

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

In the Matter of:

CASS COUNTY,
Public Employer - Respondent,

Case No. C06 J-240

-and-

TERRIE TABBERT,
An Individual - Charging Party.

APPEARANCES:

Terrie Tabbert, Charging Party, *In Propria Persona*

DECISION AND ORDER

On October 27, 2006, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Terrie Tabbert, Charging Party, in pro per

**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 matter was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings filed in response to an order to show cause, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Terrie Tabbert filed a charge on October 5, 2006 asserting that her former Employer, Cass County, terminated her employment without just cause on June 26, 2006. The Charge alleged:

Wrongful discharge: I took FMLA on June 28, 2005, was returning work on June 27, 2006. Gave employer return to work form with some restrictions on June 12, 2006. Employer terminated me on June 26, 2006, due to leave exceeded 12 month period per union contract and medical restrictions. I feel they never gave me the opportunity to submit updated physician's statement or evaluate my job functions. I feel I was within my leave period and I could perform my job. I feel termination was premature and without just clause.

An order to show cause why the charge should not be dismissed was issued on October 10, 2006, directing Charging Party to address the apparent failure to state a claim under the Act. The Charging Party filed a response to the order to show cause on October 20, 2006, asserting:

.... The first charge should be that my employer violated the bargaining unit contract by not allowing me to return... My employer terminated me before my allowed medical leave time had expired.

The second violation of the bargaining unit contract is article XVI... The Employer, Employee and Association agree to cooperate in an attempt to make reasonable accommodations to allow a disabled employee to perform the essential functions of his/her position. The Employer violated this because they terminated me instead of giving me the opportunity to prove I could perform my job functions which I know I could do. They made no attempt to determine if a reasonable accommodation were needed for my restrictions to perform my job prior to my termination.

Findings of Fact:

The findings of fact are derived from the charge and the Charging Party's response to the order to show cause, with those allegations taken in the light most favorable to Charging Party.

Tabbert was an employee of Cass County and took a leave of absence because of health problems. When she sought to return from that leave, she was instead terminated.

The charge as filed asserts that Tabbert was wrongfully discharged, and suggests a violation of the Family Medical Leave Act (FMLA), 5 USC 6381 et seq, or of the union contract. The response to the order to show cause makes clear that Tabbert's allegation is that the employer violated the union contract by not allowing her to return to work following her leave, and by failing to provide reasonable accommodations related to her disabling condition.

Discussion and Conclusions of Law:

The charge in this matter contends that the Employer improperly refused to allow Tabbert to return from a leave. PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. The Commission does not have authority to enforce the FMLA or other anti-discrimination statutes. Absent any allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no factual allegation that the Employer was motivated by conduct protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted, and dismissal is proper. 2002 AACS, R 423.165 (1).

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____