exceptions to the ALJ's Decision and Recommended Order on August 22, 2011.

On July 26, 2013, this case was placed on hold due to bankruptcy proceedings involving the Respondent City of Detroit. To our knowledge, those bankruptcy proceedings have since concluded.

On October 5, 2016, the Commission wrote to the Parties:

> It is our understanding that the City exited bankruptcy some time ago. On the advice of the Attorney General's office, the Commission has continued to hold in abeyance this case and all others involving the City. At this time, however, we can see no reason to delay moving forward with this matter.
>
> If any party believes this case has not been resolved by proceedings before the United States Bankruptcy Court in Case No. 13-53846, that party shall notify the Commission in writing and provide supporting documentation within twenty (20) days from the date of this letter.
>
> If this office does not hear from the parties within twenty (20) days from the date of this letter, the Commission will consider the matter closed, and an Order closing the case will be issued.

Neither Charging Parties nor Respondent replied to the Commission's October 5, 2016 letter.

A charge that fails to state a claim under the Public Employment Relations Act is subject to dismissal pursuant to an order to show cause why it should not be dismissed. The failure to respond to such an order may, in itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

In the instant case, the parties' failure to respond to the Commission's October 5, 2016 letter warrants dismissal of the charge and an Order closing the case.

ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: December 15, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT,
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-and- Case No. C09 I-166

VINOD SHARMA,
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_____/

APPEARANCES:

Vinod Sharma, for the Charging Parties

Dwight Thomas, Labor Specialist, for Respondent

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Doyle O'Connor, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge, Procedural History and Findings of Fact:

On September 15, 2009, a Charge was filed in this matter by Vinod Sharma (Charging Party or Sharma), president of the Association of Municipal Engineers (AME), asserting that unspecified representatives of the Employer had violated the Act, on some unspecified date by failing to pay Sharma for appearing at a MERC hearing and "other conferences".[1] Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). 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

[1] This matter was initially captioned with Vinod Sharma individually as Charging Party based on the claims as pled; however, both Sharma and the City have throughout treated the AME as a Charging Party. Any references herein to Charging Party refer collectively to both Sharma individually and to the AME.

which relief could be granted. Sharma had previously filed multiple charges at MERC, on behalf of himself and on behalf of the AME, and has been repeatedly cautioned regarding the need for minimally compliant pleadings.

The claim as filed appeared related to an earlier dispute between the parties regarding the use of paid Union leave time by AME officers. In *Detroit (AME),* C06 E-120 (Stern July 2008), ALJ Stern recounted the well established law in this area:

> Accordingly, an employer does not interfere with the rights of its employees under Section 9 of PERA simply by monitoring a union officer's use of work time for union business, or by requiring him to provide information about what he is doing. *City of Grand Rapids,* 1980 MERC Lab Op 18, 27. Union release time is a mandatory subject of bargaining under PERA, and the parties may agree to paid or unpaid release time for union officers. *Central Michigan Univ*, 1994 MERC Lab Op 527. However, disputes over the interpretation of a contract provision providing for release time, like other contractual disputes, are normally to be resolved through the grievance procedure. *Belding Area Schs,* 20 MPER 105 (2007) (no exceptions); *City of Detroit,* 17 MPER 84 (2004) (no exceptions).

The November 2, 2009 response by Sharma to the initial order to show cause was received and reviewed. It appeared from my review of Sharma's response that he did not rely on the statute, nor could I discern a claim of a statutory violation; rather, it appeared that Sharma was individually asserting a breach of contract. Further, the initial response acknowledged that Sharma sought City pay for his attending a fact-finding hearing involving a different labor organization (the Association of Professional and Technical Employees-APTE) to which AME is not affiliated. The response further acknowledged that Sharma separately sought payment from the City based on his unsuccessful attempt to attend an APTE-related bargaining session held in the Mayor's office, to which Sharma had not been invited and from which he was ejected.

