

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

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C06 H-191

-and-

GERALD BERNARD ROBINSON,
Individual Charging Party.

APPEARANCES:

Dwight Thomas, for the Public Employer

Gerald Bernard Robinson, *In Propria Persona*

DECISION AND ORDER

On November 9, 2006, Administrative Law Judge Doyle O'Connor 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
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer,

Case No. C06 H-191

-and-

GERALD BERNARD ROBINSON,
Individual Charging Party.

APPEARANCES:

Dwight Thomas, for the Public Employer

Gerald Bernard Robinson, *In Propria Persona*

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

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 matter was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the response to an order to show cause, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Gerald Robinson filed a charge on August 17, 2006 asserting that, while he was employed by the City, his female supervisor had sexually harassed him.

An order to show cause why the charge should not be dismissed was issued on August 30, 2006, directing Charging Party to address the apparent failure to state a claim under the PERA. The Charging Party filed a response to the order to show cause on September 5, 2006 asserting that he had been improperly terminated from his employment with the Detroit Water and Sewerage Department over an incident which led to a charge by the Employer that Robinson had used abusive language in the workplace and had threatened violence against a male coworker.

Findings of Fact:

The findings of fact are derived from the charge and the Charging Party's response to the order to show cause, with those allegations taken in the light most favorable to Charging Party. Robinson was employed in the Detroit Water and Sewerage Department. He asserts that he was the object of unwelcome sexual advances by his female supervisor and that he was threatened with retaliation for rejecting such advances.

Robinson asserts that he was not at fault in a disputed incident with a male coworker that led to Robinson's termination from employment. The City charged him with using abusive language in the workplace and with threatening his male coworker. Robinson asserts that some other City employees with similar offenses had not been fired. Robinson was covered by a collective bargaining agreement and the dispute over his discharge has gone to arbitration. Robinson attached a copy of the arbitration award, which upheld the discharge, finding that Robinson had been the aggressor in the disputed incident with his male coworker.

Discussion and Conclusions of Law:

PERA does not prohibit all types of discrimination or unfair treatment in the workplace, nor does the Commission have authority to interpret a collective bargaining agreement to determine whether its provisions were followed. Absent any evidence or allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the discharge of a public employee. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524.

Robinson's allegations of sexual harassment by his supervisor, if proven, might establish conduct unlawful under civil rights statutes; however, MERC has no authority to investigate, hear, or act on such alleged civil rights allegations. Robinson's assertion that he was not at fault in the incident involving his male coworker, or that the penalty was too harsh, goes only to the fairness or reasonableness of the City's conduct. Such allegations regarding reasonableness or enforcement of a collective bargaining agreement are not within the jurisdiction of MERC to resolve. Because there is no factual allegation that the Employer was motivated by union or other activity protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted by this agency.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____