STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Public Employer-Respondent,

Case No. C09 G-119

-and-

JOHN P. CHEVILLOT,
An Individual-Charging Party.
_____/

APPEARANCES:

Deborah K. Blair, Esq., Chief Labor Relations Analyst, for the Respondent

John P. Chevillot, *In Propria Persona*

DECISION AND ORDER

On October 9, 2009, 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:

WAYNE COUNTY,
Respondent-Public Employer, Case No. C09 G-119

-and-

JOHN P. CHEVILLOT,
Individual Charging Party.
_____/

APPEARANCES:

John P. Chevillot, Charging Party, representing himself

Deborah K. Blair, for the Respondent

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY JUDGMENT

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Doyle O'Connor, 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 July 14, 2009, a Charge was filed by John P. Chevillot (Charging Party), who is presently employed by the County as a tree trimmer. The Charge asserts that Wayne County (the Employer) treated Chevillot improperly or unfairly regarding the temporary and then permanent filing of a vacancy in the forestry foreman classification, which Chevillot has sought as a promotion. A contractual grievance over the temporary filling of the vacancy was heard, and rejected, by labor arbitrator, George Roumell. In that matter, Chevillot was represented by William Harper, a Union staff person, who specializes in handling arbitration cases.

Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, Charging Party was granted an opportunity to

file a written statement explaining why the charges should not be dismissed prior to a hearing. Charging Party was cautioned that to avoid dismissal of the Charge, any response to that Order to Show Cause must provide a factual basis to proceed that establishes the existence of alleged discrimination in violation of PERA, which occurred within six months of the filing of the charge. A timely response was filed which merely reiterated Charging Party's assertion that he had been denied a promotion in a manner which he believed was improper under the applicable collective bargaining agreement. Charging Party further suggested that his race might have been a factor in his being denied the promotion.

Subsequent to the issuance of the order to show cause, the Employer filed a pleading which combined an answer and a motion to dismiss, which asserted that the charge failed to state a claim. The Employer's motion additionally, and inappropriately, suggested that, despite existing caselaw to the contrary, MERC should defer to the parties' contractual grievance procedure. The Charging Party did not file a response to the Employer's motion.[1]

Discussion and Conclusions of Law:

The Public Employment Relations Act (PERA) does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting a collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer's actions were motivated by union or other activity protected by Section 9 of PERA, the Commission is not allowed to judge 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 allegation suggesting that the Employer was motivated by union or other activity protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted. While MERC would not defer to the parties' contractual grievance procedure if a claimed violation of the Act were factually pled, the mere allegation by an individual that his employer has violated his rights under a collective bargaining agreement simply does not state a claim under PERA. *Detroit Bd of Educ*, 1995 MERC Lab Op 75, 78; *Wayne Co Comm College*, 1985 MERC Lab Op 930.

[1] While various assertions of fact were made in the Employer's pleading, those factual claims were improperly asserted as they were unsupported by affidavit and were not considered in deciding this motion; rather, the facts as pled by Charging Party were presumed true for purposes of this Decision.

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: October 9, 2009