

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

In the Matter of:

CITY OF FARMINGTON HILLS,
Public Employer-Respondent,

Case No. C08 G-145

-and-

KURT WISSMAN,
Individual-Charging Party.

APPEARANCES:

Kurt Wissman, *In Propria Persona*

DECISION AND ORDER

On August 18, 2008, Administrative Law Judge Julia C. Stern issued her 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
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF FARMINGTON HILLS,
Public Employer-Respondent,

Case No. C08 G-145

-and-

KURT WISSMAN,
An Individual-Charging Party.

Kurt Wissman, appearing for himself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On July 17, 2008, Kurt Wissman filed the above charge with the Michigan Employment Relations Commission (the Commission) against his former employer, the City of Farmington Hills, under Sections 10 and 16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, 423.216. Pursuant to Section 16 of the Act, the charge was assigned to Administrative Law Judge Julia C. Stern. Pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, on July 25, 2008, I issued an order to Wissman to show cause why his charge should not be dismissed for failure to state a claim upon which relief could be granted under PERA. Wissman filed a response to my order on August 13, 2008. Based on the facts as set forth in the charge and in Wissman's response to the order to show cause, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Wissman was employed by Respondent as an electrical inspector from April 18, 2005 until his termination on January 17, 2008. Wissman asserts that, over the course of his employment, he regularly used his personal vehicle to perform inspections and sometimes went outside the city limits to have lunch. According to Wissman, nothing in Respondent's standard practice guidelines or the collective bargaining agreement between Respondent and Wissman's bargaining agent prohibits employees from using their own cars to go to lunch. Wissman also maintains that he was never told by his supervisors not to drive his own vehicle while conducting inspections. In January 2008, Wissman was called into his supervisors' office and questioned about his whereabouts on certain dates when his assigned city car was reportedly in

Respondent's parking lot. Subsequently, according to Wissman, he was falsely accused of conducting personal business on city time and terminated.

Wissman also asserts that his supervisor, Dale Countegan, created a hostile working environment by berating him during a meeting in January 2008 and throwing a lollipop across a table at him (Countegan had earlier refused to let Wissman suck on a lollipop on the job during a period when Wissman was trying to quit smoking), and by searching his desk drawers shortly before his termination. Wissman asserts, in addition, that over a period of years Countegan refused to pay for the training and reference materials necessary for Wissman to keep his skills current.

Discussion and Conclusions of Law:

Under Sections 9 and 10 of PERA, public employees have the right to engage in union activity and other "concerted activities . . . for mutual aid and protection," including joining together with other employees to complain about working conditions.¹ However, not all unfair conduct by a public employer violates PERA. Rather, as set out in Section 16 of PERA, the only "unfair labor practices" that can be remedied by the Commission are violations of the provisions of Section 10 of the Act. Section 10(1) (a) of PERA makes it an unfair labor practice for a public employer to interfere with, restrain, or coerce employees in the exercise of the rights set out in Section 9. Section 10(1) (c) make it an unfair labor practice for a public employer to discriminate against employees in order to encourage or discourage union activity. A public employer who discharges an employee because that employee has engaged in union or other activity protected by the Act violates Section 10(1) of PERA. However, an employer does not violate PERA simply by terminating an employee unfairly or without just cause, or by breaching a term of its collective bargaining agreement. See, e.g., *City of East Grand Rapids*, 20 MPER 10 (2007); *Wayne Co*, 20 MPER 27 (2007); *Ann Arbor Pub Schs*, 16 MPER 15 (2003). Absent an allegation that an employee's discharge was motivated by union or other activity protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the discharge. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524.

Wissman alleges that he was treated unfairly by Respondent, and that his termination was based on false accusations of misconduct and alleged violations of rules of which he was not aware. However, Wissman does not allege that he was terminated because of his union or other concerted protected activities, and his charge does not set forth any facts indicating that Respondent interfered with Wissman's exercise of rights protected by PERA. I conclude that Wissman's charge does not state a claim against Respondent upon which relief can be granted under PERA. I recommend, therefore, that the Commission issue the following order.

¹ Section 9 reads as follows:

It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____