

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

In the Matter of:

WASHTENAW COUNTY,
Public Employer-Respondent,

Case Nos. C03 L-288 & C04 A-013

-and-

MICHAEL SCHILS,
An Individual Charging Party.

APPEARANCES:

Gallagher & Gallagher, P.L.C., by Paul Gallagher, Esq., for Respondent

Michael Schils, *In Propria Persona*

DECISION AND ORDER

On October 19, 2004, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above matters, recommending that the charges be dismissed. Following oral argument on motions to dismiss by Respondent Washtenaw County, the ALJ found that Charging Party Michael Schils did not have standing to file charges under Section 10(1)(a) and (d) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a) and (d), because, at the time of the incidents that form the basis of his charge, he was not a public employee within the meaning of Section 1(e) of PERA. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. We granted Charging Party's request for an extension of time to file exceptions to the ALJ's Decision and Recommended Order, and he filed timely exceptions on December 8, 2004. Respondent did not file a response to the exceptions.

In his exceptions, Charging Party argues that he should be considered a public employee because, unlike the former public employees in the cases relied upon by the ALJ, Charging Party did not leave his employment voluntarily. He contends that Respondent terminated his employment in violation of PERA and that he would still be a public employee but for that unlawful act.

Charging Party's claim with respect to unlawful termination was previously adjudicated and no violation of PERA was found. Charging Party was employed by Respondent until September 2001. Subsequently, Charging Party filed unfair labor practice charges against Respondent and against his former Union, the American Federation of State, County and Municipal Employees, regarding the termination of his employment. We dismissed those charges in *Washtenaw Community Mental Health*, 17 MPER 45 (2004), aff'd, *Schils v Washtenaw Community Mental Health*, unpublished order of the Court of Appeals, entered January 5, 2005, reconsideration denied March 4, 2005 (Docket No. 259656).

At the time of the incidents challenged here, which occurred in 2003, Charging Party had not been a public employee for almost two years. Accordingly, Respondent's actions were not actions taken against a public employee and cannot give rise to a claim under PERA. We conclude that the Administrative Law Judge correctly determined that Charging Party had no standing to file charges regarding those incidents under Section 10(1)(a) and (d) of PERA.

We have carefully considered each of the arguments set forth by Charging Party and find them unpersuasive. Accordingly, we issue the following Order:

ORDER

We hereby adopt the Administrative Law Judge's Decision and Recommended Order as our final Order in this case and dismiss the charges in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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Gallagher & Gallagher, P.L.C., by Paul Gallagher, Esq., for the Respondent

Charging Party *In Pro Per*

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

This matter involves two unfair labor practice charges filed by Charging Party Michael Schils against his former employer, Respondent Washtenaw County. The charge in Case No. C03 L-288, filed on December 23, 2003, alleges that the Employer violated Section 10(1)(a) and (d) of the Public Employment Relations Act, (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a) and (d), by retaliating against him for filing an earlier unfair labor practice charge against the County. Specifically, the charge states, in pertinent part:

Respondent called Ann Arbor Police on Charging Party on June 26, 2003. This was in reaction to the Charging Party's in-person request to observe and photograph employment postings at 3901 Varsity Dr., Ann Arbor, Michigan, the Charging Party's previous place of work. It is the Charging Party's understanding that posters explaining the employee's rights to pursue action through M.E.R.C. and various other agencies are required by law to be put in a conspicuous location by the employer. The Charging Party was attempting to verify that the respondent had posted these required postings, as the Charging Party hadn't recalled ever seeing such in his previous 9+ years of employment there.

After the police arrived, supervisor Trish Cortes read a trespass notice to the Charging Party, in full view of the respondent's employees. Additionally, an employee by the name of Audrey Tisdale, who had earlier locked the door in the

face of the Charging Party, took several snapshots with a camera of him, as he was leaving the premises, escorted by the police. The Charging Party seeks full disclosure of these acts by Mrs. Tisdale to determine if she was acting out of the policy of the respondent employer. The Charging Party contends that he had never met Mrs. Tisdale, and that her actions were an unwarranted defamation against his character.

The Charging Party also contends that the facts will show that this whole “scene” was orchestrated by the respondent in an attempt to defame the character of the Charging Party, and to show the respondent’s employees what can happen to those who exercise their rights under PERA. Calling the police was also a means of preventing the Charging Party from discovering that the required M.E.R.C. posters was not in place, as he had suspected. Consequently, the Charging Party requests that the Commission draws an inference that the poster was not in place at the time of this incident, and to structure the remedy accordingly.

The facts will show that the respondent’s conduct was in retaliation for the earlier Unfair Labor charges, and thus in direct violation of the PERA.

The Charging Party requests from this Commission all relief to which he and the respondent’s employees are entitled under the PERA. This should include a mailing from the respondent employer to all of it’s employees, informing them of their rights under PERA as well as the inclusion of such information on the County website. A posted apology to the Charging Party is also warranted.¹

On January 8, 2004, Respondent Washtenaw County moved for dismissal of Case No. C03 L-288. Respondent argues that the charge fails to state a claim upon which relief can be granted since Schils has not alleged that he was an employee of the County or an agent of a labor organization representing County employees at any time relevant to the events described in the charge.

The charge in Case No. C04 A-013, filed on January 15, 2004, alleges that Respondent violated Section 10(1)(a) and (d) of PERA and Section 24 of the Labor Relations and Mediation Act (LMA), 1939 PA 176 as amended, MCL 423.24.² Specifically, the charge provides, in pertinent part:

Respondent called the Washtenaw County Sheriff on Charging Party on July 16, 2003 while he was attending a Board of Commissioner’s meeting at the LRC building in Ypsilanti. Officer Kevin Bouse and officer Saydale (?) escorted Charging Party outside the meeting. The officers patted down the Charging Party and grabbed his crotch as if they were looking for contraband. The officers then placed the Charging Party in the squad car. This all took place in front of dozens

¹ This quotation is unaltered from the original.

