

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

In the Matter of:

CITY OF DETROIT, DEPARTMENT  
OF WATER & SEWERAGE,  
Public Employer-Respondent,

-and-

MERC Case No. C15 E-060  
Hearing Docket No. 15-033561

MICHIGAN AFSCME COUNCIL 25, AFL-CIO &  
ITS AFFILIATED LOCALS 207, 2920 & 2394,  
Labor Organization-Charging Party.

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**APPEARANCES:**

Steven H. Schwartz & Associates, P.L.C., by Steven H. Schwartz, for Respondent

Shawntane Williams, Staff Attorney, for Charging Party

**DECISION AND ORDER**

On December 22, 2016, Administrative Law Judge David M. Peltz issued his 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 3, 2017

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

In the Matter of:

CITY OF DETROIT, DEPARTMENT  
OF WATER & SEWERAGE,  
Respondent-Public Employer,

-and-

Case No. C15 E-060  
Docket No. 15-033561-MERC

MICHIGAN AFSCME COUNCIL 25, AFL-CIO &  
ITS AFFILIATED LOCALS 207, 2920 & 2394,  
Charging Party-Labor Organization.

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**APPEARANCES:**

Steven H. Schwartz & Associates, P.L.C., by Steven H. Schwartz, for Respondent

Shawntane Williams, Staff Attorney, for Charging Party

**DECISION AND RECOMMENDED ORDER  
ON SUMMARY DISPOSITION**

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 to David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC). I make the following findings of fact and conclusions of law based upon the pleadings and briefs filed by the parties in this matter.

**The Unfair Labor Practice Charge and Procedural History:**

This case arises from an unfair labor practice charge filed on May 4, 2015, by Michigan AFSCME Council 25, AFL-CIO and its affiliated Locals 207, 2920 and 2394 against the City of Detroit, Department of Water & Sewerage (DWSD). The Union asserts that on or about November 21, 2014, the Employer violated PERA by unilaterally imposing new work rules on members of the bargaining units named in the charge. According to the Union, the new rules, which are entitled "The Way We Work DWSD Polices, Rules and Guidelines," effectively allow the DWSD to discipline employees at its discretion.

The case was initially placed in adjourned without date status due to the bankruptcy proceeding involving the City of Detroit. An evidentiary hearing was ultimately scheduled for December 22, 2015. The hearing was adjourned numerous times at the request of the parties.

On May 20, 2016, Respondent filed a motion for summary disposition asserting that it had no duty to bargain with Charging Party because Locals 207 and 2394 were subject to the City Employment Terms (CET) which expressly authorized the DWSD to unilaterally implement revisions to its work rules. With respect to Local 2920, the DWSD argued that the matter was governed by the collective bargaining agreement in effect between the parties and that any dispute regarding interpretation of that agreement should be resolved through the contractual grievance procedure. Finally, Respondent asserted that the work rules were revised pursuant to a court order issued by Federal District Judge Sean F. Cox on November 4, 2012, and that the same order enjoined the Commission from exercising jurisdiction over charges filed regarding actions taken by Respondent to comply with the court's order.

Charging Party filed a response to the DWSD's motion for summary disposition on July 21, 2016. The Union asserted that Respondent's implementation of the new work rules was in direct conflict with the CET governing Locals 207 and 2394 and contrary to the terms of the collective bargaining agreement between the DWSD and Local 2920.

Following receipt of the Union's response, I scheduled a pretrial conference with the parties. The conference was held by telephone on November 3, 2016. During the conference, I sua sponte raised the issue of whether the charge must be dismissed on the basis that the Local Financial Stability and Choice Act, PA 436 of 2012, MCL 141.1541 *et seq.*, suspended Section 15(1) of PERA for employers who, like Respondent, were in receivership. The Union's attorney, Shawntane Williams, agreed that if Kevin Orr, the emergency manager (EM) appointed by Governor Rick Snyder, was still serving in that position when the new work rules were implemented, Respondent had no duty to bargain with Charging Party and dismissal of the charge would be appropriate. The parties indicated that they would seek to determine the precise date upon which Orr resigned as EM and convey that information to the undersigned.

By email dated November 23, 2016, Williams acknowledged that Orr "was still in office at the time of the ULP filing and therefore there was no duty to bargain." Despite that stipulation, however, Williams indicated that the Union would not withdraw its charge.

#### Discussion and Conclusions of Law:

Ordinarily, a party violates Section 10(1)(e) of PERA if it unilaterally modifies a term or condition of employment, unless that party has fulfilled its statutory bargaining obligation or has been freed from it. *Port Huron Education Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 317 (1996). Claims alleging a unilateral change in terms and conditions of employment and/or a contract repudiation are premised upon the duty to bargain set forth in Section 15(1) of PERA, which obligates parties to bargain in good faith over "wages, hours and other terms and conditions of employment." MCL 423.215(1). Section 15(1) of PERA provides:

The 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 purposes of this section, to bargain collectively is to perform a 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 to make a concession.

On March 13, 2013, Governor Snyder confirmed the existence of a financial emergency in the City of Detroit and appointed Kevin Orr as EM under the authorizing statute then in effect, the Local Government Fiscal Responsibility Act (PA 72), MCL 141.1519. Effective March 28, 2013, PA 72 was replaced by PA 436 which suspended the duty to bargain set forth in Section 15(1) of PERA where an emergency manager is in place. See MCL 141.1567(3). Section 27(3) of PA 436 provides, “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.” Act 436 defines receivership as “the process . . . by which a financial emergency is addressed through the appointment of an emergency manager.” MCL 141.1542(q). PA 436 provides, in Section 31, that an EM appointed under PA 72 would continue to act in that capacity for the local government under the new law. MCL 141.1571.

As previously noted, there is no dispute in this matter that Kevin Orr was still serving as EM for the City of Detroit on November 21, 2014, the date upon which the new work rules were allegedly implemented. Because Respondent was in receivership on that date, it had no obligation to bargain with Charging Party over implementation of the new rules and, therefore, its refusal to do so did not violate Section 10(1)(e) of the PERA. As the Commission recognized in *City of Detroit*, 27 MPER 6 (2013) (suspension of duty to bargain also suspends the authority of an Act 312 arbitrator in a pending arbitration), “there can be no breach of duty if there is no duty.” See also *City of Detroit*, 29 MPER 59 (no exceptions) (charge dismissed where the employer was under the control of an emergency manager at the time of the allegedly unlawful action); *City of Flint*, 27 MPER 31 (2013) (no exceptions) (employer did not unlawfully refuse to bargain over elimination of release time for union president where duty to bargain had been suspended due to appointment of an emergency financial manager); *City of Inkster*, 27 MPER 35 (2013) (no obligation to bargain over implementation of furlough days where bargaining duty was statutorily suspended).

For the reasons stated above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Michigan AFSCME Council 25, AFL-CIO and its affiliated Locals 207, 2920 and 2394 against the City of Detroit, Department of Water & Sewerage (DWSD) in Case No. C15 E-060; Docket No. 15-033561-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: December 22, 2016