

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

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

-and-

SHANESHA PUGH,
An Individual Charging Party.

MERC Case No. C17 B-010
Hearing Docket No. 17-003807

Appearances:

Michael Hall, Labor Relations Director, City of Detroit, for Respondent

Shanesha Pugh, appearing on her own behalf

DECISION AND ORDER

On April 27, 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: June 9, 2017

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

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C17 B-010
Docket No. 17-003807-MERC

-and-

SHANESHA PUGH,
An Individual-Charging Party.

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

On February 2, 2017, Shanesha Pugh (Charging Party or Pugh), filed the above unfair labor practice charge against her employer, the City of Detroit. 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, an Emergency Services Operator, alleges that on November 5, 2016, she contacted a supervisor and requested to use compensatory time. Her request was denied and time was docked from her paycheck. Pugh further claims that the same supervisor denied a similar request made on June 28, 2016. Charging Party claims that these denials violate her “employee rights” and are also “a blatant breach of contract” by the Employer.

On March 10, 2017, I issued an Order to Show Cause directing Charging Party to show cause in writing why her charge against the City should not be dismissed without hearing on timeliness grounds as well as for failing to state a claim upon which relief could be granted under PERA. Charging Party’s response was due on or before March 31, 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 and are timely filed are set for hearing before an administrative law judge. The Commission has consistently held that the six-month statute of limitations, contained within Section 16(a) of PERA, is jurisdictional and cannot be waived. *Walkerville Rural Comm Sch*, 1994 MERC Lab Op 582, 583. The limitations period commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983).

Rule 165 of the Commission's General Rules, 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).

Charging Party's failure to respond notwithstanding, dismissal of the charge is nonetheless appropriate. 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.* As the Commission is charged only with the responsibility to determine whether PERA has been violated, it cannot and does not, remedy violations of other laws or statutes. *Muskegon Heights Public School District*, 1993 MERC Lab Op 654, 657.

With respect to the denial of compensatory time, Charging Party does not claim with any specificity that the Employer's action was unlawful under PERA. Furthermore, Charging Party's claim that she was denied leave time in June of 2016, clearly falls outside the Act's six-month statute of limitations. For these reasons, I recommend 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 April 27, 2017