

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

In the Matter of:

HIGHLAND PARK SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C08 F-109

-and-

WALTER SHEPARD,
An Individual-Charging Party.

APPEARANCES:

Walter Shepard, *In Propria Persona*

DECISION AND ORDER

On August 5, 2008, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Judgment in the above matter finding that the unfair labor practice charge filed against Respondent, Highland Park School District (Employer), should be dismissed for failure to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. The ALJ held that Charging Party, Walter Shepard, failed to allege facts in support of his complaint that his discharge was motivated by union or other activity protected under PERA. Also, Charging Party failed to respond to the ALJ's show cause order issued on June 3, 2008 to explain why the matter should not be dismissed for failure to state a claim. The Decision and Recommended Order on Summary Judgment was served on the interested parties in accordance with Section 16 of PERA.

Subsequently, Charging Party submitted a letter responding to the show cause order; however, it was received far too late to be considered by the ALJ. Charging Party then requested that the letter be treated as his exceptions to the ALJ's Decision and Recommended Order on Summary Judgment. The request was granted and the letter considered as his timely exceptions. In his exceptions, Charging Party contends that Respondent discriminated against him and "falsified statements" pertaining to his discharge. He alleges that he was denied payment for accrued balances in various leave time banks. Charging Party also asserts that his labor union, the American Federation of State, County, and Municipal Employees Council 25 (AFSCME), discriminated against him by refusing to "discuss or clarify the time card" issue used by the Employer as the

basis for discharge.¹ We have thoroughly reviewed Charging Party's exceptions and find them to be without merit for upsetting the ALJ's conclusions.

Discussion and Conclusions of Law:

Charging Party asserts that his termination by the Employer was discriminatorily motivated; however, he fails to suggest that this action was connected to his exercise of union or other protected activity. It is well established that PERA does not prohibit all types of discrimination or unfair treatment by a public employer. *Detroit Pub Sch*, 22 MPER 16 (2009). In fact, absent a factually supported allegation that Respondent was motivated to discriminate against Charging Party due to union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of Employer's actions. *Id.* Whenever a charge fails to state a claim under PERA, it is subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R 423.165. Furthermore, Charging Party failed to respond timely and show good cause why the ALJ should not dismiss the charge. Failing to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Accordingly, we agree with the ALJ's findings of fact and conclusions of law that the filed charge must be dismissed for failure to state a claim upon which relief can be granted.

ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

¹ A separate decision is being issued concurrently on these allegations. See *AFSCME Council 25 -and- Shepard*, 22 MPER _____ (Case No. CU08 F-028).

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

In the Matter of:

HIGHLAND PARK SCHOOL DISTRICT,
Respondent-Labor Organization,

Case No. C08 F-109

-and-

WALTER SHEPARD,
An Individual Charging Party.

APPEARANCES:

Walter Shepard, Charging Party, appearing personally

DECISION AND RECOMMENDED ORDER 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), on behalf of the Michigan Employment Relations Commission.

The Unfair Labor Practice Charge:

On June 4, 2008, Walter Shepard (the Charging Party) filed a Charge form in this matter with various attached documents related to his termination from employment with the Respondent Employer Highland Park School District. The documents reveal that Shepard was fired while on a "last chance agreement" arising from a prior disciplinary suspension from employment. There was no allegation in the Charge that Shepard had been engaged in concerted activity, nor that the Employer had discriminated against or retaliated against Shepard in violation of the Act. Shepard asserted generally that he had been wrongfully discharged, but made no allegation of unlawful conduct by Respondent. An order to show cause why the matter should not be dismissed for failure to state a claim was issued on July 3, 2008. Charging Party Shepard did not file a response to the order within the twenty-one days allowed by the order.

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, PERA does not prohibit all types of discrimination or unfair treatment. 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 is no factual supported allegation in the Charge suggesting that the Employer was motivated by Charging Party's involvement in union or other activity protected by PERA, and because no response was filed to the order to show cause, the charge against the Employer must be dismissed as it fails to state a claim upon which relief can be granted.

I. RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____