

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

In the Matter of:

COLDWATER POLICE DEPARTMENT,  
Public Employer-Respondent,

MERC Case No. C18 B-011

-and-

LEWIS B. EASTMEAD,  
An Individual-Charging Party.

---

**APPEARANCES:**

Miller, Canfield, Paddock, and Stone, P.L.C., by Leigh M. Schultz and Sarah J. Hartman, for Respondent

Lewis B. Eastmead, appearing on his own behalf

**DECISION AND ORDER**

On April 27, 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: June 26, 2018

---

<sup>1</sup> MAHS Hearing Docket No. 18-003817

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

In the Matter of:

COLDWATER POLICE DEPARTMENT,  
Public Employer-Respondent,

Case No. C18 B-011  
Docket No. 18-003817-MERC

-and-

LEWIS B. EASTMEAD,  
An Individual-Charging Party.

---

Appearances:

Miller, Canfield, Paddock, and Stone, P.L.C., by Leigh M. Schultz and Sarah J. Hartman, for the Respondent

Lewis B. Eastmead appearing on his own behalf

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

On February 26, 2018, Lewis B. Eastmead (Charging Party), filed the above captioned unfair labor practice charge against the Coldwater Police Department (Respondent). 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's filing challenges the circumstances surrounding his January 12, 2018, termination. An evidentiary hearing was initially scheduled for April 12, 2018.

On March 28, 2018, Respondent filed a motion for summary disposition under Rule 165(2)(b) and/or (d) of the Commission's General Rules, R. 423.165, claiming that Charging Party had failed to state a claim under PERA upon which relief could be granted.

That same day, by letter, I directed Charging Party to respond in writing and show cause why his charge should not be dismissed without a hearing for the reasons set forth in Respondent's motion. Further, I adjourned the April 12, 2018, hearing without date pending receipt and review of Charging Party's response. Said response was due April 20, 2018. To date Charging Party has neither filed a written response to my directive nor has he contacted my office seeking an extension of time in which to file any response.

## Background:

The following factual background, unless expressly indicated, is derived exclusively from Charging Party's February 26, 2018, filing and accepted as true for purposes of considering Respondent's motion.

Charging Party has been employed with the Coldwater Police Department since August of 2001.

On July 24, 2017, Charging Party was involved in an incident involving a female who had resisted arrest.<sup>2</sup> Approximately two weeks later it was learned that the female would be filing a lawsuit because of that incident.

According to Charging Party an internal investigation began sometime around that time, during which Charging Party was told by "several sources" that he had done nothing wrong. Charging Party claims the investigation was completed by the end of August 2017.

A "federal lawsuit" was filed in the beginning of December of 2017 over the July 24, 2017, incident. Charging Party claims that the Director told him that he, the Director, had "'dropped the ball' and thought he [Director] had more time to sign off on the investigation."<sup>3</sup>

On December 16, 2017, Charging Party claims that his Sergeant relayed a message from Director Bartell that Charging Party was to remain at the station and "clean my gear, or other administrative work."

On December 18, 2017, Charging Party's day-off, he received a call from the Deputy Director, who encouraged Charging Party to take some time off. Charging Party claims that the Deputy Director was persistent in this regard and that he, Charging Party, took time off from December 20, 2017, through January 3, 2018.

During the time off, Charging Party was asked to come back in to the station, possibly December 27 or 28, to view the video of the July 24, 2017, incident with Director Bartell. Charging Party's bargaining representative was contacted, and Charging Party then sent an email to the Director asking whether Director Bartell "wanted [Charging Party] to give a statement under the threat of discipline."<sup>4</sup>

On January 4, 2018, Director Bartell emailed Charging Party indicating that he, the Director, "did not need [Charging Party] to go over the video." Charging Party was then called into the Director's office later that same day and was provided preliminary findings of the investigation into the July 24, 2017, incident. Charging Party was also informed that a meeting with Director Bartell had been

---

<sup>2</sup> While Charging Party's filing is devoid of specifics regarding the July 24, 2017, incident, what occurred that day, allegations of excessive force captured on video, has been covered extensively in local and state media outlets. However, because the particulars of that day are irrelevant to the present proceeding further discussion is not necessary.

<sup>3</sup> Charging Party does not identify with specificity the identity of the "Director." However, in the materials provided by Respondent in support of its motion, Mark A. Bartell is identified as the Director of Public Safety.

<sup>4</sup> Charging Party's filing later identified the Police Officers Association of Michigan (POAM) as his bargaining representative.

scheduled for the next Monday, January 8, 2018.

Charging Party attended the meeting on January 8, 2018, accompanied by a POAM representative. Charging Party, who was scheduled to work that day, left work after the meeting because of an anxiety attack.

On January 12, 2018, Charging Party was terminated by Director Bartell. A grievance was filed which, according to Charging Party, is progressing towards arbitration.<sup>5</sup>

Charging Party's filing concludes with the following:

I feel that a time frame of six months is too long of a time frame to come to a decision. I had been told I had done nothing wrong. It was only after the lawsuit was filed, and a large amount of public comment, mostly on social media was it decided a month later, that I should be fired. I began seeing a therapist in Dec 2017, to help with my anxiety attacks. This is the same therapist I had seen in 2015, when I had no confidence in the Directors [sic] ability to lead the department, in a critical situation like this. I strongly believe that if this was handled in a timely manner, in September, I would have not been fired after 16 years of service. It was only after a lawsuit was filed and a large amount of public comment, the decision to fire me was made.

#### 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 AACCS; 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.

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).

The failure to respond to an order to show cause may, in itself, warrant dismissal of an unfair labor practice charge. *Detroit Dept of Trans and ATU*, 30 MPER 61 (2016); *City of Detroit*, 30 MPER 39 (2016); *AFSCME Council 25*, 22 MPER 87 (2009); *Detroit Federation of Teachers*, 21 MPER 3 (2008).

---

<sup>5</sup> Attached to Respondent's motion is a March 1, 2018, email from POAM Business Agent Dave La Montaine to Director Bartell stating that POAM had decided not to proceed to arbitration.

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). Section 10(1)(c) of the Act makes it unlawful for a public employer to discriminate against a public employee in retaliation for engaging in protected activity. The preceding notwithstanding, 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 filing makes it clear that he believes he was wrongfully terminated and further that the process by which it occurred was also unfair. It is not clear whether his primary complaint is that the investigation had taken too long or whether he believes that had the investigation been completed sooner he would not have been terminated. Whether either of the former are true, however, is irrelevant to the present proceeding as Charging Party has not identified any issue that, if proven true, could establish that the Respondent's investigation or decision to terminate him violated PERA.

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 charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

---

Travis Calderwood  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: April 27, 2018