STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GRAND HAVEN PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C10 C-062

-and-

LUANNE SWIFTNEY,
An Individual-Charging Party.
_____/

APPEARANCES:

Scholten Fant Attorneys, by John S. Lepard, Esq., for the Public Employer

Luanne Swiftney, *In Propria Persona*

DECISION AND ORDER

On June 30, 2010, 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 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

_____
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Scholten Fant, Attorney, by John S. Lepard, for Respondent

Luanne Swiftney, appearing for herself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

On March 8, 2010, Luanne Swiftney filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her former employer, the Grand Haven Public Schools (Respondent or the Employer) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MCL 423.216. Swiftney also filed a charge, Case No. CU10 C-008, against her collective bargaining representative, SEIU Local 517M (the Union). Pursuant to Section 16 of PERA, both charges were assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules.

Pursuant to Rule 165 of the Commission General Rules, 2002 AACS, R 423.165, on March 26, 2010, I issued an order to Swiftney to show cause in writing why her charges against both Respondents should not be dismissed for failure to state a claim upon which relief could be granted under PERA. Swiftney filed a response on April 12, 2010. On May 25, the Respondent Employer filed a motion for summary disposition of the charge against it. It also filed a motion to strike Swiftney's April 12, 2010 response since Swiftney failed to serve a copy on the Respondent Employer despite being directed to do so in my order. On June 7, 2010, Swiftney filed a response to the motion in the form of an amended charge.

Commission Rule 163, R 423.163, allows the Commission or administrative law judge to strike "all or part of a pleading not drawn in conformity with these rules." Although Swiftney failed to serve Respondent with a copy of her April 12, 2010 response as I directed her to do, her failure to

serve does not provide grounds for striking this response from the record under the rules. Respondent's motion to strike is, therefore, denied. Based on the facts set forth in Swiftney's pleadings, including her charge, amended charge and April 12, 2010 response, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Facts:

Swiftney was employed by the Employer as a custodial employee from about 1986 until her termination on December 17, 2009. She has had back problems for many years and at the time of her termination had planned to have back surgery Swiftney asserts that on August 25 and 26, 2009, she complained to her supervisor, Ted Rescorla, and to her building principal, about the conduct of a male custodian. Specifically, Swiftney told them that the male custodian constantly made sexual jokes and comments and used crude hand gestures and facial expressions. Swiftney told her supervisors that she was sick of the male custodian's behavior. She also told them that the Employer had several young female teachers and that she hoped they would not have to put up with this behavior. Finally, Swiftney said that she believed that the custodian's conduct constituted sexual harassment. According to Swiftney, she asked her supervisors to talk to the male custodian, but no action was taken and the objectionable behavior continued up to the date of her termination. Swiftney does not allege that she discussed the male custodian's conduct with the teachers or with any of her fellow custodians.

On December 17, 2009, Swiftney was called to a meeting with the Employer and given a termination letter. Swiftney did not include a copy of her termination letter in her pleadings. However, it appears from her response to my order that the Employer asserted that she spent too much time in the employee lounge and supported its claim with video from a surveillance camera showing the hallway outside the lounge. The Employer and the Union have an oral agreement that the Employer may view surveillance cameras installed for security purposes to monitor the work of employees when there are complaints about the quality of work. Swiftney's termination letter stated that there were complaints about her work. However, at the meeting on December 17, 2009, Respondent refused to provide Swiftney with the names of individuals who had complained about her work.

Swiftney's charge alleges that her termination was, at least in part, retaliation for her complaints of sexual harassment. She also asserts that her termination constituted a violation of the federal Americans with Disabilities Act of 1990 (ADA), 40 USC 12101.

Discussion and Conclusions of Law:

PERA prohibits strikes by public employees and protects certain rights of public employees, as set out specifically in Sections 9 and 10 of the statute. Under Section 9, public employees have the right to form, join, or assist labor organizations and to negotiate or bargain with their public employers through representatives of their own free choice. Section 9 also protects the rights of public employees to engage in lawful concerted activities for mutual aid or protection which do not involve unions. Sections 10(1)(a) and (c) of PERA prohibit an employer from discriminating against employees because they have exercised their Section 9 rights or otherwise interfering with the exercise of these rights, and from discharging or otherwise discriminating against employees

because of their union activities. PERA, however, does not provide a cause of action for other types of discrimination, harassment or unfair treatment of public employees by their employers, and the Commission does not have authority to enforce the ADA or other federal or state discrimination statutes. Absent an allegation that the employer interfered with, restrained, coerced, restrained or retaliated again the employee for engaging in union or other protected activities, 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. An employee does not state a claim under PERA by asserting that he or she was terminated in retaliation for complaining about sexual harassment. See e.g., *City of Detroit,* 19 MPER 86 (2006) (no exceptions); *Saginaw Co,* 1992 MERC Lab Op 639 (no exceptions).

Swiftney's charge against the Respondent Employer alleges that she was terminated because she complained about sexual harassment and/or in violation of the ADA. She does not allege that she was terminated because of union or other concerted activity as defined in Section 9 of PERA. I conclude that Swiftney's charge against the Respondent Employer does not state a claim upon which relief can be granted under PERA. For this reason, I recommend that Respondent's motion for summary disposition be granted and that the Commission issue the following order.

RECOMMENDED ORDER

The charge against Respondent Grand Haven Public Schools is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____