

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

In the Matter of:
CITY OF DETROIT (FIRE DEPT),
Respondent-Public Employer,

Case No. C04 B-035

-and-

DETROIT FIRE FIGHTERS ASSOCIATION,
LOCAL 344,
Charging Party-Labor Organization.

APPEARANCES:

City of Detroit Law Department, by Kathryn Niemer, Esq., for the Public Employer

Alison L. Paton, P.C., by Alison L. Paton, Esq., for the Labor Organization

DECISION AND ORDER

On May 17, 2005, Administrative Law Judge Roy L. Roulhac issued his 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

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on August 9, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and post-hearing briefs filed by November 29, 2004, I make the following findings of facts and conclusions of law.

The Unfair Labor Practice Charge:

On February 5, 2004, Charging Party Detroit Fire Fighters Association, Local 344, filed an unfair labor practice charge alleging that Respondent City of Detroit violated Sections 10(1)(a) and (e) of PERA by repudiating a settlement agreement and sending representatives to negotiate who lacked authority to enter into a binding agreement.¹

Findings of Fact:

On December 8, 2003, prior to beginning an arbitration hearing on grievance nos. 03 and 04, the parties entered into settlement discussions. Vice president Verdine Pierce and legal counsel Alison Paton represented Charging Party. Labor relations specialist Ron Pollock, Fire Department representative James Mack and Respondent's legal counsel Bruce Henderson represented Respondent. The settlement negotiations were the first for Henderson that involved the fire department.

¹At the onset of the hearing, Charging Party withdrew other allegations that were included in the charge.

According to Pierce, she and Paton explained Charging Party's interest in reaching a binding agreement during the settlement discussions by telling Respondent's agents that "we would only talk about it if we could come to a final decision that day, because of -- once before we had a grievance that we was [sic] going to reach a tentative agreement on, but it fell through. We got burned on it. We had to wind up going back and file [sic] for another hearing date, because the City didn't talk to us until the second hearing, two days before the second hearing, and we didn't want to waste money any more on scheduling another hearing for [a] tentative agreement." The parties reached a settlement. Charging Party's vice president and legal counsel, Respondent's legal counsel and the Fire Department's representative initialed the agreement, which Pollack agreed to re-type.²

The next day, December 9, Henderson approved the re-typed agreement, and Pierce and Charging Party's president, Dan McNamara, signed it. Respondent, however, never executed it or complied with its terms. Rather, sometime after January 15, 2004, Barbara Wise, Respondent's labor relations deputy director, revised the agreement and presented it, along with proposed language to be included in a successor contract to Charging Party. Charging Party rejected the revised agreement and filed a grievance and the instant unfair labor practice charge. Thereafter, Henderson telephoned Charging Party's legal counsel and left a voice mail message, which reads, in part, as follows:

[T]he ULP, the unfair labor practice against the City, as far as I knew, I had settlement authority, and the people who needed to be there had settlement authority, so I don't know what happened with that and what's going on with Barbara Wise, but I apologize for what happened with that because (inaudible) I am just as surprised as you are that, you know, something is amiss ..."

Henderson testified that on December 8, 2003, he believed that he, Mack and Pollock were authorized to enter into a final and binding settlement agreement. Later, according to Henderson, his supervisor told him that in cases involving the fire department, the labor relations division has control.

Conclusions of Law:

Respondent would have this tribunal believe that the December 8 settlement discussions only resulted in a tentative agreement. It claims that Charging Party knew that Article 6, Chapter 5, Section 6-508 of the Detroit City Charter requires the labor relations director or the deputy director to review and sign tentative agreements before they became final.³ Therefore, according to Respondent, its representatives, including its legal counsel, were not authorized to enter into a settlement agreement that would alter the language of the collective bargaining agreement. Respondent attributes its legal counsel's inexperience with the parties' relationship for his mistaken, but good faith, belief in his authority to enter into a binding agreement. Notably, according to Respondent, Pollock, the labor relations' representative, did not initial the agreement and did not act

²The agreement provided, among other things, that Respondent would to provide fire fighters with sheets, blankets, pillows, pillowcases and towels, and pay \$18,354 to Charging Party not later than January 15, 2004.

