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

In the Matter of:

SAGINAW INTERMEDIATE SCHOOL DISTRICT,
Public Employer-Respondent in Case No. C15 C-040; Docket No. 15-021411-MERC,

-and-

UNITED STEELWORKERS, LOCAL 9521,
Labor Organization-Respondent in Case No. CU15 C-008; Docket No. 15-021412-MERC,

-and-

JAMES ORMSBY,
An Individual Charging Party.
_____________________________________________/

APPEARANCES:

Masud Labor Law Group, by Joshua J. Leadford, for the Public Employer-Respondent

James Ormsby, appearing on his own behalf

## DECISION AND ORDER

On July 2, 2015, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents 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 any 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: August 25, 2015

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

In the Matter of:

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APPEARANCES:

Masud Labor Group, by Joshua J. Leadford, for the Public Employer

James Ormsby, appearing on his own behalf

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

This case arises from unfair labor practice charges filed on March 11, 2015, by James Ormsby against the Saginaw Intermediate School District and the United Steelworkers, Local 9521 (USW). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charges were consolidated and assigned to David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The charges allege that the school district terminated Ormsby from his non-union position as Fluids Mechanic on July 1, 2014, and that Respondents subsequently agreed to reclassify the position as Mechanic Assistant, a bargaining unit position. The charges assert that in October of 2014, the school district hired a younger, less qualified individual as Mechanic Assistant and paid him a higher salary than Ormsby had been receiving while working as Fluids Mechanic. Ormsby contends that the Employer's actions constitute age and "wage discrimination" and that both the school district and the Union violated the State's "right to work" law.

In an order issued on April 24, 2015, I directed Ormsby to show cause why the charges should not be dismissed without a hearing for failure to state a claim under PERA. Ormsby filed his response on June 2, 2015.

Discussion and Conclusions of Law:

Rule 1513, R 792.11513, of the MAHS Administrative Hearing Rules allows for a pre-hearing dismissal of a charge, or for a ruling in favor of the charging party. In the instant cases, it appears that dismissal of the charges without a hearing is warranted on the ground that Charging Party has failed to state a claim upon which relief can be granted as to either Respondent. Ormsby asserts that the school district discriminated against him because of his age, that it terminated his employment as a Fluids Mechanic without just cause, and that the Employer engaged in "wage discrimination" by paying another employee more to perform the same work. With respect to public employers, the Act does not prohibit all types of discrimination or unfair treatment, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. The Commission's jurisdiction with respect to claims brought by individual employees against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in, or refrain from engaging in, union or other concerted activities protected by PERA. In the instant case, the charge against Saginaw Intermediate School District does not provide a factual basis which would support a finding that Charging Party was subjected to discrimination or retaliation for engaging in, or attempting to refrain from, union activities in violation of the Act.[1]

There is also no factually supported allegation which would establish that either the school district or the Union violated the state's "right-to-work" laws in connection with its treatment of Ormsby. It appears that Charging Party's primary complaint is that three months after he was terminated, the Fluids Mechanic position was renamed and placed within the USW bargaining unit. According to the charge, the individual hired to fill the new position was paid one dollar more per hour than Ormsby previously earned. Ormsby asserts that this action constitutes a violation of Section 10(3) of PERA, which provides that an individual shall not be required to join or financially support a labor organization as a condition of obtaining or continuing employment. It is unclear how any of the facts alleged by Ormsby in his charge and response to the order to show cause establish a violation of the Act. Even if the duties of the new mechanic position are the same or similar to the duties performed by Ormsby through July 1, 2014, it was not unlawful for the Employer to decide to fill that position several months later, give it a new title and increase its wages. Nor is there anything inappropriate about the Mechanic Assistant position being placed within the USW bargaining unit. It should be noted that the mere inclusion of a position within a bargaining unit does not mean that the individual employee who holds that position is required to join or financially support the Union.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation or articulate any legal theory which would establish that either Respondent violated PERA. Accordingly, I conclude that the charges must be dismissed on summary disposition and recommend that the Commission issue the following order.

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1 Any allegation relating to Ormsby's termination would be untimely under Section 16(a) of PERA, as the charge was filed more than six months after that event. See e.g. *Walkerville Rural Comm Sch*, 1994 MERC Lab Op 582, 583.

## RECOMMENDED ORDER

The unfair labor practice charges filed by James Ormsby against Saginaw Intermediate School District and the United Steelworkers, Local 9521 in Case Nos. C15 C-040 & CU15 C-008; Docket Nos. 15-021411-MERC & 15-021412-MERC, are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: July 2, 2015