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

In the Matter of:

CITY OF DETROIT (WATER DEPARTMENT),
Respondent-Public Employer,

Case No. C04 D-104

-and-

PLUMBERS UNION, LOCAL 98,
Charging Party-Labor Organization.
_____/

APPEARANCES:

City of Detroit Law Department, by Andrew Jarvis, Esq., Assistant Corporation Counsel, for Respondent

Law Offices of J. Douglas Korney, by J. Douglas Korney, Esq., for Charging Party

## DECISION AND ORDER

On August 3, 2005, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Nora Lynch, Commission Chairman

_____
Nino E. Green, Commission Member

Dated: _____

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## DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

On April 19, 2004, Plumbers Union, Local 98, filed an unfair labor practice charge alleging that the City of Detroit (Water Department) violated Section 10(1)(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The charge states:

> Since on or about February 27, 2004, the public employer, through its representative, Louise Liberman, has improperly interfered with the contractual obligations of its subcontractor, Centerline Piping, Inc., by failing and refusing to grant Kevin Sullivan access to the City of Detroit Wastewater Treatment Plant.

A hearing in this matter was scheduled for October 5, 2004. At a prehearing conference on October 4, 2004, I indicated to the parties that the allegations set forth by the Union did not appear to state a valid claim against Respondent under PERA. Pursuant to Rule 165, R 423.165 of the Commission's General Rules and Regulations, I directed the Union to show cause why the charge should not be dismissed. The parties waived their right to oral argument and instead agreed to file written briefs addressing the issue of whether PERA governs the allegations set forth in the charge. The Union filed its brief on February 25, 2005, and the City filed a response brief on March 18, 2005.

Facts:

The following facts are derived from the pleadings and briefs filed by the parties in this matter. Charging Party is the bargaining representative for employees of Centerline Plumbing, Inc (Centerline), a private employer. Charging Party and Centerline are parties to a collective bargaining agreement which states that employees may only be disciplined or discharged based upon a showing of just cause. The contract between the Union and Centerline also contains a grievance procedure culminating in arbitration.

Respondent contracted with Centerline to perform certain construction services at the City's wastewater treatment plant. Kevin Sullivan was an employee of Centerline and covered by its contract with Charging Party. Sullivan was assigned to work in the City's wastewater treatment plant. On December 10, 2003, Sullivan was removed from the plant at the direction of City representatives. He was subsequently terminated by Centerline.

On January 26, 2004, Charging Party filed a grievance with Centerline claiming that Sullivan's discharge was without just cause. On February 4, 2004, following an investigation into the matter, Centerline determined that the grievance had merit and that Sullivan should be reinstated and reassigned to his former position at the wastewater treatment plant. On February 23, 2004, a business agent for Charging Party wrote to the City explaining what had transpired and requesting that Sullivan be granted access to the plant. The City did not respond to Charging Party's letter and refused to allow Sullivan onto its property.

Discussion and Conclusions of Law:

Charging Party alleges that Respondent violated Section 10(1)(a) of PERA by refusing to allow Sullivan onto its property to perform work for Centerline Piping, Inc, a private company. Section 10(1)(a) prohibits a public employer from interfering with, restraining or coercing "*public employees* in the exercise of their rights guaranteed by section 9." (Emphasis supplied.) It is well established that PERA addresses the rights and privileges of public rather than private employees. See e.g. *Lansing v Schlegel*, 257 Mich App 627 (2003), aff'g *City of Lansing*, 2001 MERC Lab Op 403. Section 1 of PERA defines "public employee" as "a person holding a position by appointment or employment in the government of this state, in the government of 1 or more of the political subdivisions of this state, in the public school service, in a public or special district, in the service of an authority, commission, or board, or in any other branch of the public service . . . ." In the instant case, neither Sullivan nor any of the members of Charging Party's bargaining unit are public employees as that term is defined under PERA.

Nevertheless, Charging Party contends that the protections of PERA should be extended to Centerline and its employees because Respondent, by inviting the subcontractor onto its property, surrendered its rights and defenses and agreed to be bound by the grievance/arbitration provisions of the contract between the Plumbers Union, Local 98, and Centerline. In support of this contention, Charging Party cites the decision of the National Labor Relations Board in *Wolgast Corp*, 334 NLRB 203 (2001), enf'd 349 F3d 250 (CA 6 2003). I find that Charging Party's reliance on *Wolgast* is wholly misplaced. *Wolgast* concerns the issue of whether a

general contractor may deny access to a jobsite to nonemployee union representatives who seek to communicate with employees of a subcontractor represented by the union where a visitation clause in the contract between the subcontractor and the union permits such access. In fact, the Sixth Circuit, in enforcing the Board's decision in *Wolgast*, explicitly rejected any suggestion that a general contractor is "bound" to a contract term to which it is not a party. 349 F3d at 256. I conclude that the Commission lacks subject matter jurisdiction over this charge because Sullivan is not a public employee covered by PERA.

For the reasons set forth above, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated: _____