

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

In the Matter of:

DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT,
Public Employer-Respondent,

MERC Case No. C18 G-071

-and-

REGINA FUQUA,
An Individual Charging Party.

APPEARANCES:

Regina Fuqua, appearing on her own behalf

DECISION AND ORDER

On September 28, 2018, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order¹ 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: November 27, 2018

¹ MAHS Hearing Docket No. 18-014831

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

In the Matter of:

DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT,
Public Employer-Respondent,

-and-

Case No. C18 G-071
Docket No. 18-014831-MERC

REGINA FUQUA,
An Individual-Charging Party.

APPEARANCES:

Regina Fuqua, appearing for herself

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

On July 23, 2018, Regina Fuqua filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her employer, the Detroit Public School Community District pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, MCL 423.216. Pursuant to Section 16 of the Act, the charges were assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On July 30, 2018, pursuant to Rule 165(2)(d) of the Commission's General Rules, 2002 AACRS, 2014 AACRS, R 423.165(2)(d), I issued an order directing Fuqua to show cause why her charge should not be dismissed because the charge failed to state a claim upon which relief could be granted under PERA. Fuqua did not file a response to my order.

The Unfair Labor Practice Charge and Pertinent Facts:

The facts as set out in the charge are as follows. Fuqua is a classroom teacher. On or about February 5, 2018, Fuqua was accused by the parent of a child in her class of assaulting another child in the class by picking him up and dropping him to the floor. Fuqua was informed of the allegation by her principal on February 5, 2018, but was not told the name of the child she supposedly assaulted. Fuqua was placed on paid administrative leave on February 7, 2018. Respondent held a hearing on the accusation on March 1, 2018. On April 9, 2018, Respondent notified Fuqua that she would be

suspended for 10 days without pay from April 10 through April 23, 2018, and a notice of disciplinary suspension was placed in her file. The disciplinary suspension affected Fuqua's end-of-year evaluation for the 2017-2018 school year and her attendance rating. Fuqua asserts that it also harmed her professional relationships with colleagues.

Fuqua alleges that Respondent caused her unnecessary distress and embarrassment by holding her hearing at her school during school hours, thus drawing the attention of her fellow teachers. According to Fuqua, one of her co-workers also had a disciplinary hearing at about this same time, but that hearing was held at Respondent's administrative offices rather than at the school.

Fuqua alleges that she was not given due process at the hearing and also that the alleged incident was not proven to have taken place. As noted above, Fuqua was not told the name of the child involved when she was informed of the allegation and did not learn the child's name until near the end of her hearing. During the hearing, Fuqua's accuser, a Ms. Jones, related what she claimed to have seen in Fuqua's classroom. Fuqua denied that the incident occurred. According to the charge, a third adult, a consultant from the Wayne County Regional Service Agency, the intermediate school district, was also in the room at the time of the alleged incident. The consultant, Capri Scott, did not testify at the hearing but submitted a written statement stating that she had not witnessed Fuqua engaging in any inappropriate behavior toward her students. Fuqua argues, first, that Jones' credibility should be questioned because she did not remove her own child from Fuqua's class after witnessing the alleged assault. Fuqua also points out that it came out at the hearing that the parents of the boy who was allegedly assaulted had not made a complaint.

Fuqua also alleges that Respondent did not address the allegations against her in a timely manner. At the end of the hearing, Fuqua was informed by the hearing officer that she would be returning to work within a week. However, Fuqua did not receive Respondent's decision letter until more than a month later, on April 9. Because of the delay, Fuqua was in fact absent from her classroom for nearly three months.

Discussion and Conclusions of Law:

Rule 165(1) of the Commission's General Rules, 2014 AACRS R 423.165 (1), 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 elsewhere in this rule, which include failure to allege a claim on which relief may be granted by the Commission. Under Commission Rule 165(2)(h), a charging party's failure to file a response to an order to show cause can be grounds for dismissing the charge.

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, 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 treatment of its employees by a public employer violate PERA. 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.

There are Michigan statutes other than PERA which also address some aspect of the relationship between a public employer and its employees. These include statutes that prohibit discrimination based on race, sex, religion, age and disability. There are also federal employment statutes which apply to public employees. 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. In some circumstances, a public employee may have a claim against his or her employer under the State or federal constitutions.

Fuqua alleges that Respondent suspended her for an incident that was not proved, failed to give her an adequate opportunity to defend herself, unnecessarily exposed her to embarrassment by holding her hearing at Fuqua's own school building, and unreasonably delayed its decision thereby extending her administrative leave. Although Fuqua alleges that she was wrongfully disciplined, she does not allege that she engaged in any of the types of activities protected by PERA, or that there was any relationship between such activities and her discipline. Based on the facts set out in the charge, I find that Fuqua has not alleged a claim upon which relief could be granted under PERA and that her charge should be dismissed on this basis. 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: September 28, 2018