² The LMA, Act 176 of 1939, as amended, is a law governing labor relations for private sector employers and employees who are not within the exclusive jurisdiction of the National Labor Relations Act, and has no application to this case, which involves the conduct of a public sector employer.

of onlookers and the watchful eyes of the County's Diane Heidt, who seems to have initiated the action. After several minutes, the Charging Party was handed a Trespass Notice and taken to his car and told to leave the premises.

The Trespass Notice prohibits the Charging Party from entering Washtenaw County Government property for one year. The Charging Party sent a certified letter to Sheriff Daniel J. Minzey on 7-28-03, demanding an explanation and a copy of any related documents. Charging Party left a message on Minze's machine on 8-11-03, requesting the same. Charging Party sent another certified letter on 8-19-03, this time restricting delivery to Mr. Minzey only. Charging Party received no response from these inquiries, with the latest letter returning unclaimed.

Charging Party sent letters to each member of the Board of Commissioners on 9-3-03, demanding an investigation into this apparent violation of the Open Meetings Act. The OMA states that a person cannot be removed from a board meeting except for a violation at that same meeting. Charging Party e-mailed Board Chair Leah Gunn on 9-12-03, inquiring the same. Gunn denied receiving this email on 9-15-03. Charging Party sent inquiring emails to remainder of Board on 9-15-03 and 9-16-03. Again on 9-17-03, Charging Party sent emails to the Board of Commissioners, the County Administrator, the Sheriff and Corporate Council. With the exception of Gunn's denial, the Charging Party did not receive a response to any of these inquiries. This violates the County Board of Commissioners Act 156 of 1851 which requires boards to conduct meetings in compliance with the OMA, and to investigate any violations thereof.

The facts will show that the respondents actions were in retaliation for the earlier Unfair Labor charges, and thus in direct violation of the PERA. The respondent's actions also serve to prevent the Charging Party from supporting these earlier charges, as the Trespass Notice prevents him from entering County premises and accessing the necessary documents. The Trespass Notice has also prevented the Charging Party from filing charges against the County in circuit court for the violations of the OMA and CBCA, as such charges must be filed in the same county as the allegations occurred.

The Charging Party requests from this Commission all relief to which he is entitled under the PERA. This should include a full inquiry into this apparent "secret police" mechanism that has been employed by the respondent to prevent the Charging Party from exercising his rights under the PERA. This is the third time the respondent has called the police on the Charging Party since his termination. Additionally, these unjustified and very visible acts of intimidation are serving to frighten union members into not exercising their rights guaranteed under PERA.³

On January 26, 2004, Respondent filed a motion to dismiss in Case No. C04 A-013, once again arguing that the charge fails to state a claim under PERA because Schils was not a public

³ This quotation is unaltered from the original.

employee at any time relevant to the events set forth therein. In orders entered on January 20, 2004, January 29, 2004, and February 6, 2004, I directed Charging Party to show cause why the charges in Case Nos. C03 L-288 and C04 A-013 should not be dismissed. On February 18, 2004, Charging Party formally requested oral argument and, pursuant to that request, a hearing was held before the undersigned on March 31, 2004.

Based upon the pleadings and the arguments of the parties, I find that Charging Party is not covered by the protections of PERA because he was not a public employee when the unfair labor practices allegedly occurred. The term “public employee” is defined in Section 1 of PERA, MCL 423.201, which states, in pertinent part:

(e) “Public employee” means a person holding a position by appointment or employment in the government of this state, in the government of 1 or more of the political subdivisions of this state, in the public school service, in a public or special district, in the service of an authority, commission, or board, or in any other branch of the public service”

With respect to the instant charges, Schils alleges that Respondent violated Section 10(a) and (d) of PERA. Section 10(a) of PERA, MCL 423.210, prohibits a public employer from interfering with, restraining or coercing “*public employees* in the exercise of their rights guaranteed by section 9,” while Section 10(d) of PERA makes it an unfair labor practice for a public employer to “discriminate against a *public employee* because he has given testimony or instituted proceedings under this act.” (Emphasis supplied.) I interpret this language to mean that, in order for an individual to have standing to file an unfair labor practice charge under Section 10(a) or (d) of PERA, that person must have been a public employee at the time the unfair labor practice occurred.⁴ In fact, the Commission has previously recognized that individuals who are no longer employed by a public employer, such as persons who have resigned or retired, are not “public employees” within the meaning of PERA. See e.g. *City of Detroit*, 1989 MERC Lab Op 788; *West Ottawa Ed Ass’n v West Ottawa Bd of Ed*, 126 Mich App 306 (1983), enf’g 1982 MERC Lab Op 629. See also *SMART*, 1998 MERC Lab Op 53 (no exceptions).

At oral argument in this matter, Charging Party conceded that his employment with the County was terminated on or about September 7, 2001, and all of the allegations set forth in his charge pertain to incidents which occurred approximately two years after his discharge. Under such circumstances, I conclude that the charges in Case Nos. C03 L-288 and C04 A-013 should be dismissed for lack of standing pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission.

I, therefore, recommend that the Commission issue the order set forth below:

⁴ Of course, terminated employees maintain the right to challenge the discharge itself as discriminatory, since such individuals were public employees at the time of the allegedly unlawful conduct upon which the charge was based. Indeed, Charging Party did file an unfair labor practice charge against Washtenaw County challenging his termination. That charge was dismissed by the Commission in an order entered on August 6, 2004 (Case Nos. C03 C-061 & CU03 C-017).

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____