

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF HARPER WOODS,
Public Employer-Respondent in Case No. 19-A-0089-CE and 19-A-0088-CE,

-and-

SANDRA HERNDEN,
An Individual-Charging Party in Case No. 19-A-0089-CE,

-and-

ANTHONY ABDALLAH,
An Individual-Charging Party in Case No. 19-A-0088-CE

APPEARANCES:

Sandra Hernden and Anthony Abdallah, appearing for themselves

DECISION AND ORDER

On July 9, 2019, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order¹ 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 any of the parties.

¹MOAHR Hearing Docket Nos. 19-002678 & 19-002680

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



Edward D. Callaghan, Commission Chair



Robert S. LaBrant, Commission Member



Natalie P. Yaw, Commission Member

Issued: AUG 21 2019

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF HARPER WOODS,
Public Employer-Respondent in Case No. 19-A-0089-CE/19-002678-MERC
and 19-A-0088-CE/19-002680-MERC,

-and-

SANDRA HERNDEN,
An Individual-Charging Party in Case No. 19-A-0089-CE/19-002678-MERC,

-and-

ANTHONY ABDALLAH,
An Individual-Charging Party in Case No. 19-A-0088-CE/19-002680-MERC

APPEARANCES:

Sandra Hernden and Anthony Abdallah, appearing for themselves

DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION

On January 28, 2019, Sandra Hernden and Anthony Abdallah, both police officers employed by the City of Harper Woods (the Employer), filed the above unfair labor practice charges with the Michigan Employment Relations Commission (the Commission) against their employer pursuant to Section 10 and 16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, MCL 216. Herndon and Abdallah both also filed charges against their collective bargaining representative, the Michigan Fraternal Order of Police Labor Council (the Union); Herndon filed a separate charge against its local affiliate, the Harper Woods Patrol Union.¹ Pursuant to Section 16 of that Act, the two charges against the Employer were consolidated and assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules (formerly the Michigan Administrative Hearing System.)

¹ Case No. 19-A-0090-CU/19-002679-MERC, Case No. 19-A-0094-CU/19-002674-MERC, and Case No. 19-A-0093-CU/19-002682-MERC. These charges were also assigned to me. The charges were consolidated and heard on March 25, 2019. On July 9, 2019, I issued a Decision and Recommended Order recommending that these charges be dismissed.

Pursuant to Rule 165(d) of the Commission's General Rules, 2002 AACS, 2014 AACS, R 423.165(d), on February 20, 2019, I issued an order to Hernden and Abdallah to show cause why their charges against the Employer should not be dismissed for failure to state a claim upon which relief can be granted under PERA. Neither Hernden nor Abdallah responded to my order.

The Unfair Labor Practice Charges and Pertinent Facts:

The charges filed by Hernden and Abdallah against the Employer are merely copies of the charges they filed against the Union. On January 21, 2019, the Union held a meeting of its members to vote on whether to ratify a tentative agreement on the terms of a new collective bargaining agreement. The tentative agreement was reached at the bargaining table on January 15, 2019. At the meeting, the members voted nine to seven to accept the agreement. One member, who was prevented by the Employer from leaving her post to come and vote, was permitted by the Union to cast her ballot after the ballots had already been counted. Another member who was not present at the meeting also asked to have his ballot counted, but this request was denied. The final count for the election was nine to eight to accept the agreement.

Hernden's and Abdallah's charges allege various improprieties by the Union in connection with this election. These include the following actions by Local Union President David Holfelder. Officer Stephen Johnson, a member of the Union's bargaining unit, was present at the January 21, 2019, meeting and cast a ballot in the election. The tentative agreement included a chart with each unit member's step placement on the agreement's new salary schedule effective January 1, 2019. During the discussion that preceded the vote, Johnson complained to the Union about his placement. Johnson asserted that based on his months of service, he should have been placed at the next higher step on the salary schedule. On January 22, 2019, the day after the election, Local Union President David Holfelder called Johnson and told him that he would raise his pay concern with the Employer City Manager Joe Rheker. Later that same day, Holfelder called Johnson again and told him that Rheker had agreed to move Johnson to the next higher step. According to the charge, Holfelder then asked Johnson if this would change his vote on the ratification. Rheker's agreement to this change, apparently at Holfelder's request, was the only act by an Employer representative mentioned in Hernden's and Abdallah's charges.

Discussion and Conclusions of Law:

The actions by public employer constituting unfair labor practices under PERA are enumerated in Section 10(1) of PERA. First, Section 10(1)(a) of PERA prohibits a public employer from interfering with or coercing its employees in the exercise of their rights under Section 9 of that Act. The rights set out in Section 9 are the right to form, join, or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from engaging in any or all of these activities. Section 10(1)(b) of PERA prohibits a public employer from unlawfully assisting or

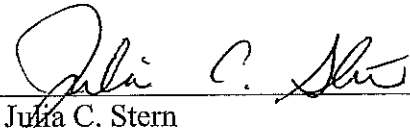
attempting to dominate a labor organization. Section 10(1)(c) makes it unlawful for a public employer to discriminate against its employees with respect to their wages or terms or conditions of employment because they have engaged in, or refused to engage in, union activity. Section 10(1)(e) prohibits it from refusing to bargain in good faith with a labor organization that is the exclusive representative of its employees.

As noted above, the only act by an Employer representative mentioned in either Hernden's or Abdallah's charge is Rheker's agreement, at Holfelder's request, to change Johnson's placement on the salary schedule in the new contract. Neither Hernden's nor Abdallah's charges cite any section of PERA Rheker allegedly violated by this agreement and neither explains why his agreement violated that statute. As noted above, neither Charging Party responded to my February 20, 2019 order that they do so. Under Commission Rule 165(h), the failure to respond to a show cause order may be grounds for dismissing a charge, and the Commission has held that a Charging Party's failure to adequately respond to a show cause order may, in itself, warrant dismissal of the charge. *AFSCME Council 25, Local 207, 23 MPER 99 (2010)*. I conclude that Hernden's and Abdallah's charges do not allege a violation of PERA by the Employer upon which relief can be granted. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charges filed by Hernden and Abdallah are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Julia C. Stern
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: July 9, 2019