I directed the City to respond, and a timely and substantive response was received. In that response, the City provided the language of the collective bargaining agreement which appropriately and expressly limits paid time off for the Union president to time spent in grievance matters and the like on behalf of the AME bargaining unit. The contract additionally and appropriately provides that time off *may* also be granted for other duties "directly related to wages, hours and working conditions of bargaining unit members". Finally the contract provides an express mechanism for resolving disputes regarding time off with pay for Union business. The relevant contract article provides:

> The Association President . . . *shall* be permitted to take time off with pay to handle special conferences, grievances and participate in arbitration cases. *Other duties* associated with being an Association President and *directly related to wages, hours and working conditions of bargaining unit members* may arise which must be addressed . . . during working hours. In this regard,

> upon request, a meeting will be convened between the Association and the appropriate departmental representative to discuss this matter and resolve any difficulties being experienced. (Emphasis added).

The Employer asserted, and Sharma has admitted, that the two specific events in dispute in this matter were both related to the affairs of APTE, another labor organization, rather than directly related to the working conditions of AME bargaining unit members. Sharma failed to seek a contractually provided for special conference on the question of his demand to be paid, and instead faults the City for not requesting such a conference.

Sharma then filed a reply which did not dispute the relevant factual assertions made by the Employer, which were that the contract limits paid time off for Union business to matters related to the AME bargaining unit, and that the two events in dispute were hearings or meetings regarding APTE.

I issued a second order to show cause why the matter should not be dismissed, again directing Sharma to address with specificity the apparent failure to assert any claim cognizable as a charge under PERA, including by directly and substantively responding in numbered paragraphs to the questions set forth below:

1. Does the collective bargaining agreement by its express terms require that paid time off for Union business be "directly related to wages hours and working conditions of bargaining unit members"?
2. Does the collective bargaining agreement by its express terms provide that disputes over the use of paid time off for Union business are to be addressed at a special conference?
3. Does the collective bargaining agreement by its express terms provide that unresolved disputes over the use of paid time off for Union business are to be addressed through binding arbitration?
4. How is the present dispute not a mere contract dispute covered by a collective bargaining agreement and subject to binding arbitration, such that the charge should be dismissed under *St Clair Shores Rd Comm*, 1992 MERC Lab Op 533?
5. Did the decision in *Detroit (AME)*, C06 E-120 (Stern July 2008), hold that under PERA there was no statutory duty to provide paid time off for Union activity and that disputes compliance with time off systems established in a collective bargaining agreement must be resolved through the contractual grievance process?
6. How is the present charge not subject to dismissal as an improper collateral attack on, or effort to relitigate, the holding in *Detroit (AME)*, C06 E-120 (Stern July 2008)?

7. Why should the present charge not be held in abeyance pending the outcome of the exceptions filed to the ALJ decision in *Detroit (AME)*, C06 E-120 (Stern July 2008)?

Sharma's response to the second order failed to address the questions put to him, and he failed to provide his response in numbered paragraphs, as he was expressly directed to do by the second order. Further, Sharma's response to the second order to show cause did not seemingly raise any statutory issue. In essence, Sharma appeared to not recognize, or accept, that there is no general statutory right of public employees to do union business on time paid for by the employer. The issue in question of Sharma's ability to do union business on employer time appeared to be solely a contractual issue, which did not appear to be properly before MERC. The earlier ruling by Judge Stern addressed discipline issued against Sharma, and should not be read as granting Sharma, or other AME officers, a general right to utilize whatever employer-paid time they see fit to conduct business related, even tangentially, to the Union. Additionally, it is notable that Sharma in his responses to the several orders asserted that it is preposterous of the employer to expect him to do union related work on his own time, even if that work is not of the sort covered by the terms of the collective bargaining agreement. To the contrary, the Employer's position on that question was an ordinary and reasonable restriction on the use of employer paid time for the benefit of a labor organization, which is required in part to avoid an employer having an undue financial entanglement with the labor organization. It appeared likely that this matter was a mere contract dispute, as Sharma did not dispute the Employer's assertion that the meetings for which it refused to pay Sharma were not about AME union business, as that term is defined under the collective bargaining agreement, but rather involved Sharma attending meetings involving another unaffiliated union.

