STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C09 C-030

-and-

KENNETH GRAY, EDWARD D. COLLINS, SAMMIE BARBER, ANDREW DANIEL-EL, JAMES CHARLES WILLIAMS, AND PAUL CHEATHAM, JR.
Individuals-Charging Parties.
_____/

APPEARANCES:

Eric I. Frankie P.L.C., by Eric Frankie for Charging Party

DECISION AND ORDER

On September 3, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that the unfair labor practice charge filed by Charging Parties, Kenneth Gray et al, against Respondent City of Detroit (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 charge and amended pleadings allege various violations of provisions in the collective bargaining agreement between the Employer and Charging Parties' exclusive bargaining representative, AFSCME Local 207 (Union). Finding the charge deficient, the ALJ ordered an explanation of why the charge should not be dismissed for failure to state a claim. In responding, Charging Parties failed to address any of the specific issues raised in the ALJ's order. The ALJ concluded that no material factual issues existed and recommended summary dismissal of the charge. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. After obtaining an extension, Charging Parties filed exceptions to the ALJ's decision on October 5, 2009, to which the Employer did not respond.[1]

In their exceptions, Charging Parties contend that the ALJ erred by recommending summary dismissal. They argue that oral argument is required before a charge can be summarily dismissed based on *Smith v Lansing Sch Dist*, 428 Mich 248 (1987). They also contend that their pleadings contained sufficient factual allegations to support the existence of a PERA violation by the Employer. After carefully reviewing the exceptions, we find them to be without merit.

[1] On October 20, 2009, Respondent Union untimely filed a response to exceptions in a companion case CU09 C-007. That response is not being considered in this decision.

Factual Summary:

We accept the ALJ's factual summary set forth in the Decision and Recommended Order and will not repeat it here, except where necessary. We also accept as true Charging Parties' allegations in reviewing the appropriateness of the ALJ's summary dismissal recommendation.

Charging Parties are employees with the City of Detroit and members of a bargaining unit exclusively represented by AFSCME Council 25, Local 207 (Union). Between May, 2005 and February, 2008, they filed various grievances against Respondent alleging a number of contract violations. The Union advanced these matters through several steps of the grievance procedure, but later elected not to arbitrate many of the grievances. Charging Parties filed unfair practice charges alleging a breach of contract against Respondent Employer and a breach of the duty of fair representation against the Union. The allegations recited in each charge were identical with most of the detail relating to the complaint against the Union.

On August 4, 2009, the ALJ issued a decision recommending summary dismissal of the charge against the Union[2], and also ordered Charging Parties to explain why the charge against the Employer should not be dismissed for lack of a valid claim. Charging Parties failed to adequately respond to the show cause order. The ALJ recommended summary dismissal for lack of any material factual issues and the deficient show cause response.

Discussion and Conclusions of Law:

This matter stems from a complaint filed by Charging Parties against the Employer regarding various allegations of breach of contract. It is well understood that PERA does not prohibit all types of unfair treatment by public employers. *Detroit Pub Sch*, 22 MPER 16 (2009). Only misconduct by public employers that interferes with, restrains, discriminates against or is in retaliation to an employee's exercise of the specific rights set forth in section 9 is subject to redress by the Act. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). Moreover, absent a factually supported allegation that an employer's actions were motivated by anti-union animus, this Commission is foreclosed from judging the merits of the employer's conduct. *Detroit Pub Sch.*

We agree with the ALJ's conclusion that Charging Parties' pleadings and exceptions do not allege sufficient facts to support their claim of a PERA violation by Respondent. As indicated earlier, the majority of the allegations here relate to Charging Parties' discontent with the Union's processing of their grievances. The only assertions contained in the pleadings relating to Respondent are the allegations of contract violation, which alone, do not constitute a cause of action under PERA. *Detroit Bd of Ed*, 1995 MERC Lab Op 75, 78. We also note that Charging Parties' failure to adequately respond to the ALJ's show cause order may, in itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Since the charge fails to state a cognizable claim under PERA, it is subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165.

