

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

In the Matter of:

AFSCME COUNCIL 25,
Labor Organization - Respondent,

-and-

CHRISTOPHER HARRISON,
An Individual - Charging Party.

Case No. CU14 C-016
Docket No. 14-005596-MERC

APPEARANCES:

Christopher Harrison, appearing on his own behalf

DECISION AND ORDER

On June 12, 2014, 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 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: July 29, 2014

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

In the Matter of:

AFSCME COUNCIL 25,
Respondent-Labor Organization,

Case No. CU14 C-016
Docket No. 14-005596-MERC

-and-

CHRISTOPHER HARRISON,
An Individual-Charging Party.

APPEARANCES:

Christopher Harrison, appearing for himself

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

On March 28, 2014, Christopher Harrison filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against his collective bargaining agent, AFSCME Council 25. The charge alleges that Respondent violated its duty of fair representation toward Harrison under Section 10(2)(a) of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, by refusing to file grievances or take other actions on Harrison's behalf because of family relationships between Respondent representatives and Harrison's supervisor. Harrison also alleges that the Respondent Union violated its duty of fair representation by assisting another employee in making complaints about Harrison because there was a family relationship between that employee and a Respondent representative. Pursuant to Section 16 of PERA, the charge was assigned for hearing to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On April 10, 2014, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, I issued an order directing Harrison to show cause in writing why his charges against the Respondent Union should not be dismissed without a hearing as untimely filed and because it did not, as filed, state a claim upon which relief could be granted under PERA. Harrison did not respond to this order. Based upon the facts as asserted by Harrison in the charge, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Harrison's charge reads as follows:

I believe that the Union has failed to represent me fairly because of nepotism. I have been disciplined on numerous occasions by Kevin Muma, [who] happens to be [a] cousin of the President of AFSCME Local 1600. The Union or its agents have refused to write a grievance on my behalf. The alleged infraction of insubordination took place last summer for not fueling up [a] sweeper that was driven by another employee that ran out of fuel. Also Foreman Curtis Armstrong has had me work in unsafe working conditions with the threat that if I did not comply then I would be disciplined, after telling another employee Sheldon Golden [to] help me put [an] underbody scraper on [a] salt truck during [a] recent snow storm, that employee told Curtis, "Fuck no, I am not helping him." Foreman Curtis Armstrong has called me in the office on two separate occasions without representation on insubstantial claims of misconduct based on what another employee has said (Sheldon Golden), as a result I have been disciplined, whereas my Union steward helped write a statement against me for Sheldon Golden who happens to be related to Union steward spouse.

Discussion and Conclusions of Law:

Rule 151(2)(c) of the Commission's General Rules 2002 AACRS, R 423.151(2)(c) requires that an unfair labor practice charge filed with the Commission include, insofar as these are known:

A clear and complete statement of the facts which allege a violation of LMA or 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 LMA or PERA alleged to have been violated. [Emphasis added]

Section 16 of PERA prohibits the Commission from finding a violation of PERA based on 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 alleged unfair labor practice is untimely and must be dismissed. 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.

Harrison's charge, as filed, did not include the dates of the alleged unfair labor practices by the Respondent Union or the names of its agents who committed these unfair labor practices. The charge also did not clearly describe the acts by which the Respondent Union was alleged to have violated its duty of fair representation.

In my April 10, 2014 order, I directed Harrison to supply the following facts:

1. The date or approximate date on which the Union or its representatives refused to write a grievance on Harrison's behalf after Harrison was disciplined by Muma; the Union representative(s) who refused to write the grievance; and the circumstances which led Harrison to believe that the refusal was based on Muma's relationship to the Union president.
2. The date or approximate date on which the Union or its representatives refused to write a grievance on Harrison's behalf after Harrison was ordered by Armstrong, under threat of discipline, to work in unsafe conditions; the Union representative(s) who refused to write the grievance; and the circumstances which led Harrison to believe that the refusal was arbitrary, discriminatory or done in bad faith.
3. The dates or approximate date on which Harrison's steward helped his co-worker prepare a statement which led to Harrison's discipline; the name of the steward; and the circumstances which led Harrison to believe that the steward's action was improper.

Harrison did not respond to my order. The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In *Detroit Federation of Teachers*, as in the instant case, the charging party filed a charge alleging that her bargaining representative violated its duty of fair representation toward her and took actions that were motivated by bad faith. However, the charge, as filed, did not include the dates or approximate dates of these actions. The ALJ assigned to hear the charge issued an order to show cause to the charging party directing her to supply certain specific facts, including the dates that the union first and most recently acted, or failed to act, in a manner that she claimed violated its duty toward her. The charging party did not respond to the order, and the ALJ issued a decision and recommended order that recommended that her charge be dismissed. The charging party then filed exceptions with the Commission. The Commission adopted the ALJ's recommendation. It noted that it was not possible to determine from the charge when the actions complained of occurred relative to the filing of the charge, and that the administrative law judge gave the charging party the opportunity to correct this defect, but the charging party did not take advantage of this opportunity. It concluded that given the absence of relevant dates in the charge, the charge should be dismissed as untimely under Section 16(a) of PERA.

Like the charging party in *Detroit Federation of Teachers*, Harrison has failed to allege that the Respondent took any action within the six month statute of limitations set out in Section 16(a) that violated its duty of fair representation toward him. I conclude, therefore, that his charge should be dismissed as untimely. 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: June 12, 2014