

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

In the Matter of:

ARAMARK FOOD SERVICE,
Private Employer - Respondent,

- and -

Case No. C07 B-040

TERRIE REYNOLDS,
Individual Charging Party.

APPEARANCES:

Terrie Reynolds, *In Propria Persona*

DECISION AND ORDER

On May 29, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent did not violate the Labor Relations and Mediation Act, 1939 PA 176, 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 23 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 23 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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In the Matter of:

ARAMARK FOOD SERVICE,
Respondent-Private Employer,

Case No. C07 B-040

-and-

TERRIE REYNOLDS,
An Individual Charging Party.

APPEARANCES:

Terrie Reynolds, for Charging Party

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE**

Pursuant to the Labor Mediation Act (LMA), 1939 PA 176, as amended, MCL 423.1, et seq, this case was assigned for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission.

The Unfair Labor Practice Charge, Order to Show Cause, and Findings of Fact:

On February 28, 2007, a Charge was filed in this matter asserting that the Employer treated Charging Party improperly or unfairly. It is asserted in the charge and its attachments that Reynolds was discriminated against in 2003 for asserting a civil rights violation and for reporting improper smoking by other employees.

On March 29, 2007, pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, Charging Party was granted twenty-one days to file a written statement explaining why the charges should not be dismissed without a hearing for failure to state a claim. The order advised Charging Party that to avoid dismissal of the Charge, any response to the order to show cause must provide a factual basis that establishes the existence of an alleged violation of the LMA that occurred within six months of the filing of the charge. Charging Party did not respond to the order.

Discussion and Conclusions of Law:

The LMA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting a collective bargaining agreement to determine

whether its provisions were followed. Absent a factually supported allegation that the Employer was motivated by union or other activity protected by Section 8 of the LMA, the Commission is prohibited from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. An allegation that the employee was treated improperly is not sufficient to state a claim. *Knoke v East Jackson Public Sch Dist*, 201 Mich App 480 (1993). The charge against the Employer fails to state a claim upon which relief can be granted.

The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415. The attachments to the Charge make clear that the alleged unfair labor practice occurred in 2003, well beyond the six-month time limit.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____