

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer - Respondent,

Case No. C09 B-012

-and-

DANON WESLEY,
An Individual - Charging Party.

APPEARANCES:

Danon Wesley, *In Propria Persona*

DECISION AND ORDER

On March 18, 2009, Administrative Law Judge David M. Peltz issued his 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
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

Case No. C09 B-012

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer,

-and-

DANON WESLEY,
An Individual Charging Party.

APPEARANCES:

Danon Wesley, appearing on his own behalf

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On February 13, 2009, Danon Wesley filed an unfair labor practice charge against the Detroit Public Schools. 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) of the State Office of Administrative Hearings and Rules, on behalf of the Michigan Employment Relations Commission.

The charge alleges that Wesley was terminated by Respondent on November 10, 2008 without regard to his seniority or union rights. In an order issued on February 27, 2009, I directed Charging Party to show cause why the charge should not be dismissed for failure to state claims upon which relief can be granted under PERA. Charging Party filed a response to the order to show cause on March 12, 2009, along with numerous attachments. In the response, Wesley did not provide any additional information concerning his termination. Rather, the response describes a dispute which allegedly occurred in March of 2007 between Wesley and a manager for Aramark, a "contracted company."

Discussion and Conclusions of Law:

With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide an independent cause of action for an employer's breach of contract or violation of other statutes. 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 activities. Absent a factually supported allegation that the Employer took action against an employee for engaging in conduct protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the Employer's action. 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. In the instant case, Charging Party has not alleged any facts which would support a finding that he engaged in protected concerted activity for which he was subject to discrimination or retaliation in violation of the Act. Accordingly, the charge must be dismissed for failure to state a claim under PERA.¹

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge in Case No. C09 B-012 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: March 18, 2009

¹ In his response to the order to show cause, Charging Party asserts that he was harassed by "Mr. Blunt." Wesley does not allege that Blunt was an employee or agent of the school district, nor does he contend that this harassment was the result of anti-union discrimination. Nevertheless, because the incident allegedly occurred in March of 2007, almost two years prior to the filing of the charge, any allegations pertaining to that dispute would be untimely under Section 16(a) of PERA. Pursuant to Section 16(a), no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission.