

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,  
Public Employer-Respondent,

-and-

Case No. C08 F-132

WAYNE D. BERNARD,  
An Individual-Charging Party.

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**APPEARANCES:**

Wayne D. Bernard, *In Propria Persona*

**DECISION AND ORDER**

On August 13, 2008, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order 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.

**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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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,  
Respondent-Public Employer,

-and-

Case No. C08 F-132

WAYNE D. BERNARD,  
Charging Party.

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**APPEARANCES:**

Wayne D. Bernard, Charging Party appearing personally

**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE  
ON SUMMARY JUDGMENT**

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim.

**The Unfair Labor Practice Charge:**

On June 27, 2008, a Charge was filed in this matter by Wayne D. Bernard (the Charging Party) asserting that Detroit Public Schools (the Employer) had violated the Act, in some unspecified way, on unspecified dates, related to apparent disputes over disciplinary suspensions or deductions from wages. The initial charge was supplemented on July 1, 2008 with a new charge form asserting that the Employer had refused to allow Bernard to work on April 5, 2008 and had, on April 8, 2008, ordered him to remain in a conference room rather than perform his ordinary duties. Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), the Charging Party was ordered to provide a more definite statement of the Charge against the Employer.

Furthermore, the initial Charge filed in this matter appeared to arise from workplace disputes occurring in March and November of 2007 in which Bernard was sent home without pay or with partial pay. The Charging Party was, therefore, ordered, pursuant to Commission

Rules R 423.151(5), R423.165 (2), and R 423.182, to show cause why the initial charge should not be dismissed as barred by the statute of limitations.

Charging Party was cautioned in the order to show cause that a failure to respond to the order would result in a dismissal without a hearing or other proceedings.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, the attachments to the Charge make it apparent that Bernard contests the Employer's conduct related to disputes over being sent home from work without pay, or with partial pay. 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 a factually supported allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there were no such allegations, the charge against the Employer fails to state a claim upon which relief can be granted.

Under PERA, there is a strict six-month statute of limitations for the filing and service of charges, and a charge alleging an unfair labor practice occurring more than six months prior to the filing and service of the charge is untimely. The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Where the charge in this matter was filed on June 27, 2008, all allegations related to disputed events occurring prior to December 27, 2007, are barred by the statute of limitations and must be dismissed.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

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