

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

In the Matter of:

SOUTHFIELD PUBLIC SCHOOLS,
Public Employer – Respondent,

Case No. C08 F-115

-and-

SOUTHFIELD MICHIGAN EDUCATIONAL
SUPPORT PERSONNEL ASSOCIATION,
Labor Organization – Charging Party.

APPEARANCES:

Floyd E. Allen & Associates, P.C., by George D. Mesritz, Esq., for Respondent

Law office of Lee and Correll, by Michael K. Lee, Esq., for Charging Party

ORDER DENYING LEAVE TO FILE EXCEPTIONS

This matter is before the Michigan Employment Relations Commission on the request of Respondent Southfield Public Schools for consideration of its exceptions to an interim order by Administrative Law Judge (ALJ) Doyle O'Connor. The interim order denied Respondent's Motion for Summary Disposition for Failure to State a Claim upon Which Relief Can Be Granted.

Procedural History:

Charging Party, Southfield Michigan Educational Support Personnel Association, filed a charge on June 9, 2008, alleging that Respondent violated Sections 10(1)(a), (c), and (e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(a), (c), and (e), when it decided to subcontract noninstructional support services. The charge contends that Respondent refused to meet to negotiate a successor collective bargaining agreement, thereby interfering with the association rights of the bargaining unit represented by Charging Party. The charge further contends that Respondent subcontracted work formerly performed by the bargaining unit to dilute the power of the employees in that unit. The matter was assigned to ALJ O'Connor and scheduled for hearing on October 23, 2008.

On June 26, 2008, Respondent filed a Motion for Summary Disposition for Failure to State a Claim upon Which Relief Can Be Granted. On July 18, 2008, Charging Party filed its response to

Respondent's motion, as well as its first amended charge, in which it added factual allegations and the assertion that Respondent was motivated by anti-union animus when it privatized bargaining unit positions. Respondent filed its reply to Charging Party's response to the motion on July 25, 2008, contending that the facts alleged in the first amended charge are not sufficient to support a claim under PERA. Respondent asserts that Section 15(3)(f) of PERA gives school districts "the freedom to subcontract non-instructional support services for any reason - even if the subcontracting decision is motivated by anti-union animus." The ALJ issued an order denying the motion to dismiss on August 8, 2008.

On August 15, 2008, Respondent filed an appeal to this Commission from the ALJ's denial of its motion for summary disposition, along with a brief in support and a motion for immediate consideration. Charging Party did not file a response to Respondent's appeal. On August 25, 2008, Respondent filed a motion for stay of the proceedings before the ALJ. By letter dated August 26, 2008, the ALJ denied the motion for stay of proceedings, anticipating that we would dismiss the appeal based on our rulings in similar past appeals.

Inasmuch as this is scheduled for hearing before the ALJ on October 23, 2008, we deem it appropriate to grant Respondent's motion for immediate consideration. Respondent also seeks oral argument in this matter. After reviewing Respondent's appeal and brief in support, we find that oral argument would not materially assist us in deciding this matter. Therefore, Respondent's request for oral argument is denied.

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 an appeal or 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.

Respondent argues that by denying its motion for summary disposition, the ALJ has sustained the entire charge. We disagree. The ALJ did not sustain the charge in its entirety; he merely denied Respondent's motion to dismiss the charge summarily and ruled that the proceedings in this matter should continue. The charge is still pending and is scheduled for an evidentiary hearing, at which Respondent will have the opportunity to present evidence and argument supporting its contention that the charge is without merit.

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 14

(2008); *Otsego County (Gaylord Regional Airport)*, 21 MPER 20 (2008). Rule 161(6) does not authorize an interlocutory appeal from the denial of a motion for summary disposition where the motion is seeking dismissal of the 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 reviewing the ALJ's ruling at this time. Respondent will have the option of filing exceptions in accordance with Rule 176 after the ALJ issues his Decision and Recommended Order in this matter.

ORDER

Respondent's appeal from the ALJ's interim order denying Respondent's motion for summary disposition is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____