

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

In the Matter of:

PONTIAC SCHOOL DISTRICT,  
Respondent-Public Employer,

Case No. C04 L-319

-and-

DAVID MILLER,  
An Individual Charging Party.

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**DECISION AND ORDER**

On February 9, 2005, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was 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

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

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

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

On December 7, 2004, David Miller filed an unfair labor practice charge against the Pontiac School District. Miller alleges that the school district breached the collective bargaining agreement by laying him off from his position as a journeyman carpenter while retaining lower seniority employees, and by failing to pay him for vacation days earned during his 28 years of employment with the school district.

On December 16, 2004, Charging Party was granted fourteen days to show cause why his charges should not 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.

Charging Party filed a response to the order to show cause on January 3, 2005. Other than identifying the date of the layoff as July 27, 2004, the response essentially repeated the allegations which Miller had previously set forth in his charge.

I find that Charging Party has failed to state a claim for which relief can be granted under PERA. PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against Charging Party because he engaged in conduct protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the Employer's action. See e.g. *City of Detroit (Fire Dept)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. In the instant case, Miller has not alleged that the school district discriminated or retaliated against him because of union or other protected concerted activity. I, therefore, recommend that the Commission issue the following order:

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge

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