

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

In the Matter of:

CITY OF EAST GRAND RAPIDS,
Public Employer - Respondent in Case No. C06 J-258,

-and-

POLICE OFFICERS LABOR COUNCIL,
Labor Organization - Respondent in Case No. CU06 J-050,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization - Respondent in Case No. CU06 J-051,

-and-

CARRIE L. HUDENKO,
An Individual Charging Party.

APPEARANCES:

Carrie L. Hudenko, *In Propria Persona*

DECISION AND ORDER

On December 5, 2006, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 176 of the Commission's General Rules, 2002 AACS, R423.176, exceptions to the Decision and Recommended Order were due on December 28, 2006. On December 16, 2006, Charging Party made a request for a one-month extension of time in which to file her exceptions. We granted the request and issued an order extending the time for filing exceptions to the Administrative Law Judge's decision to January 29, 2007.

No exceptions were filed on or before the specified date. Rather, we received a letter from Charging Party on January 30, 2007 expressing disagreement with the ALJ's decision. Although the envelope in which the exceptions were mailed was postmarked on January 25, 2007, it is well established that the date of filing of exceptions is the date the document is received at the Commission's office, not the date posted. See e.g. *Police Officers Association of Michigan*, 18 MPER 14 (2005); *City of Detroit (Finance Dep't, Income Tax Div)*, 1999 MERC Lab Op 444,445; *Battle Creek Police Dep't*, 1998 MERC Lab Op 684, 686; *Frenchtown Charter Twp*, 1998 MERC Lab Op 106, 110. Moreover, our order granting the one-month extension explicitly stated that the exceptions must be *received* at a Commission office by the close of business on the specified date. Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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CITY OF EAST GRAND RAPIDS,
Respondent-Public Employer in Case No. C06 J-258,

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POLICE OFFICERS LABOR COUNCIL,
Respondent-Labor Organization in Case No. CU06 J-050,

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POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Respondent-Labor Organization in Case No. CU06 J-051,

-and-

CARRIE L. HUDENKO,
An Individual Charging Party.

APPEARANCES:

Carrie L. Hudenko, *in pro per*

DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned for hearing before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. This matter comes before the Commission on unfair labor practice charges filed by Carrie L. Hudenko on October 26, 2006 against the Police Officers Labor Council (POLC) and on October 27, 2006 against the City of East Grand Rapids and the Police Officers Association of Michigan (POAM).

With respect to Respondent City of East Grand Rapids, the charge in Case No. C06 J-258 states:

Violation of POLC Union Contract. That the City of East Grand Rapids terminated my employment as of May 14, 2006 per Section 7.3(g) of the applicable collective bargaining agreement between the City and the POLC. That on May 13, 2004 I was placed on paid Administration leave per City Manager Brian Donovan. That I

remained on paid leave until September 16, 2004 when I received my final paycheck from the City. That I was not on sick leave on May 14, 2006 as the City alleges per my termination. That I was ordered to leave per the City Manager while they investigated a sexual harassment complaint I filed on May 12, 2006. That I am currently on City short term disability plan until November 10, 2006.

In Case No. CU06 J-050, Hudenko alleges that Respondent POLC violated PERA in the following manner:

Unfair Labor – Failure to Represent. That on April 26, 2004 Union Representative PSO Brett Naumcheff told me in person that the department would no longer represent me. That Field Representative Fred LaMaire would handle my case “from top to bottom.” That on May 7, 2004 I had to go to the Firing Range without a witness to qualify after the department had alleged that I had intentionally shot a Sergeant in a training exercise. That I had called Fred LaMaire and he stated, “Don’t make anyone mad.” May 12, 2004 [sic] I filed a sexual harassment complaint against the City of Grand Rapids. May 13, 2006 I meet with the City Manager and the City Attorney to file my complaint without a Union Representative. May 21, 2006 Fred LaMaire calls me and states that he has contacted his attorneys and he can no longer represent me. I attempt to contact a private attorney. May 15, 2006 the City terminates my employment as of May 14, 2006. Because the Union was no longer representing me I contact my private attorney. He states that I have a wrongful termination case and proceeds against the City.

In her charge against Respondent POAM, Case No. CU06 J-051, Hudenko sets forth the following allegations:

Unfair Labor – Failure to File Grievance. [On] June 8, 2006, I [met] with Union President Brett Naumcheff at East Grand Rapids. I requested that the Union file a grievance on my behalf disputing my termination of employment on May 14, 2006. That I was not on sick leave in excess of 2 years as per the City’s allegation. That when I received the termination in the mail that I had contacted my private attorney since I no longer had union representation as of May 21, 200[6]. That I did contact the POLC and was informed that they no longer represented the City as of June 1, 2006. That my Attorney decided this would be a Union matter on June 8, 2006 the day I came in to file a grievance. That after 15 years as an employee that I came into file my first grievance as soon as reasonably possible once it was determined that a grievance may be possible to save my career. That a grievance was never filed. That Union President Brett Naumcheff received notice on June 19, 2006 that a grievance would not be filed and did not forward that information to me until 20 days later.

In an order entered on October 31, 2006, Charging Party was granted fourteen days in which to show cause why her charges should not be dismissed for failure to state a claim upon which relief can be granted under PERA. Charging Party did not file a response to this order.

The failure of Charging Party to respond to the order to show cause, in and of itself, warrants dismissal of the charges. In any event, I find that Charging Party has not raised any issue cognizable under PERA. With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide an independent cause of action for an employer's breach of contract. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against the Charging Party for engaging in conduct protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524. In the instant case, Charging Party has not alleged that Respondent City of East Grand Rapids discriminated or retaliated against her because of union or other protected concerted activity.

Similarly, the charges against Respondents POLC and POAM also fail to state a claim under PERA. A union's duty of fair representation is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123, 146 (1973); *Int'l Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. In the instant case, the charges do not allege that either of the labor organizations acted arbitrarily, discriminatorily or in bad faith with respect to their representation of Hudenko.

Lastly, I find that several of the allegations set forth in Case No. CU06 J-050 are untimely. Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Since the charge against the POLC was not filed until October 26, 2006, any allegations concerning incidents occurring in April and May of 2004 are time-barred under Section 16(a) of the Act. I, therefore, recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charges in Case Nos. C06 J-258, CU06 J-050 and CU06 J-051 are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____