

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

In the Matter of:

HIGHLAND PARK SCHOOL DISTRICT,  
Public Employer-Respondent,

-and-

WALTER SHEPARD,  
An Individual-Charging Party.

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Case No. C08 F-109

APPEARANCES:

Walter Shepard, *In Propria Persona*

**DECISION AND ORDER DENYING  
MOTION FOR RECONSIDERATION**

On September 18, 2009, this Commission issued its Decision and Order in the above-entitled matter, finding that Charging Party's charge against Respondent failed to state claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.201-423.217. We concluded that the charge failed to allege that Respondent acted discriminatorily towards Charging Party for engaging in union or other concerted activity protected by PERA. Accordingly, we affirmed the ALJ's summary dismissal of the unfair labor practice charge.

On October 26, 2009, Charging Party filed a motion for reconsideration of our Decision and Order. Respondent did not submit a response to the motion.

Rule 167 of the Commission's General Rules, 2002 AACS, R 423.167 governs motions for reconsideration and states in pertinent part:

A motion for reconsideration shall state with particularity the material error claimed. . . . Generally, and without restricting the discretion of the commission, a motion for reconsideration which merely presents the same issues ruled on by the commission, either expressly or by reasonable implication, will not be granted. (Emphasis added)

Charging Party's motion for reconsideration is essentially a half page letter that restates the arguments already presented in his exceptions to the ALJ's Decision and Recommended Order. These arguments were carefully considered and discussed in our Decision and Order of

September 18, 2009. Thus, Charging Party has not properly set forth grounds for reconsideration of our earlier order. See *Michigan State University*, 22 MPER 30 (2009); *City of Detroit Water and Sewerage Dep't*, 1997 MERC Lab Op 453, in which the Commission denied the motion for reconsideration where the charging party restated the same arguments presented in his exceptions.

Further, Rule 167 also states: “[a]ny motion pursuant to this rule shall be filed not later than 20 days after the issuance of the commission’s final order.” The Commission’s final decision was issued on September 18, 2009; however, the motion for reconsideration was filed 38 days later on October 26, 2009.

Accordingly, the motion for reconsideration fails as it is untimely filed and merely restates the same arguments contained in the earlier pleadings and exceptions.

**ORDER**

Charging Party’s motion for reconsideration is denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Dardarian, 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:

HIGHLAND PARK SCHOOL DISTRICT,  
Respondent-Labor Organization,

Case No. C08 F-109

-and-

WALTER SHEPARD,  
An Individual Charging Party.

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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.

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: \_\_\_\_\_