Based on my finding that his responses to date were deficient and were a seemingly willful refusal to substantively address the issues as directed by the prior orders, I issued a Third Order to Show Cause directing Sharma to cure his several defective filings. Sharma was ordered to file a response which recited each numbered question from the Second Order to Show Cause and which followed each question with a direct and substantive factual response. In his response, Sharma was to additionally address the factual question, raised by the Employer's response, of whether or not the meetings or conferences in dispute which led to the filing of this charge were related to the APTE Union's meetings with the employer.

Charging Party was expressly advised that upon receiving a fully compliant response to the Third Order to Show Cause by Sharma, I would determine if the matter should be dismissed as raising a mere contractual violation which should be resolved through the grievance procedure, should be set for hearing, or should continue to be held in abeyance pending resolution of the exceptions filed to Judge Stern's earlier recommended decision. Charging Party was cautioned that the filing of yet another non-complying response would result in the immediate dismissal of this charge. In the interest of economy, and to avoid further inappropriately burdening the Employer, the

Employer was instructed to not file any further pleadings until and unless otherwise ordered.

Sharma filed a non-compliant response to the Third Order to Show Cause, refusing to directly address the specific issues raised in the order to show cause, while being willfully deceptive regarding the plain language of the collective bargaining agreement. In particular, Sharma falsely asserted that, regarding time off for Union business, the collective bargaining agreement "is quite general and does not specifically list the specific activities protected by the contract", where the contract in fact expressly provides that the entitlement to time off with pay for union business is limited to that necessary to "*handle special conferences, grievances and participate in arbitration cases*". Sharma was similarly dishonest in asserting that the contract does not list "all of the topics" for special conferences, where it expressly provides as to disputes over time off for Union business that "*upon request a meeting will be convened between the Association representative and the appropriate department representative*".

Then, on January 10, 2011, Sharma filed a proposed amended Charge in this matter, which seemed intended to abandon the claims initially brought in this case and to substitute for them claims previously litigated. The proposed amended charge complained that Sharma had received a written reprimand and five day suspension which he asserts were "intentional harassment". While no date was specified in the proposed charge for the issuance of the discipline, the Employer's response to the original charge attached a written reprimand issued on December 15, 2009, well outside the statute of limitations.

On February 4, 2011, the City objected to that proposed amendment. On February 9, 2011, I rejected the proposed amended Charge for several substantive reasons. First, the Charge failed to minimally state a claim. In particular, the proposed amended charge did not indicate when the alleged events occurred, which is a minimally necessary factual allegation, regarding which Sharma has previously been repeatedly cautioned. Second, Sharma was, in essence, in default in this matter based on his refusal to minimally comply with prior orders of the tribunal, including in particular, his seemingly willful failure to properly respond to the Third Order to Show Cause Why the Matter Should Not be Dismissed. Sharma had been expressly cautioned that the filing of yet another non-complying response would result in dismissal of his Charge. In rejecting the proposed amended charge, I noted Judge Peltz' recent holding in *Detroit and AME*, Case C08 L-250 that:

> . . . Charging Party's conduct in this matter, including its willful disregard for the procedures established by the City pertaining to the transmission of information requests under PERA, leads me to conclude that the actual intent of the AME, or perhaps Sharma himself, in making the requests was to harass the Employer in pursuit of claims previously addressed by the Commission and which appear to have no relation to the legitimate interests of the Union. Were it not for *Goolsby v Detroit*, 211 Mich App 214, 224 (1995), a decision which the Commission has urged the Court

of Appeals to reconsider, I would follow MERC's earlier decision in *Wayne-Westland Community Sch Dist*, 1987 MERC Lab Op 381, aff'd sub nom *Hunter v Wayne-Westland Community Sch Dist*, 174 Mich App 330 (1989) and award attorney fees and costs to Respondent as compensatory damages, as I find that Sharma and the AME have engaged in an intentional pattern of abuse of MERC's processes.

