

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

In the Matter of:

CITY OF DETROIT,
Public Employer - Respondent,

- and -

WANYARAH ABDULLA,
An Individual - Charging Party.

Case No. C09 H-123

APPEARANCES:

Sydney R. Zack, City of Detroit Law Department, for the Respondent

Margaret F. Terrasi, for Charging Party

DECISION AND ORDER

On August 3, 2011, Administrative Law Judge Julia C. Stern issued a 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 charge 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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Derdarian, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C09 H-123

-and-

WANYARAH ABDULLAH,
An Individual-Charging Party.

APPEARANCES:

Sydney R. Zack, Assistant Corporation Counsel, City of Detroit Law Department, for Respondent

Zaddik Law, P.L.L.C., by Margaret Terasi, for Charging Party

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

On August 4, 2009, Wanyarah Abdullah filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her Employer, the City of Detroit, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Abdullah also filed a charge (Case No. CU09 H-024) against her collective bargaining agent, AFSCME Local 312 (the Union). The charges were consolidated and, pursuant to Section 16, assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

As discussed below, the charge in Case No. CU09 H-024 was dismissed on June 3, 2011. On June 8, 2011, pursuant to Rule 165 of the Commission's General Rules, 2002 ACS, R 423.165, I issued an order to Abdullah, through her counsel, to show cause why her charge against the Employer should not be dismissed because it failed to allege a violation of PERA. Abdullah filed a response to this order on June 29, 2011. Based on the facts alleged by Abdullah in this response and in her charge, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and History:

Abdullah was employed as a coach service attendant (CSA) in Respondent's Transportation Department (DOT). She was a member of a bargaining unit represented by the

Union. According to the charge, Abdullah was laid off from her CSA position in 2004 while on a medical leave of absence. She alleges that the Employer improperly failed to recall her even though she was released to return to work by her doctor, and instead hired new employees to fill CSA positions. She also asserts that in 2008, when she attempted to apply for open positions in other Employer departments, she was told that Employer records indicated that the DOT would not release her to work in another department. She alleges that, through mistakes in paperwork, the Employer improperly “locked” her in layoff status and refused to allow her to be hired into a new position. She does not allege that the Employer took any of these actions to retaliate against her because of her union or other activities protected by Section 9 of PERA, or that the Employer’s actions interfered with, restrained, or coerced her in the exercise of her rights under that section.

As noted above, Abdullah also filed a charge against the Union. In that charge, Abdullah alleged that the Union refused her requests to file grievances or otherwise assist her in returning to work on multiple occasions after June 7, 2004. She alleged that on May 5, 2009, the Union told her that it had no obligations toward her since she was no longer a member of its bargaining unit.

On November 2, 2009, I conducted a pre-hearing conference on the consolidated cases with Abdullah and representatives of both the Employer and the Union. At that time, Abdullah was not represented by an attorney. At the conclusion of this conference, Abdullah asked that the matter be adjourned without date to give her an opportunity to find legal counsel. I granted her request. After Abdullah succeeded in obtaining legal representation, a hearing was scheduled, but was adjourned without date at Abdullah’s request pending settlement discussions between Abdullah and the Employer on another claim.

On April 22, 2011, I issued an order regarding inactive case file in which I directed Abdullah to indicate whether she wanted the matter to be rescheduled. The order indicated that if Abdullah did not respond to my order, the cases would be closed as inactive. On May 1, 2011, I receive a letter from Abdullah asking that a hearing be scheduled on her charge against the Employer. On May 11, I asked Abdullah to clarify whether she also wished to proceed with her charge against the Union. Abdullah did not respond to this letter. On June 3, 2011, I issued an order dismissing the charge in Case No. CU09 H-024. On June 8, as indicated, above, I issued another order directing Abdullah to show cause why her charge against the Employer should not be dismissed.

Facts:

Abdullah was hired by the Employer in 2001 to work as a building attendant in its Detroit Wayne Joint Building Authority department. In 2002, Abdullah filed a sexual harassment complaint with the Employer against two supervisors. One supervisor was fired and the other was suspended. Abdullah was transferred to another shift, and, in March 2003, transferred to the CSA position in the DOT.

