

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

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent,

-and-

PAMELA KING,
An Individual Charging Party.

MERC Case No. C16 K-124
Hearing Docket No. 16-034550

APPEARANCES:

Pamela King, appearing on her own behalf

DECISION AND ORDER

On February 14, 2017, Administrative Law Judge Julia C. Stern issued her 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 29, 2017

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

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent,

-and-

Case No. C16 K-124
Docket No. 16-034550-MERC

PAMELA KING,
An Individual-Charging Party.

APPEARANCES:

Pamela King, appearing for herself

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION**

On November 22, 2016, Pamela King filed an unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her employer, the City of Detroit (Department of Transportation) alleging violations of Section 10 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of that Act, the charge was were assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System (MAHS).

On December 19, 2016, pursuant to Rule 165 of the Michigan Employment Relations Commission's General Rules, R 423.165, I issued an order to King to show cause why her charge should not be dismissed on the grounds that her charge, as filed, did not allege a violation of PERA. King did not file a response to the order. Based upon the facts alleged by King in her charge, as set forth below, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Facts:

King is employed by Respondent as a customer service transportation supervisor. Sometime in 2013, King made a complaint to Duane Yuille, whose title was then human resources general manager, that she was being sexually harassed by a male co-worker. Yuille took no action on King's complaint. In August, 2016, Yuille informed King that he had been appointed manager of administration and that thereafter King would be reporting to him.

Beginning in September 2016, Yuille began making demeaning remarks about King to King's subordinates. He also instructed King not to attend certain meetings and removed or attempted to remove her from others.¹ On November 16, 2016, Yuille instructed King not to attend a meeting and to stay in her office. He also told her that this order came directly from Respondent's department director. According to King, this statement was not true.

King's charge alleges that her 2013 complaints to Yuille constituted activity protected by PERA. She also alleges that beginning in September 2016, Yuille violated PERA by creating a "hostile work environment," for King because of her 2013 complaints and because of her sex.

Discussion:

The failure of a charging party to file a timely response to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

Section 10(1)(a) of PERA prohibits a public employer from interfering with or coercing employees in the exercise of their rights under Section 9 of that Act. Section 9 of PERA protects the rights of public employees 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. The types of activities protected by PERA include filing or pursuing a grievance under a union contract, holding union office, and joining or refusing to join a union. In addition to protecting the right to engage in these union activities, Section 9 also protects the right of public employees to join with other employees to protest or complain about working conditions outside the context of collective bargaining. Section 10(1)(a) prohibits public employers from disciplining or retaliating against employees for exercising any or the rights protected by Section 9. In addition, Section 10(1)(c) of PERA prohibits a public employer from discriminating against employees in order to discourage or encourage union membership.

An individual's complaints to an employer about working conditions may, in certain circumstances, constitute activity protected by PERA. Concerted activity protected by Section 9 "encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." See *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), *aff'd sub nom Prill v NLRB*, 835 F.2d 1481 (DC Cir. 1987), cert. denied 487 US 1205 (1988); *Genesee Township Police Department*, 26 MPER 3(2012). However, individual complaints not based on a collective bargaining agreement and made solely by and on behalf of an individual employee are not protected, because what Section 9 of PERA protects is the right of employees to act together on matters of mutual concern. *Hesperia Bd of Ed*, 1969 MERC Lab Op 104, 109; *City of Detroit (Dept of Water and Sewerage)*, 18 MPER 34 (2005).

¹ King did not explain the purpose of the meetings from which Yuille excluded or attempted to exclude her, or what, if any, justification he offered for excluding her. However, nothing in her charge indicated that these were union or grievance meetings.

The protections guaranteed by PERA to public employees are those set out in the statute. Not all types of unfair, or even unlawful, treatment of its employees by a public employer violate PERA. There are many other Michigan and federal statutes that govern some aspect of the relationship between a public employee and public employer, including statutes which prohibit discrimination based on sex. Each statute has its own enforcement mechanism. The Commission administers and enforces PERA. It does not have the legal authority to enforce these other statutes. Absent an allegation that the employer interfered with, restrained, coerced, or retaliated against the employee for engaging in, or refusing to engage in, union or other activities of the type protected by PERA, the Commission has no jurisdiction to make a judgment on the fairness of the employer's actions. 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.

Charging Party did not file a response to my order to show cause. I conclude that King's charge, as filed, does not allege a violation of PERA. King does not allege that Yuille's actions constituted retaliation against her for engaging in any type of union activity. According to the facts set out in her charge, in 2013 King complained to Yuille about sexual harassment by another employee, but her complaints appear to have been confined to that employee's conduct toward her. That is, King's sexual harassment complaints do not appear to have been made with or on behalf of any other employee. I find that King failed to allege facts to support a claim that she engaged in activity protected by Section 9 when she complained to Yuille in 2013. For reasons discussed above, King's claim that Yuille's conduct toward her in 2016 constituted discrimination on the basis of her sex also does not state a claim under PERA. I find that King's charge should be dismissed on the grounds that it does not state a claim upon which relief could be granted under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 14, 2017