³Section 6-508 of the Detroit City Charter created the labor relations division within the human resources department and granted it authority to negotiate and administer collective bargaining agreements.

in bad faith by not telling Respondent's legal counsel that the labor relations director or deputy director are the only individuals authorized to enter into a binding agreement.

I find no merit to this argument. First, Section 6-508 of the Detroit City Charter does not require the labor relations director or deputy director to review and sign tentative agreements before they become final. Rather, it merely creates the labor relations division and empowers it to negotiate and administer collective bargaining agreements. Moreover, it is well settled that a party commits an unfair labor practice by repudiating an agreement based upon internal procedural irregularities or alleged misunderstandings internal to only one party. *City of Battle Creek*, 1994 MERC Lab Op 440; *City of Lincoln Park*, 1982 MERC Lab Op 479; *Amalgamated Transit Union*, 1978 MERC Lab Op 987; *Calhoun Co*, 1980 MERC Lab Op 323. In finding that the union could not rely on its own procedural irregularities to avoid executing a new contract, the Administrative Law Judge in *Amalgamated Transit Union* stated:

If Respondent's proposition were to be accepted, there would appear to be no limit to the ability of one party, through its agents or officers, to assert their own wrongdoing to vitiate an agreement. A party should not be able to rely upon its own wrongdoing to call into question the validity of its own acts.

In this case, I credit Pierce's testimony that Respondent was put on notice that any agreement reached needed to be final because a prior grievance settlement "fell through" and Charging Party, at additional cost, was required to schedule a second arbitration hearing. Clearly, Respondent could have made approval by the labor relations director or deputy director a condition precedent to entering into a final settlement agreement. It did not. I, therefore, find that the agreement reached on December 8, 2003, was final and binding and conclude that Respondent committed violated Section 10(1)(e) of PERA by refusing to sign the December 8, 2003 settlement agreement. I have carefully considered all other arguments advanced by the parties and conclude they do not warrant a change in the result. Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

1. The City of Detroit, its officers and agents shall cease and desist from:
 - a. Withdrawing from, or attempting to withdraw from, the grievance settlement reached with the Detroit Fire Fighters Association, Local 344, on December 8, 2003.
 - b. In any like or related manner, bargaining in bad faith with the Detroit Fire Fighters Association, Local 344.
2. Take the following affirmative action to effectuate the policies of PERA:
 - a. Execute the typed grievance settlement agreement that sets forth the parties' December 8, 2003 settlement of grievances nos. 03 and 04, including paying Charging Party the amount specified in the settlement agreement, plus interest at the statutory rate from January 15, 2004, until paid.

- b. Post for thirty consecutive days, copies of the attached notice at all places where notices to employees are customarily placed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, THE CITY OF DETROIT WAS FOUND TO HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). BASED UPON AN ORDER OF THE COMMISSION, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL cease and desist from withdrawing from, or attempting to withdraw from, the grievance settlement reached with the Detroit Fire Fighters Association, Local 344, on December 8, 2003, and in any like or related manner, bargaining in bad faith with the Detroit Fire Fighters Association, Local 344.

WE WILL execute the December 8, 2003 settlement of grievances nos. 03 and 04, and pay interest at the statutory rate from January 15, 2004, until paid.

All of our employees are free to engage in lawful, concerted activity through representatives of their own choice for the purpose of collective bargaining or other mutual aid or protection as provided by Section 9 of the Public Employment Relations Act.

CITY OF DETROIT (FIRE DEPARTMENT)

BY: _____

TITLE: _____

Dated: _____

This notice must remain posted for a period of thirty consecutive days. Respondent shall take reasonable steps to prevent the removal or defacement of the notice. Questions about this notice shall be directed to the Michigan Employment Relations Commission, 3026 W. Grand Blvd, Ste. 2-750, Box 02988, Detroit, MI 48202. Phone (313) 456-3510.