STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

CITY OF IRON MOUNTAIN,
Respondent–Public Employer,

Case No. C05 A-010

- and -

AFSCME COUNCIL 25, LOCAL 1176,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Nantz, Litowich, Smith & Girard, by Grant T. Pecor, Esq., for the Public Employer

Roger Smith, Staff Specialist, for the Labor Organization

DECISION AND ORDER

On June 23, 3005, Administrative Law Judge Roy L. Roulhac 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
MOTION FOR SUMMARY DISPOSITION

On January 12, 2005, Charging Party AFSCME Council 25, Local 1176, filed an unfair labor practice charge against Respondent City of Iron Mountain. The charge reads:

> That on l0/25/04 the City of Iron Mountain City Commission changed benefit levels specifically in health care benefit levels after being notified by the Union of its intent to organize said employees by requesting voluntary recognition as required by the MERC. On l0/8/04, Union requested the MERC to reinstate lost benefits and ordered the Employer to reinstate benefits to the level in affect prior to l0/8/04 and reimburse affected employees for any out of pocket costs associated with the change in benefit levels. [sic]

On May 13, 2005, Respondent filed a motion for summary disposition. It claims that since its decision to amend the retiree health insurance plan for non-represented employees was made prior to Charging Party's certification, it was not required by the Public Employment Relations Act, MCL 423.201 *et. seq.*, to bargain with Charging Party prior to implementing the amendments.

Facts:

The facts are undisputed. Charging Party and Respondent are parties to a collective bargaining agreement that covered the period July 1, 2000 through June 30, 2004. Charging Party represents a bargaining unit of all full and part-time employees,

excluding a foreman and certain seasonal employees, who work in Respondent's public works department. The International Association of Fire Fighters and the Police Officers Labor Council, represents fire and police department employees, respectively.

In an October 8, 2004 letter to Respondent, Charging Party requested that Respondent grant voluntary recognition of "All City Hall Employees, excluding City Manager and Chief Financial Officer" and requested that these employees be accreted to its existing unit. The proposed bargaining unit included the following positions: chief of police; fire chief; assessor/code enforcement/zoning administrator; city clerk/treasurer; assistant finance officer; deputy clerk/treasurer; water account clerk; account clerk/ computer operations and cemetery sexton. Respondent answered Charging Party's letter on October 15, and indicated that it would not grant voluntary recognition.

Thereafter, on November 4, Charging Party filed a petition for election seeking certification as the bargaining representative of the above described unit. Respondent agreed to a consent election for a bargaining unit consisting of the assistant finance officer, deputy clerk/treasurer, water account clerk and account clerk/computer operations. Charging Party received a majority of the ballots cast on January 25, and the Michigan Employment Relations Commission (Commission) issued a certificate of representation on February 23, 2005.

In the meantime, sometime before October 8, 2004, Respondent prepared an amendment to its retiree health care benefit policy and scheduled a vote on the amendments by the Iron Mountain City Commission for October 25, 2004. The amended policy, which applied to all non-represented employees, including the four employees who subsequently voted to be represented by Charging Party, was adopted.

Conclusions of Law:

Charging Party cites Section 27 of the Labor Mediation Act (LMA), MCL 423.27, to support its claim that the Commission requires labor organizations to request voluntary recognition prior to submitting a petition for election under PERA. Charging Party contends that Respondent violated its duty to bargain by implementing changes to its retiree health insurance policy after it requested voluntary recognition on October 8, 2004.

I find no legal support for Charging Party's arguments. First, Respondent, a public employer, is not governed by the LMA, a statute that regulates the relationship between labor organizations and private employers. Second, the Commission has never interpreted the LMA, or Section 12 of PERA, MCL 423.212, which mirrors the language of Section 423.27 of the LMA, to require a labor organization to request voluntary recognition prior to submitting a petition for election.[1] Rather, the Commission has long

[1]Section 27 of the LMA and Section 12 of PERA reads in pertinent parts as follows: When a petition is filed . . . (a) By an employee or group of employees, or an individual or labor organization . . . alleging that 30% or more of the employees within a unit claimed to be appropriate for such purpose wish to be

held that an employer is not obligated to bargain decisions that were made prior to a labor organization's certification. *Adrian Pub Schs*, 1994 MERC Lab Op 298*; S Macomb Hospital*, 1972 MERC Lab Op 968; *Oakland Community College*, 1971 MERC Lab Op 543. In this case, Respondent not only decided to amend the retiree health insurance plan for non-represented employees prior to Charging Party's certification, it prepared the retiree plan amendment and scheduled it for a vote prior to October 8, 2004, when Charging Party requested voluntary recognition.

Based on the above discussion, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____

represented for collective bargaining and that their employer declines to recognize their representative . . . (b) . . . the commission shall investigate the petition . . .