

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

In the Matter of:

WAYNE COUNTY,
Public Employer -Respondent,

- and -

Case No. C07 F-133

BARRY GATES,
Individual Charging Party.

APPEARANCES:

Mark D. Dukes for Respondent Wayne County

Barry Gates, Charging Party, *In Propria Persona*

DECISION AND ORDER

On July 31, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

WAYNE COUNTY,
Respondent-Public Employer,

Case No. C07 F-133

-and-

BARRY GATES,
An Individual Charging Party.

APPEARANCES:

Barry Gates, Charging Party, appearing personally

Mark D. Dukes for Respondent Wayne County

DECISION AND RECOMMENDED ORDER

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 Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission.

The Unfair Labor Practice Charge and Findings of Fact:

On June 12, 2007, a Charge was filed in this matter asserting that the Employer has treated Charging Party improperly or unfairly regarding changes in his work schedule.

Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, on June 19, 2007, an order to show cause why the charge should not be dismissed for failure to state a claim was issued, which granted Charging Party an opportunity to file a written statement explaining why the charges should not be dismissed prior to a hearing. No response was filed.

Discussion and Conclusions of Law:

Where a charge is deficient on its face, the failure of a Charging Party to respond to an order to show cause in itself warrants dismissal of the charge. Moreover, PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer 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. Because there is no allegation that the Employer was motivated by union or other activity protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____