

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY, AND  
MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 25,  
Labor Organization-Respondent,

Case No. CU08 F-028

-and-

WALTER SHEPARD,  
An Individual-Charging Party.

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APPEARANCES:

Cassandra D. Harmon-Higgins, Esq., for the Labor Organization

Walter Shepard, *In Propria Persona*

**DECISION AND ORDER DENYING  
MOTION FOR RECONSIDERATION**

On September 18, 2009, this Commission issued its Decision and Order in the above-entitled matter, finding that Charging Party's charge against Respondent failed to state an actionable claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.201- 423.217. We concluded that Charging Party failed to allege that Respondent acted arbitrarily, discriminatorily or in bad faith in deciding not to pursue arbitration over Charging Party's termination. Accordingly, we affirmed the ALJ's summary dismissal of the unfair labor practice charges.

On October 26, 2009, Charging Party filed a motion for reconsideration of our Decision and Order. Respondent did not submit a response to the motion.

Rule 167 of the Commission's General Rules, 2002 AACS, R 423.167 governs motions for reconsideration and states in pertinent part:

A motion for reconsideration shall state with particularity the material error claimed. . . . Generally, and without restricting the discretion of the commission, a motion for reconsideration which merely presents the same issues ruled on by the commission, either expressly or by reasonable implication, will not be granted. (Emphasis added)

Charging Party's motion for reconsideration is essentially a half page letter that restates the arguments already presented in his exceptions to the ALJ's Decision and Recommended Order. Those arguments were carefully considered and discussed in our Decision and Order of September 18, 2009. Thus, Charging Party has not properly set forth grounds for reconsideration of our earlier order. See *Michigan State University*, 22 MPER 30 (2009); *City of Detroit Water and Sewerage Dep't*, 1997 MERC Lab Op 453, in which the Commission denied the motion for reconsideration where the charging party restated the same arguments he presented in his exceptions.

Further, Rule 167 also states in pertinent part: "[a]ny motion pursuant to this rule shall be filed not later than 20 days after the issuance of the commission's final order." The Commission's final decision was issued on September 18, 2009; however, the motion for reconsideration was filed 38 days later on October 26, 2009.

Accordingly, the motion for reconsideration fails as it is untimely and merely presents the same arguments contained in the earlier pleadings and exceptions.

**ORDER**

Charging Party's motion for reconsideration is denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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  
RULESEMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

AMERICAN FEDERATION OF STATE COUNTY  
AND MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 25,  
Respondent-Labor Organization,

-and-

Case No. CU08 F-028

WALTER SHEPARD,  
An Individual Charging Party.

APPEARANCES:

Walter Shepard, Charging Party, appearing personally

DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE ON SUMMARY JUDGMENT

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) of the State Office of Administrative Hearings and Rules (SOAHR), on behalf of the Michigan Employment Relations Commission. This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim.

The Unfair Labor Practice Charge:

On June 4, 2008, Walter Shepard (the Charging Party) filed a Charge form in this matter with various attached documents related to his termination from employment with the Highland Park School District and related to the decision by the Respondent Union Michigan AFSCME Council 25 not to pursue a grievance over Shepard's termination to arbitration. The documents revealed that Shepard was fired while on a "last chance agreement" arising from a prior disciplinary suspension from employment. Shepard makes no specific allegation of improper conduct by Respondent.

The allegations filed in this matter did not properly state a claim under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge was therefore subject to dismissal as such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), the Charging Party was ordered to file either a voluntary withdrawal or a written statement explaining in detail what he believed the Union did that was unlawful and why the charge

should not be dismissed.. Charging Party Shepard did not file a response to the order within the twenty-one day limit set by the order.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, the fact that a member expresses generalized dissatisfaction with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Because there is no allegation in the Charge supporting the claim that the Union violated its statutory duties, and because no response was filed to the order to show cause, the charge against the Union must be dismissed as it 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

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Doyle O'Connor  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

Dated: \_\_\_\_\_