

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

In the Matter of:

PONTIAC SCHOOL DISTRICT,
Public Employer-Respondent,

-and-

KERRY TOLBERT,
An Individual-Charging Party.

Case No. C14 E-066
Docket No. 14-011794-MERC

APPEARANCES:

Kerry Tolbert, appearing on own behalf

DECISION AND ORDER

On July 11, 2014, Administrative Law Judge Travis Calderwood 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

/s/

Edward D. Callaghan, Commission Chair

/s/

Robert S. LaBrant, Commission Member

/s/

Natalie P. Yaw, Commission Member

Dated: August 15, 2014

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

In the Matter of:

PONTIAC SCHOOL DISTRICT,
Respondent-Public Employer,

Case No. C14 E-066
Docket No. 14-011794-MERC

-and-

KERRY TOLBERT,
Individual Charging Party.

APPEARANCES:

Kerry Tolbert appearing on own behalf.

DECISION AND RECOMMENDED ORDER

On May 27, 2014, Kerry Tolbert (Charging Party), filed an unfair labor practice charge against the Pontiac School District (Respondent). 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 Administrative Law Judge, Travis Calderwood, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission).

On June 12, 2014, I issued an order, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, directing Charging Party to show cause in writing why its charge against its employer should not be dismissed for failure to state a claim upon which relief could be granted under PERA. Charging Party was given until July 3, 2014 to do so. Charging Party failed to respond to my order. Based upon the facts as alleged by Charging Party in its charge, I make the following conclusions of law and recommend that the Commission issue the following order dismissing the charge in its entirety.

The Unfair Labor Practice Charge:

The charge as filed by Tolbert, states in its entirety:

I have been employed with the Pontiac School District since August 2008. On November 26, 2013, I went to the Pontiac School's Administration building located at 4720 Woodward Ave, Pontiac [sic] Michigan; to turn in a Freedom of Information Request. While standing in the front lobby of the administration

building, the Human Resources Manager, Mrs. Hughes approached me and said “You are terminated; turn in all of you [sic] things by tomorrow.” I turned in all of my Pontiac School District equipment the following day, Wednesday November 27, 2013. I was never written up for any action. I did not receive *Due Process*. [Emphasis in original]

Discussion and Conclusions of Law:

The Commission does not investigate charges filed with it. Charges filed with the Commission must comply with the Commission’s General Rules. More specifically, Rule 151(2)(c) of the Commission’s General Rules, 2002 AACS, R 423.151(2)(c), requires that an unfair labor practice charge filed with the Commission include:

A clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged therein, and the sections of LMA or PERA alleged to have been violated.

Charges which comply with the Commission’s rules which are both timely filed and allege a violation of PERA, are set for hearing before an administrative law judge. In order to be timely filed, the charge must be filed within six months of the alleged unfair labor practice.¹ MCL 423.216(a). The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415.

Rule 165 of the Commission’s General Rules, 2002 AACS, R 423.165, states that the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the charge does not state a claim upon which relief can be granted under PERA. See, e.g., *Oakland County and Sheriff*, 20 MPER 63 (2007); *aff’d* 282 Mich App 266 (2009); *aff’d* 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986), *lv den* 428 Mich 856 (1987),

With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment. PERA does not provide a remedy for an employer’s violation of another state or federal statute. Moreover, an individual cannot support a claim under PERA by alleging merely that his or her rights under a union contract were violated. *Utica Community Schools*, 2000 MERC Lab Op 268; *Detroit Bd of Ed*, 1995 MERC Lab Op 75. The Commission’s jurisdiction with respect to claims brought by individual employees against public employers 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

¹ While I am not making a dispositive determination regarding the timeliness of the charge; because the limited facts plead indicates that the termination occurred on November 26, 2013 and the charge was filed on May, 27, 2014, it does appear the charge is untimely.

activities. Absent such an allegation, the Commission is precluded 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 Lab Op 523, 524.

Charging Party asserts that the termination from employment occurred without "due process." Charging Party does not allege that the termination was in retaliation of Charging Party's engaging in conduct protected by PERA, or that Respondent otherwise interfered with the exercise of any rights given to Charging Party under PERA.

Additionally, Charging Party's failure to respond to my June 12, 2014 order is further cause for dismissal. 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).

For the reasons set forth herein, I conclude that Tolbert has failed to state a factually supported claim upon which relief could be granted under PERA. Therefore, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

DATED: July 11, 2014