

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

-and-

ANGELA HOLLIS INGRAM,
An Individual-Charging Party.

Case No. C13 B-027
Docket No. 13-000164-MERC

APPEARANCES:

Daryl Adams, Office of Labor Relations, Detroit Public Schools, for Respondent

Angela Hollis Ingram, appearing on her own behalf

DECISION AND ORDER

On September 3, 2013, Administrative Law Judge Doyle O'Connor issued a 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

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Dated: _____

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent,

-and-

Case No. C13 B-027
Docket 13-000164-MERC

ANGELA HOLLIS INGRAM,
Charging Party.

_____ /

APPEARANCES:

Angela Hollis Ingram, Charging Party appearing on her own behalf

Daryl Adams, for Respondent

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

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, MCL 423.201, *et seq.*, as amended, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC). This matter is being decided pursuant to a motion for summary disposition. The following findings of fact, conclusions of law, and recommended order are based upon the entire record:

The Unfair Labor Practice Charge:

On February 15, 2013, the charge was filed in this matter by Angela Hollis Ingram asserting that her former Employer, Detroit Public Schools (DPS), had unlawfully discriminated against Charging Party, in retaliation for her prior Union activity, by failing to recall her from an otherwise unchallenged layoff on or about August 24, 2012.

The Employer filed a motion for summary disposition on April 3, 2013, pursuant to MERC Rule R 423.165. While asserting several grounds for summary dismissal, the motion relied on and attached a DPS "separation from service" form dated August 21, 2012, bearing

Ingram's signature, and in which Ingram tendered her resignation and cashed out certain benefits payable on termination.

On April 4, 2013, I issued an Order setting a briefing schedule on the Employer's motion to dismiss. In that Order, I cautioned Charging Party that:

I have received and reviewed the Employer's Motion for Summary Disposition [and that] there is one claim at least on which there may be no material dispute of fact.

The Charge asserts that the Employer discriminated against you on and after August 24, 2012 by failing to recall you from layoff. Attached to the Employer's motion is a "separation from service" form which the Employer asserts was submitted by you and apparently accepted by the Employer. That form has you resigning from employment effective August 27, 2012, and bears a signature dated August 21, 2012. The form cautions that it is irrevocable.

If the form is authentic, and was submitted by you on August 21, 2012, it would appear to logically preclude your claims that you were improperly denied recall on and after August 24, 2012, as you had already resigned. The motion for summary dismissal based on that form would appear to raise substantial grounds which may preclude the holding of an evidentiary hearing.

The Order advised Ingram that she had a right to respond to the Employer's motion and granted her a month's time in which to do so, with her written response to be received no later than May 2, 2013. The Order expressly cautioned Ingram that:

To avoid dismissal of the Charge, the written response to this Order must assert facts that establish a violation of PERA. The response must describe who did what and when they did it, and explain why such actions constitute a violation of PERA. The response must provide a factual basis in support of any claim that the Employer acted improperly in failing to recall you at a point in time after you had submitted an apparently irrevocable resignation. Additionally, any response must detail how you propose to prove that the adverse evaluation was a result of your

Union activities as asserted in the Charge. A timely response to this Order will be reviewed to determine whether a proper claim has been made and whether a hearing should be scheduled.

If the Charge and your response to the Order do not state a valid claim, or if you do not timely respond to this Order, a decision recommending that the Charge be dismissed without a hearing will be issued. Pursuant to MERC Rule R 423.176, Charging Party will have the right to file exceptions to that recommended dismissal.

Charging Party did not file any response to the motion for summary disposition or to the pre-trial Order.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to a motion for summary disposition under R423.165. The failure to respond to such a motion, or to a pre-trial order to show cause may, in itself, warrant dismissal. R 423.165; *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 acted improperly and that it 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.

Here, the claim is that the Employer acted from improper motive in failing to recall Ingram from an otherwise unchallenged layoff. The Employer's motion to dismiss was supported by a document, assertedly in Charging Party's own hand, in which on August 21, 2012, she irrevocably resigned from employment and cashed out benefits which were payable only upon termination of employment. Absent a response to the Employer's motion, which asserts that Ingram was not recalled from layoff because she had irrevocably resigned, there is no genuine dispute of material fact and no possible basis on which to conclude that a claim upon which relief could be granted has been pled. The Charge is therefore subject to summary dismissal under MERC Rule R423.165.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 3, 2013