

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

In the Matter of:

ARGENTINE TOWNSHIP,
Public Employer-Respondent,

Case No. C09 H-124

-and-

THOMAS R. BROOKS,
An Individual-Charging Party.

APPEARANCES:

Thomas R. Brooks, *In Propria Persona*

DECISION AND ORDER

On September 3, 2009, 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: _____

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

In the Matter of:

Case No. C09 H-124

ARGENTINE TOWNSHIP,
Respondent-Public Employer,

-and-

THOMAS R. BROOKS,
An Individual Charging Party.

APPEARANCES:

Thomas R. Brooks, appearing on his own behalf

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

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 David M. Peltz, Administrative Law Judge (ALJ) for the State Office of Administrative Hearings & Rules, acting on behalf of the Michigan Employment Relations Commission.

The Unfair Labor Practice Charge and Order to Show Cause:

On August 4, 2009, Thomas R. Brooks filed an unfair labor practice charge against his Employer, Argentine Township. The charge alleges that Brooks was removed from his position at the Township Fire Department in violation of the Whistleblowers Protection Act. On August 17, 2009, Brooks was ordered to show cause why the charge should not be dismissed for failure to state a claim under PERA. Brooks did not file a response to that 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 pursuant to Rule 165, R423.165, of the General Rules and Regulations of the Employment Relations Commission. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, PERA does not prohibit all types of discrimination or unfair treatment by a public

employer, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. Furthermore, the Commission has no jurisdiction to remedy claims asserting violations of other statutes, including the Whistleblower's Protection Act. With respect to a claim brought by an individual employee against a public employer, the Commission's jurisdiction is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in *union or other protected concerted activities*. Absent a factually supported allegation that the public employer interfered with, restrained, coerced or retaliated against the employee for engaging in such activities, the Commission is foreclosed 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. Because there is no allegation suggesting that the Employer was motivated by union or other activity protected by PERA, the charge must be dismissed for failure to state a claim upon which relief can be granted.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge in Case No. C09 H-124 is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____