

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

In the Matter of:

DETROIT PUBLIC SCHOOLS  
COMMUNITY DISTRICT  
Public Employer-Respondent

MERC Case No. 20-E-0829-CE

-and-

JOHNNIE BERRIEN,  
An Individual Charging Party.

APPEARANCES:

Johnnie Berrien, appearing on his own behalf

**DECISION AND ORDER**

On June 10, 2020, 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.

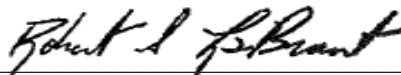
**ORDER**

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

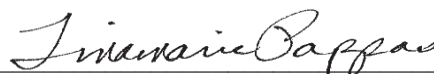
MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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Samuel R. Bagenstos, Commission Chair



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Robert S. LaBrant, Commission Member



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Tinamarie Pappas, Commission Member

Issued: September 22, 2020

<sup>1</sup> MOAHR Hearing Docket No. 20-008875

**STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT,  
Public Employer-Respondent,

-and-

JOHNNIE BERRIEN,  
An Individual Charging Party.

Case No. 20-E-0829-CE  
Docket No. 20-008875-MERC

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Johnnie Berrien appearing on his own behalf

**DECISION AND RECOMMENDED ORDER OF  
ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE**

On May 11, 2020, Johnnie Berrien, an individual charging party, filed the above captioned unfair labor practice charge against his former employer, the Detroit Public Schools Community District (DPSD or 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, the charge was assigned to Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (Commission).

Charging Party's filing alleges that the Respondent "wrongfully terminated" him from his position as Dean of Students on April 14, 2020. Charging Party, in further elaborating on the basis for his charge, states:

DPSD held a hearing and terminated my employment during a global pandemic while the State of Michigan was in a mandated "Stay Home, Stay Sage" [sic] home quarantine. During that time, [Charging Party] was quarantined at home and the quarantine prohibited him from obtaining all of the information and support documentation to fully support his case. Additionally, [Charging Party] was not allowed to present his case in person (due to the quarantine) and defend against the allegations against him.

Charging Party's filing does not identify what allegations the Respondent supposedly levied against him or what information or documentation he was prohibited from gathering.

Upon initial review of Charging Party's allegations, it appeared likely that dismissal of the charge without a hearing was warranted. Rule 165 of the Commission's General Rules, R. 423.165, 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 R. 423.165(2)(d).

On May 15, 2020, I issued an order directing Charging Party to respond in writing and show cause why his allegations should not be dismissed without a hearing. More specifically, I instructed Charging Party that in order to avoid dismissal of his charge, his written response to my order must assert facts that establish a violation of PERA. Charging Party's response was due by May 29, 2020. Charging Party did not file a response to my order, nor did he contact my office in order to request an extension of time in which to file such a response.

#### Discussion and Conclusions of Law:

Charging Party's failure to respond to my May 15, 2020, order, by itself, is cause for dismissal in favor of Respondents. The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. See R 423.165(h); See also *Detroit Federation of Teachers*, 21 MPER 3 (2008).

Charging Party's failure to respond notwithstanding, it is clear from review of the allegations as filed that dismissal of the charge is required under Rule 423.165(2)(d), because Charging Party has failed to state a claim under PERA where relief could be granted.

Generally, with respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment. 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 union or other protected concerted activities as guaranteed under Section 9 of the Act.<sup>1</sup>

Paramount to understanding the Commission's jurisdiction, one must remain cognizant that not all unfair, or even unlawful, treatment of its employees by a public employer violates PERA. The authority of the Commission is limited to the enforcement of PERA. Absent a factually supported allegation that the employer interfered with, restrained, and/or coerced an employee in the exercise of Section 9 rights 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

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<sup>1</sup> Section 9 of PERA, MCL 423.209, provides the following affirmative rights:

- (1) Public employees may do any of the following:
  - (a) Organize together or form, join, or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection; or negotiate or bargain collectively with their public employers through representatives of their own free choice.
  - (b) Refrain from any or all of the activities identified in subdivision (a).

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.

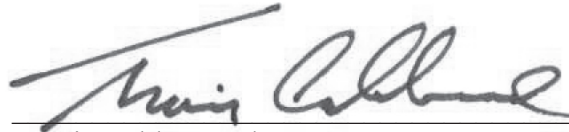
Here, Charging Party's allegations that he was "wrongfully terminated" and/or not provided an opportunity to defend against allegations made against him by the Respondent are not sufficient, on their own, to establish a violation of PERA. Absent allegations that, if proven true, could establish that the Respondent's actions somehow were in retaliation for, or otherwise sought to coerce, interfere, and/or restrain Charging Party's Section 9 rights, the charge must be dismissed.

For the reasons stated herein, I recommend that the Commission issue the following order dismissing the charge in its entirety.

**RECOMMENDED ORDER**

It is hereby ordered that the unfair labor practice charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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Travis Calderwood  
Administrative Law Judge  
Michigan Office of Administrative Hearings and Rules

Dated: June 10, 2020