

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

In the Matter of:

CITY OF PONTIAC,
Public Employer - Respondent,

Case No. C06 L-302

-and-

CYNTHIA CARR-LEE,
An Individual Charging Party.

APPEARANCES:

Cynthia Carr-Lee, *In Propria Persona*

DECISION AND ORDER

On January 19, 2007, Administrative Law Judge Doyle O'Connor 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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An Individual Charging Party.

APPEARANCES:

Cynthia Carr-Lee, in *propria persona*, for the Charging Party

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE**

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 for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Findings of Fact:

Cynthia Carr-Lee (Charging Party) alleges that her employer violated the Union contract. She additionally alleges that the Employer has failed to carry out its duty to bargain with her exclusive bargaining agent, Teamsters Local 214. 1Charging Party did not respond to an order to show cause, which was issued on December 21, 2006.

Discussion and Conclusions of Law:

The charge that the Employer violated the union contract does not state a claim under the Act. A breach of contract is not in itself an unfair labor practice. *J O Mutch Co*, 1966 MERC Lab Op 314. An employee does not state a claim under PERA simply by alleging that his or her employer has violated the collective bargaining agreement. *City of Detroit Wastewater Treatment Plant*, 1993 MERC Lab Op 793, 794; *Ferris State College*, 1978 MERC Lab Op 757, 762-763. An unfair labor

1 A charge against Teamsters Local 214 was filed in Case No. CU06 L-055, which is the subject of a separate decision.

practice proceeding is not the proper forum for the adjudication of a contract dispute. *Village of Romeo*, 2000 MERC Lab Op 296. As the Commission stated in *St Clair Co Road Comm*, 1992 MERC Lab Op 533 at 538:

Where there is a contract covering the subject matter of the dispute, which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the Commission finds that the contract controls and no PERA issue is present.

Additionally, absent any evidence or allegation that the Employer was motivated by animus as a result of union or other activity protected by Section 9 of PERA, the Commission does not have jurisdiction to make a judgment on the merits or fairness of the actions complained of by the Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation that the employer was motivated by union or other activity protected by PERA, the charge against the employer fails to state a claim upon which relief can be granted.

Further, regarding the assertion that the Employer has failed to bargain with the Teamsters, Charging Party lacks standing to bring a charge under PERA Section 10 (1)(e), which regulates the relationship between an employer and a labor organization certified as an exclusive bargaining agent and which does not create individual rights. *Coldwater Community Schools*, 1993 MERC Lab Op 94.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____