

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

In the Matter of:

CITY OF BATTLE CREEK,
Public Employer-Respondent,

-and-

NANCY CRAWFORD,
An Individual Charging Party.

MERC Case No. C16 K-121
Hearing Docket No. 16-033040

APPEARANCES:

Nancy Crawford, appearing on her own behalf

DECISION AND ORDER

On January 19, 2017, Administrative Law Judge Travis Calderwood 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 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 either 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: March 8, 2017

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

In the Matter of:

CITY OF BATTLE CREEK,
Public Employer-Respondent,

-and-

Case No. C16 K-121
Docket No. 16-033040-MERC

NANCY CRAWFORD,
An Individual-Charging Party.

APPEARANCES:

Cindy A. Crawford appearing on her own behalf

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

On November 21, 2016, Nancy Crawford (Crawford or Charging Party), filed the present unfair labor practice charge against her employer, the City of Battle Creek. 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 Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission).

Charging Party is challenging the City's denial of her request to take leave to care for her daughter following the latter's birth via cesarean section.¹ Charging Party alleges that sometime prior to September 16, 2016, she submitted certain forms to her employer requesting that she be allowed to leave in order to care for her daughter. On September 26, 2016, she was informed that the Employer had denied her request. Charging Party then amended the forms and resubmitted her request. On October 3, 2016, the Employer denied her request. Charging Party informed her Employer that she would not be at work from September 27 through September 30.

On October 5, 2016, by letter, Charging Party was informed that her position had been terminated. Charging Party claims she then contacted her union representative and "the proper channels were taken."² Once again Charging Party amended her leave request paperwork and resubmitted them to her Employer. The Employer denied the paperwork again and indicated that

¹ Charging Party labels the leave request as leave under FMLA.

² Charging Party does not indicate who her authorized bargaining representative is or what "proper channels" references.

Charging Party would not be offered her job back.

On December 12, 2016, I issued an Order directing Charging Party to show cause in writing why her charge against the City should not be dismissed without hearing for failing to state a claim upon which relief could be granted under PERA. Charging Party's response was due on or before January 3, 2017. Charging Party did not file any response with my office nor did she contact my office to request an extension in which to file a response.

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.

Rule 165 of the Commission's General Rules, 2002 AACRS, 2014 MR 24, R 423.165, 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),

When an Administrative Law Judge issues an order to a charging party to show cause why a charge should not be dismissed for failure to state a claim upon which relief can be granted under PERA, the failure to respond to the order may, in itself, warrant dismissal of the charge. *Detroit Pub Schs*, 29 MPER 44 (2015); *Detroit Federation of Teachers*, 21 MPER 3 (2008).

The above failure to respond notwithstanding, generally, with respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment. Section 10(1)(a) of PERA prohibits public employers from engaging in "unfair" actions that seek to interfere with an employee's free exercise of the specific rights contained in Section 9 of the Act. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). PERA does not prohibit all types of discrimination or unfair treatment. *Detroit Pub Sch*, 22 MPER 16 (2009). Absent a valid claim under PERA, the Commission lacks jurisdiction to address the fairness of an employer's actions. *Id.* The Commission is charged only with the responsibility to determine whether PERA has been violated,

and it cannot, and does not, remedy violations of other laws or statutes. *Muskegon Heights Public School District*, 1993 MERC Lab Op 654, 657.

In the instant case and with the facts as alleged by Charging Party, the charge does not plead with any specificity that the Employer violated PERA. Whether the Employer's denial of Charging Party's leave request may have been violation of federal law is immaterial to an analysis under PERA absent some allegation that the Employer's decision interfered with the rights as protected by the Act.

Simply put, Charging Party has failed to state a claim for which relief can be granted under PERA against the Employer despite being given the opportunity to clarify how her allegations stated a valid claim under PERA. For this reason, it is the opinion of the undersigned that the charge should be dismissed for failure to state a claim under PERA upon which relief could be granted. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: January 19, 2017