We also disagree with Charging Parties' assertion that oral argument is required under the decision in *Smith v Lansing Sch Dist*, 428 Mich 248 (1987). In *Smith*, the Michigan Supreme Court

[2] Refer to the Decision and Recommended Order issued by ALJ Julia C. Stern in MERC case number CU09 C-007.

clarified that we are authorized to summarily dispose of any charge that fails to state a valid PERA claim, and can do so without conducting an evidentiary hearing, as long as the parties have an opportunity to present oral arguments on issues of law and policy. *Id* at 250 - 251. However, a party waives this requirement if they fail to request oral argument. *Teamsters Local 214*, 16 MPER 8, 18 (2003). In this matter, Charging Parties made no request for oral argument that is contained in the record before the ALJ. While they request in their pleadings that the ALJ conduct an evidentiary hearing, we have previously held that a request for evidentiary hearing does not act as a request for oral argument. *Muskegon Hts Pub Sch Dist*, 1993 MERC Lab Op 869, 870. Further, under Commission Rule 165(3), R 423.165(3), when a party fails to respond to a show cause order issued from a motion for summary disposition, the motion "shall be considered and decided without oral argument. As such, we find that the ALJ appropriately recommended summary dismissal.

Finally, we have carefully examined the remaining issues raised in the exceptions and find that they would not change the results. Accordingly, we agree with the Administrative Law Judge's conclusion that the charge must be summarily dismissed.

ORDER

The unfair labor practice charge against the Union is dismissed in its entirety.

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:

CITY OF DETROIT,
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Case No. C09 C-030

-and-

KENNETH GRAY, EDWARD D. COLLINS, SAMMIE BARBER, ANDREW DANIEL-EL, JAMES CHARLES WILLIAMS, AND PAUL CHEATHAM, JR.
Individuals-Charging Parties.
_____/

APPEARANCES:

Eric I. Frankie, Esq., for Charging Parties

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On March 6, 2009, Kenneth Gray, Edward D. Collins, Sammie Barber, Andrew Daniels-El, James Charles Williams and Paul Cheatham, Jr. filed an unfair labor practice charge (Case No. C09 C-30) with Michigan Employment Relations Commission against their employer, the City of Detroit (the Employer). Charging Parties also filed a charge against their collective bargaining representative, AFSCME Council 25 and its affiliated Local 207 (the Union) on this same date (Case No. CU09 C-007). The charge against the Employer alleges that it violated Sections 10(1) (a) and (c) of the Public Employment Relations Act (PERA0, 1965 PA 379, as amended, MCL 423.210. The charges were amended on April 8 and again on June 11, 2009. Pursuant to Section 16 of PERA, both charges were assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules.

On August 4, 2009, I issued a Decision and Recommended Order recommending that the Commission grant the Union's motion for summary disposition in Case No. CU09 C-007. On this same date, pursuant to my authority under Rules 165(1), 2(d) and (3) of the Commission's General Rules. AACS 2002 423.165, I issued an order to the Charging Parties to show cause why the charge in Case No. C09 C-30 should not be summarily dismissed because it failed to state a claim upon which relief could be granted under the Act. Charging Parties filed a response to my order on August 20, 2009. Based on the facts as set forth in the charge and pleadings, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

As noted above, Charging Parties filed the charge in Case No. C09 C-30 at the same time they filed a charge against their collective bargaining representative, AFSCME Council 25 and its affiliated Local 207. The charge against the union alleged that it violated its duty of fair representative by failing to provide Charging Parties with information about certain grievances and by arbitrarily failing to move their grievances to the next step of the grievance procedure. The charge against the Employer, as amended, alleges that it breached its collective bargaining agreement with the Union by eleven different acts. Although Charging Parties allege that the Employer's actions violated Section 10(1) (c) of PERA, the charge does not assert that any of these actions constituted discrimination or retaliation against them because of their union activities.

Discussion and Conclusions of Law:

PERA prohibits strikes by public employees and protects certain rights of public employees as set out specifically in Sections 9 and 10 of the statute. Under Section 9, public employees have the right to form, join, or assist labor organizations and to negotiate or bargain with their public employers through representatives of their own free choice. Section 9 also protects the rights of public employees to engage in lawful concerted activities for mutual aid or protection which do not involve unions. Sections 10(1)(a) and (c) of PERA prohibit an employer from discriminating against employees because they have exercised their Section 9 rights and from discharging or otherwise discriminating against employees because of their union activities. However, an employer's breach of a collective bargaining agreement is not per se an unfair labor practice under Section 10 of PERA. A charge which merely alleges contract violations does not state a cause of action under PERA. See, e.g. *City of Detroit*, 1997 MERC Lab Op 11 (no exceptions); *City of Monroe*, 1994 MERC Lab Op 638 (no exceptions).

I find that the charge in this case does not state a claim upon which relief could be granted under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____