

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

In the Matter of:

WAYNE COUNTY AIRPORT AUTHORITY,
Public Employer-Respondent in MERC Case No. C16 D-034; Hearing Docket No. 16-010669,

-and-

AFSCME LOCAL 953,
Labor Organization-Respondent in MERC Case No. CU16 D-025; Hearing Docket No. 16-010668,

-and-

JAMECIA LEWIS,
An Individual Charging Party.

_____ /

APPEARANCES:

Jamecia Lewis, appearing on her own behalf

DECISION AND ORDER

On June 7, 2016, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order in the above matter finding that Respondents 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 11, 2016

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

In the Matter of:

WAYNE COUNTY AIRPORT AUTHORITY,
Respondent-Public Employer in Case No. C16 D-034;
Docket No. 16-010669-MERC,

-and-

AFSCME LOCAL 953,
Respondent-Labor Organization in Case No. CU16 D-025;
Docket No. 16-010668-MERC,

-and-

JAMECIA LEWIS,
An Individual-Charging Party.

APPEARANCES:

Jamecia Lewis, Charging Party appearing for herself

**DECISION AND RECOMMENDED ORDER OF
ADMINISTRATIVE LAW JUDGE
ON ORDER TO SHOW CAUSE**

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 Administrative Law Judge Travis Calderwood of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission).

On April 8, 2016, Charging Party Jamecia Lewis filed the above captioned unfair labor practice charges against her employer, the Wayne County Airport Authority (Authority) and her bargaining representative, AFSCME Local 953 (Association).

Charging Party's initial filings claim that she had been admitted for medical treatment at the Novi Providence Hospital from August 16, 2015, through August 20, 2015. Lewis states she was cleared to return to work on August 24, 2015. The Authority subsequently terminated Charging Party's employment. Charging Party, after receiving notice of the termination, contacted the Association. Several days later the Association filed a grievance challenging the termination. Following the filing of the grievance by the Association, the Authority agreed to

reinstate Lewis subject to a last chance agreement. That agreement listed several actions, including missing work without sufficient leave time, as grounds for termination. Charging Party signed the agreement and presumably returned to work. Lewis objects to the Authority's initial act of terminating her on the grounds that she was not provided an opportunity to justify her absence. Lewis further alleges that the Association did not represent her properly, claiming that the Association should have continued to challenge her termination as opposed to agreeing to the Employer's last chance offer.

Following a review of the charges filed by Lewis it appeared that Charging Party had failed to state a claim for which relief could be granted under PERA against either the Employer or the Association. Furthermore, it appeared from my review of the charges that the actions complained of by Lewis occurred in late August of 2015, which would be more than six months before the date these proceedings were filed and, therefore, were untimely under Section 16(a) of PERA. Accordingly, on April 21, 2016, I directed Charging Party, pursuant to Rule 165 of the Commission's General Rules, to show cause in writing why her charges against both the Association and Authority should not be dismissed without a hearing.¹ Lewis responded in writing on May 12, 2016.

Charging Party's response to my order includes a restatement of the earlier factual allegations attached as part of her charges. Additionally, the responses included several other documents, most notably a copy of the October 8, 2015, Last Chance Agreement (Agreement), entered into between the Association, the Authority and Charging Party. That Agreement provided that:

Grievant was terminated on August 25, 2015 as a voluntary quit for being off work unapproved for five (5) consecutive work days. In full and complete settlement of the above referenced grievance, the parties agree to reinstate Grievant effective [text unreadable] under the following conditions...

The Agreement included ten numbered paragraphs outlining the terms the parties agreed to, the relevant portions of which included the following:

1. Grievant acknowledges that she was off work unapproved and without pay for five (5) consecutive work days.

6. The discipline cited [above] and other terms of this agreement provide Grievant with a "last chance" to correct her behavior. Grievant and the Union agree that the terms as set forth in this Last Chance Agreement are reasonable conditions

¹ Rule 1501 of the MAHS Administrative Rules, R 792.11501, provides:

The general rules of the employment relations commission, R 423.101 to R 423.484, govern practice and procedure in administrative hearings conducted by the Michigan administrative hearing system in cases arising under LMA, 1939 PA 176, MCL 423.1 to 423.30, and PERA, 1947 PA 336, MCL 423.201 to 423.217, with the exclusion of parts 2 and 3 of those rules.

for Grievant to comply with in order to maintain her job and continue her employment with the Wayne County Airport Authority. Grievant and the Union acknowledge and agree that if Grievant engages in any of the following conduct or fails to comply with or complete any of the requirements specified below, it constitutes “just cause” for her discharge from employment with the [Authority]:

- a. Any violation of the WCAA Attendance Policy, including but not limited [to any] absence without approval or leave/pay;
- b. Any violation of Work Rule 2.03 regarding accidents;
- c. Any discipline for unsatisfactory performance; and/or
- d. Any violation of a Group 3 or Group 4 work rule as outlined in the Wayne County Airport Authority Employee Handbook dated 10/1/14.