On February 9, 2011, I advised the parties that the record in this matter was closed and that, in the absence of a prompt voluntary withdrawal of the Charge, I would be issuing a decision recommending the dismissal of the original charge.

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, as here, to substantively or properly respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). The mere fact that Charging Party filed pleadings subsequent to being ordered to respond to specific factual deficits in his Charge does not mean that he has substantively responded to the orders of this tribunal. The pleadings filed by Sharma willfully failed to address the central factual questions relating to his demands for payment from his Employer. Here, the refusal of Charging Party to substantively respond to specific orders by the tribunal warrants the dismissal of the Charge, and further, warrants that the dismissals come without any further proceedings, as Charging Party was expressly and repeatedly cautioned would occur if his non-compliance with orders was not rectified.

Further, to the extent that Sharma and the AME sought to assert a claim that the Employer had failed to pay for union time off in accord with the collective bargaining agreement, their proper remedy was under the contract. First, the contract expressly directs that in the event of any dispute over the use of time off for Union business, a labor relations conference to resolve the dispute will be convened upon request. Sharma and the AME failed to request such a conference. Second, the contract has a typical grievance procedure, which Sharma declined to follow. Here, at best, there is a dispute over the application of contractual language. Where such a dispute is "covered by" a provision in a collective bargaining agreement, the proper recourse is to seek a remedy pursuant to the contract. See, *Port Huron Ed Ass'n v Port Huron Schls*, 452 Mich 309 (1996); *St Clair County Rd Comm*, 1992 MERC Lab Op 533.

Moreover, Sharma's efforts to improperly secure more Employer paid time off work for himself blithely ignores the sole statutorily appropriate purpose of such employer-paid release time for union officers is to protect the right of the *members* of the bargaining unit to representation by the union. Such paid time off is not lawfully authorized for the purpose of having Employer resources used to financially reward individuals for holding Union office. To provide otherwise unlawfully discriminates

among employees based on the extent of their Union activity.[2] It is expressly unlawful for an employer to contribute to the administration of a labor organization, including by financially underwriting its officers, other when those officers are legitimately engaged in negotiation and administration of contracts regarding employee wages hours and working conditions. MCL 423.210 (1)(b).[3]

I concur in Judge Peltz' earlier finding that, in the matter before Judge Peltz as well as in the present matter, Charging Party's conduct, including Sharma's willful disregard individually and as the AME's representative of the procedures established by the City regarding the proper use of Union leave time, was abusive. The goal of the charge was to compel contractually and legally unwarranted payments from the City for Sharma's personal benefit. Further, I conclude, based on that improper goal and on Sharma and the AME's willful failure to comply with orders of this tribunal, that the actual intent of Sharma and of the AME in bringing and pursuing this frivolous Charge was to improperly harass the Employer. Additionally, I find the attempted pursuit of the proposed Amended Charge to have been similarly abusive. In bringing the proposed amended charge, Sharma and the AME sought to abandon the original non-viable charge and to bring a new vague charge. I find that the sole purpose of the new proposed charge was to further delay and complicate the proceedings and to allow Sharma to appear at MERC for a hearing, not to legitimately secure relief, but rather for the primary purpose of his personally getting the paid time off work he was earlier denied.

Despite my having utilized the same formulation in *AFSCME Council 25*, 22 MPER 102 (2009), I differ here with the description in *Detroit and AME*, Case C08 L-250, regarding the breadth of the decision in *Goolsby v Detroit*, 211 Mich App 214, 224 (1995), in restricting the ability of this tribunal to secure compliance with its orders and to address the repeated pursuit of frivolous claims brought for the improper purpose of harassing an opponent. After the *Goolsby* decision, and consistent with the broad and express Legislative grant of authority to the Commission to fashion such affirmative relief "as will effectuate the policies" of PERA, the Commission held in *Police Officers Labor Council,* 1999 MERC Lab Op 196, 202, that "*We believe that Goolsby was wrongly decided and urge the Court of Appeals to revisit the issue*". More recently, the Commission stated in *City of Belleville,* 24 MPER 14 (2011), in express reliance on *Goolsby*: "*We reiterate that this Commission and its ALJs are without authority to award attorney fees and costs in an unfair labor practice proceeding*". I find that in our several prior decisions we have offered a significant overstatement of the actual holding in *Goolsby.*

What was actually held in *Goolsby*, supra, (reversing 1993 MERC Lab Op 268), was:

> *In this case,* we are unable to find any authority under the PERA *or under any court rule* that would authorize the award of attorney fees. (Emphasis added).

