

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

In the Matter of:

DETROIT POLICE OFFICERS ASSOCIATION,
Respondent-Labor Organization,

Case No. CU98 C-9

-and-

JOAN MERRIEWETHER,
An Individual Charging Party.

APPEARANCES:

Gregory, Moore, Jeakle, Heinen, Ellison & Brooks, P.C., by William A. Schimmel, Esq., for the Respondent

Joan Merriewether *in pro per*

ORDER GRANTING MOTION FOR RETROACTIVE EXTENSION

On December 8, 1998, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent did not violate its duty of fair representation under Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210; MSA 17.455(10). The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of PERA, MCL 423.216; MSA 17.455(16).

Pursuant to Rule 66, R423.466, of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order of the Administrative Law Judge were due by the close of business on January 4, 1999. Charging Party made a timely request for a two-week extension of time in which to file her exceptions, and the request was granted. The order granting the extension listed January 18, 1999, as the date the exceptions were due. On that date, however, our offices were closed in observance of the birthday of Martin Luther King, Jr. Therefore, Charging Party attempted to file her exceptions by facsimile. In addition, she allegedly left copies of the documents at another location in the building which houses our Detroit office. Three days later, we received copies of the exceptions by mail. The package was postmarked January 20, 1999. We notified Charging Party by letter that her exceptions were not properly filed. Charging Party now moves for a retroactive extension of time to file exceptions to the Administrative Law Judge's Decision and Recommended Order.

Discussion and Conclusions of Law:

There is no dispute that Charging Party's exceptions were not timely filed. Charging Party requested and was granted a two week extension of time to file her exceptions. The extension order specified that exceptions were due by the close of business on January 18, 1999. Although Charging

Party attempted to file her exceptions by facsimile on that date, our rules do not provide for the filing of official documents in such a manner. Charging Party also claims to have left copies of the documents at another location in the Detroit office building. However, those documents were never forwarded to us. Rather, we received copies of the exceptions by mail three days later.

We will not consider late-filed exceptions absent a showing of good cause. See Commission Rule 67(3), R423.467(3); Pontiac Public Schools, 1993 MERC Lab Op 667; Detroit Federation of Teachers, 1985 MERC Lab Op 1214. Based on the record, it appears that Charging Party made a good faith effort to comply with our rules. Her failure to properly file the exceptions appears to have been due, in part, to the fact that the extension order which we issued erroneously listed a legal holiday as the date upon which the exceptions were to be filed. Under such circumstances, we believe that Charging Party has demonstrated good cause for granting her request for a retroactive extension. Accordingly, we will consider the exceptions filed with this office by Charging Party on January 21, 1999. For purposes of computing the time in which Respondent has to file a brief in support of the ALJ's decision, the date of this order shall be considered the date the exceptions were filed.

ORDER

For the reasons stated above, the motion for a retroactive extension of time to file exceptions to the Administrative Law Judge's Decision and Recommended Order is hereby granted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____