

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

In the Matter of:

WASHTENAW COUNTY,  
Public Employer-Respondent,

Case No. C04 J-260

-and-

MICHAEL SCHILS,  
An Individual-Charging Party.

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**APPEARANCES:**

Gallagher and Gallagher, P.C., by Paul Gallagher, Esq., for the Respondent

Michael Schils, *In Propria Persona*

**DECISION AND ORDER**

On January 4, 2005, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Charging Party Michael Schils failed to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.201 et seq. Upon concluding that the charge merely restated matters previously adjudicated by this Commission in our September 8, 2004 Order in *Washtenaw Cmty Mental Health -and- Michael Schils*, Case No. C03 C-061, the ALJ recommended that the charge be dismissed. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. Following a timely request, Charging Party was granted an extension of time to file exceptions. He filed timely exceptions to the ALJ's Decision and Recommended Order on February 28, 2005. Respondent Washtenaw County did not file a response to the exceptions.

In his exceptions, Charging Party alleges that the Commission did not sufficiently adjudicate the matters raised herein in the September 8, 2004 Order in Case No. C03 C-061. He further contends that, in this case, the Commission is not addressing the same question of law that was addressed in our previously issued Order.

In our September 8, 2004 Order, we denied Charging Party's motion to reopen the record, citing Rule 166(1)(c) of the Commission's General Rules, 2002 AACS, R 423.166(1)(c), because the additional evidence that Charging Party sought to introduce would not require us to change our August 6, 2004 Decision and Order dismissing the charges in that case. See *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004). On October 5, 2004, Charging Party filed the charge in this case citing the same facts and arguments that he set forth in Case No. C03

C-061. His charge states, “The complainant files this charge based on the same facts he presented with the ‘Motion to Reopen the Record’ he submitted to the commissioners on August 16, 2004.”

Section 16(e) of PERA states, in pertinent part,

Any party aggrieved by a final order of the commission granting or denying in whole or in part the relief sought may within 20 days of such order as a matter of right obtain a review of the order in the court of appeals by filing in the court a petition praying that the order of the commission be modified or set aside, with copy of the petition filed on the commission, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the commission.

Accordingly, after we denied Charging Party’s motion to reopen the record in Case No. C03 C-061, the only means by which Charging Party could obtain review of our Decision and Order and our Order denying his motion was to file a *timely* appeal to the Michigan Court of Appeals. Instead, Charging Party filed the charge in this case and filed several additional motions seeking further review.<sup>1</sup> Charging Party cannot reopen the record by filing a new charge on the same facts.

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

**ORDER**

For the above reasons, we hereby adopt the Administrative Law Judge’s Decision and Recommended Order as our final order in this case and dismiss the charge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

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<sup>1</sup> When Charging Party appealed to the Court of Appeals months later, his appeal was dismissed as untimely.

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
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In the Matter of:

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-and-

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APPEARANCES:

I.

II. Gallagher and Gallagher, P.C., by Paul Gallagher, Esq., for the Respondent

III.

Michael Schils, in pro per

DECISION AND RECOMMENDED ORDER  
OF  
ADMINISTRATIVE LAW JUDGE

On October 5, 2004, Michael Schils filed this charge against his former employer, Washtenaw County, pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The charge was assigned for hearing to the undersigned. On November 8, 2004, I consolidated the charge with other pending charges filed by Schils against the Respondent (Case Nos. C04 H-213 and C04 I-228), and against his labor organization, the American Federation of State, County and Municipal Employees, Council 25 and its Local 2733 (Case Nos. CU04 I-042 and CU04 J-051).

At the time he filed this charge, Schils also filed a motion for summary disposition pursuant to Rule 165(2)(f) of the Commission's General Rules, 2002 AACRS R 423.165(2)(f). Schils alleged that, except as to the relief sought, there was no genuine issue of material fact and that he was entitled to a ruling in his favor as a matter of law. I denied this motion on November 30, 2004. On December 13, 2004, Schils filed a motion for reconsideration of my denial. In this motion, Schils waived his right to oral argument and requested that I issue a separate decision and recommended order in this case. Accordingly, on December 16, I severed this charge from the consolidated charges.

The Unfair Labor Practice Charge:

The charge in Case No. C04 J-260 reads, in its entirety, as follows:

The complainant files this charge based on the same facts he presented with the “Motion to Reopen the Record” he submitted to the commissioners on August 16, 2004. The commissioners in their order dated September 8, 2004 never addressed these facts:

1. Greg Roling of the Federal Motor Carrier Safety Administration confirms in his November 21, 2003 letter that his agency has no record of the communication described by Washtenaw County administrator Donna Sabourin, in her July 7, 2000 memo to her staff. The memo asserts specifically that Sabourin “learned that the Federal Regulations had been changed requiring drivers of vehicles of 8 passengers and above who provide transportation for compensation to now be required to hold a CDL.” Sabourin used this supposed communication as the sole justification for imposing her new CDL and drug testing policies on her employees.
2. Roling also states in his letter that vehicles that seat 9-15 passengers do not require a CDL to operate, contrary to what Sabourin asserts in her memo.

