

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

In the Matter of:

SUBURBAN MOBILITY AUTHORITY
FOR REGIONAL TRANSPORTATION,
Public Employer-Respondent,

-and-

SHAYLA MOSELEY,
An Individual Charging Party

Case No. C15 E-069
Docket No. 15-036237-MERC

APPEARANCES:

Shayla Moseley, appearing for herself

DECISION AND ORDER

On August 27, 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: October 30, 2015

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

In the Matter of:

SUBURBAN MOBILITY AUTHORITY
FOR REGIONAL TRANSPORTATION,
Public Employer-Respondent,

Case No. C15 E-069
Docket No. 15-036237-MERC

-and-

SHAYLA MOSELEY,
An Individual-Charging Party.

APPEARANCES:

Shayla Moseley, appearing for herself

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

On May 19, 2015, Shayla Moseley filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her former employer, the Suburban Mobility Authority for Regional Transportation (the Employer). Pursuant to §16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.216, the charges were assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On May 26, 2015, pursuant to Rule 1513 of the Rules of the Michigan Administrative Hearing System, R 792.1153, I issued an order directing Moseley to show cause in writing why her charge should not be dismissed for failure to state a claim upon which relief could be granted under PERA. She did not file a response. Based upon the facts as alleged by Moseley in her charge, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

The facts as alleged by Moseley in her charge are as follows. Moseley was hired by the Employer on November 18, 2014, as a capital and general ledger accountant. Moseley's supervisor was Karen Foster. Moseley frequently asked Foster questions about how to do her job. Moseley had the impression that these questions irritated Foster. However, Moseley's three-month job evaluation, on February 27, 2015, was generally positive, although Foster mentioned

that Moseley had made minor clerical errors in her billings to the State of Michigan. Foster also told Moseley during discussion of her job evaluation that “people were watching her.” On March 2, 2015, Foster and Moseley met again to discuss the billing problem. It was agreed that Moseley would submit all State of Michigan billings to Foster for her review before they were sent out. Moseley began doing this, and Foster did not tell Moseley that there continued to be problems with her State of Michigan billings or that there was a significant problem with her other work. On April 23, 2015, Moseley was terminated for unsatisfactory job performance.

On the day she was terminated, Moseley emailed a written statement to the Employer’s Human Resources office. In that statement, Moseley detailed her relationship with Foster and defended her (Moseley’s) job performance. Moseley did not receive a response to her email. Sometime thereafter, Moseley called the office of the Employer’s general manager to attempt to set up a meeting with him to discuss her termination. Her call was returned by a human resources representative who told her that the general manager would not meet with her and that the Employer stood behind Foster’s decision to terminate her.

Moseley alleges that she was wrongfully terminated. She also alleges that she was denied due process in connection with her discharge, and that the Employer failed to follow proper protocol in deciding terminate her. For example, Moseley asserts that the Employer should have waited to terminate her until after she had received her six-month evaluation. She alleges that the Employer violated §5 of the Bullard-Plawecki Employee Right to Know Act, MCL 423.505, and §2 of the Disclosure of Employee Job Performance Act, MCL 423.452(2). Moseley does not explicitly allege that the Employer violated the Public Employment Relations Act.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

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.

Not all types of unfair, or even unlawful, treatment of its employees by a public employer violate PERA. As employees of governmental entities, public employees have due process rights under both the Michigan and federal constitutions. There are also many Michigan and federal statutes, in addition to PERA, that govern some aspect of the relationship between a public employee and public employer. 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. The Commission is empowered by the Legislature to administer and enforce PERA. It does not have the legal authority to enforce constitutional rights or other statutes. 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.

The Bullard-Plawecki Act is a Michigan statute that gives employees the right to examine personnel files kept on them by their employers and former employers. Section 5 of this Act gives employees who disagree with information in their personnel file the right to submit a statement explaining the employee's position, and requires that this statement be included in the file when it is divulged to a third party. That section states:

Sec. 5. If there is a disagreement with information contained in a personnel record, removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining the employee's position. The statement shall not exceed 5 sheets of 8 ½ -inch by 11-inch paper and shall be included when the information is divulged to a third party and as long as the original information is a part of the file. If either the employer or employee knowingly places in the personnel record information which is false, then the employer or employee, whichever is appropriate, shall have remedy through legal action to have that information expunged.

If an employee or employer knowingly places false information in the personnel records, the other party can bring an action in state court to have the information removed from the file. The Bullard-Plawecki Act does not provide a cause of action for wrongful discharge based on false claims. There is no administrative agency responsible for enforcing the Bullard-Plawecki Act, and an employee who believes that statute has been violated must bring an action in court.

Section 2 of the Disclosure of Employee Job Performance Act, reads as follows:

Sec. 2. An employer may disclose to an employee or that individual's prospective employer information relating to the individual's job performance that is documented in the individual's personnel file upon the request of the individual or his or her prospective employer. *An employer who discloses information under this section in good faith is immune from civil liability for the disclosure.* An employer is presumed to be acting in good faith at the time of a disclosure under this section unless a preponderance of the evidence establishes 1 or more of the following:

- (a) That the employer knew the information disclosed was false or misleading.
- (b) That the employer disclosed the information with a reckless disregard for the truth.
- (c) That the disclosure was specifically prohibited by a state or federal statute. [Emphasis added]

Section 2 of the above statute protects employers, under certain circumstances, from liability in lawsuits filed against them for disclosing false and harmful information about an employee's job performance. The Disclosure of Employee Job Performance Act does not provide a statutory cause of action for wrongful discharge based on false information and there is no administrative agency charged with enforcing this statute.

In this case, Moseley has not alleged that the Employer violated PERA or facts that, if true, would support a finding that she was terminated because she engaged in, or refrained engaging in, union activity or other activity protected by PERA. I find that Moseley's charge does not state a claim upon which relief could 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

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Date: August 27, 2015