STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

-and-

Case No. C13 G-135
Docket No. 13-008109-MERC

TEAMSTERS LOCAL 214,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Wayne A. Rudell, for Charging Party

DECISION AND ORDER

On January 13, 2016, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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 either 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: February 29, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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TEAMSTERS LOCAL 214,
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APPEARANCES:

Wayne A. Rudell, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On August 8, 2013, Teamsters Local 214 filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the City of Detroit pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On December 9, 2015, pursuant to my authority under Rule 1513 of the Administrative Rules of the Michigan Administrative Hearing System, R 792.11513, I issued an order to Charging Party to show cause in writing why its charge should not be dismissed on the grounds that it failed to state a claim upon which relief could be granted under PERA because, at the time of the alleged unfair labor practice, Respondent had no statutory duty to bargain with the Charging Party. Charging Party did not respond to my order.

The Unfair Labor Practice Charge and Facts:

The facts as alleged in the charge are as follows. Charging Party represents a bargaining unit of employees of the City of Detroit employed in its Department of Public Works. According to the charge, in late May 2013, representatives of the parties met to discuss how radioactive or potentially radioactive materials should be handled by bargaining unit employees and the protocols to be followed by employees who might handle these materials. The parties also discussed how Charging Party might obtain information necessary for it to perform its

representative function. Respondent disclosed that its representatives planned to discuss the handling of radioactive materials at a series of scheduled management meetings. According to Charging Party, the parties agreed that Derrick Reeves, a Charging Party steward, would be permitted to attend these meetings. However, shortly before the first meeting, held on June 12, 2013, Respondent changed its mind and refused to permit Reeves to attend that or any subsequent meeting held to address the handling of radioactive materials.

The August 8, 2013, charge in this case alleges that Respondent violated its duty to bargain in good faith, including its obligation to provide Charging Party with information relevant to its obligations to represent employees, by refusing to permit Reeves to attend meetings held to discuss safety protocols for handling potentially radioactive materials. The charge was immediately placed in abeyance because of the pending bankruptcy proceeding involving the City of Detroit. On August 26, 2015, I notified the parties that unless a party believed that this would be in contravention of a court order, I would place the case back on my active docket. Neither party responded. On December 9, 2015, as indicated above, I issued an order to Charging Party to show cause why the charge should not be dismissed.

The following additional facts are public knowledge widely reported in the press and detailed at http://www.michigan.gov/treasury, the website of the Michigan Department of Treasury. In 2012, Respondent entered into a consent agreement with the State of Michigan under the Local Government and School District Fiscal Accountability Act, 2011 PA 4. In November 2012, 2011 PA 4 was repealed by referendum of the voters. The repeal had the effect of reviving a predecessor statute, the Local Government Fiscal Responsibility Act, 1990 PA 72. Both 1990 PA 72 and 2011 PA 4 allowed for the appointment of an emergency financial manager when the Governor determined that a municipality was experiencing a local government financial emergency. A third statute providing for the appointment of an emergency manager, the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1543 et seq., was adopted by the Legislature near the end of 2012 and took effect on March 28, 2013.

On March 14, 2013, Governor Rick Snyder confirmed the existence of a financial emergency in the City of Detroit and Kevin Orr was appointed emergency financial manager under 1990 PA 72. On March 26, 2013, the Governor reconfirmed Orr's status as emergency manager under the new 2012 PA 436. Under §9(2) of 2012 PA 436, the appointment of an emergency manager placed Respondent "in receivership" within the meaning of the statute. On July 18, 2013, Respondent filed a bankruptcy petition in the Federal Bankruptcy Court. On December 14, 2014, Governor Snyder declared Respondent's financial emergency to have terminated.

Discussion and Conclusions of Law:

Section 27(3) of 2012 PA 436, MCL 141.1567, states:

> A local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.

Section 15(1) of PERA reads as follows:

> A public employer shall bargain collectively with the representatives of its employees as described in section 11 and may make and enter into collective bargaining agreements with those representatives. Except as otherwise provided in this section, for the purposes of this section, to bargain collectively is to perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or make a concession.

The Commission has consistently found that an employer's obligation to bargain in good faith under §15(1) and §10(1)(e) of PERA requires an employer to supply, in a timely manner, information requested by the union to allow it to bargain intelligently and fulfill its statutory obligations as bargaining agent. See e.g., *Washtenaw Cmty College,* 1968 MERC Lab Op 956, 959*; City of Lowell,* 28 MPER 62 (2015).

The charge in this case alleges that Respondent violated its duty to bargain in good faith under §15(1), including its duty to provide Charging Party with information Charging Party had requested that was relevant to its obligations to represent its members. However, at the time of the events alleged to constitute the unfair labor practice, Respondent was under the control of an emergency manager and in receivership. Therefore, under §27(3) of 2012 PA 436, it was not subject to the duty to bargain which §15(1) imposes upon public employers.

The failure of a charging party to file a timely response to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). I conclude in this case that Charging Party failed to state a claim upon which relief could be granted under PERA because, as Respondent was not subject to a duty to bargain under §15(1) of PERA at the time of the alleged unfair labor practice, the charge does not state a claim upon which relief could be granted under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: January 13, 2016