

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

In the Matter of:

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

Case No. C05 H-194

-and-

SOUTHEASTERN MICHIGAN HEALTH ASSOCIATION,  
Public Employer - Respondent,

-and-

AFSCME, COUNCIL 25,  
Labor Organization - Charging Party.

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**APPEARANCES:**

City of Detroit Law Department, by Valerie Colbert-Osamuede, Esq., for Respondent City of Detroit

Jacquelyn G. Schulte, Esq., for Respondent Southeastern Michigan Health Association

Miller Cohen, P.L.C., by Richard G. Mack, Jr., Esq., for Charging Party

**ORDER DENYING MOTION FOR RECONSIDERATION**

On March 20, 2008, the Commission issued its Order Denying Leave to File Exceptions in the above matter finding that Respondent Southeastern Michigan Health Association's (SEMHA) exceptions could not be considered because they were filed before a Decision and Recommended Order had been issued by the ALJ assigned to the matter. SEMHA had sought to appeal an ALJ's interim order denying its motion for summary dismissal by filing exceptions. Rule 161(6) of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.161(6), prohibits the filing of exceptions to an ALJ's interim order unless the order dismisses or sustains the unfair labor practice charge in its entirety. SEMHA failed to provide any authority that would allow the Commission to disregard Rule 161(6). Accordingly, we denied the request for leave to file exceptions.

On April 8, 2008, SEMHA submitted a letter to the Commission entitled, "Substantial Erroneous Assumptions in MERC Order Dated March 20, 2008." Because SEMHA objects to our Order, we will treat its letter as a motion for reconsideration of our earlier Order.<sup>1</sup> On or about

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<sup>1</sup> Neither Respondent City of Detroit nor Charging Party American Federation of State, County, and Municipal Employees (AFSCME), Council 25, submitted a response to SEMHA's motion.

April 9, 2008, SEMHA appealed our March 20, 2008 order to the Michigan Court of Appeals. Since the record has not yet been filed in the Court, we have proceeded to review SEMHA's motion for reconsideration pursuant to Section 16(c) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216(c).<sup>2</sup>

In its motion, SEMHA argues that the Commission erred by concluding that SEMHA withdrew its exceptions. At most, SEMHA has alleged a harmless error. If we were to find that SEMHA's exceptions had not been withdrawn, that would not change our conclusion that we could not appropriately review the exceptions. Even if SEMHA had not sent the e-mail that we interpreted as a request to withdraw the exceptions, the Commission would still have been required to deny SEMHA leave to file exceptions pursuant to Rule 161(6) of the Commission's General Rules. Rule 161(6) provides:

Rulings by an administrative law judge on any motion, *except a motion resulting in a ruling dismissing or sustaining the unfair labor practice charge in its entirety*, shall not be appealed directly to the commission, but shall be considered by the commission only if raised in exceptions or cross exceptions to the proposed decision and recommended order filed under R 423.176. (Emphasis added.)

The ALJ's interim order to which SEMHA sought to file exceptions neither dismissed nor sustained the unfair labor practice charge. Therefore, pursuant to Rule 161(6), SEMHA's exceptions to the ALJ's interim order could not be considered. Neither SEMHA's exceptions nor its motion for reconsideration cite any authority that would allow the Commission to make an exception to Rule 161(6). Accordingly, we find that SEMHA has not set forth grounds for reconsideration.

### **ORDER**

The motion for reconsideration is denied.

#### MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

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<sup>2</sup> Section 16(c) of PERA provides, "Until the record in a case has been filed in a court, the commission at any time, upon reasonable notice and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it."