STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

COMMUNITY MENTAL HEALTH AUTHORITY
FOR CLINTON, EATON & INGHAM COUNTIES,
Public Employer-Respondent,

Case No. C14 L-147
-and- Docket No. 14-038069-MERC

AVIS MARIA STUBBS,
An Individual Charging Party.
_____/

APPEARANCES:

Foster, Swift, Collins & Smith, P.C., by Melissa J. Jackson, for the Respondent

Avis Stubbs, appearing on her own behalf

DECISION AND ORDER

On April 14, 2015, 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: May 26, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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Case No. C14 L-147

COMMUNITY MENTAL HEALTH AUTHORITY FOR CLINTON, EATON & INGHAM COUNTIES,
Respondent-Public Employer,

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-and-

AVIS MARIA STUBBS,
Individual Charging Party.
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APPEARANCES:

Foster, Swift, Collins & Smith, P.C., by Melissa J. Jackson, for the Respondent-Public Employer

Avis Stubbs appearing on her own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

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 (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission).

Unfair Labor Practice Charge and Procedural History:

On December 16, 2014, Charging Party, Avis Maria Stubbs, filed the above unfair labor practice charge against her employer, the Community Mental Health Authority of Clinton, Eaton and Ingham Counties ("Authority" or "Employer"), in which she claims certain actions taken against her by the Authority, including the transferring of her position and scheduling of shifts, amounted to harassment, and was the result of her "effort to represent the rights of the mental health workers." Initially this matter was set for hearing on February 4, 2015, with a telephone pre-hearing conference to occur prior to that on January 15, 2015.

In the charge filed, Stubbs provided several specific examples of the alleged harassment she claims she suffered at the hands of the Authority, including but not limited to, an October 2014 reassignment from the position of Mental Health Worker at the Employer's Recovery Center to a position with the Employer's Crisis Services for reasons she claimed were "arbitrary and capricious" and other various actions against her with regard to her hours, scheduling and training. Upon further review of the charge, I concluded that it failed to satisfy Rule 151(2)(c) of the Commission's General

Rules, 2002 AACS; 2014 MR 24, R 423.151(2)(c), in so far as it did not allege any specific facts giving rise to an actual violation of PERA; Stubbs did not allege with any specificity what protected or otherwise concerted activity she had engaged in under PERA for which she was discriminated other than the general statement that the Authority undertook certain actions because of her "effort to represent the rights of the mental health workers." On January 12, 2012, my office received, by fax from Stubbs, forty-five (45) pages of various emails and other correspondence. The fax cover sheet stated within the "comments" section that the first eight pages were indicative of a "concerted activity email sent to 12 or so Board Members" and remaining pages were indicative of the alleged harassment regarding her schedule and training. On January 14, 2015, my office received an additional nine (9) pages by fax containing more emails and correspondence. Neither fax indicated that it had been provided to the Respondent.

On January 15, 2015, during the telephone pre-hearing conference, I conveyed to the parties my determination regarding the charge's deficiencies and informed them that I would be issuing an Order to Show Cause. Furthermore, I confirmed with Charging Party that she had not provided the materials contained within her January 12 or January 14 faxes to Respondent. I explained to Charging Party that, while I had received the faxes, I had not reviewed them as I considered them to be *ex parte* communications. I informed Charging Party that she could include those materials, where relevant, with her response to my forthcoming Order to Show Cause. The next day, January 16, 2015, I issued said order in which provided Stubbs until February 6, 2015, to respond to. Accordingly, the February 4, 2015, hearing was adjourned without date pending receipt and review of such response. Stubbs did not respond to the January 16, 2015, order nor did she contact MAHS to request an extension of time in which to file a response.

Discussion and Conclusions of Law:

Charging Party's failure to respond to my January 16, 2015, Order, by itself, is cause for dismissal in favor of Respondents. 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).

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; 2014 MR 24, 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 in the violation or violations and the sections of LMA or PERA alleged to have been violated.

Charges which comply with the Commission's rules which are 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. MCL 423.216(a).

Rule 165 of the Commission's General Rules, 2002 AACS; 2014 MR 24, 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, *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).

The Commission administers and enforces PERA. Section 9 of PERA protects the rights of public employees to form, join, or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. "Lawful concerted activities for mutual aid and protection" includes complaining with other employees about working conditions and taking other kinds of actions with other employees to protest or change working conditions. Section 10(1) of PERA prohibits a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against its employees because they have engaged in, or refused to engage in, union activities or other concerted protected activities.

In order to establish a prima facie case of unlawful discrimination under PERA that resulted in an adverse employment action, a charging party must allege: (1) union or other protected concerted activity; (2) employer knowledge of that activity; (3) anti-union animus or hostility to the employees' protected rights; and (4) suspicious timing or other evidence that the protected activity was a motivating cause of the allegedly discriminatory action. *Waterford Sch Dist*, 19 MPER 60 (2006). If the charging party has alleged that the employer's unlawful discrimination is motivated by anti-union animus, that party bears the burden of demonstrating that protected conduct was a motivating or substantial factor in the employer' s decision. *MESPA v Evart Pub Sch*, 125 Mich App 71, 74 (1983); *Southfield Pub Schs*, 25 MPER 36 (2011). Only after a charging party establishes a prima facie case of unlawful discrimination does the burden shift to the respondent to demonstrate with credible evidence that the same action would have taken place even in the absence of the protected conduct. *Michigan Educational Support Personnel Ass'n v. Evart Public Schools*, 125 Mich. App. 71, 74 (1983).

The adverse employment actions complained of by Stubbs begins with an October 2014 reassignment from the position of Mental Health Worker at the Employer's Recovery Center to a position with the Employer's Crisis Services. Following that reassignment, of which Charging Party claims was done for "arbitrary and capricious" reasons, Stubbs alleges that the employer has discriminated against her with regard to hours, scheduling and training.

Charging Party, in her original filing, did not allege any facts sufficient to support a *prima facie* case of discrimination under PERA; Charging Party has not alleged any conduct or action on her part that could form a finding that she was engaged in union or other protected activity. Charging Party's one sentence statement in her charge that "[m]y effort to represent the rights of the mental health workers caused my harassment, in part I believe" is by itself enough to properly allege a violation under PERA for which relief may be granted. For the reasons set forth herein, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: April 14, 2015