

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES, LOCAL 1346,  
Labor Organization-Respondent,

Case No. CU03 B-012

-and-

JOHN LAKEY,  
An Individual Charging Party.

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APPEARANCES:

Miller Cohen, P.C., by Richard G. Mack, Jr., Esq., for Respondent

John Lakey, In Propria Persona

**DECISION AND ORDER**

On November 20, 2003, Administrative Law Judge (ALJ) Julia C. Stern issued her Recommended Decision and Order, in which she concluded:

Section 16(a) of PERA states that no unfair labor practice complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. By July 2, 2002, Lakey had exhausted his internal union appeal of Respondent's November 2000 actions. Lakey did not file his charge until February 6, 2003, more than seven months later. Lakey's charge was, therefore, untimely even if his claim was tolled while his internal union appeal was pending. Since this charge was not filed within the time limits set forth in Section 16(a) of PERA, I recommend that the Commission issue the order set forth below.

The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On December 5, 2003, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order. Respondent filed a timely response to the exceptions on December 18, 2003.

We find the record before us to be inadequate to support the summary dismissal of the charge and remand this matter for hearing to determine by unqualified admission, stipulation or competent and credible evidence, the following facts:

1. The date of Charging Party's return to work following the rescision of his resignation;
2. The date that Respondent grieved the decision allowing Charging Party to rescind his resignation;
3. The date that Charging Party was removed from the position to which he returned following the rescision of his resignation;
4. The date that Charging Party initiated his effort to obtain relief through Respondent's internal union appeal process; and
5. The date of Respondent's last disposition of Charging Party's internal union appeal;

The record made on remand shall include copies of the relevant documents including, without limitation, those documents representing: the grievance; the internal union appeal; the final disposition of the grievance; the final disposition of the internal union appeal; and the provisions of the Union's constitution and bylaws that set forth the internal union appeal process and time limits. It should be noted that this decision to remand should not discourage any party from seeking a mutually acceptable resolution of their underlying dispute through negotiation, for which the Commission's mediation services are available.

**ORDER**

We hereby remand this matter to the ALJ for hearing and the issuance of findings of fact, conclusions of law, and a supplemental recommended order. Following service of the supplemental order on the parties, the provisions of R423.176 through R423.179 of the Commission's Rules and Regulations shall be applicable.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

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

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JOHN LAKEY,  
An Individual Charging Party

APPEARANCES:

Miller Cohen, P.C., by Richard G. Mack, Jr., for the Respondent Labor Organization

John Lakey, in pro per

DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE

ON MOTION FOR SUMMARY DISPOSITION

On February 6, 2003, John Lakey filed the above charge against his collective bargaining representative, the American Federation of State, County and Municipal Employees (AFSCME), Local 1346. Lakey is employed by the Warren Consolidated Schools. Lakey alleged that Respondent violated its duty of fair representation toward him under Section 10(3)(a)(i) of the Public Employment Relations Act (PERA), MCL 423.210, by filing a grievance which resulted in his demotion and loss of seniority.

On June 30, 2003, I issued an order requiring Lakey to show cause why his charge should not be dismissed as untimely under Section 16(a) of PERA, as it appeared from the charge that the alleged unfair labor practice took place in November 2000. Lakey responded to the order to show cause on July 14, 2003. Lakey asserted that his charge was timely because he had appealed Respondent's decision through the Union's internal appeal procedure. On July 15, 2003, I wrote the parties informing them that I was scheduling the case for hearing. I explained that in its recent decision in *Troy School District*, 2003 MERC Lab Op \_\_\_\_ (Case No. C02 D-080, issued June 27, 2003), the Commission cited with approval *Silbert v Lakeview Education Assn.*, 187 Mich App 21 (1991). *Silbert* held that a claim of a breach of the duty of fair representation is tolled while an internal union appeal is pending. I stated that I was uncertain whether the Commission intended to follow *Silbert*.

On September 8, 2003, Respondent filed a motion for summary disposition. On September 22, 2003, after a prehearing telephone conference, Lakey filed a response to the motion. Attached to Lakey's response was a list of the dates of the pertinent events in his claim. The facts, as set forth in Lakey's pleadings, are as follows.

Lakey is a maintenance leader/coordinator for the Warren Consolidated Schools. In or around August 2000, Lakey resigned after the school district denied his request for a leave of absence. His position was filled. Lakey later asked to rescind his resignation. On November 13, 2000, he returned to work. The school district granted him a retroactive leave of absence for the 47 days he had been gone, and placed him in his old position. Shortly after Lakey's return, Respondent filed a grievance protesting the school district's decision to let Lakey return to his former position. Because of this grievance, Lakey was demoted in February 2001.<sup>1</sup> He also lost all seniority he had accumulated before November 2000. On February 23, 2001, Lakey filed an appeal under AFSCME's internal appeal procedure protesting Respondent's decision to grieve his reinstatement. Lakey pursued this appeal through the first four steps. The fifth step requires the appellant to appear at AFSCME's annual convention. Lakey filed his appeal at the fifth step on March 16, 2002. However, due to health problems in his family, Lake was not able to attend the convention on July 2, 2002. As a result, his appeal was not heard. On December 22, 2002, Lakey wrote a letter to this Commission explaining his complaint against the Respondent. On January 28, 2003, he was sent the form for filing an unfair labor practice charge. As noted above, Lakey filed his charge on February 6, 2003.

Section 16(a) of PERA states that no unfair labor practice complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. By July 2, 2002, Lake had exhausted his internal union appeal of Respondent's November 2000 actions. Lakey did not file his charge until February 6, 2003, more than seven months later. Lakey's charge was, therefore, untimely even if his claim was tolled while his internal union appeal was pending. Since this charge was not filed within the time limits set forth in Section 16(a) of PERA, I recommend that the Commission issue the order set forth below.

#### RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

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

<sup>1</sup> Lakey subsequently returned to the maintenance leader/coordinator position after it became vacant.