The evidence shows that Washtenaw County has implemented its CDL and drug testing policy through a fraudulent misrepresentation.

This fraudulent concealment of the claim by the employer tolls any time limitation to commence action until its discovery, per MCLA 600.5855. After discovery, the complaining party has 2 years with [sic] which to file an action. In this specific case, the complainant was also prevented from filing after he received the FMCSA letter because he had a pending charge relating to this same allegation that was later dismissed.

Background:

On March 18, 2003, Schils filed a charge against Respondent (Case No. C03 C-061), alleging that Respondent discharged him on January 7, 2000, reinstated him pursuant to an arbitrator’s decision, and unlawfully terminated him again on September 7, 2001. Respondent’s purported reason for discharging Schils the second time was that he failed a drug test. On August 6, 2004, the Commission affirmed the decision of Administrative Law Judge (ALJ) Roy L. Roulhac granting Respondent’s motion for summary disposition of this charge on the grounds that it was untimely under Section 16(a) of PERA. See *Washtenaw Comm Mental Health*, 17 MPER ¶ \_\_\_\_ (2004). ALJ Roulhac and the Commission both noted that the most recent event involving the Respondent alleged in that charge occurred on June 28, 2002, when, according to Schils, Respondent refused to acknowledge a breach of federal regulations. The Commission agreed with the ALJ that the charge was untimely because it was filed more than six months after any alleged unfair labor practice.

On August 17, 2004, Schils filed a motion to reopen the record in Case No. C03 C-061 to admit a memo from Respondent supervisors Donna Sabourin and Lydia Sattler dated July 7, 2000. The memo stated that Sabourin had learned “through recent contacts with the Department of Transportation,” that federal regulations required all drivers of vehicles of 8 passengers and above to hold a commercial driver’s license (CDL). The memo also directed all mental health employees of Respondent to obtain a CDL with a P-C endorsement. Schils also sought to admit a letter from Greg Roling, from the Federal Motor Carrier Safety Administration, dated November 21, 2003. Roling’s letter stated that his agency had no record of a written communication with Sabourin related to CDL requirements, and that he could not confirm whether a telephone conversation between his office and Sabourin took place. Roling’s letter also stated that even if Respondent, as a governmental entity, was subject to federal regulations, these regulations did not require a driver of a vehicle designed to transport 9-15 passengers to have a CDL. Schils also filed a motion for summary judgment in that case based on the evidence he sought to have admitted.

R 423.166(1)(c) sets out the conditions under which the Commission may reopen a record to admit new evidence. This rule states that the evidence sought to be admitted must be newly discovered. It also provides that the evidence is not to be admitted unless the evidence “if adduced and credited, would require a different result.” In his motion to reopen the record in Case No. C03 C-061, Schils asserted that Roling's letter was the first evidence he obtained that Sabourin had fabricated her justification for imposing the CDL requirement on employees in July 2000. Schils argued that Sabourin’s memo and Roling's letter established that Respondent fraudulently concealed his cause of action, and that the statute of limitations on his claim was thus tolled under MCL 600. 5855.

On September 8, 2004, the Commission denied both Schils’ motion to reopen the record and his motion for summary judgment. It stated:

Because the arguments presented fail to raise any issue under PERA and the additional evidence that Charging Party seeks to introduce would not require us to change our Decision and Order, we find no basis to reopen in this matter. See Rule 166(1)(c) of the Commission’s General Rules, 2002 AACRS, R 423.166(1)(c). Neither does that evidence support a finding that Charging Party is entitled to judgment as a matter of law. Both motions are denied.

#### Discussion and Conclusions:

In the instant charge, Schils asserts that the Commission erred in Case No. C03 C-061 by finding that his March 7, 2003 charge alleging that he was unlawfully terminated in September 2001 was untimely under Section 16(a) of PERA. According to Schils, per MCL 600.5855, Respondent’s fraudulent concealment of his cause of action tolled the statute of limitations and, pursuant to that statute, Schils had two years from the date he discovered the fraudulent concealment within which to file his charge. Schils made this same argument to the Commission in his August 17, 2004 motion to reopen in the record in Case No. C03 C-061. On September 4, 2004, the Commission rejected this argument when it held that the new evidence that Schils sought to introduce - the same facts cited by Schils in the instant charge - would not require it to

change its conclusion. Per Section 16(e) of PERA, Schils has the right to appeal the Commission's order to the Court of Appeals. However, the filing of a new charge is not the appropriate mechanism to appeal a Commission decision.

I conclude that Schils' charge fails to state a claim upon which relief can be granted. Pursuant to R 423.165(1) and R 423.165(2)(d), I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

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