On or about May 6, 2004, Abdullah injured her hand at work. On or about June 2, 2004, she was released by her doctor to return to work. For reasons that are unclear from her pleadings,

however, she did not return to her CSA position in June 2004. When Abdullah submitted a form to return to work – it is unclear from the pleadings when this was - she was told by the Employer that there were no CSA positions available.

On July 30, 2004, the Employer notified Abdullah that she was being laid off from her CSA position because of a reduction in force. Other CSAs were also laid off around this time. On August 24, 2004, she received a letter from the Employer's human resources department stating that her position "had been identified" for layoff. The letter also stated that the Employer's records indicated that she currently had a worker's compensation claim in dispute and that the Employer would determine, when she was eligible to return to work, whether based on her seniority she could continue in her position or would be demoted, transferred, laid off, or would be able to bump.

At least some of the CSAs laid off in the summer of 2004 were recalled, but Abdullah was not. In addition, in April 2007, the Employer posted the CSA position to internal applicants. According to a document Abdullah received from the Employer after she filed her unfair labor practice charge, the Employer considered Abdullah to be on a medical leave of absence after May 6, 2004. In October 2007, the Employer terminated her. Abdullah was informed by the Employer's human resources department that she was being placed on a preferred eligibility list, i.e. would be given preference in hiring for other Employer positions, for two years. Abdullah believed that the two years would run from October 2007. However, according to an Employer document dated October 3, 2007, her placement on the preferred eligibility list was made retroactive to May 9, 2006, the date on which, according to the Employer's records, her medical leave of absence should have expired. Unbeknownst to Abdullah, therefore, she was removed from the preferential eligibility list on May 10, 2008. In 2007 and 2008, Abdullah applied for numerous positions posted as open by the Employer, but was not contacted for an interview for any. When she applied for a position in the Detroit Wayne Joint Building Authority department sometime in 2008, she was told by her former supervisor there that the DOT would not "release her" to work for another department. In August 2009, believing that she would be removed from the preferential eligibility list in October 2009, Abdullah filed this charge.

Discussion and Conclusions of Law:

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 other types of lawful concerted activities for mutual aid or protection, e.g., complaining with other employees about working conditions. 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. The Commission also lacks jurisdiction to determine whether federal or other state statutes have been violated. 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. 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.

Under Section 16(a) of PERA, the Commission lacks jurisdiction to find an unfair labor practice occurring more than six months prior to the filing of the charge with the Commission and the service of a copy thereof upon the party against whom the charge is made. An unfair labor practice charge that is filed more than six months after the commission of the alleged unfair labor practice is untimely. The limitation contained in Section 16(a) of PERA is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Police Officers Labor Council, Local 355*, 2002 MERC Lab Op 145; *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 582. The six-month period begins to run when the charging party knows, or should have known, of the alleged violation, i.e. when it knows of the injury and had good reason to believe that it was improper. *City of Detroit*, 18 MPER 73 (2005); *AFSCME Local 1583*, 18 MPER 42 (2005); *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836.

Abdullah asserts that, for unknown reasons, the Employer failed to recall her to work after she was injured on the job even though she was ready, willing and able to work and there were positions available. She asserts that, through no fault of her own, the Employer wrongfully terminated her in 2007 and subsequently refused to rehire her. However, PERA does not prohibit all types of unfair treatment or discrimination by public employers. Abdullah does not allege any connection between the Employer's conduct and her union or other activities protected by PERA, and has not set forth any facts indicating that the Employer violated her rights under that Act. I find that Abdullah's charge does not state a claim upon which relief can be granted under PERA. I also note that Abdullah did not allege that the Employer took any specific adverse action against her during the six month period preceding the filing of her charge in August 2009. Her charge, therefore, is also untimely filed under Section 16(a) of PERA. For these reasons, 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
Michigan Administrative Hearing System

Dated: _____