

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

In the Matter of:

GRAND VALLEY STATE UNIVERSITY,  
Public Employer-Respondent,

Case No. C09 D-048

-and-

BEVERLY MOORE,  
An Individual-Charging Party.

APPEARANCES:

Barnes & Thornburg, L.L.P., by Donald P. Lawless, Esq., for Public Employer

Beverly Moore, *In Propria Persona*

**DECISION AND ORDER**

On July 2, 2009, Administrative Law Judge Doyle O'Connor issued his 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

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

GRAND VALLEY STATE UNIVERSITY,  
Public Employer-Respondent,

-and-

Case No. C09 D-048

BEVERLY MOORE,  
Individual Charging Party.

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**APPEARANCES:**

Beverly Moore, Charging Party, appearing on her own behalf

Donald P. Lawless, for Public Employer-Respondent

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

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 Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

**The Unfair Labor Practice Charge and Findings of Fact:**

On April 1, 2009, a Charge was filed in this matter by Beverly Moore (the Charging Party) asserting that Grand Valley State University (GVSU or the Employer) had treated Charging Party unfairly. The Charge with particularity asserted that the Employer's conduct violates "Title II of the Civil Rights Act of 1964 and the ADA statutes".

Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, Charging Party was granted an opportunity to file a written statement explaining why the charge should not be dismissed prior to a hearing. Moore was advised that, to avoid dismissal of the Charge, any response to the Order to Show Cause must provide a factual basis to proceed that established the existence of alleged discrimination in violation of PERA.

Additionally, the Order specified that the Charge was factually deficient. The documents initially submitted in support of the Charge reflected that related complaints were pursued with the Michigan Department of Civil Rights and the Federal Equal Employment Opportunity Commission more than a year before the MERC Charge was filed. Moore was instructed that any response to the Order to Show cause must, as expressly required by R 423.151(2), provide a clear and complete statement of the facts that allege a violation of PERA, and must factually address the following deficits in the Charge:

1. The date(s) of the alleged occurrences.
2. The date when Moore first became aware of the action, or inaction, by the Employer which she claims was improper.
3. The names of each agent of the Employer who is alleged to have engaged in the claimed improper conduct.
4. A factual description of the conduct that is alleged to violate PERA, including an explanation of what it is that the Employer did, or did not do, which is claimed to be a breach of Employer's statutory obligations.

Moore filed multiple responses to the Order, including her initial response to the Order to Show Cause on May 1, 2009, which included a proposed amended charge. That amended charge noted MERC's lack of jurisdiction over Moore's substantive Federal disability claims, and sought to substitute for those claims an assertion that the Employer had violated PERA by discriminating against her based on an allegedly non-disqualifying disability.<sup>1</sup> On May 4, 2009, Moore supplemented her response to the Order to Show Cause and her proposed amended charge. Moore additionally filed supplemental documents on June 29 and 30, 2009.<sup>2</sup> Moore did not, in her several responses, directly address the identified factual deficits in her charge.

On April 28, 2009, the Employer filed both a motion to dismiss for failure to state a claim, based in part on the running of the statute of limitations, and also filed a motion to strike some of Moore's filings.<sup>3</sup>

#### Discussion and Conclusions of Law:

PERA does not prohibit all types of discrimination or unfair treatment. The Commission is without authority to determine if the Employer's conduct violated the Federal statutes relied upon in the original Charge. It is transparent that Moore's attempted amendment of her Charge is futile, in that it merely seeks to litigate her claim of disability discrimination by asserting that the same conduct violates PERA rather than

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<sup>1</sup> While the narrative submitted with the May 1<sup>st</sup> proposed amended charge asserted in conclusory terms that the Employer had engaged in "coercion and retaliation for writing grievances", no factual support was asserted for those conclusory claims and, to the contrary, the factual assertions made related to alleged handicap discrimination.

<sup>2</sup> In the June filings, Moore asserted claims related to her belief that the Employer intended to fire her in the near future and that the Employer's agents had broken into her home and had taken or rearranged her personal belongings.

<sup>3</sup> In a letter decision, I denied the Employer's motion to strike.

the Federal statutes under which her claims were previously asserted. Absent a factually supported allegation that the Employer's actions violate rights protected under Section 9 of PERA, the Commission is foreclosed 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 factually supported allegation which if proved would establish that the Employer was motivated by reasons unlawful under PERA, the charge against the Employer fails to state a claim upon which relief can be granted, and therefore, must be dismissed.

Additionally, it is apparent from the documents submitted by Moore that the present dispute is merely the latest manifestation of her underlying problems with employment at GVSU. Those disputes date back at least prior to the filing of the claims Moore submitted to the Michigan Department of Civil Rights in April of 2006. Section 16(a) of PERA states that "no complaint shall issue upon any unfair labor practice occurring more than 6 months prior to the filing of the Charge...". The statute of limitations is jurisdictional in nature and conclusively bars the finding of a violation where the action complained of occurred more than six months prior to filing a charge. *City of Detroit (Department of Public Works)*, 2000 MERC Lab Op 149. The limitation period under PERA commences when the person knows of the act that caused her injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). While Moore may cite to events more recent than her 2006 discrimination charge, in *City of Adrian*, 1970 MERC Lab Op 579, the Commission adopted the holding of the U.S. Supreme Court in *Local Lodge 142 v NLRB (Bryan Mfg Co)*, 362 US 411 (1960), which rejected the doctrine of a continuing violation if the inception of the violation occurred more than six months prior to the filing of the charge. Because the course of conduct of which Moore complains has its origins more than six months before the present charge was filed, it is barred by the statute of limitations and therefore, must be dismissed on that additional ground.

### **RECOMMENDED ORDER**

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

Dated: July 2, 2009