

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

In the Matter of:

CITY OF DETROIT (RECREATION DEP'T),  
Respondent-Public Employer,

-and-

JOHNNY CHAMBERLAIN,  
An Individual Charging Party.

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Case No. C99 H-149

APPEARANCES:

City of Detroit Law Department, by Lynise Bryant, Esq., for Respondent

Johnny Chamberlain, in pro per

**DECISION AND ORDER**

On September 15, 2000, Administrative Law Judge 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 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

Dated: \_\_\_\_\_

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APPEARANCES:

Lynise Bryant, Esq., City of Detroit Law Department, for the Respondent

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DECISION AND RECOMMENDED ORDER  
OF  
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), as amended, MCL 423.210 & 423.216; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on February 9, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the pleadings and the record made at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The charge was filed on August 16, 1999, by Johnny Chamberlain against his employer, the City of Detroit. Chamberlain leads a crew of employees who collect trash from city-owned parks. Chamberlain is also chief steward for AFSCME Local 542. The charge alleges that in June 1999, Chamberlain met with Michael McLeod, superintendent of forestry and landscaping for City of Detroit Department of Recreation (the Department), to complain about the conditions under which park workers were being forced to collect trash. Chamberlain alleges that on or about August 10, 1999, McLeod retaliated against Chamberlain for his protected concerted activities by ordering Chamberlain to take drug and alcohol tests when no reasonable basis existed for suspecting Chamberlain to be under the influence of these substances. Chamberlain also alleges that McLeod thereafter violated Section 10(1)(c) of PERA by releasing confidential information regarding the results of these tests to a television station.

Facts:

On June 30, 1999, at the request of the union, a meeting was held between McLeod, Chamberlain, and AFSCME Local Vice-President Victor Saunders. The purpose of the meeting was to address a problem which had arisen for workers assigned to empty trash containers in city parks. Until sometime in early 1999, these workers had garbage trucks. They drove the garbage trucks into the parks, picked up full trash containers, and dumped the contents into the trucks. In the summer of 1999, a number of the Department's garbage trucks were out of commission. Instead of garbage trucks, workers were assigned very large flatbed trucks. During this period, workers had to put garbage bags over the cans, dump the garbage in, tie up the bags, load them on the flatbed, drive to a dump, climb up on the truck bed, and throw the bags off one by one. With all this handling, the bags often broke. The workers found themselves handling maggots, as well as various types of waste material. At the June 30 meeting, Chamberlain and Saunders first asked McLeod about replacing the garbage trucks. McLeod told them that new trucks were on order and were supposed to have already been delivered. Chamberlain and Saunders then asked McLeod to provide heavy-duty rubber gloves and rubber aprons until the Department could get the garbage trucks back into service. McLeod promised to see to this. He also promised to get heavier grade plastic bags.<sup>1</sup> Immediately after the meeting McLeod took Chamberlain aside and said that his complaints were being "orchestrated by district management to stir up a ruckus." That is, McLeod believed that his subordinate managers were using Chamberlain and this issue to try to undermine him (McLeod) in some way. Chamberlain told McLeod that this wasn't true.

Neither the new trucks nor the promised safety equipment had arrived by August 10, 1999. On that day Chamberlain was assigned to work overtime. At about 3:20 p.m. Chamberlain picked up a new work crew and went to collect trash at a park. It was a busy day and the park was full of people. At Chamberlain's direction, the workers drove the flatbed truck into the park and began collecting garbage. At some point, the driver of the flatbed, (not Chamberlain), backed over a barbeque grill and demolished it. While Chamberlain's crew was working, a reporter and film crew from a local television station arrived and began filming them. As the work crew later learned, a woman who runs children's programs in the park had called the television station. While the television cameras were running, the same crew member who had driven over the barbeque grill jumped out of the truck and began angrily complaining about the Department's failure to supply employees with proper equipment. The television crew filmed: the truck driver's speech; several workers(including Chamberlain) loading garbage onto the truck; a couple of people (not Chamberlain) walking in what might be deemed an unsteady manner; a shot of the driver sitting in the truck with drooping eyelids and a blank stare on his face. McLeod received a phone call about the incident and arrived at the park while the film crew was still there. He approached Chamberlain and asked him for a summary of the situation. Chamberlain did not look at McLeod directly as he explained what had happened, and he did not mention to McLeod that anyone on the crew might be

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<sup>1</sup> According to Chamberlain, shortly after this meeting Local President Nancy Willis filed a complaint with the Michigan Occupational Safety and Health Division (MIOSHA) about the situation. However, in MIOSHA's letter to the Department it indicated that the complaint was made on August 17, 1999. MIOSHA did not disclose to Respondent the name of the complaining party.

intoxicated. Later, McLeod himself observed at least two crew members walking unsteadily and acting oddly. The television crew filmed an interview with McLeod. While this interview was taking place, the truck driver stood on camera in the background and shouted, "This is ridiculous. The city needs to get us equipment!" After his interview, McLeod spoke to the woman who had phoned the TV station. The woman told McLeod that she believed that the entire crew was drunk and acting badly. The television reporter told McLeod much the same thing. McLeod ordered the crew to pick up the barbeque grill and leave the park, and he then left himself.

