

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

In the Matter of:

AMERICAN FEDERATION OF TEACHERS, LOCAL 2000,
Labor Organization - Respondent,

Case No. CU08 A-004

-and-

OMAR R. KAH,
An Individual - Charging Party.

_____ /

APPEARANCES:

Mark H. Cousens, Esq. for Respondent (on exceptions)

The Sanders Law Firm, P.C., by Herbert A. Sanders, Esq. for Charging Party (on exceptions)

DECISION AND ORDER

On March 24, 2008, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Judgment in the above case finding that the charge filed by Charging Party, Omar R. Kah, against Respondent, American Federation of Teachers, Local 2000 (Union), failed to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201-217. The unfair labor practice charge accused Respondent of a "failure of duty of fair representation in a wrongful termination of employment." Finding that this charge did not contain sufficient factual allegations to support Charging Party's claim, the ALJ ordered Kah to file a more definite statement in accordance with the minimum pleading requirements of Rule 151(2) of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.151(2). After Kah failed to respond within the allotted time, the ALJ recommended that we summarily dismiss the charge in its entirety. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On April 16, 2008, Charging Party filed exceptions to the ALJ's Decision and Recommended Order. After requesting and receiving an extension of time, Respondent filed a brief on May 12, 2008 opposing the exceptions and supporting the ALJ's Decision and Recommended Order.

In his exceptions, Charging Party asserts that the ALJ erred in not finding that Respondent acted arbitrarily and capriciously by failing to pursue his grievance. He further contends that the ALJ erred by failing to hold that the Union breached its duty of fair representation by making no decision as to the merits of his grievance, merely allowing it to expire by negligently failing to take the basic and required steps toward resolving it. Charging Party states that his failure to respond to the ALJ's order for more definite statement stemmed from his language barrier and his failure to fully comprehend his responsibilities with respect to the ALJ's order. He claims that his charge should not be dismissed based on his procedural error. In an apparent effort to compensate for that error, Charging Party has attached certain exhibits to his exceptions, which appear to be a belated response to the ALJ's order. In its response, Respondent asserts that Kah's charge is not only substantively lacking, but it is also time-barred under PERA's six-month statute of limitations. We have reviewed Kah's exceptions and we find them to be without merit.

Rule 151(2)(c) requires that an unfair labor practice charge shall include: "A clear and complete statement of the facts" alleging a violation of PERA, "including the date of occurrence of each particular act, the names of the agents of the charged party who engaged therein and the sections of . . . PERA alleged to have been violated." Rule 151(3) allows this Commission to reject a charge that fails to include the required information.

As noted, Charging Party failed to respond to the ALJ's Order for a more definite statement. Instead, in his exceptions to the ALJ's Decision and Recommended Order, he provided a more definite statement of facts and attached various exhibits. Charging Party is seeking to assert facts that are not part of the record. We decide exceptions on the record made before the ALJ and do not consider factual assertions or exhibits that are not supported by the record created during proceedings before the ALJ. See e.g. *Garden City/Dearborn Pub Sch Adult Ed Consortium*, 1994 MERC Lab Op 1. The facts and exhibits referred to by Charging Party in his exceptions should have been included in his charge or in his response to the ALJ's order for a more definite statement.

Even if we were to consider Charging Party's belated assertions, it appears that his claims are barred by the six-month statute of limitations that governs our jurisdiction. *Walkerville Rural Communities Sch*, 1994 MERC Lab Op 582, 583. See also *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. Charging Party admits in his filing that he wrote letters on May 31 and June 6, 2007, asserting his belief that Respondent was not properly representing him. His charge, filed more than six months later on January 28, 2008, is untimely.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

AMERICAN FEDERATION OF TEACHERS, LOCAL 2000,
Respondent-Labor Organization,

Case No. CU08 A-004

-and-

OMAR R. KAH,
Individual Charging Party.

APPEARANCES:

Omar R. Kah, Charging Party appearing personally

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY JUDGMENT**

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 to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. This matter is being decided pursuant to an order for more definite statement which cautioned the Charging Party that a failure to respond would result in dismissal of the charge.

The Unfair Labor Practice Charge:

On January 28, 2008, a Charge was filed in this matter by Omar R. Kah asserting that the American Federation of Teachers Local 2000 (the Union) had violated the Act, by failing in some unspecified way to represent the Charging Party, on unspecified dates. Such an allegation failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), the Charging Party was ordered to provide a more definite statement of the Charge against the Union. Charging Party Kah did not file a response to the order.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to R423.165. The failure to respond to an order for more definite statement may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, the fact that a member expresses dissatisfaction with their union's efforts or

ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Because there are no factual allegations in the Charge supporting the claim that the Union violated its statutory duties, and because no response was filed to the order for more definite statement, the charge against the Union must be dismissed as it fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____