

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

In the Matter of:

OTSEGO COUNTY (GAYLORD REGIONAL AIRPORT),  
Public Employer – Respondent,

Case No. C06 L-301

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, COUNCIL 25,  
Labor Organization – Charging Party,

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**APPEARANCES:**

Howard L. Shifman, P.C., by Howard L. Shifman, Esq., for Respondent

Miller Cohen, P.L.C., by Richard G. Mack, Jr., Esq., for Charging Party

**ORDER DENYING LEAVE TO FILE EXCEPTIONS**

This matter is before the Michigan Employment Relations Commission on the request of Charging Party, the American Federation of State, County and Municipal Employees, Council 25 (AFSCME) for consideration of its exceptions to an interim order by Administrative Law Judge (ALJ) Doyle O'Connor. The interim order denied reconsideration of the ALJ's previously issued order denying AFSCME's motion to amend its unfair labor practice charge.

**Procedural History:**

AFSCME filed a charge on December 19, 2006 alleging that Respondent, Otsego County (the Employer) had unlawfully discriminated against members of its bargaining unit. The charge alleges that on November 17, 2006, the Employer violated Section 10(1)(a)(b)(c) and (d) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(a)(b)(c) and (d), when the Employer announced the termination of the employment of a three person bargaining unit, effective December 31, 2006. The charge alleges that the three employees in the bargaining unit were terminated for the protected activity of seeking union representation. The charge also points out that the employees' mail ballots were to be returned to MERC by November 22, 2006 and that the unit was certified by MERC on December 6, 2006. The matter was assigned to ALJ O'Connor and scheduled for hearing.

The original charge did not allege that the Employer had breached its duty to bargain under Section 10(1)(e) of PERA. On October 18, 2007, Charging Party moved to amend the charge to add the allegation that Respondent violated Section 10(1)(e) when it refused to bargain over its decision to subcontract bargaining unit work. Respondent filed objections to the amendment on October 29, 2007, contending that the additional allegations were unrelated to the original charge and were barred by the statute of limitations. On December 14, 2007, after allowing Charging Party to respond to the objections and allowing Respondent to reply to the response, the ALJ denied the motion to amend the charge. The ALJ reasoned that Charging Party sought to assert a new claim based on different statutory obligations. He concluded that the new claim does not relate back to the original claim and is barred by the statute of limitations. On December 20, 2007, Charging Party moved for reconsideration of the ALJ's ruling and requested oral argument. On January 15, 2008, after hearing oral argument from both parties, the ALJ orally denied the motion for reconsideration on the record. Subsequently, the ALJ scheduled the matter for a June 17, 2008 evidentiary hearing on the underlying merits of the charge.

On February 1, 2008, Charging Party filed exceptions from the ALJ's denial of its motion for reconsideration. Respondent was granted an extension of time until February 19, 2008 to file a response to the exceptions and, on that date, filed an answer and brief in opposition to Charging Party's exceptions.

#### Discussion and Conclusions of Law:

Rule 161(6) of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R 423.161(6), addresses the circumstances in which a party may file exceptions to an ALJ's ruling on a motion, stating:

Rulings by an administrative law judge on any motion, except a motion resulting in a ruling dismissing or sustaining the unfair labor practice charge in its entirety, shall not be appealed directly to the commission, but shall be considered by the commission only if raised in exceptions or cross exceptions to the proposed decision and recommended order filed under R 423.176.

AFSCME argues that by refusing to allow it to amend its charge to add the breach of duty to bargain allegation under Section 10(1)(e), the ALJ has dismissed its entire duty to bargain charge. That, AFSCME contends, permits it to fall within the provision of Rule 161(6) permitting an interlocutory appeal. We disagree. The ALJ did not dismiss AFSCME's charge. AFSCME's charge, as originally filed, is still pending and is scheduled for an evidentiary hearing before the ALJ. The ALJ's December 14, 2007 order merely denied AFSCME's motion to amend its charge to add a different theory of relief. After the parties' oral argument on the motion for reconsideration, the ALJ continued to hold that it would not be appropriate to consolidate the additional issues raised by the allegations in the proposed amendment with the matters contained in the original charge.

Rule 161(6) very narrowly prescribes the circumstances in which exceptions may be filed to an interim order. An interlocutory appeal to this Commission is permitted only when the ALJ's interim order has dismissed or sustained the unfair labor practice charge in its entirety. See *City of*

*Detroit (Health Dep't) and Southeastern Michigan Health Ass'n and AFSCME*, 21 MPER \_\_\_\_ (Case No. C05 H-194, issued March 20, 2008). Rule 161(6) does not authorize an interlocutory appeal from the denial of a motion for reconsideration or from an order denying a motion to amend a charge. Inasmuch as the ALJ's interim order in this instance neither dismissed nor sustained the unfair labor practice charge, we find no basis for considering the exceptions at this time. AFSCME will have the option of filing exceptions in accordance with Rule 176 after the ALJ issues the Decision and Recommended Order in this matter.

**ORDER**

AFSCME's request for leave to file exceptions to the ALJ's interim order denying AFSCME's motion for reconsideration is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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