After McLeod left the park, he phoned the work crew's supervisor and told him to send the whole crew to take drug and alcohol tests. The lab results indicated that the worker who had spoken to the film crew was legally intoxicated. Another member of the work crew was also legally intoxicated. This employee also tested positive for cocaine. Chamberlain's test showed no alcohol in his system; his drug screen was inconclusive. The fourth crew member tested negative for both alcohol and drugs. That night on the news, the television station showed footage of the work crew collecting garbage and its interview with McLeod. The news report also said that the station believed that a couple of the crew members were drunk, and that it would give viewers more details the following day.

The television reporter phoned McLeod the next day. McLeod told the reporter that two employees were found to be under the influence, and that in the ensuing days proper disciplinary actions would be taken. He refused the reporter's request for the names of anyone involved. That night the television station aired its footage of the complaining worker, and said that "two of the members of the crew had incredible amounts of alcohol in their systems." The station showed this footage again the next day, as well as in promotional clips for their news program over the next several weeks.

Both crew members whose tests showed them to have been intoxicated were fired. Chamberlain and the fourth crew member were not disciplined or reprimanded in any way.

On September 1, MIOSHA sent a letter to McLeod indicating that a complaint had been filed that the Department was not providing adequate safety equipment and requesting that he conduct an investigation into the matter and report back to the agency. On September 15, McLeod informed all employees involved with bulk trash collection that they would be issued protective equipment and were required to wear it under penalty of discipline.

#### Discussion and Conclusions of Law:

Chamberlain engaged in activity protected by PERA when he and the local vice-president met with McLeod on June 30, 1999 regarding potential health hazards to unit members arising from the Department's lack of garbage trucks. Neither the existence of protected activity nor the employer's knowledge of that activity is in dispute.

The third element of a *prima facie* case is evidence of employer hostility either to unions or

to the employee's protected activity. *Rochester School District*, 2000 MERC Lab \_\_\_\_ (Case No. C98 K-224, issued 2/23/00); *City of Grand Rapids (Fire Dept)*, 1998 MERC Lab Op 703,706. McLeod's remarks to Chamberlain after the June 30, 1999 meeting might be construed as an indication of hostility toward the union's complaints, although McLeod appeared to be more angry at his management subordinates than at Chamberlain. However, assuming arguendo that Chamberlain has shown animus in this case, I conclude nevertheless that Chamberlain has not established a *prima facie* case of unlawful discrimination under PERA. With regard to the timing of the August 10 incident, I note first that the record indicates that the union did not file its MIOSHA complaint until after the incident, on August 17, 1999. Even if McLeod suspected that Chamberlain was behind the filing of this complaint, the actions which Chamberlain alleges constituted retaliation against him occurred prior to the complaint being filed. I also note that Chamberlain does not dispute that the television crew showed up at the park on August 10, 1999 because a woman who runs a program in the park called the station. That is, Chamberlain does not argue that the appearance of the television crew was orchestrated by McLeod to embarrass Chamberlain. Chamberlain also does not question McLeod's decision, based on what McLeod heard and saw himself that day at the park, to send the driver of the flatbed for alcohol and drug testing. Rather, Chamberlain argues that McLeod did not have reasonable grounds to order drug and alcohol screening for other members of the crew, including Chamberlain himself. McLeod attempted to justify his decision at the hearing in this case. However, I need not decide here whether McLeod had reasonable grounds for ordering the whole crew to be tested. The only issue before me is whether, when McLeod decided to send Chamberlain for alcohol and drug screening, McLeod was motivated, even in part, by Chamberlain's earlier complaints about working conditions. I find that the evidence cannot support this conclusion. On August 10, 1999, McLeod found himself unexpectedly thrust into the glare of unfavorable publicity. At least one of his subordinates acted in a way which which seemed out of line. He was informed by both a television reporter and a member of the public that his whole crew appeared to be drunk. Under these circumstances, no reasonable inference can be drawn that McLeod decided to send the whole work crew to be tested because he wanted to punish Chamberlain for the union's complaints about safety conditions.

Chamberlain also alleges that McLeod retaliated against him for his protected activities by releasing confidential information about the results of the drug and alcohol tests. Chamberlain argues that he was harmed because McLeod did not identify him, Chamberlain, as an employee who was not intoxicated. After August 10, McLeod was pressed by the television reporter for more information about what the station obviously considered a viable story. McLeod could have answered in several ways; what he chose to do was confirm that two members of the crew had in fact been intoxicated, but to protect confidentiality by not releasing any names. I find nothing to support an inference that McLeod's choice of how to respond to the reporter was in any way influenced by a desire to embarrass Chamberlain.

In accord with the findings of fact and discussion and conclusions of law set out above, I find that Chamberlain did not establish a *prima facie* case of unlawful discrimination under Sections 10(1)(a) and (c) of the Act. I therefore recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern

Administrative Law Judge

Dated: \_\_\_\_\_