

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

In the Matter of:

OAKRIDGE PUBLIC SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C10 B-039

-and-

ELSIE JANE PATCH,
An Individual-Charging Party.

APPEARANCES:

Thrun Law Firm, P.C., by Martha J. Marcero, Esq., for Respondent

Elsie Jane Patch, *In Propria Persona*

DECISION AND ORDER

On March 31, 2010, Administrative Law Judge Julia C. Stern issued her 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

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

OAKRIDGE PUBLIC SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C10 B-039

-and-

ELSIE JANE PATCH,
An Individual-Charging Party.

Thrun Law Firm, P.C., by Martha J. Marcero, Esq., for Respondent

Elsie Jane Patch, appearing for herself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On February 11, 2010, Elsie Jane Patch filed the above charge with the Michigan Employment Relations Commission (the Commission) against her former employer, the Oakridge Public School District (the Employer), pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Pursuant to Section 16, the charges were assigned to Julia C. Stern, Administrative Law Judge for the State Office of Administrative Hearings and Rules.

On February 25, 2010, I issued an order to show cause directing Patch to show cause why her charge should not be dismissed without a hearing. The order stated that Patch's charge against the Employer, as filed, failed to state a claim upon which relief could be granted under PERA and also appeared on its face to be untimely filed under Section 16(a) of PERA. Patch was cautioned that if she did not respond, her charge would be dismissed. She did not file a response or request an extension of time to do so. Based upon the facts as set forth in Patch's charge, I make the following conclusions of law and recommend that the Commission take the following action.

The Unfair Labor Practice Charge:

Patch's charge alleges that she was unfairly terminated after attempting to return to work after a period of medical leave. Although it was not clear from the charge, it appears that Patch

¹ Patch also filed a charge against her collective bargaining representative, the Michigan Education Association. (Case No. CU10 B-005).

was terminated on or about June 10, 2009. Patch asserts that under the terms of the collective bargaining agreement between Respondent and her collective bargaining representative, she was entitled to return to her former position because she submitted a doctor's note indicating that she was able to return to work within a year of taking the medical leave. Patch alleges that she was terminated in part because she and the Employer's superintendent got into an argument over Respondent's treatment of her son, a student in the school district. Patch also asserts that "she was an easy budget cut." The charge also alleges that in the fall of 2008, Respondent failed to provide her with a requested accommodation that would have allowed her to return to work from medical leave.

Facts:

The facts as alleged by Patch are as follows. Patch was employed by the Oakridge Public Schools as a bus driver. She was a member of a bargaining unit represented by the Michigan Education Association (the Union). On or about May 12, 2008, Patch went on medical leave after she developed complications from a prior surgery. In November 2008, Patch presented Respondent with a note from her doctor stating that she needed a bus with a "button door." Respondent did not provide Patch with a modified bus. Had it done so, Patch could have returned from medical leave.

Patch was not aware that there was a provision in the collective bargaining agreement between Respondent and the Union limiting the length of medical leaves. On May 11, 2009, Patch gave Respondent a slip from her doctor stating that she could return to work in August at the beginning of the 2009-2010 school year. On June 5, 2009, Patch attended an end-of-the-school-year meeting with other transportation employees and her supervisor. After this meeting, Patch went to see Respondent's superintendent to complain about the school district's treatment of her son. The meeting did not go well, and Patch ended the meeting by telling the superintendent that she planned to move out of the district. On June 10, 2009, Patch received a certified letter from Respondent. Patch did not attach a copy of the letter to her charge. However, it appears that the letter terminated her employment.

Discussion and Conclusions of Law:

Section 16 (a) of PERA prohibits the Commission from finding an unfair labor practice based on an event occurring more than six months prior to the filing of the charge with the Commission and the service of the charge upon the Respondent. The statute of limitations in Section 16(a) is jurisdictional. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. In general, the limitations period commences when the charging party knows or should have known of the acts 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).

Section 9 of PERA protects the rights of public employees to form, join, or assist labor organizations and to negotiate or bargain with their public employers through representatives of their own free choice. It also protects the rights of public employees to engage in lawful

concerted activities for mutual aid or protection, e.g., complaining about working conditions with another employee. Section 10 of PERA prohibits an employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against employees because of their union activities or other concerted activities. However, PERA does not prohibit all types of discrimination or unfair treatment, and the Commission's jurisdiction is limited to determining whether the employer engaged in conduct that violated PERA. An individual does not state a cause or claim under PERA merely by asserting that his employer has behaved wrongfully or that his or her rights under a union contract were violated. *Utica Cmty Schs*, 2000 MERC Lab Op 268; *Detroit Bd of Ed*, 1995 MERC Lab Op 75. Similarly, an allegation that the employer has violated federal or state civil rights statutes, including the Americans with Disabilities Act (ADA), does not state a claim upon which relief can be granted under PERA. Absent an allegation that the employer interfered with, restrained, coerced, restrained or retaliated against the employee for engaging in union or other protected activities, the Commission has no jurisdiction to make a judgment on the fairness of the employer's actions. 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.

The instant charges were filed on February 11, 2010. If Patch was in fact terminated on June 10, 2009, as her charge suggests, her charge was untimely filed because all of the alleged unfair labor practices occurred more than six months prior to the date the charge was filed. Even if the charge was not untimely, however, Patch has not alleged in her charge that her termination was for reasons prohibited by PERA, or that Respondent engaged in any other conduct that interfered with the exercise of her rights under that statute. I find, therefore, that Patch's charge against the Employer does not state a claim upon which relief can be granted under PERA and should be dismissed on that basis. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____