

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

In the Matter of:

BORTZ HEALTH CARE,
Respondent - Employer,

Case No. C07 L-227

-and-

PHYLLIS E. HANNA,
An Individual Charging Party.

APPEARANCES:

Phyllis E. Hanna, *In Propria Persona*

DECISION AND ORDER

On March 4, 2008, 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Phyllis E. Hanna *in pro per*

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case was assigned to David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. This matter comes before the Commission on an unfair labor practice charge filed by Phyllis E. Hanna on December 26, 2007. In the charge, Hanna alleges that Respondent Bortz Health Care acted unfairly in terminating her employment “without corporate investigation.”

In an order issued by the undersigned on January 14, 2008, Charging Party was granted fourteen days in which to show cause why the charge should not be dismissed for lack of jurisdiction and for failure to state a claim upon which relief can be granted. Charging Party did not respond to that order.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 2008 MPER ___ (Case No. CU07 B-006, issued January 9, 2008). In any event, I conclude that the charge fails to raise any cognizable issue under either the Public Employment Relations Act (PERA), 1965 PA 3709, as amended, MCL 423.210 and 423.216, or the Labor Relations and Mediation Act (LMA), 1939 PA 176 as amended, MCL 423.24.

With respect to employers, neither PERA nor the LMA prohibit all types of discrimination or unfair treatment. Moreover, the Commission is not charged with interpreting the terms of a

collective bargaining agreement to determine whether its provisions were followed. Rather, the Commission's jurisdiction with respect to employers is limited to determining whether the employer interfered with, restrained, and/or coerced an employee with respect to his or her right to engage in union or other protected activities. Absent an allegation that the employer interfered with, restrained, coerced or retaliated against the employee for engaging in such activities, 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 Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523; 524. In the instant case, Hanna has not alleged that Respondent discriminated or retaliated against her because of union or other protected activity. For that reason, the charge is subject to summary dismissal.

Due to Charging Party's failure to respond to the order to show cause, a question remains as to whether Bortz Health Care is public employer under PERA or a private employer for purposes of the LMA.¹ Regardless, in light of the above finding, it is not necessary that I address that issue. Despite having been given an opportunity to do so, Charging Party has alleged no facts from which it could be concluded that Respondent violated either PERA or the LMA. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____

¹ Under the doctrine of federal preemption, the Commission has jurisdiction to resolve unfair labor practices disputes involving private employers only when the NLRB or refuses to exercise jurisdiction. See e.g. *AFSCME v Dep't of Mental Health*, 215 Mich App 1 (1996).