

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

In the Matter of:

MELVINDALE-NORTHERN ALLEN PARK SCHOOL DISTRICT,
Respondent-Public Employer in Case No. C04 G-194,

-and-

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL
EMPLOYEES, COUNCIL 25,
Respondent-Labor Organization in Case No. CU04 G-036,

-and-

MICHAEL CAZABON,
An Individual Charging Party.

APPEARANCES:

Allen, James & Foley, P.C., by Kevin J. Foley, Esq., for the Public Employer

Miller Cohen, P.L.C., by Eric I. Frankie, Esq., for the Labor Organization

DECISION AND ORDER

On February 4, 2005, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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.

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

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

On July 21, 2004, Michael Cazabon filed unfair labor practice charges against his former employer, Melvindale-Northern Allen Park School District, and his Union, American Federation of State, County & Municipal Employees (AFSCME), Council 25. The charge in Case No. C04 G-194 alleges:

On May 9, 2003 I was terminated for failing to show up for work after coming off workman compensations [SIC] 5-4-03 even though I was off work with my doctor's excuse . . . until 5-12-03. A copy which you have. I was never notified by your office that I was to report before 5-12-03. In my opinion this was a wrongful termination.

With respect to the labor organization, the charge in Case No. CU04 G-036 states:

On Dec 16, 2003 I had a[n] arbitration hearing at 8:30 a.m. at Melvindale Schools. I failed to make this hearing due to car trouble for which I have receipts.

I was on my way to [a] meeting when this happened. I called home to have my parents notify the school which they did. I didn't get home until afternoon. I call[ed] Betty Gatson of Council 25 the next day and was told to request a live appeal for another hearing which I did and was denied. I am requesting [that] the union set up another arbitration hearing. Union letter of refusal is dated 2-3-04.

On December 17, 2004, the school district filed a motion for summary disposition alleging that the charge in Case No. C04 G-194 should be dismissed as untimely under Section 16(a) of the Public Employment Relations Act (PERA), MCL 423.216(a), and for failure to state a claim upon which relief could be granted under the Act. In an order entered on December 23, 2004, Charging Party was granted fourteen days in which to show cause why his charge in Case No. C04 G-194 should not be dismissed for the reasons stated in the school district's motion. Charging Party did not file a response to the order or any additional pleadings in this matter.

An evidentiary hearing was scheduled for January 26, 2005 at 10:00 a.m. in Detroit. A complaint and notice of hearing setting forth the date, time and place of the hearing was sent to Charging Party on August 10, 2004. The notice was not returned and Charging Party did not make a request to postpone the hearing. In fact, a few days before the hearing, Cazabon represented to a Commission court reporter that he would attend the hearing. However, Charging Party did not appear for hearing on that date, nor did he respond to a telephone message left for him that morning by the undersigned at his last known telephone number.

Section 72(1) of the Michigan Administrative Procedures Act, MCL 24.272, states that if a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of a party. I find that Charging Party was properly served with the notice of hearing; he failed to appear at the time, date and place scheduled for the hearing; and he did not produce evidence to support the allegations made in his charges. Therefore, I conclude that Charging Party failed to meet his burden of proving that the Respondents committed unfair labor practices in violation of PERA, and recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____