9. By entering into this Agreement, Grievant acknowledges that she has received full, fair and adequate representation from her Union throughout this matter and that Grievant and the Union enter into this Last Chance Agreement knowingly and voluntarily read and considered each of the provisions of this agreement and that she voluntarily entered into this agreement with full knowledge of the consequences.

Discussion:

The Commission does not investigate charges filed with it. Charges filed with the Commission must comply with the Commission’s General Rules. Charges which comply with the Commission’s rules which are timely filed and allege a violation of PERA are set for hearing before an administrative law judge. In order to be timely filed, the charge must be filed within six months of the alleged unfair labor practice. MCL 423.216(a). The Commission has consistently held that the statute of limitations, contained within Section 16(a) of PERA, is jurisdictional and cannot be waived. *Walkerville Rural Comm Sch*, 1994 MERC Lab Op 582, 583. 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).

Rule 165 of the Commission’s General Rules, R 423.165, states that the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the charge is untimely filed or that the charge does not state a claim upon which relief can be granted under PERA. R 423.16(2)(c), (d). See *Oakland County and Sheriff*,

20 MPER 63 (2007); aff'd 282 Mich App 266 (2009); aff'd 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986),

To the extent that Charging Party alleges that the Authority terminated her on August 25, 2015, in violation of PERA, such a charge is barred by the statute of limitations as the complained of activity occurred more than six months before the present proceedings were filed. See *City of Dearborn*, 1994 MERC Lab Op 413, 415.

Moving forward to address the allegations set forth by Lewis that occurred within the six month statutory period, i.e., the Last Chance Agreement executed on October 8, 2015, it is my finding that Charging Party has failed to state a claim for which relief can be granted under PERA against either the Authority or the Association.

The Commission administers and enforces PERA. Section 9 of PERA protects the rights of public employees to form, join, or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. "Lawful concerted activities for mutual aid and protection" includes complaining with other employees about working conditions and taking other kinds of actions with other employees to protest or change working conditions.

With respect to public employers, Section 10(1)(a) of PERA prohibits public employers from engaging in "unfair" actions that seek to interfere with an employee's free exercise of the specific rights contained in Section 9 of the Act. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). PERA does not prohibit all types of discrimination or unfair treatment. *Detroit Pub Sch*, 22 MPER 16 (2009). Absent a valid claim under PERA, the Commission lacks jurisdiction to address the fairness of an employer's actions. *Id.*

Under well-established Commission law, a union's duty of fair representation is comprised of three responsibilities: (1) to serve the interest of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty; and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); See also *Goolsby v City of Detroit*, 419 Michigan 651 (1984). The Commission has steadfastly refused to interject itself in judgments over agreements made by employers and collective bargaining representatives, despite frequent challenge by employees. *City of Flint*, 1996 MERC Lab Op 1, 11. A union's actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Association v O'Neill*, 499 US 65, 67 (1991). An individual's dissatisfaction with the union's efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Education Association*, 2001 MERC Labor Op 131.

Simply put, Lewis has failed to state a claim for which relief can be granted under PERA against either the Authority or the Association. Lewis has not alleged in any fashion that the Authority's actions in connection with the Last Chance Agreement, or for that matter, at any point, sought to interfere with her free exercise of the specific rights provided to her under PERA. With respect to the claim that the Association breached its duty of fair representation,

Lewis failed to plead any facts that, if proven true, could establish an actionable claim under PERA. Rather, on the contrary, by signing the Last Chance Agreement, Charging Party expressly affirmed that she “received full, fair, and adequate representation” from the Association.

Accordingly, for the reasons set forth above, it is the recommendation of the undersigned that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charges filed by Jamecia Lewis against the Wayne County Airport Authority and AFSCME Local 953 are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 7, 2016