

STATE OF MICHIGAN
COURT OF APPEALS

RETIRED DETROIT POLICE AND FIRE
FIGHTERS ASSOCIATION,

UNPUBLISHED
February 6, 2007

Plaintiff-Appellee,

v

CITY OF DETROIT, MAYOR OF DETROIT, and
DETROIT CITY COUNCIL,

No. 272235
Wayne Circuit Court
LC No. 05-505684-CZ

Defendants-Appellants.

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order directing defendants to engage in collective bargaining with various unions to implement a city charter provision regarding the composition of the retirement plan board of trustees. Because charter provisions enacted pursuant to the Home Rules Cities Act cannot contravene the obligations of the Public Employee Relations Act, we reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Article 11 of the Detroit City Charter requires the city to “provide, by ordinance, for the establishment and maintenance of retirement plan coverage for city employees.” Detroit Charter, Part I, Article 11, § 11-101. It directs that there be two governing bodies to administer the retirement plans, one for the general retirement system and one for the police and fire retirement system. *Id.*, § 11-103. As amended by the voters in the 1996 election, effective January 1, 1997, the charter provides that a twelfth member be added to the board of trustees overseeing the police and fire retirement system, which member is to be a “retirant, receiving benefits under the retirement system who shall be a resident of the city and elected by retired firefighters and police officers under procedures established by ordinance.” *Id.*, § 11-103(2)(H). On plaintiff’s motion for summary disposition, the trial court issued an order requiring that defendants “take all reasonable actions, including bargaining with the unions representing active-duty police and fire employees, in order to implement and give effect to” § 11-103(2)(H).

“Mandamus is a writ issued by a court of superior jurisdiction to compel a public body or public officer to perform a clear legal duty.” *Lee v Macomb Co Bd of Comm’rs*, 235 Mich App 323, 331; 597 NW2d 545 (1999), rev’d on other grounds 464 Mich 726 (2001). Such a writ may be issued where (1) the plaintiff has a clear legal right to performance of the specific duty sought,

(2) the defendant has a clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result. *Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001). The party seeking the writ has the burden of proving entitlement to such relief. *Keaton v Village of Beverly Hills*, 202 Mich App 681, 684; 509 NW2d 544 (1993). The trial court's decision regarding an order of mandamus is reviewed for an abuse of discretion. *Baraga Co v State Tax Comm*, 466 Mich 264, 268-269; 645 NW2d 13 (2002). A trial court's decision on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

The Public Employment Relations Act (PERA), MCL 423.201 *et seq.*, obligates a public employer to “bargain collectively with the representatives of its employees as defined in section 11” MCL 423.215(1). “Representatives designated or selected by the majority of the public employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the public employees in such unit for the purposes of collective bargaining” MCL 423.211. “[T]he composition of the Boards of Trustees of the General Retirement System and the Policemen and Firemen Retirement System of the City of Detroit is a mandatory subject of bargaining.” *Detroit v Michigan Council 25, AFSCME*, 118 Mich App 211, 219; 324 NW2d 578 (1982). A public employer's refusal to bargain collectively over mandatory subjects with the representatives of its public employees constitutes an unfair labor practice. MCL 423.210(1)(e); MCL 423.216; *West Ottawa Ed Ass'n v West Ottawa Pub Schools Bd of Ed*, 126 Mich App 306, 314; 337 NW2d 533 (1983).

Plaintiff has failed to show that it has a clear legal right to performance of the act requested. The duty owed by defendants to bargain collectively is owed to the employees' representatives, i.e., those “designated or selected for purposes of collective bargaining” MCL 423.211, and plaintiff, while a representative of its members, does not purport to be a representative designated or selected for collective bargaining. Nor has plaintiff shown that defendant has a clear legal duty to implement the charter provision at issue. The composition of the board of trustees is a matter subject to collective bargaining under the PERA. Charter provisions enacted pursuant to the Home Rule Cities Act cannot contravene the obligations imposed by the PERA. *Senior Accountants, Analysts & Appraisers Ass'n v Detroit*, 218 Mich App 263, 273; 553 NW2d 679 (1996). Therefore, the city cannot implement § 11-103(2)(H) unilaterally. Further, the public employer's and the union's obligation to bargain collectively does not require “either party to agree to a proposal or require the making of a concession.” MCL 423.215(1). Therefore, apart from the fact that the unions are not parties to this action and cannot be compelled to negotiate with defendants, neither side can be compelled to actually agree to implement § 11-103(2)(H). Therefore, the trial court erred in summarily granting plaintiff a writ of mandamus.

Reversed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio