

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

In the Matter of:

GIBRALTAR CUSTODIAL/MAINTENANCE
ASSOCIATION, MEA,
Labor Organization – Respondent,

Case No. CU02 C-015

-and-

WADE D. HEUMANN,
Individual Charging Party.

APPEARANCES:

Fink, Zausmer & Kaufman, P.C., by Harvey I. Wax, Esq., for the Respondent

Wade D. Heumann, in pro per

DECISION AND ORDER

On November 27, 2002, Administrative Law Judge Julia C. Stern 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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION**

On March 26, 2002, Wade D. Heumann filed the above charges against his labor organization, Gibraltar Custodial Maintenance Association, MEA, alleging that the Respondent violated its duty of fair representation under Section 10(3)(a)(i) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Heumann alleged that Respondent's President, Ken Korczynski, acted in bad faith and out of personal malice toward Heumann by filing and then settling a group grievance when Heumann had filed an individual grievance seeking backpay for the same contract violation. On November 21, 2001, an arbitrator ruled that Heumann's grievance was not arbitrable because of the settlement of the group grievance.

Pursuant to Section 16 of PERA, a hearing was held on August 15, 2002, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. At the conclusion of Heumann's proofs, Respondent made a motion for summary disposition asserting that Heumann had failed to state a claim. At my direction, Respondent filed a brief in support of its motion on October 3, 2002. On October 11, 2002, Heumann filed a written response to the motion. Based on the facts as set forth by Charging Party at the hearing and the exhibits in the record, I make the following conclusions of law and

recommend that the Commission issue the following order.

Facts:

Wade Heumann is employed by the Gibraltar Public Schools (hereinafter the School District) as a custodian. Heumann is a member of a bargaining unit of nonsupervisory custodians and maintenance employees of the School District represented by the Respondent. Heumann was Respondent's president from 1994 until early 2000, when Korczynski replaced him.

On or about August 14, 2000, Heumann heard that the School District had been assigning temporary custodial employees to work on weekends at Weiss Elementary School, a violation of the collective bargaining agreement. On August 15, 2000, Heumann filed a Freedom of Information Act (FOIA) request with the School District seeking a list of all temporary custodial employees and their weekly time sheets for the period June 15, 2000 through August 15, 2000. Korczynski filed similar a request at about the same time.

On August 21, Korczynski filed a formal group grievance protesting the assignment of overtime work to temporary employees at Weiss School. Korczynski's grievance requested as relief "ten hours overtime awarded to a bargaining unit member for loss of wages. This member has yet to be determined." On August 22, Heumann filed an informal individual grievance at the first step of the grievance procedure seeking 58.5 hours of overtime to be paid to him.

On September 6, School District Superintendent James Vollmar and Korczynski signed an agreement settling the group grievance. The settlement acknowledged the contract violation, but stated that both Respondent and the School District accepted partial responsibility for the lack of a posted overtime list. The agreement did not include any monetary settlement. An addendum was later executed stating that Respondent's blame for the contract violation was "minimal." The addendum also stated that claim brought by an individual member of the bargaining unit for this or related infractions would not be "endorsed by this Union."

On the date Korczynski settled the group grievance, Doyle Greenlagh, Respondent's steward, filed a formal individual grievance on Heumann's behalf. On September 8, Vollmar notified Heumann that his grievance had no standing because of the September 6 grievance settlement. When Greenlagh appealed Heumann's grievance to the second step of the grievance procedure, Vollmar did not respond. On October 10, Respondent's local executive council met to consider whether to advance Heumann's grievance to step three. The council decided to submit the question of whether it had the right to do this to the MEA's legal department. On March 5, 2001, an MEA staff attorney issued an opinion letter concluding that Korczynski had acted improperly by filing a group grievance under the circumstances of this case. The staff attorney also concluded that the grievance filed by Korczynski was invalid. That evening, the local executive council voted to advance Heumann's grievance to step three. On April 2, Vollmar and Korczynski entered into another written agreement. This agreement stated that the School District admitted that it violated Respondent's contract by allowing summer employees to perform bargaining unit overtime work, and that the School District agreed not to repeat this error in the future. On April 4, 2001, Respondent's executive

council voted to take Heumann's grievance to arbitration.

The School District challenged the arbitrability of the grievance, citing the September 6, 2000 settlement agreement. Respondent and the School District agreed to have this question resolved by an arbitrator. In a decision issued on November 14, 2001, the arbitrator concluded that Korcynski's group grievance and Heumann's individual grievance were the same, as they protested the same contract violations and were based on the same facts. He found that any of the contractually designated union officials, including Korcynski, were authorized by the contract to enter into final and binding grievance settlements. The arbitrator determined, therefore, that he did not have authority under the contract to set aside the September 6, 2000 grievance settlement.

Discussion and Conclusions of Law:

As noted above, Respondent moved to dismiss the charge based on Heumann's failure to state a claim. Respondent did not assert that the charge was untimely. However, my review of the record indicates that the charge filed by Heumann on March 26, 2002 was not timely.

Section 16(a) of PERA prohibits the Commission from acting upon any unfair labor practice occurring more than six months prior to the filing of the charge with the commission and the service of a copy thereof upon the party against whom the charge is made. Moreover, the statute of limitations under Section 16(a) is jurisdictional; it cannot be waived. *Walkerville Community Schools*, 1994 MERC Lab Op 582; *Shiawasee County Road Commission*, 1978 MERC Lab Op 1182. The Commission is obligated to address the issue even if, as here, the Respondent has not claimed that the charge is untimely. *Southfield Public Schools*, 1984 MERC Lab Op 1049, 1050; *Superiorland Library Cooperative*, 1984 MERC Lab Op 701.

In his March 26, 2002 charge, Heumann alleges that Respondent Local President Korcynski maliciously interfered with Heumann's attempt to collect back overtime by: (1) filing a group grievance on August 21, 2000; (2) settling that grievance without backpay on September 6, 2000; (3) signing a second settlement agreement for that same grievance on April 2, 2001. All three of these acts occurred more than six months before Heumann filed his charge.

The limitations period under PERA commences when the person knows of the act which caused his injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). See also *Leary v Rupp*, 89 Mich App 145 (1979). In this case, Heumann learned about Korcynski's allegedly unlawful acts almost as soon as they took place, and he immediately judged them to be improper. I find, moreover, that the fact that Respondent was actively pursuing Heumann's grievance throughout the statutory filing period did not toll the statute. It is well established that the statute of limitations contained in Section 16(a) is not tolled by the pursuit of other remedies, *Rodgers v Washtenaw County*, 209 Mich App 73 (1995), *aff'g* 1992 MERC Lab Op 471, 472. *Walkerville, supra* at 583. Heumann was obliged by statute to file his charge within six months of learning of the alleged unfair labor practices.

For reasons set forth above, I conclude that Heumann's charge should be dismissed as untimely. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____