[2] See, *AFSCME Local 1346*, 19 MPER 37 (2006); *Grand Rapids Bd of Educ*, 1985 MERC Lab Op 802; *Gulton Electro-Voice*, 226 NLRB 406; 112 LRRM 1361 (1983).
[3] *Lansing School Dist*, 21 MPER 21 (2008); *Warren Con Schls*, 19 MPER 37 (2006)

That holding, at minimum, left open the possibility of an award by MERC of fees or costs of litigation based, for example, on frivolous or abusive pleading as would routinely authorize a fee award under the court rules. For the following reasons, I find that the *Goolsby* decision, while controlling, is factually distinguishable from the instant case.

First, the Court of Appeals holding in *Goolsby*, can be viewed as an unremarkable application of the American Rule, which precludes the routine award of fees to a prevailing party merely for winning, absent express statutory authority, especially where the Commission in that case expressly held the defenses were not frivolous. In the underlying *Goolsby* ULP decision, the Commission had awarded attorney fees despite expressly holding that the defenses offered were not "patently frivolous", awarding the fees instead as damages based on a union's negligent conduct, and despite the Commission finding the underlying claims to be without merit, such that even absent the union's negligence, the Charging Parties would not have been entitled to substantive relief. In essence, in *Goolsby* fees were awarded by the Commission to the charging parties solely on the basis that they were the prevailing party, without express statutory authority and contrary to traditional American Rule.

Second, *Goolsby* did not explicitly address the ability of the Commission to award 'costs', which was not an issue expressly resolved in *Goolsby* (the Court of Appeals initially referred to the award of "fees and costs" but then did not mention costs at all in its analysis, discussing only attorney fees). The award of 'litigation expenses' was appealed, and affirmed, albeit similarly without any significant analysis, in *Amalgamated Transit Union v. Detroit,* 150 Mich App 605 (1985), which also affirmed an award of fees, with only the authority to award fees later expressly rejected by the controlling decision in *Goolsby.* Here, Respondents did not incur attorney fees, but did incur litigation costs by defending instead through their own non-attorney staff.

Moreover, while the *Goolsby* panel rejected the prior award of attorney fees in *Amalgamated Transit,* the *Goolsby* panel could have as readily distinguished *Amalgamated Transit.* Unlike in *Goolsby*, the fee award in *Amalgamated Transit* was premised on an express finding, affirmed on appeal, that the respondent there had interposed a frivolous defense, a ground which then and now would support an award of attorney fees without offending the American Rule.

The Michigan Supreme Court recently recognized, and reaffirmed, the inherent authority of a tribunal to assess sanctions as necessary to allow the tribunal to control proceedings. As the Court held in *Maldonado v Ford Motor Company*, 476 Mich 372 (2006), in upholding the severe sanction of outright dismissal of a claim:

> We reiterate that trial courts possess the inherent authority to sanction litigants and their counsel, including the power to dismiss an action. This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases . . . The authority is rooted in a court's fundamental interest in protecting its own integrity and that of the judicial process. The

> 'clean hands doctrine' applies not only for the protection of the parties but also for the protection of the court. (*Internal citations omitted*.)

