STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Public Employer-Respondent,

MERC Case No. C17 K-103

-and-

KAREN GREEN,
An Individual-Charging Party.
_____/

APPEARANCES:

The Allen Group PC, by Dorian Tyus, for Respondent

Karen Green, appearing for herself

DECISION AND ORDER

On February 23, 2018, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order[1] 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: April 13, 2018

[1] MAHS Hearing Docket No. 17-026480

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Public Employer-Respondent,

Case No. C17 K-103
Docket No. 17-026480-MERC

-and-

KAREN GREEN,
An Individual-Charging Party.
_____/

APPEARANCES:

The Allen Group PC, by Dorian Tyus, for Respondent

Karen Green, appearing for herself

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On November 28, 2017, Karen Green filed the above charge with the Michigan Employment Relations Commission (the Commission) against her employer, the Wayne County Community College District, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MCL 423.216.[2] Pursuant to Section 16 of PERA, the charge was assigned for hearing to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On December 12, 2017, pursuant to Rule 165 of the Commission's General Rules, 2002 AACS, 2014 AACS, R 423.165, I issued an order to Green to show cause why her charge against Respondent should not be dismissed because it did not allege a violation of PERA. Green was granted an extension until February 5, 2018, to file a response to that order but did not do so. Based on the facts set out in Green's charge, I make the following conclusions of law and recommend that the Commission issue the following order.

[2] Green also filed a charge against her collective bargaining representative, UAW Amalgamated Local 1796, Region One, on this same date. The two charges were originally consolidated. Per agreement of the parties, the hearing in Case No. CU17 K-035/17-026481-MERC has been adjourned without date.

The Unfair Labor Practice Charge and Pertinent Facts:

Karen Green is employed by Respondent as a part-time Science Lab Aide and is part of a bargaining unit represented by UAW Amalgamated Local 1796, Region One (the Union). According to Green, sometime in late 2006 Respondent informed Green that, in addition to her Lab Aide duties, she was to be assigned the duties previously performed by an eliminated position, Science Lab Coordinator. Despite going through training and being assigned the new duties on a permanent basis, Green did not receive any additional compensation. Green asserts that since that time the Employer has continued to assign her new and more complex duties, including duties performed by a much higher paid full-time position, Chemical/Hygiene Science Tech, without compensating her for these additional duties. According to Green, since 2006 three part-time Science Lab Aides, including two with less seniority than Green, have been reclassified as full-time Chemical/Hygiene Science Techs. However, despite Green's complaints about her compensation, her expressed interest in becoming full-time, and a constantly shrinking number of part-time unit positions, Respondent has refused to either reclassify her as full-time or pay her at the higher rate of a Chemical/Hygiene Science Tech.

Green's charge alleges that by the actions above Respondent violated two provisions in the collective bargaining agreement between Respondent and the Union. The first provision, according to Green, requires reclassification when an existing job is permanently and materially changed. The second provision, according to Green, requires Respondent to pay additional compensation to employees performing duties at a higher grade level. Green also alleges that in refusing to reclassify her, the Employer discriminated against her and other female Science Lab Aides.

On or about June 6, 2016, the Union filed a grievance on Green's behalf asking that she be compensated for performing job duties outside of her classification. In early June 2017, Respondent made an offer to settle the grievance to Green and her Union representatives. Green found the terms of the offer unsatisfactory and rejected it, despite efforts by Union representatives to persuade her to accept the offer. When Green filed the instant charge, she was not sure whether her grievance was still pending or, if so, what the status of the grievance was.

Discussion and Conclusions of Law:

Rule 165 of the Commission's General Rules states that an administrative law judge assigned to hear a case for the Michigan Employment Relations Commission may, on his or her own initiative or on a motion by any party, order dismissal of a charge or issue a ruling in favor of a party without a hearing based on grounds set out in the rule. These include, as set out in Rule 165(2)(f), failure to allege a claim on which relief may be granted by the Commission.

In addition, under Rule 165(2)(h) a charge may be dismissed for failure to respond to a "dispositive motion or show cause order or other order." 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. See *Detroit Federation of Teachers*, 21 MPER 3 (2008).

The Commission administers and enforces PERA. Section 9 of PERA protects the rights of public employees in Michigan 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, 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 protected by PERA. For example, an employer who disciplines or discharges an employee because the employee has filed a grievance under a union contract violates PERA.

However, 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 employment statutes, including statutes that prohibit discrimination based on race, sex, religion, age and disability. Each statute has its own enforcement mechanism. Some of these statutes are enforced by administrative agencies, while others require aggrieved parties to bring an action in a state or federal court.

Although PERA protects employees from retaliation by their employer for filing and/or pursing a grievance under a union contract, PERA does not provide individual employees with a cause of action for their employer's breach of a collective bargaining agreement. See e.g., *Ann Arbor Sch*, 16 MPER 15 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75. 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.

Here, Green asserts that Respondent's refusal to reclassify her or pay her a higher wage for performing additional work was unfair, violated the collective bargaining agreement, and constituted discrimination based on her sex. I find that even if true, these claims do not allege a violation or violation(s) of PERA. I conclude that Green's charge against Respondent does not state a claim upon which relief can 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

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 23, 2018