

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

In the Matter of:

WAYNE COUNTY,  
Public Employer-Respondent,

-and-

MERC Case No. C15 L-161  
Hearing Docket No. 15-063071

KENNETH H. MONTROY,  
An Individual Charging Party.

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**APPEARANCES:**

Kenneth H. Montroy, appearing on his own behalf

**DECISION AND ORDER**

On March 29, 2016, Administrative Law Judge Julia C. Stern issued her 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 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 either 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

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: May 12, 2016

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

In the Matter of:

WAYNE COUNTY,  
Public Employer-Respondent,

Case No. C15 L-161  
Docket No. 15-063071-MERC

-and-

KENNETH H. MONTROY,  
An Individual Charging Party.

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APPEARANCES:

Kenneth H. Montroy, appearing for himself

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

On December 11, 2015, Kenneth H. Montroy filed an unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against his former employer, Wayne County (the Employer) under §10 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. Montroy also filed a charge against his collective bargaining representative, AFSCME Council 25 and its Local 101 (the Union), Case No. CU15 L-044/15-063072-MERC. Pursuant to §16 of the Act, the charges were consolidated and assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System (MAHS).

On December 30, 2015, pursuant to Rule 1513 of the Rules of the Michigan Administrative Hearing System, R 792.11503, I issued an order to Montroy to show cause why his charges against both Respondents should not be dismissed because neither charge, as filed, stated a claim upon which relief could be granted under PERA. On January 27, 2016, Montroy filed a timely response to my order. The response addressed only Montroy's claims against the Union. On March 1, 2016, I issued an order severing the charges and setting Montroy's charge against the Union for hearing. Based upon the facts alleged by Montroy in his charge, as set forth below, I make the following conclusions of law with respect to Montroy's charge against the Employer and recommend that the Commission issue the following order.

### The Unfair Labor Practice Charge and Facts:

The pertinent facts, as alleged by Montroy in his charge, are as follows. In November 2014, Montroy was employed as a crew leader in the Employer's alternative workforce division. On November 7, 2014, and again on November 14, 2014, Montroy was disciplined for reasons Montroy asserts were unjust, and his employment was terminated. The Union filed grievances on his behalf challenging the discipline. Sometime in January or February, 2015, the Employer granted the grievances, in part. Montroy was returned to work, but with a demotion. The Union continued to grieve the discipline as excessive, and Thomas Richards, the president of Local 101, submitted a request to AFSCME Council 25 to arbitrate the grievance.

According to a letter from the Employer to Montroy attached to the charge, Montroy was demoted to a vacant clerk position in the Jail Division of the Wayne County Sheriff's office. According to this same letter, Montroy was required to complete a criminal history record request to obtain a jail security badge/pass. The Employer asserted that Montroy filled out this request on or about March 31, 2015, and that in doing so he falsified his criminal history. Montroy denies that he filled out any such form on or about March 31, 2015. Meanwhile, on or about May 15, 2015, the Employer eliminated the alternative workforce division and Montroy's former position as crew leader.

On July 6, 2015, the Employer sent Montroy a letter terminating him again effective July 2, 2015. It appears from the termination letter that Montroy was terminated for allegedly making false statements on a criminal history record request.

Montroy alleges that the Employer violated PERA by wrongfully discharging him twice and by denying him due process.

### Discussion and Conclusions of Law:

The Commission does not investigate charges filed with it. Rule 165(1) of the Commission's General Rules, R 423.165(1), states that an administrative law judge may, on his or her own initiative or on a motion by any party, order dismissal of a charge or issue a ruling in favor of a party without a hearing based on grounds set out in Rule 165(2), including failure to allege a claim on which relief may be granted by the Commission. Such a motion, or order to show cause, may be made at any time before or during a hearing.

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. The types of activities protected by PERA include filing or pursuing a grievance under a union contract, participating in union activities, joining or refusing to join a union, and joining

with other employees to protest or complain about working conditions. Sections 10(1)(a) and (c) of PERA prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities protected by PERA. For example, an employer who disciplines or discharges an employee because the employee has filed a grievance under a union contract violates PERA.

However, PERA does not provide employees with a cause of action for wrongful discharge, per se, or for violations of their constitutional rights to due process. An individual also 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 or coerced, an employee in exercising the specific rights protected by PERA, or that the employer retaliated against the employee for engaging in, or refusing to engage in union activity, 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.

Montroy alleges in his charge against the Employer that he was wrongfully terminated and that he was not granted due process. However, he has not alleged that his discharge constituted retaliation against him for engaging in union or other activities protected by PERA, or that the Employer interfered with or coerced him in the exercise of his rights under §9 of the Act. I find that Montroy's charge against the Employer, as filed, 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 in Case No. C15 L-161, Docket No. 15-063071-MERC is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: March 29, 2016