

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

In the Matter of:

EAST DETROIT PUBLIC SCHOOLS,

Public Employer-Respondent in MERC Case No. C16 F-057; Hearing Docket No. 16-017156,

-and-

EAST DETROIT EDUCATIONAL SECRETARIES ASSOCIATION,

Labor Organization-Respondent in MERC Case No. CU16 F-038; Hearing Docket No. 16-017292,

-and-

JENNIFER SMITH,

An Individual Charging Party.

APPEARANCES:

Clark Hill PLC, by Marshall W. Grate, for the Public Employer

Mark H. Cousens, for the Labor Organization

Deborah Caminita, for Charging Party

DECISION AND ORDER

On February 3, 2017, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order in the above matter finding that Respondents 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: March 29, 2017

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

In the Matter of:

EAST DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C16 F-057; Docket No. 16-017156-MERC,

-and-

EAST DETROIT EDUCATIONAL SECRETARIES ASSOCIATION,
Labor Organization-Respondent in Case No. CU16 F-038; Docket No. 16-017292-MERC,

-and-

JENNIFER SMITH,
An Individual-Charging Party.

APPEARANCES:

Clark Hill PLC, by Marshall W. Grate, for the Public Employer-Respondent

Mark H. Cousens for the Labor Organization-Respondent

Deborah Caminita for Charging Party

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

On June 13, 2016, Jennifer Smith (Smith or Charging Party), filed unfair labor practice charges against her former employer, the East Detroit Public Schools (District) and her bargaining representative, East Detroit Educational Secretaries Association (Association). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, these cases were 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 alleges that following her return from maternity leave she was unjustly terminated. Charging Party further alleges that despite her desire to file a grievance challenging her termination, the Association President would not allow her to do so and told her that she could not file a grievance.

On June 24, 2016, I consolidated these proceedings and directed Respondents to file position statements in which each were to respond to the allegations as set forth in the charges.

Following receipt and review of those position statements, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, 2014 MR 24, R 423.165, I directed Charging Party to show cause why her charges should not be dismissed without a hearing because, as filed, her charges did not allege any violation of PERA. Charging Party timely filed her response on November 2, 2016.

Based upon a thorough review of the response as filed by Charging Party, I concluded that summary dismissal of the charge against the East Detroit Public Schools, Case No. C16 F-057; Docket No. 16-017156-MERC was appropriate and I issued an Interim Order on November 22, 2016, incorporated by reference herein, indicating such and stating that a Decision and Order formally recommending dismissal of the charge against the East Detroit Public Schools would be issued upon the final resolution of the consolidated cases.

With respect to the charge levied against the Association, I concluded that there existed a material issue of fact with respect to whether the Association breached its duty to represent Charging Party in connection with her termination and that summary dismissal was not appropriate. Also within that Interim Order I included the following statement:

Charging Party must be made aware that because I will be recommending dismissal of the charge against the East Detroit Public Schools, I am unable to order any remedy with respect to the Employer. Thus, regardless of whether Charging Party prevails against the Association, there can be no order in this matter requiring the Employer to pay damages to Charging Party or to take any remedial action such as reinstatement of her position with the Employer.

A telephone pre-hearing conference was held on December 8, 2016, during which time I explained the nature of the proceedings still pending against the Association to Charging Party. During that phone call Charging Party indicated that she wished to be represented going forward by her mother, Deborah Caminita, a non-attorney.¹ Several possible dates were discussed to schedule the evidentiary hearing on Smith's charge against the Association. The District's representative indicated their intention to attend the hearing. On December 9, 2016, both Respondents provided their availability from the dates discussed during the prior day's telephone call. On December 13, 2016, Caminita emailed my office with her available dates, one of which was January 25, 2017. That same day a Notice of Hearing for January 25, 2017, was sent to all parties.

On January 19, 2017, Caminita, on behalf of Charging Party sent my office an email requesting an adjournment of the following week's hearing because a family member of one of Charging Party's current co-workers had taken ill and that that co-worker had taken time off of work, leaving Charging Party with no available work coverage. Both Respondents objected to the request on the grounds that a third-party's illness, who has no connection to the present proceedings, should not serve as a reason to adjourn the hearing. I agreed and denied Charging Party's request. On January 20, 2017, Caminita sent my office an email in which she stated that both she and Charging Party would be attending the hearing on January 25, 2017.

¹ Rule 106 of the Commission's General Rules, 2002 AACRS, R 423.106, states:

A party to a proceeding before the Michigan Employment Relations Commission may be represented by an attorney or non-attorney, or other agent of his or her choice, or appear on his or her own behalf.

On the morning of January 25, 2017, a little more than 30 minutes prior to the start of the hearing, my office received an email from Caminita which stated:

Due to the reasons listed in the earlier email, we will not be attending the hearing. Thanks so much for your compassion.

At 10:00 a.m., I convened the hearing. Present at the hearing were both Respondents along with various witnesses and others in attendance. On the record, I recounted the timeline of events as summarized above and stated that I considered the email from Caminita to be an abandonment of the unfair labor practice charge by Charging Party.

Charge Against the Employer

Based upon a thorough review of the response as filed by Charging Party, I conclude that summary dismissal of the charge against the East Detroit Public Schools, Case No. C16 F-057; Docket No. 16-017156-MERC is appropriate.

Under Section 9 of PERA, public employees are guaranteed in their rights to form, join or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. Types of activities protected by PERA include filing or pursuing a grievance pursuant to the terms of a union contract, participating in union activities, joining or refusing to join a union, and joining with other employees to protest or complain about working conditions. Sections 10(1)(a) and (c) of PERA prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities described above.

Commission application of PERA makes it clear that the Act does not prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for a breach of contract claim asserted by an individual employee. Furthermore, it is not MERC's role to hear allegations of discrimination on the basis of race, age, gender, religion, disability, national origin, or other generalized claims of unfair treatment. See e.g. *Ann Arbor Sch*, 16 MPER 15 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75. Charging Party's claim and her response to my Order to Show Cause, while alleging that she was unjustly terminated, does not allege any facts, that if proven true, could establish that the District's decision to terminate her employment was based on considerations unlawful under PERA. Accordingly, summary dismissal of the charge in Case No. C16 F-057; Docket No. 16-017156-MERC is warranted.

Charge Against the Union

Under Commission Rule 165(2)(g), Charging Party's refusal to appear at the evidentiary hearing on January 25, 2017, despite admitted notice of the hearing and an affirmative statement that she would attend, is grounds for the dismissal of the charge against the Union.

Accordingly, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charges be dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 3, 2017