

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

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent in MERC Case No. C18 J-100,

-and-

AFSCME COUNCIL 25, LOCAL 312,
Labor Organization-Respondent in MERC Case No. CU18 J-038,

-and-

JERMAINE SMITH,
An Individual Charging Party.

APPEARANCES:

Jermaine Smith, appearing on his own behalf

DECISION AND ORDER

On December 4, 2018, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order¹ 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: February 6, 2019

¹ MAHS Hearing Docket Nos. 18-020634 & 18-020635

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent in Case No. C18 J-100; Docket No. 18-020634-MERC,

-and-

AFSCME COUNCIL 25, LOCAL 312,
Labor Organization-Respondent in Case No. CU18 J-038; Docket No. 18-020635-MERC,

-and-

JERMAINE SMITH,
An Individual Charging Party.

**DECISION AND RECOMMENDED ORDER OF
ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE**

On October 29, 2018, Jermaine Smith filed the above captioned unfair labor practice charges against the City of Detroit, Department of Transportation (Employer) and AFSCME Council 25, Local 312 (Union). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the above captioned cases were assigned to Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission). Pursuant to Rule 164 of the Commission's General Rules, R 423.164, 2002 AACS; 2014 AACS, these matters were consolidated.

Smith, in Case No. C18 J-100 against the Employer, lists under Section 3 of the Commission provided charge form the following, "Breach of Contract." Similarly, in Case No. CU18 J-038 against the Union, Charging Party lists, "Duty of fair representation" in that same section.²

On December 6, 2017, I issued an Order to Show Cause directing Charging Party to show cause in writing why his charges against both Respondents should not be dismissed without a hearing for failing to state a claim upon which relief could be granted under PERA. Charging Party's responses were due on or before November 26, 2018. Charging Party did not file any response with my office nor did he contact my office to request an extension in which to file a response.

² Smith earlier filed charges against just the Employer, Case No. C17 K-094; Docket No. 17-025824-MERC and Case No. C17 K-095; Docket No. 17-025825-MERC. Similar to the present charges, Charging Party listed "Breach of Contract - Failure to follow grievance procedure" and "Unfair Labor Practice - Retaliation" respectively.

Discussion and Conclusions of Law:

The Commission does not investigate charges filed with it. Charges filed with the Commission must comply with the Commission's General Rules. More specifically, Rule 151(2)(c), of the Commission's General Rules, 2002 AACRS; 2014 MR 24, R 423.151(2)(c), requires that an unfair labor practice charge filed with the Commission include:

A clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged therein, and the sections of LMA or PERA alleged to have been violated.

Charges which comply with the Commission's rules, are timely filed, and allege a violation of PERA are set for hearing before an administrative law judge. In order to be timely filed, the charge must be filed within six months of the alleged unfair labor practice. MCL 423.216(a).

Rule 165 of the Commission's General Rules, states that the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the charge does not state a claim upon which relief can be granted under PERA. See, *Oakland County and Sheriff*, 20 MPER 63 (2007); *aff'd* 282 Mich App 266 (2009); *aff'd* 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986), *lv den* 428 Mich 856 (1987).

The failure to respond to an order to show cause may, in itself, warrant dismissal of an unfair labor practice charge. *Detroit Dept of Trans and ATU*, 30 MPER 61 (2016); *City of Detroit*, 30 MPER 39 (2016); *AFSCME Council 25*, 22 MPER 87 (2009); *Detroit Federation of Teachers*, 21 MPER 3 (2008).

Charging Party's failure to respond notwithstanding, dismissal of the charge is nonetheless appropriate. Simply put, Charging Party's filings are devoid of any allegation that could establish a claim under PERA against either the Employer or the Union. As such, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The charges are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: December 4, 2018