

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

In the Matter of:

WAYNE COUNTY,  
Public Employer-Respondent,

Case No. C09 L-251

-and-

ROSZETTA M. MCNEILL,  
An Individual-Charging Party.

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APPEARANCES:

Roszetta M. McNeill, *In Propria Persona*

**DECISION AND ORDER**

On March 10, 2010, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, 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 16 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 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

COUNTY OF WAYNE,  
Respondent-Public Employer,

Case No. C09 L-251

-and-

ROSZETTA M. MCNEILL,  
An Individual Charging Party.

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**APPEARANCES:**

Roszetta M. McNeill, appearing on her own behalf

Patricia Ways, for the Public Employer

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

On December 15, 2009, Roszetta M. McNeill filed an unfair labor practice charge against her former Employer, Wayne County. 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 David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules, on behalf of the Michigan Employment Relations Commission.

In the charge, McNeill asserts that Wayne County violated PERA in the following manner:

Since whistle blowing on Wayne County, been fired twice and brought back by arbitrator. I've been injured on the job requiring surgery. In court, Wayne County informed Wayne County circuit court judge it's work related – to get case dismissed – tells unemployment its not. Initially, Wayne County stated I had not name[d] [the] right entity to sue – then lied and said case was litigated.

In violation of FMLA took \$8,500.00 from my back pay for “anticipated leave” then refused me the medical leave I paid for.

Frivolously arguing “res judicata” when [the County] knew it was wrong.

Harassed, retaliated, coerced, injured (mentally and physically) discriminated etc.

Force me in injurious positions to force me to quit, notwithstanding the fact that I have restrictions from on-the-job injury.

Illegally fired me, and the year and [a] half I was off, Wayne County sold my home.

Documents attached to the charge indicate that there has been a long history of conflict between McNeill and her former Employer. McNeill has been terminated several times since 2001, and she claims that she has repeatedly been the victim of harassment and discrimination at the hands of the County or by her fellow employees.<sup>1</sup>

On January 7, 2010, I issued an order directing McNeill to show cause why the charge should not be dismissed as untimely and for failure to state claims upon which relief can be granted under PERA. In the order, Charging Party was specifically directed to provide factual support for her allegations and cautioned that a decision recommending dismissal of the charge would be issued without a hearing if her response to the order did not state valid and timely claims under the Act.

Charging Party filed a response to the order to show cause on January 28, 2010. In her response, McNeill alleges that an arbitrator ordered Wayne County to reinstate her in January of 2009. McNeill contends that the County failed to make her whole as required by the arbitrator, and that Respondent subjected her to harassment and retaliation upon her return to work by refusing her the promotion to which she was entitled and by assigning her to an "injurious position." McNeill further asserts that she was "refused workers compensation" in May of 2009. Finally, Charging Party alleges that she was terminated on November 30, 2009 for failing to turn in an FMLA form, despite the fact that she had been on "contractual leave" for several months prior to that date.

#### Discussion And Conclusions Of Law:

Having carefully reviewed the various pleadings filed by Charging Party in this matter, including the attachments thereto, I conclude that McNeill has not raised any issue cognizable under PERA. First, several of the allegations set forth in the charge were not timely filed. Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any alleged 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. The limitations period commences when the charging party knows or should have known of the acts

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<sup>1</sup> Among the attachments to the charge is an order issued by Wayne Circuit Court Judge Michael F. Sapala on July 11, 2008 permanently enjoining McNeill from filing any further claims against Wayne County, including its departments, divisions, representatives, employees, and elected officials, unless McNeill first posts a \$15,000 bond with the clerk of the court to secure her liability for any costs, sanctions, or attorney fees awarded against her in such action. This order raises serious concerns about the filing of the instant charge and may well serve to bar McNeill from pursuing this matter.

constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). In the instant case, McNeill asserts that Respondent subjected her to harassment and retaliation upon her return to work by refusing her the promotion to which she was entitled and by assigning her to an “injurious position.” Those events allegedly occurred in January and May of 2009 respectively, more than six months prior to the filing of the charge. Accordingly, such allegations must be dismissed as untimely under Section 16(a) of the Act.

Even if the charge had been timely filed, Respondent is nonetheless entitled to summary disposition because McNeill has failed to state a claim upon which relief can be granted. 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 an employee for engaging in conduct protected by Section 9 of PERA, the Commission is prohibited 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, McNeill alleges that she was subjected to harassment and discrimination in retaliation for her “whistle blowing” on the County. For purposes of this decision, I must accept her factual allegations as true, including the factual assertion that her former Employer’s animus toward her arose from her “whistle blowing” on the County. The Commission has no jurisdiction to remedy claims asserting violations of other statutes, including the Whistleblower’s Protection Act. Despite having been given ample opportunity to do so, Charging Party has failed to set forth any specific facts which, if proven, would establish that she engaged in protected concerted activity for which she was retaliated against in violation of PERA. Accordingly, I recommend that the Commission issue the order set forth below.

#### RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge in Case No. C09 L-251 be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

Dated: March 10, 2010