

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

In the Matter of:

GRAND RAPIDS PUBLIC SCHOOLS,
Public Employer-Respondent,

-and-

CYNDIE PETERS,
An Individual-Charging Party.

Case Nos. C11 L-212

APPEARANCES:

Varnum L.L.P., by John Patrick White, for the Respondent

Cyndie Peters, *In Propria Persona*

DECISION AND ORDER

On February 22, 2012, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matters 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 charge 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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Derdarian, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

GRAND RAPIDS PUBLIC SCHOOLS,
Public Employer-Respondent,

-and-

Case No. C11 L-212
11-000643 MERC

CYNDIE PETERS,
An Individual-Charging Party.

APPEARANCES:

Varnum, Attorneys at Law, by John Patrick White, for Respondent

Cyndie Peters, appearing for herself

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

On December 9, 2011, Cyndie Peters filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her employer, the Grand Rapids Public Schools, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Pursuant to Section 16 of PERA, the charges were assigned to Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System.

On January 6, 2012, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, I issued an order directing Peters to show cause in writing why her charge should not be dismissed without a hearing because it failed to state a claim upon which relief could be granted under PERA. The order informed Peters that I would review her timely response to the order to determine whether a proper claim had been made and whether a hearing should be scheduled. I gave Peters until January 27, 2012 to file this response, and provided her with instructions on how to request an extension of time. Peters was cautioned that if her charge and response to the order did not state a valid claim, or if she failed to file a response to the order, I would issue a decision recommending that the charge be dismissed without a hearing. Peters did not respond to my order. Based upon the facts alleged in the charges and set forth below, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Facts:

Peters is employed by Respondent as a nurse. In August and September 2011, she applied for two positions posted as vacant by Respondent's human resources department (HR). After Peters learned that one of the positions had been filled by an applicant who had less seniority than she did, she asked HR about the status of her applications. In response, HR notified her in writing that she was not a candidate for either position. Sometime in September 2011, Peters learned that the second position had been filled by an individual who had not previously worked for Respondent.

Peters alleges that by hiring applicants with less seniority, Respondent violated Article 9 (Transfers and Vacancies) of the collective bargaining agreement between Respondent and her labor organization, GRACEN. This provision states:

When the qualifications of the applicants are equal and both are deemed qualified pursuant to the requirements specified on the job description, the applicants with the longest period of service in GRACEN will be appointed.

Peters does not indicate in her charge whether she sought to file a grievance under the collective bargaining agreement over Respondent's refusal to award the positions to her.

Discussion and Conclusions of Law:

Section 9 of PERA protects the rights of public employees to form, join, or assist labor organizations and to negotiate or bargain with their public employers through representatives of their own free choice. It also protects the rights of public employees to engage in lawful concerted activities for mutual aid or protection, e.g., complaining about working conditions with another employee. Section 10 of PERA prohibits an employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against employees because of their union activities or other concerted activities. However, the Commission's jurisdiction is limited to determining whether the public employer engaged in conduct that violated PERA, and PERA does not prohibit all types of discrimination or unfair treatment. An individual does not state a cause or claim under PERA merely by asserting that his or her rights under a union contract were violated. *Utica Cmty Schs*, 2000 MERC Lab Op 268; *Detroit Bd of Ed*, 1995 MERC Lab Op 75. Absent an allegation that the employer interfered with, restrained, coerced, restrained or retaliated against the employee for engaging in union or other protected activities, the Commission has no jurisdiction to make a judgment on the fairness of the employer's actions. 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.

The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Peters' charge alleges that Respondent treated her unfairly and that it violated the terms of her collective bargaining agreement by filling vacancies for which she had applied with individuals who had less seniority than her. However, it does not allege that Respondent's action was motivated by Peters' union activities or exercise of rights protected by PERA, or that it constituted unlawful interference with the exercise of these rights. I find that Peters' charge does not state a claim upon which relief can be granted under

any provision of PERA, and I conclude that it should be dismissed on that basis. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: _____