

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

In the Matter of:

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

MERC Case Nos. C17 K-094 & C17 K-095

-and-

JERMAINE SMITH,  
An Individual Charging Party.

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Jermaine Smith, appearing on his own behalf

**DECISION AND ORDER**

On January 5, 2018, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order<sup>1</sup> 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 20, 2018

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<sup>1</sup> MAHS Hearing Docket Nos. 17-025824 and 17-025825

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

In the Matter of:

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

Case Nos. C17 K-094  
C17 K-095

-and-

Docket Nos. 17-025824-MERC  
17-025825-MERC

JERMAINE SMITH,  
An Individual-Charging Party.

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Jermaine Smith, appearing on his own behalf

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

On November 16, 2017, Jermaine Smith (Charging Party), filed the above captioned unfair labor practice charges against the City of Detroit (Department of Transportation). 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, in Case No. C17 K-094, lists under Section 3 of the Commission provided charge form the following, "Breach of Contract – Failure to follow grievance procedure." Similarly, in Case No. C17 K-095, Charging Party lists, "Unfair Labor Practice – Retaliation" in the same section.

On December 6, 2017, I issued an Order to Show Cause directing Charging Party to show cause in writing why his charges 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 December 27, 2017. Charging Party did not file any response with my office nor did he 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 AACS; 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. In order to be timely filed, the charge must be filed within six months of the alleged unfair labor practice. MCL 423.216(a).

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),

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.*

Charging Party's filings fail to plead with any specificity facts, that if proven true, could establish a claim under PERA for which relief could be granted. As such I recommend that the Commission issue the following order:

#### RECOMMENDED ORDER

The charges are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: January 5, 2018