

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

In the Matter of:

HEALTH SOURCE SAGINAW,  
Respondent-Public Employer in Case No. C99 D-62,

-and-

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, COUNCIL 25,  
Respondent-Labor Organization in Case No. CU99 D-11,

-and-

MELVA D. WILLIAMS,  
An Individual Charging Party.

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APPEARANCES:

Jensen, Gilbert, Smith and Borello, by Peter Jensen, Esq., for the Public Employer

Miller Cohen, by Richard Mack, Esq., for the Labor Organization

Melva D. Williams, in pro per

**DECISION AND ORDER**

On August 26, 1999, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 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

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date: \_\_\_\_\_

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APPEARANCES:

Peter Jensen, Esq., Jensen, Gilbert, Smith, and Borello, for the Public Employer

Richard Mack, Esq., Miller Cohen, for the Labor Organization

Melva D. Williams, In pro per

DECISION AND RECOMMENDED ORDER  
OF  
ADMINISTRATIVE LAW JUDGE

On April 1, 1999, Individual Charging Party Melva D. Williams filed unfair labor practice charges with the Commission naming as Respondents the above entitled Employer and Labor Organization. These charges were amended on May 7, 1999. The charges concerned changes in Charging Party's work assignment but did not appear to relate to activities protected by the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10).

On June 28, 1999, Respondent Labor Organization filed a Motion to Dismiss and/or Motion for Bill of Particulars. Respondent maintained that the charges should be dismissed for failure to state a claim under PERA. In the alternative, Respondent sought a Bill of Particulars, arguing that the charges were vague, basically indecipherable, and did not comply with Rule 52 of the Commission's General Rules and Regulations (R423.452). On July 8, 1999, the undersigned issued an Order pursuant to Rule 55(2), requiring that Charging Party file a Bill of Particulars in

conformance with Rule 52(c), setting forth a complete statement of the allegations contained in the charges.

On August 2, 1999, Charging Party submitted a packet of documents which began as follows:

Please consider this as a Bill of Particulars in the above listed case. I am a cancer patient, seeking relief under the A.D.A. law. I would like to file a civil action against Health Source Saginaw for noncompliance of the law and for not complying or honoring my physician's restrictions concerning my health.

Charging Party summarized the circumstances under which she felt that she was inappropriately placed on family medical leave, indicating that her last day of work was September 10, 1998. She asserted that she wished to return to work at the earliest convenience with her doctor's restrictions being honored.

Discussion:

In order to state a claim under PERA, it must be alleged that the particular actions of the employer complained of were taken for the purpose of interfering with, restraining, or coercing an employee in his or her right to engage in concerted or union activities. With respect to the union, a charging party must set forth conduct to demonstrate that the union has failed in its duty of fair representation, that is, its conduct as employee representative has been arbitrary, discriminatory, or in bad faith. In addition, pursuant to Section 16(a) of PERA, charges must be filed within six months of the action complained of.

Although given the opportunity to clarify her charges to bring them within the Commission's jurisdiction, Charging Party failed to do so. Charging Party appears to be alleging a violation of the federal Americans with Disabilities Act (ADA). The Commission is clearly without statutory authority in this area. I find that Charging Party has failed to state a claim against either the Employer or the Labor Organization upon which relief can be granted under PERA. *Lansing School District*, 1998 MERC Lab Op 403; *Detroit Board of Education*, 1995 MERC Lab Op 75. In addition, the charges are subject to dismissal as untimely under Section 16(a) of PERA.

Accordingly, it is recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch  
Administrative Law Judge

DATED: \_\_\_\_\_