Our overly-broad reading and application of *Goolsby*, *supra,* has led to a failure of the Commission and the administrative law judges to effectively protect litigants, and the forum itself, from abusive pleading, harassment, and the pursuit of frivolous claims, as is perhaps best exemplified by the Moralez cases. John Moralez was separated from employment with Michigan State University in 2003 and, beginning in 2007, has repeatedly filed time-barred claims against his former employer and his former Union. *AP Assoc and Moralez*, 20 MPER 45 (May, 2007) (claims dismissed as barred by six-month PERA statute of limitations); *MSU and Moralez*, 20 MPER 103 (Oct 2007) (claims dismissed as barred by statute of limitations); *AP Assoc v Moralez*, 21 MPER 60 (Mich Court of Appeals) (Dec 2008), aff'g 20 MPER 45; *AP Assoc and MSU and Moralez*, 22 MPER 30 (March 2009) (dismissing same claims as barred); *MSU v Moralez*, 22 MPER 38 (Mich Court of Appeals) (April 2009), aff'g 20 MPER 103; *AP Assoc and MSU and Moralez*, 23 MPER 62 (July 2010) (same claims dismissed); *AP Assoc and MSU and Moralez*, 23 MPER 80 (Sept 2010) (reconsideration denied); *AP Assoc and MSU and Moralez*, 23 MPER 103 (Dec 2010) (reconsideration again denied and Moralez barred from future filings); *AP Assoc and MSU and Moralez*, 24 MPER 16 (Feb 2011) (reconsideration of bar denied). See also, *Michael Schils* cases: 21 MPER 7 (Mich Court of Appeals)(Feb 2007); 19 MPER 63 (August 2006); 18 MPER 81 (Dec 2005); 18 MPER 40 (June 2005); 18 MPER 2 (Jan 2005); 17 MPER 80 (Nov 2004); 17 MPER 45 (August 2004). A proper and narrower application of *Goolsby*, consistent with the American Rule, will better avoid burdening the process and will better protect future litigants against harassment through the bringing or pursuit of frivolous claims or defenses.

Unlike in *Goolsby*, Charging Party brought and continued in the pursuit of a frivolous claim, including after being cautioned that the claim was unmeritorious and would be dismissed unless voluntarily withdrawn. Consistent with the *Goolsby* holding, Charging Party would therefore be subject to sanctions, including ordinary attorney fees, under MCR 2.114(C)(2), unlike the respondent in *Goolsby* which had expressly been found to have not proffered frivolous defenses. Additionally, I find that the conduct of Charging Party in repeatedly filing pleadings, including the proposed amended charge, and briefs in which they refused to substantively or honestly respond to the issues before the tribunal was intended to, and had the effect of, harassing the Respondent, causing unnecessary delay and expense in the litigation, and burdening the forum itself, contrary to PERA and contrary to MCR 2.114(C)(3). Sanctions are warranted under MCR 2.114(E) and MCR 2.625 and are also awardable as damages under PERA where a frivolous defense or abusive conduct must be addressed in order to "effectuate the purposes of the act" as expressly authorized by MCL 423.216(b).[4]

[4] Attorney fees were recently awarded under the Michigan Civil Service System's Employment Relations Rule, which is patterned after the PERA, premised on a finding that: "Those fees are intended to assure that conduct of this type on the part of the [party] will not be repeated . . . Without such an award, with a mere cease and desist order and posting, this [party] might well be willing to repeat the conduct that has been demonstrated in this case". . See, *ASEM and OSE*, HERM 2010-59 (October 5, 2010).

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

I further recommend that the Commission issue an order assessing, against Sharma individually and against the AME jointly and severally, the City's actual costs incurred, including for personnel costs, in defending this frivolous claim. The City's costs are to be established by affidavit reasonably detailing staff time spent and the hourly cost of involved staff, inclusive of both wages and benefits. I recommend that payment of such costs be treated as a pre-condition to the filing of any related future charges by Sharma or by the AME, as would be otherwise appropriate under MCR 2.504(D). Additionally, I recommend that the conduct of Sharma and the AME in this case, including compliance with this proposed order, and the similar conduct of Sharma and the AME in *Detroit and AME*, Case C08 L-250, be utilized as substantive factors in the further processing of any currently pending claims.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 2, 2011