

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

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Public Employer-Respondent,

Case No. C10 D-088

-and-

MICHAEL L. MCCLAIN,
An Individual-Charging Party.

APPEARANCES:

Michael L. McClain, *In Propria Persona*

DECISION AND ORDER

On May 28, 2010, Administrative Law Judge David M. Peltz 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 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 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. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Respondent-Public Employer,

Case No. C10 D-088

-and-

MICHAEL L. MCCLAIN,
An Individual Charging Party.

APPEARANCES:

Michael L. McClain, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

On April 2, 2010, Michael L. McClain filed an unfair labor practice charge against his former employer, Wayne County Community College District. 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 David M. Peltz, Administrative Law Judge (ALJ) for the State Office of Administrative Hearings & Rules, acting on behalf of the Michigan Employment Relations Commission.

The Unfair Labor Practice Charge:

The charge alleges that McClain was discharged by the Employer while on long term disability leave and that his medical benefits were cancelled. In an order issued on April 14, 2010, I directed Charging Party to show cause why the charge should not be dismissed for failure to state a claim under PERA. Charging Party was specifically directed to provide factual support for his allegations and cautioned that a decision recommending dismissal of the charge would be issued without a hearing if his response to the order did not state valid and timely claims under the Act, or if he failed to respond to the order. Charging Party did not file a response to the order to show cause.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, accepting all of the allegations in the charge as true, dismissal is nonetheless warranted, as the

charge fails to state a claim under the Act.

PERA does not prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. Rather, the Commission's jurisdiction with respect to public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in union or other protected concerted activities. The charge does not provide a factual basis which would support a finding that McClain engaged in union activities for which he was subjected to discrimination or retaliation in violation of the Act. Absent such an allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the employer's action. Thus, dismissal of the charge is warranted.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge in Case No. C10 D-088 is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: May 28, 2010