

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

In the Matter of:

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

-and-

Case No. C14 D-048  
Docket No. 14-007602-MERC

DETROIT POLICE LIEUTENANTS AND SERGEANTS ASSOCIATION,  
Labor Organization-Charging Party.

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**APPEARANCES:**

Peter P. Sudnick, 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

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: February 29, 2016

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF DETROIT (POLICE DEPARTMENT),  
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DETROIT POLICE LIEUTENANTS AND SERGEANTS ASSOCIATION,  
Labor Organization-Charging Party.

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APPEARANCES:

Peter P. Sudnick, for the Charging Party

**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE  
ON SUMMARY DISPOSITION**

On April 22, 2014, the Detroit Police Lieutenants and Sergeants Association filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the City of Detroit (Police Department) 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, R792.11513, 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:

Charging Party represents a bargaining unit of employees of the City of Detroit Police Department holding the supervisory classifications/ranks of Police Investigator, Police Sergeant, Police Sergeants-Promotion List, Senior Communications Officer– Police Sergeant, Senior Radio Maintenance Office–Police Sergeant, Police Sergeant–Chemist, Police Lieutenant, Assistant Supervisor of Operators–Police Lieutenant, Supervisor of Radio Systems and Planning–Police

Lieutenant, Supervisor of Operators– Police Lieutenant, Supervisor of Radio Maintenance–Police Lieutenant, and Supervisor of Firearms Identification and Explosives–Police Lieutenant.

The charge asserts that on or about December 5, 2013, Respondent created a new position, Police Detective, in a bargaining unit comprised of nonsupervisory police officers. This unit is represented by the Detroit Police Officers Association (DPOA). According to the charge, Respondent then unilaterally transferred criminal investigation work formerly performed exclusively by members of Charging Party’s bargaining unit to the new position. Charging Party alleges that Respondent violated §10(1)(e) of PERA by unilaterally removing the work from its unit and transferring it to the DPOA bargaining unit.

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 the 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 under these circumstances, 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 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 petition for bankruptcy in the Federal Bankruptcy Court. On December 14, 2014, after Respondent emerged from bankruptcy, Governor Snyder declared its 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 charge in the instant case, filed on April 22, 2014, alleges that Respondent violated its duty to bargain under §15(1) and §10(1)(e) of PERA by unilaterally transferring bargaining unit work to members of another bargaining unit. However, at the time of the alleged unfair labor practice in December 2013, Respondent was under the control of an emergency manager and in receivership under 2012 PA 436. Under §27(3) of 2012 PA 436, it was, therefore, not subject to the duty to bargain with representatives of its employees 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

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Julia C. Stern  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: January 13, 2016