STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MONROE COUNTY INTERMEDIATE SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C15 D-056
-and- Docket No. 15-031073-MERC

LINDA G. SHORT,
An Individual-Charging Party.
_____/

APPEARANCES:

Linda G. Short, appearing on her own behalf

DECISION AND ORDER

On July 1, 2015, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order 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: September 30, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

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Amended as to Signature
Date ONLY

LINDA G. SHORT,
An Individual-Charging Party.
_____/

APPEARANCES:

Linda G. Short, appearing for herself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On April 20, 2015, Linda G. Short filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her employer, the Monroe County Intermediate School District, pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On April 28, 2015, pursuant to Rule 1513 of the Administrative Rules of the Michigan Administrative Hearing System, R 792.11513, I issued an order directing Short to show cause in writing why her charge against the Respondent should not be dismissed because it failed to state a claim upon which relief could be granted under PERA. Short filed a timely response to my order on May 15, 2015. Based upon the facts set out in Short's charge and her response to my order to show cause, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Facts:

Short was employed by Respondent as an intensive services aide until she retired on January 23, 2015. She was a member of a bargaining unit represented by the Michigan Education Association (the Union). Intensive services aides provide necessary support services in twelve special education classrooms in the four school districts within Respondent's service area. In the 2014-2015 school

year, Short had held the position of intensive services aide for eight years and was one of two such aides employed by Respondent.

At the beginning of the 2014-2015 school year, Short found herself assigned on a full-time basis to a classroom in the Summerfield School District, one of Respondent's four districts. The other intensive services aide was assigned to a school in the Bedford Public Schools, another district. On October 2, 2014, Short contacted the Union President, Kay Hinds, to discuss whether she could alternate days with the other aide so that she would not be working exclusively in the Summerfield classroom. Hinds told Short that she would set up a meeting among herself, Short, and Short's supervisor, Melissa Morton, to discuss this. Hinds left a voice mail for Morton proposing a meeting and stating the topic.

The following day, Respondent Regional Director Shawna Landis came to Hinds' classroom to discuss Short's request. Short does not know what Landis and Hinds discussed, but does know that Hinds told Landis that Short was disgruntled and dissatisfied with either her job or her current job assignment. Hinds asked Landis to set up a meeting with the two of them, Morton, and Short to discuss the situation.

On October 17, 2014, Short received a voicemail from Morton telling her that a meeting had been scheduled for 3:30 p.m. that afternoon. Short replied that she could not make it on such late notice, and asked that the meeting be rescheduled. The meeting was rescheduled for Monday, October 20. Morton told Short that she, Landis, and Hinds would be there. On Monday afternoon, however, Morton came to Short's classroom and told her that the meeting was rescheduled for Wednesday, but that only she, Short and Landis would attend. Short told Morton that she wanted Hinds there, but Morton said that Respondent Assistant Superintendent of Human Resources Betsy Taylor had said that Hinds could not attend because it was not a union matter. Short related this discussion to Hinds. Hinds went to Taylor's office to discuss the issue, but Short does not know the details of the conversation.

The meeting was held on October 22 as scheduled with Morton, Landis and Short. Short asked Landis why she had gone to Taylor about the matter, and Landis asked her why she had involved Hinds. Short explained her request to alternate duties with the other intensive services aide. Morton and Landis brought up Short's size and may have also mentioned her age. They stated or implied that they believed that Short could not safely be assigned to the Bedford classroom. Short mentioned that neither her size nor her age had ever been a factor in her assignments over the previous eight years. Short had other issues that she would have liked to address at the meeting, but did not feel comfortable doing so without a Union representative present.

Short alleges that she had a right to union representation at the October 22 meeting since it involved matters of the collective bargaining contract and that Respondent violated PERA by refusing to allow her Union representative to attend.

Discussion and Conclusions of Law:

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 rights protected by §9 include the right to file grievances and to consult with union representatives on matters relating to the employee's employment.

A public employer violates §10(1)(a) of PERA when it interferes, restrains, or coerces public employees in the exercise of these rights and §10(1)(c) when it discriminates against employees or disciplines them because they have engaged in, or refused to engage in, union activity. Both §9 and §10(1)(a) were patterned on similar provisions in the federal statute protecting the collective bargaining rights of public sector employees, the National Labor Relations Act (NLRA), 29 USC §150 et seq.

In *NLRB v Weingarten***,** 429 US 251 (1976), the United States Supreme Court concluded that employees have the right under the NLRA to have a union representative present when they are being interviewed by their employers and the employees reasonably believe that the interview may lead to discipline. In *Univ of Michigan*, 1977 MERC Lab Op 496, the Commission adopted the so-called *Weingarten* rule. The Commission summarized the rule in *City of Detroit,* 22 MPER 32 (2009), as follows:

> An employee has the right to have a union representative present when interviewed by his employer when the employee reasonably believes that the interview may lead to discipline. The employee must invoke the right by requesting union representation. The employer then may grant the request, present the employee with the option of continuing the interview without representation or foregoing the interview altogether, or deny the request and terminate the interview.

The *Weingarten* rule requires public employers to grant their employees' requests for union representation when meeting with the employer under the limited circumstances set forth above. Public employers are not required to allow union representatives to participate in all meetings between the employer and an employee. *City of Troy,* 1989 MERC Lab Op 80 (1989).

Short argues that she had no idea how her supervisors would approach her request at the October 22 meeting or how their response might affect her. She also asserts that she had reason to believe that if she spoke out at the meeting about being treated unfairly, or stated that she would refuse to perform work assigned to her, she might be disciplined.

As Short points out, Short requested the October 22 meeting to discuss her desire to alternate job assignments with her co-worker. She also wished to discuss other ways in which she believed she was being treated unfairly. Respondent agreed to meet with her, although not with her Union representative present. There is no indication in the facts that Respondent suspected Short of any wrongdoing before the meeting or that Respondent sought to obtain information from Short that might lead to her discipline. Whether Short reasonably believed that she might be disciplined if she

used the meeting as a forum to raise other complaints about unfair treatment is not relevant. I conclude that Short had no reasonable basis to conclude that the October 22 meeting, which she had requested, would lead to discipline.

As discussed above, the rights protected by §9 of PERA include the right to consult with union representatives on matters of employment. I note, however, that Short does not allege that she suffered any repercussions for discussing her complaint or complaints with Hinds. Section 9 also protects employees' rights to file grievances under a collective bargaining agreement. Although Short asserts that the October 22 meeting involved "matters of the collective bargaining contract," she does not allege that Respondent interfered with her right to file a grievance under the contract over Respondent's refusal to allow her to alternate assignments or any other alleged contract violation. I conclude, based on the facts alleged by Short, that her charge does not state a claim upon which relief can be granted under PERA. I recommend, therefore, that Short's charge be dismissed on these grounds, and 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: July 1, 2015