STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS
(TRANSPORTATION DEPARTMENT),
Respondent-Public Employer, Case No. C02 F-137

-and-

VICKIE SANDERS,
An Individual Charging Party.
_____/

APPEARANCES:

Gordon J. Anderson, Esq., for Respondent

Vicki Sanders, In Pro Per

DECISION AND ORDER

On August 26, 2003, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Nora Lynch, Commission Chair

_____
Maris Stella Swift, Commission Member

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Harry W. Bishop, Commission Member

Dated: _____

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Gordon J. Anderson, Esq., for Respondent

Vickie Sanders *in pro per*

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, oral argument was held at Detroit, Michigan on October 10, 2002, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the pleadings and oral arguments of the parties, I make the following conclusions of law and recommended order.

The Unfair Labor Practice Charges:

On June 14, 2002, Vickie Sanders filed an unfair labor practice charge against her employer, Detroit Public Schools, alleging that Respondent treated her differently than other employees by denying her the right to work overtime during the period form June 23, 2000 to August 25, 2001. The charge alleges that this action violated Articles IV and V of the collective bargaining agreement.[1]

On August 5, 2002, Sanders filed an additional charge against the Detroit Public Schools, which I treated as an amendment to the original pleading in this matter. The amended charge, which consists of six handwritten pages, alleges that Respondent "committed misfeance [sic]

[1] Sanders also filed a charge against her collective bargaining representative, Teamsters, Local 214. That charge was withdrawn prior to the hearing in this matter.

with malice aforethought" with respect to the manner in which it handled a grievance hearing. The charge alleges that the grievance chairperson improperly allowed the Employer to raise a new allegation concerning Charging Party at the hearing, and that Sanders was denied due process by the failure of several individuals to appear at the hearing. The charge also asserts that Respondent improperly changed her work assignment without the approval of its human resources department. Finally, the charge alleges that the Employer entered into an agreement with the Union which conflicted with the terms of the collective bargaining agreement.

A hearing on the charges was scheduled for October 10, 2002. On that date, I indicated to the parties that none of the allegations set forth by Sanders appeared to state a valid claim against Respondent under PERA. Therefore, I concluded that dismissal of the charges was warranted under Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission. However, Charging Party was given the opportunity for oral argument in accordance with *Smith v Lansing School District*, 428 Mich 248 (1987).

Facts:

The following facts are derived from the pleadings and oral arguments of the parties. Charging Party was employed by the Detroit Public Schools as a field trip coordinator. Effective June 22, 2000, her position was eliminated as the result of a letter of understanding entered into between the Employer and the union. At that time, Sanders was transferred to a position in the Employer's scheduling department. From the time of the transfer until August 25, 2001, Respondent did not allow Sanders to work overtime. Sanders filed a grievance concerning the denial of overtime on August 15, 2001. The grievance was still pending at the time of the hearing in this matter.

While employed in the scheduling department, Sanders was charged with violating various work rules. A disciplinary hearing was conducted on January 22, 2002, during which the Employer introduced an additional allegation against Sanders. Sanders filed a grievance concerning this matter on January 29, 2002. A hearing was held concerning the grievance on March 12, 2002, at which several potential witnesses did not appear. Following the hearing, the Employer decided to take no further action against Charging Party with regard to the allegations. Charging Party was subsequently transferred from the scheduling department to the dispatch office.

Discussion and Conclusions of Law:

There is nothing in the record in this case that raises any issue cognizable under PERA. PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. Absent any evidence or allegation that Respondent was motivated by union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524.

I also find that Charging Party's allegations concerning denial of overtime are untimely under Section 16(a) of PERA, MCL 423.216(a), which requires that an unfair labor practice charge be filed within six months of the date of the challenged action. Charging Party alleges that Respondent refused to allow her to work overtime from June 23, 2000 to August 25, 2001; however, the charge pertaining to the overtime issue was not filed until June 14, 2002. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 5 82; *Washtenaw County*, 1992 MERC Lab Op 471.

For the reasons set forth above, I conclude that Charging Party has failed to establish a valid claim under PERA. Accordingly, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____