

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

In the Matter of:

UNIVERSITY OF MICHIGAN,
Public Employer-Respondent,

Case No. C10 I-220

-and-

JUDITH D. EBERLINE,
An Individual-Charging Party.

APPEARANCES:

David J. Masson, Deputy General Counsel for Respondent

Judith D. Eberline, *In Propria Persona*

DECISION AND ORDER

On December 1, 2010, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the unfair labor practice charge filed by Charging Party, Judith D. Eberline against Respondent, University of Michigan (Employer) failed to state a claim upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. After determining that the initial charge did not include a claim against Respondent, the ALJ ordered Charging Party to provide a more definite statement of the alleged violation by addressing five specific questions outlined in the order. In her responses, Charging Party alleged several instances of harassment by other co-workers due to race and disability biases, but failed to specifically address the issues raised by the ALJ. Concluding that the allegations did not suggest any employer discrimination due to anti-union animus, the ALJ recommended summary dismissal of the charge. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA.

On December 28, 2010, Charging Party filed exceptions that we accepted as timely submitted, in light of the envelope's postmark and holiday mail delivery schedule. Respondent did not file a response. In her exceptions, Charging Party mostly reiterates her discontent with the conduct of her union officials. She also indicates that she informed supervisors of ongoing harassment by her co-workers and that her complaints

were “totally ignored”. After careful review of the exceptions, we find them to be without merit.

Discussion and Conclusions of Law:

As correctly noted by the ALJ, PERA does not prohibit all types of discrimination or unfair treatment by public employers. *Detroit Pub Sch*, 22 MPER 16 (2009). Instead, PERA seeks to prohibit an employer’s “unfair” actions that interfere with or restrain an employee’s right to engage in lawful concerted activity as set forth in Section 9 of that law. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). Absent a valid claim under the Act, we lack authority to review the merits of a charging party’s complaint. *Detroit Pub Sch*. Charging Party alleges in her pleadings and exceptions that the Employer’s conduct was discriminatorily motivated, thereby “forcing [her] to retire”. Specifically, Charging Party complains of the Employer’s failure to address the racial, age and disability related harassment that she allegedly experienced from other co-workers. Even if true, these assertions do not indicate or even suggest an underlying connection between the Employer’s alleged misconduct and Charging Party’s exercise of PERA protected activity. Since the charge lacks a valid claim under any law within our jurisdiction, it is subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACCS, R 423.165. Accordingly, we adopt the ALJ’s findings of fact and conclusions of law and dismiss this charge on summary disposition for failure to state a claim upon which relief can be granted under PERA.

ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

UNIVERSITY OF MICHIGAN,
Respondent-Public Employer,

Case No. C10 I-220

-and-

JUDITH D. EBERLINE,
Individual Charging Party.

APPEARANCES:

Judith D. Eberline, Charging Party representing herself

David J. Masson, appearing for Respondent Employer

**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).

The Unfair Labor Practice Charge and Order to Show Cause:

On September 10, 2010, a Charge was filed in this matter against the University of Michigan (the Employer) by Charging Party Judith R. Eberline. The wording of the Charge was identical to a parallel Charge filed the same day against Eberline's Union, AFSCME Local 1583 in Case No. CU10 I-038.

The Charge against the Employer, as filed, alleged wrongful conduct by the Union, but did not allege any wrongful conduct by the Employer. For that reason an order to show cause why the charge should not be dismissed without a hearing was issued on October 14, 2010. Eberline was expressly advised that to avoid dismissal of the Charge, the written response to this Order must assert facts that establish a violation of PERA. She was instructed that the response must describe who did what and when they did it, and explain why such actions constitute a violation of PERA. Eberline was further advised that a timely response to that Order would be reviewed to determine whether a proper claim had been made and whether a hearing should be scheduled.

As expressly required by R 423.151(2), Eberline was directed to provide a clear and complete statement of the facts which allege a violation of PERA, and she was instructed to factually address the following deficits in the Charge:

1. The date(s) of the alleged actions by the Employer.
2. The date when Eberline first became aware of the action, or inaction, by the Employer which she claims was improper.
3. The names of each agent or supervisor of the Employer who is alleged to have engaged in the claimed improper conduct.
4. A factual description of the conduct by the Employer that is alleged to violate the Act, including an explanation of what it is that the Employer did, or did not do, which is claimed to be a violation of PERA.
5. The Charge refers to an EEO proceeding. Charging Party must submit a copy of any decision or outcome of the EEO case with her response to this order.

The Order closed by advising Eberline that if the Charge and her response to the Order did not state a valid claim, a decision recommending that the Charge be dismissed without a hearing would be issued, and that, pursuant to MERC Rule R 423.176, Charging Party would have the right to file exceptions to that recommended dismissal.

After requesting and receiving an extension of time to respond, Eberline filed several responses to the Order. Her filing consisted of some nine separate documents and attachments totaling twenty-six pages. Those documents reveal multiple complaints by Eberline regarding what she perceived as harassment of her by several of her non-supervisory coworkers over a period of years, with the central events occurring far outside the PERA six month statute of limitations. Eberline attributes the harassment to animosity based on race and based on her disability. Much of the discussion in her submissions relates to her Charge that her Union did not do more to respond to her complaints about the conduct of her coworkers. It is apparent that Eberline's difficulties with her coworkers interfered substantially with her employment with the University.

Eberline's submission also documented her unsuccessful pursuit of a similar charge against the Employer with the Michigan Department of Civil Rights (MDCR), again asserting discrimination based on her race or based on her disability. In August of 2010, prior to the filing of this Charge under PERA, the MDCR denied reconsideration of its earlier decision which declined to pursue those allegations.

While Eberline provides considerable detail on her complaints against her coworkers, what is missing from her response to the Order is any factual response to the central questions put to her in the Order. Eberline did not provide the names of agents or supervisors of the Employer who she alleges engaged in any actions which would be unlawful under PERA. Eberline did not provide a factual description of the conduct by the Employer that is alleged to violate the Act, including an explanation of what it is that the Employer did, or did not do, which is claimed to be a violation of PERA. The factual

gravamen of Eberline's complaint is the allegation that the Employer failed to properly address harassment of Eberline by her coworkers, allegedly based on her race or her disability.

Discussion and Conclusions of Law:

The Public Employment Relations Act (PERA) does not prohibit all types of discrimination or unfair treatment by an Employer. Absent a factually supported allegation that the Employer was motivated by unlawful antagonism based on union or other activity protected by 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.

Allegations of racial or handicap-based discrimination by an employer, or of an employer's failure to address such misconduct by its employees, are not the types of claim which can be heard or remedied by MERC. Rather, these are the sort of claims over which the MDCR has proper jurisdiction and that agency has already investigated, and dismissed, these claims by Eberline.

Because there is no allegation in the Charge or in the documents submitted in response to the Order suggesting that the Employer acted improperly and that it was motivated by union or other activity protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____