

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

In the Matter of:

WAYNE COUNTY (DEPARTMENT OF ENVIRONMENT),
Public Employer-Respondent,

Case No. C08 L-258

-and-

MICHIGAN AFSCME COUNCIL 25 and LOCAL 25,
Labor Organization-Charging Party.

APPEARANCES:

Wayne County Labor Relations Division, by Deborah K. Blair, Esq., for the Respondent

Michigan AFSCME Council 25, by Aina N. Watkins, Esq., for the Charging Party

ORDER DENYING LEAVE TO FILE EXCEPTIONS

This matter is before the Michigan Employment Relations Commission on the request of Respondent County of Wayne (Department of Environment) for consideration of its exceptions to an interim order by Administrative Law Judge (ALJ) Julia C. Stern, denying Respondent's Motion to Dismiss the Charge.

Procedural History

On December 15, 2008, Charging Party Michigan AFSCME Council 25 and Local 25 (Union) filed the charge in this matter against Respondent County of Wayne (Department of Environment) alleging that Respondent violated Section 10(1)(a) and (c), and Section 15(1) of the Public Employment Relations Act (PERA), 1965 PA 379 amended, MCL 423.210(1)(a) and (c), and 423.215(1). The charge contends that Respondent was motivated by anti-union animus when it interfered with an employee's rights under Section 9 of PERA by denying her request to attend a training conference after her participation in protected union activities. The matter was assigned to ALJ Stern and scheduled for hearing.

On January 8, 2009, Respondent filed its Motion to Dismiss the Charge & Affirmative Defense alleging that the charge failed to state a claim upon which relief could be granted and that the charge was untimely filed. On February 3, 2009, Charging Party filed its response. On

February 24, 2009, ALJ Stern issued an interim order denying Respondent's Motion to Dismiss the Charge, concluding that there are material issues of fact and that the charge is timely.

On March 24, 2009, Respondent filed exceptions to this Commission from the ALJ's denial of its motion, along with a brief in support asking the Commission to dismiss the charge because it is untimely.

Discussion and Conclusions of Law:

Respondent contends that the ALJ erred by finding that the charge is timely and seeks to have this Commission rule on that issue before the entire matter has been heard by the ALJ. The ALJ merely denied Respondent's motion to dismiss the charge and ruled that the proceedings in this matter should continue, thus leaving the status of the case unchanged.

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. (Emphasis added.)

Rule 161(6) 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)*, 21 MPER 14 (2008); *Otsego Co (Gaylord Regional Airport)*, 21 MPER 20 (2008). Rule 161(6) does not authorize an interlocutory appeal from the denial of a motion to dismiss. In such an instance, the case is neither dismissed nor sustained in its entirety. It merely goes forward to be decided on the merits. In this situation, the ALJ's interim order did not dismiss or sustain an unfair labor practice charge in its entirety, so we find no basis for reviewing the ALJ's ruling at this time.

There is also the issue of Respondent's timeliness in filing exceptions. We note Respondent's assertion that its exceptions to the ALJ's interim order are timely. However, if the February 24, 2009 ruling issued by the ALJ had been a Decision and Recommended Order, exceptions to it would have been due March 19, 2009, and Respondent's March 24, 2009 filing would be untimely. [See Rule 176(2) of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R 423.176(2), which allows parties twenty days from the date the ALJ Decision and Recommended Order is served to file exceptions. See also Rule 183, which extends the time for filing by three days when service is by mail.] While we make this observation, our decision is based on the authority of Rule 161(6) cited above.

The matter is scheduled for an evidentiary hearing, which will provide Respondent with the opportunity to present evidence and argument supporting its contention that the charge

should be dismissed. After the ALJ issues her Decision and Recommended Order in this matter, Respondent will have the option of filing exceptions in accordance with Rule 176.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____