

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

In the Matter of:
AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, MICHIGAN
AFSCME COUNCIL 25, LOCAL 1583,
Labor Organization-Respondent,

Case No. CU05 F-025

-and-

DANETTA JOPLIN,
An Individual-Charging Party.

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APPEARANCES:

Ben K. Frimpong, Esq., for the Respondent

Lewis Irby, Jr. for Charging Party

DECISION AND ORDER

On December 9, 2005, 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

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

On June 22, 2005, Danetta Joplin filed an unfair labor practice charge alleging that her former bargaining representative, the American Federation of State, County and Municipal Employees (AFSCME) Council 25 and Local 1583, violated its duty of fair representation under Section 10(3)(a)(i) of the of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. On July 5, 2005, I directed Joplin to amend her charge to include a clear and complete statement of the facts, including the dates that the acts alleged in the charge, occurred, as required by R 423.151(2)(c). Joplin filed an amended charge on July 29, 2005, and the matter was scheduled for hearing on December 20, 2005.

On October 27, Respondent filed a motion for summary disposition. On November 4, I issued an order to Joplin to show cause why her charge should not be dismissed as untimely. Joplin filed a response to my order on November 28, and Respondent filed a renewed motion to dismiss on December 5. Based on the facts as alleged by Joplin in her charge, as amended, and in her November 28 response, and the

arguments set forth by the parties in their various pleadings, I make the following conclusions of law and recommend that the Commission issue the following order.

Facts:

Joplin was employed by the University of Michigan Medical Center (the employer) as a custodian. Joplin was a member of a bargaining unit represented by AFSCME Local 1583. In 2003, the employer charged Joplin with taking drink and food items for personal consumption. In October 2003, Joplin signed a so-called "last chance" agreement negotiated by Respondent in settlement of these charges. The last chance agreement stated, "Joplin will not incur further incidents of serious misconduct." It also stated that Joplin would be discharged should she fail to comply with the conditions of the agreement and that Respondent would not file a grievance or seek arbitration of her discharge under such circumstances.

In the afternoon of June 30, 2004, Joplin found a letter on her work cart from her supervisor stating that a nurse had made a complaint about her conduct that morning. According to the letter, a staff member asked Joplin to put a fresh bag into a linen hamper, and Joplin, using profanity, stated that it was not her job. According to the letter, Joplin then pointed at an overfilled linen bag, cursed, and, in front of patients, told the staff not to put any more dirty linen in the bags. Then, according to the letter, Joplin cursed again, kicked a chair, went into an empty room and refused to do any more work. The letter stated that the employer considered Joplin's actions to be serious misconduct and that it was terminating her employment immediately, without a hearing. Joplin was escorted from the building by security.

Paragraph 318 of the collective bargaining agreement between Respondent and the employer states:

In the event the Union has a grievance, it shall begin at Step Two of the grievance procedure, provided the grievance is submitted within the fifteen (15) calendar day period following the day on which the Union had knowledge of the facts giving rise to the grievance. Such a grievance shall be submitted by the Chairperson of the Bargaining Committee, or the Chairperson's designated representative, on behalf of the Union.

Shortly after her discharge, Joplin met with Local 1583 steward Nadia Eastman. Joplin denied that anything unusual occurred on the morning of June 30; she maintained that she had spent the morning "pulling linen" and that when a nurse asked her to empty a linen bag she had done so. At this time, Warren Jenkins was chairperson of Local 1583's bargaining committee. On July 1 or 2, 2004, Joplin and Eastman tried to call Jenkins to explain that Joplin had not done what she was accused of doing. Jenkins did not return their call. Joplin and Eastman met again on about August 10. No grievance was filed on Joplin's behalf.

Joplin and Eastman did not attempt to contact Jenkins again until about December 1, when they called Jenkins to ask him to attend Joplin's unemployment hearing on December 13. Eastman called Jenkins' cell phone and left several messages at his office, but he did not call her back. Jenkins did not attend the unemployment hearing. On December 16, an unemployment administrative law judge issued a decision granting Joplin unemployment benefits. He concluded that, as the nurse who made the accusations

against Joplin had not appeared at the hearing and the employer's witnesses had no personal knowledge of Joplin's alleged misconduct, the record did not establish that Joplin had been discharged for misconduct connected with her work. Joplin and Eastman called Jenkins and AFSCME Council 25 representative Cheryl McCreary to notify them of this decision, but neither returned their calls.

Eastman then suggested that Joplin attend the local union meeting scheduled for December 18, 2004. Around this time, Lewis Irby, a former bargaining chairperson for Local 1583, heard about Joplin's situation and agreed Joplin had been treated unjustly. At the December 18 meeting, Eastman, Joplin and Irby spoke to McCreary, explained the situation, and told her that they had been trying to reach Jenkins but that he would not return their calls. McCreary said, "I can't make Mike (Edwards, Local 1583 president) or Warren do anything . . . you know that."

In April or May 2005, Irby contacted individuals he knew in the employer's human resources department regarding Joplin and asked them as a courtesy to consider looking into the circumstances of Joplin's discharge. His request was not successful. As noted above, Joplin filed this charge on June 22, 2005.

Discussion and Conclusions of Law:

Under Section 16 (a) of PERA, a charge must be filed with the Commission within six months of the date the claim accrues. A claim accrues when the charging party knows, or should know, of the alleged unfair labor practice. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. The limitation period under Section 16(a) is jurisdictional and cannot be waived. *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 502.

When a charging party's complaint against his or her union is based on the union's inactivity, the statute of limitations begins to run when the charging party should have reasonably realized that the union would not act on his behalf. *Washtenaw Cmty Mental Health*, 17 MPER 45, at 134, citing *Metz v Tootsie Roll Industries, Inc.*, 715 F2d 299 (CA 7, 1983). In *Metz*, the Court dismissed as untimely a lawsuit filed by plaintiff thirteen months after her discharge alleging that her union violated its duty of fair representation by failing to file a grievance on her behalf. Plaintiff alleged that the statute of limitations had not begun to run because the union never notified her that it had decided not to file a grievance. The Court held that the claim accrued when the union failed to file a grievance within the period provided for in the collective bargaining agreement. It also noted that the union did nothing on plaintiff's behalf for almost seven months prior to the six-month statutory limitations period, and that the union did nothing to mislead plaintiff into believing that a grievance had been filed. It concluded that a reasonably diligent claimant could have discovered the alleged violation prior to the statutory period.

In this case, Joplin's complaint against Respondent is that it failed to file a grievance challenging her June 30, 2004 discharge. Under its collective bargaining agreement, Respondent was required to file the grievance within 15 days of the date it knew of the facts giving rise to it. On July 1 or 2, 2004, Joplin met with her steward, Eastman. Eastman tried to contact Jenkins, the grievance chairperson, but he did not

return her calls. Whether or not Eastman had authority under the contract to file a grievance, she was Respondent's representative and she clearly knew the facts surrounding Joplin's discharge by early July 2004. The alleged unfair labor practice, therefore, occurred sometime around the middle of July 2004, when Respondent failed to file a grievance within the time period provided for in the contract. Joplin does not assert that Respondent misled her into believing that it had filed a grievance over her discharge. I find that by August 2004, Joplin knew or should have known that Respondent had not filed the grievance. Under Section 16(a) of PERA, Joplin was required to file her unfair labor practice charge within six months of that date, or no later than February 2005. I conclude that the charge filed on June 22, 2005 should be dismissed as untimely, and I recommend 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: _____