

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

In the Matter of:

DETROIT PUBLIC SCHOOLS
COMMUNITY DISTRICT & DAMON SEWELL

Respondents

-and-

LORENZO MORRIS,
An Individual Charging Party.

MERC Case No. 20-C-0555-CE

APPEARANCES:

Lorenzo Morris, appearing on his own behalf

DECISION AND ORDER

On June 23, 2020, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order¹ 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.

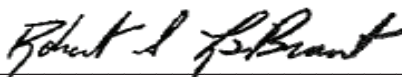
ORDER

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

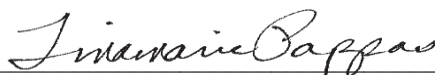


Samuel R. Bagenstos, Commission Chair



Robert S. LaBrant, Commission Member

Issued: September 4, 2020



Tinamarie Pappas, Commission Member

¹ MOAHR Hearing Docket No. 20-005549

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

In the Matter of:

DETROIT PUBLIC SCHOOLS
COMMUNITY DISTRICT & DAMON SEWELL,
Respondents,

Case No. 20-C-0555-CE
Docket No. 20-005549-MERC

-and-

LORENZO MORRIS,
An Individual Charging Party.

APPEARANCES:

Lorenzo Morris, appearing on his own behalf

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

This case arises from an unfair labor practice charge filed on March 9, 2020, by Lorenzo Morris against the Detroit Public Schools Community District (DPSCD) and Principal Damon Sewell. 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 David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (Commission).

Facts and Procedural History:

The following facts are derived from the unfair labor practice charge and attachments thereto. Charging Party was employed by Respondent DPSCD as a trainable aide. On or about December 16, 2019, Charging Party was called into a meeting and questioned by Principal Sewell and “Officer Shane” about a recent incident. After the meeting, Sewell pulled Morris aside and began to yell at him. Sewell told Morris that he had “the wrong attitude” and attempted to prevent Morris from leaving the room. At some point, Sewell put his face close to Charging Party and told him that he was fired. Around the same time, someone grabbed Charging Party’s arm. As Charging Party pulled away, Shane accused Morris of pushing him. At that point, Morris left the room.

On December 18, 2019, the DPSCD notified Charging Party that he was being placed on administrative leave pending the results of an investigation to determine whether Morris engaged in misconduct, including committing an act which might endanger the safety or lives of others. As part of the leave process, Morris was directed to report to the Employee Transition Center on December 18, 2019.

On or about January 17, 2020, the DPSCD notified Charging Party in writing that he had been absent from work without authorization for a period exceeding five consecutive workdays in violation of the District's work rules. Charging Party was instructed to either (1) contact the Employer's medical department to obtain clearance to return to work on or before January 30, 2020; (2) submit applicable medical documentation for leave of absence approval; or (3) complete a separation of service form to resign or retire.

On February 28, 2020, Charging Party was notified by a representative of his union that he had been terminated. Thereafter, Charging Party filed the instant charge on March 9, 2020, alleging that he was terminated without due process and with no notice to the union. In a pretrial order issued on March 12, 2020, I directed Charging Party to show cause why his charge should not be dismissed for failure to state a claim under PERA. The order specified that to avoid dismissal of the charge, Charging Party's written response must assert facts that establish a violation of the Act. Charging Party was directed to "describe who did what and when they did it, and explain why such actions constitute a violation of the Act, with consideration given to the legal principles" set forth in the order.

Charging Party's response was due by the close of business on March 12, 2020. At Charging Party's request, the deadline for filing a response to the Order to Show Cause was extended to May 15, 2020. On that date, Charging Party requested a second extension of time in which to file his response. By order of the undersigned, the deadline was extended an additional thirty days to June 15, 2020. To date, Charging Party has not filed a response to the Order to Show Cause or requested an additional extension of time in which to do so.

Discussion and Conclusions of Law:

Pursuant to Rule 165(1), R 423.165(1), of the General Rules and Regulations of the Employment Relations Commission, which govern practice and procedure in administrative hearings conducted by MOAHR, the ALJ may "on [his] own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party." Among the various grounds for summary dismissal of a charge is the failure by the charging party to "respond to a dispositive motion or a show cause order." Rule 165(2)(h). See also *Detroit Federation of Teachers*, 21 MPER 3 (2008), in which the Commission recognized that the failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. In any event, accepting all of the allegations set forth by Morris as true, dismissal of the charge is warranted.

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 the Act include filing or pursuing a grievance pursuant to the terms of 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 the Act 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 described above. PERA does not, however, prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for a breach of contract claim asserted by an individual employee. 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 refusal to engage in, union or other concerted activities protected by PERA.


In the instant case, none of the allegations set forth by Charging Party provide a factual basis which would support a finding that Morris was subjected to discrimination or retaliation for engaging in, or refusing to engage in, protected activities in violation of the Act during the six-month period preceding the filing of the charge.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to meet his burden of proving that Respondents DPSCD and Sewell violated PERA. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Lorenzo Morris against the Detroit Public Schools Community District and Damon Sewell in Case No. 20-C-0555-CE; Docket No. 20-005549-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



David M. Peltz
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: June 23, 2020