

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

CADILLAC/WEXFORD TRANSIT AUTHORITY,  
Respondent-Public Employer,

Case No. C01 E-90

-and-

RICHARD T. MURRAY,  
An Individual Charging Party.

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Appearances:

The Fishman Group, by Steven J. Fishman and Alexander K. Marketos, Attorneys for the Public Employer

Richard T. Murray, In Pro Per

**DECISION AND ORDER**

On January 30, 2002, Administrative Law Judge Roy L. Roulhac issued his 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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DECISION AND ORDER OF THE ADMINISTRATIVE LAW JUDGE  
ON MOTION FOR SUMMARY DISPOSITION

On May 11, 2001, Charging Party Richard Murray filed an unfair labor practice charge against Respondent Cadillac/Wexford Transit Authority. Charging Party was employed by Respondent as a bus driver until February 27, 2001, when he was discharged. During his employment he was a member of the United Steelworkers of America, AFL-CIO, and served as the chairperson of the union's grievance committee. Charging Party alleged in his charge that since long before November 2000, Respondent refused to bargain collectively with the United Steelworkers regarding wages, hours, and other terms and conditions of employment. In a June 27, 2001, amended charge, that Charging Party did not serve on Respondent, he alleged that Respondent violated the Public Employment Relations Act by discriminating against union members for filing grievances, denying reasonable access between union officials and union members, giving excessive punishment for minor infractions, and permitting far greater infractions to go virtually unpunished.

On November 6, 2001, Respondent filed a motion for summary disposition of Charging Party's May 11, 2001 charge. It alleged that Murray, as an individual former employee, lacked standing to file a refusal to bargain charge and the Michigan Employment Relations Commission lacked jurisdiction. On December 17, 2001, I granted Respondent's motion. The duty to bargain runs between the employer and the recognized bargaining agent. *Coldwater Community Schools*, 1993 MERC Lab Op 94; *Detroit Public Schools*, 1985 MERC Lab Op 789.

In the meantime, on November 14, 2001, I faxed a copy of Charging Party's June 27, 2001, amended charge to Respondent. Respondent filed an answer to the amended charge on

December 5, 2001. In addition to denying its allegations, Respondent asserted, among other things, that the amended charge was barred by the six-month statute of limitations and for lack of service. Subsequently, on January 7, 2002, Respondent filed a motion to summarily dismiss the amended charge because it was not served on Respondent within six months of the alleged unfair labor practice charge. In responding to the motion, Charging Party wrote:

An "Amended Charge" was filed on June 27, 2001. I am unaware of any reason(s) as to why the Respondent may, or may not have been served with this Amended Charge. I do not have the authority to serve the documents on the Respondent. That authority lies in the hands of MERC. If the Respondent did not receive the required documentation, as they contend, I cannot be held to blame.

It is well-settled that a charge alleging an unfair labor practice must be filed with the Commission and upon the person against whom the charge is made within six months of the alleged violation. MCL 423.216(a). Additionally, upon filing a charge with the Commission, the party filing the charge is responsible for timely and properly serving a copy of the charge upon the party against whom the charge is made. Michigan Administrative Code R423.453(1). These provisions are jurisdictional and cannot be waived. Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415.

In this case, Charging Party knew of the alleged violations when he was terminated on February 27, 2001. However, he never served Respondent with a copy of his June 27, 2001 amended charge, and Respondent was not made aware of the charge until November 14, 2001, more than six months after the alleged violation. As the administrative rule makes clear, it was Charging Party's responsibility to insure that his charge was timely and properly served on the Respondent. His failure to serve the charge upon Respondent requires that it be dismissed. I have considered all other arguments raised by Charging Party and they do not warrant a change in the result. Included is his claim that the charge should not be dismissed because he was told by MERC that they would serve all concerned parties after the charge was time stamped and dated. I recommend that the Commission issue the order set forth below:

#### ORDER

The unfair labor practice is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac  
Administrative Law Judge

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