

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

In the Matter of:

CITY OF DETROIT (HEALTH DEPARTMENT)
Public Employer-Respondent,

Case No. C05 H-194

-and-

SOUTHEASTERN MICHIGAN HEALTH ASSOCIATION
Public Employer-Respondent,

-and-

AFSCME, COUNCIL 25,
Labor Organization-Charging Party.

APPEARANCES:

Valerie Colbert-Osamuede, Esq., City of Detroit Law Department for Respondent City of Detroit

Jacquelyn G. Schulte, Esq., for Respondent Southeastern Michigan Health Association

Miller Cohen, by Richard G. Mack, Jr., Esq., for Charging Party

ORDER DENYING LEAVE TO FILE EXCEPTIONS

This matter is before the Michigan Employment Relations Commission on the request of the Southeastern Michigan Health Association (SEMHA) for consideration of its exceptions to an administrative law judge's interim order denying SEMHA's motion for summary dismissal.

Procedural History:

On August 30, 2005, Charging Party AFSCME Council 25 (AFSCME) filed the charge in this matter against Respondent City of Detroit (the City) alleging that the City violated Section 10(1)(a) and (e) of the Public Employment Relations Act (PERA), 1965 PA

379 as amended, MCL 423.210(1)(a) and (e). The matter was assigned to Administrative Law Judge (ALJ) Julia C. Stern for hearing. On January 17, 2006, May 24, 2006, and September 25, 2006, AFSCME amended the charge; the third amendment added the Southeastern Michigan Health Association as a Respondent.

On March 19, 2007, SEMHA filed a motion for summary dismissal asserting that the Commission lacks jurisdiction over it. Charging Party filed a response to the motion on April 19, 2007. On May 3, 2007, the ALJ issued an Order Denying Motion for Summary Dismissal for Lack of Jurisdiction, but concluding that there are material questions of fact with respect to whether SEMHA is a political subdivision of the State of Michigan and, thus, subject to the Commission's jurisdiction. Accordingly, the ALJ conducted an evidentiary hearing on that issue on May 22, 2007. On August 9, 2007, the ALJ issued a Second Order Denying Motion for Summary Dismissal for Lack of Jurisdiction concluding that SEMHA is subject to the Commission's jurisdiction.

SEMHA filed exceptions to the ALJ's August 9, 2007 order on August 28, 2007. However, on September 5, 2007, SEMHA's attorney withdrew those exceptions by e-mail stating:

I just learned from Judge Stern that her order denying SEMHA's motion for summary disposition was not a final order, and therefore not ripe for appeal to the full Commission. I will instead be taking the law and arguments from the exceptions and accompanying brief served on counsel and MERC last week, and turning those into a motion for reconsideration directed to Judge Stern. (Emphasis added.)

Therefore, the exceptions were returned to the ALJ who treated them as a request for reconsideration of her order. SEMHA filed the document as a motion for reconsideration on September 13, 2007. The ALJ issued an order denying reconsideration later the same day. On December 21, 2007, SEMHA filed a second motion for reconsideration of the ALJ's August 9, 2007 order denying SEMHA's motion for summary disposition. Finding that the motion raised no issues not previously addressed, the ALJ denied the motion by letter dated December 28, 2007. Subsequently, SEMHA's attorney contacted the director of the Bureau of Employment Relations to inquire about the previously withdrawn exceptions. The Bureau director sent a confirming e-mail to SEMHA's attorney on January 30, 2008 explaining that the Commission has no authority to consider the ALJ's ruling regarding jurisdiction at the current stage of the proceedings. In the e-mail, the Bureau director cited Rule 161(6) of the General Rules of the Michigan Employment Relations Commission, 2002 AACCS, R 423.161(6), which provides:

Rulings by an administrative law judge on any motion, except a motion resulting in a ruling dismissing or sustaining the unfair labor practice charge in its entirety, shall not be appealed directly to the commission, but shall be considered by the commission only if raised in exceptions or cross exceptions to the proposed decision and recommended order filed under R 423.176.

On February 15, 2008, SEMHA requested that the Commission make an exception to Commission rule 161(6) "for the limited but critically important purpose of determining the threshold issue of whether MERC has jurisdiction over. . . SEMHA." SEMHA did not file new exceptions, but sought to have the Commission review the exceptions that it had previously withdrawn.

Discussion and Conclusions of Law:

Rule 176 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.176 provides in relevant part:

- (1) Any party may file written exceptions to the decision and recommended order of the administrative law judge, or to any other part of the record or proceedings, including rulings upon motions or objections, and a brief in support thereof. . . .
- (2) Exceptions shall be filed within 20 days of service of the decision and recommended order.

The e-mail from SEMHA's attorney indicated that she accepted the ALJ's assertion that the matter was not ripe for appeal to the Commission and, for that reason, on behalf of SEMHA she would pursue the matter by requesting reconsideration by the ALJ instead. Indeed, SEMHA did just that by filing two successive requests for reconsideration with the ALJ. SEMHA's actions, therefore, clearly indicated to the other parties, the ALJ, and the Commission that the exceptions had been withdrawn. The fact that the ALJ proceeded to exercise jurisdiction over the matter would also have indicated to the other parties that the exceptions had been effectively withdrawn.

SEMHA's February 15, 2008 letter does not deny that the exceptions had been withdrawn; yet it offers no support for its apparent assumption that the exceptions can now be reinstated. The letter also fails to address the timeliness of SEMHA's renewed request that the Commission consider the issue of jurisdiction. While SEMHA's letter argues that "the Constitution" requires that questions of jurisdiction be finally decided before the substance of any other issue is addressed, SEMHA offers no support for its proposition. Neither SEMHA's letter nor the exceptions provide any authority that would allow the Commission to disregard Rule 161(6), which limits the filing of exceptions to the time period following the issuance of the ALJ's Decision and Recommended Order except in cases where the ALJ has issued an interim order "dismissing or sustaining the unfair labor practice charge in its entirety." The ALJ's interim order in this instance neither dismissed nor sustained the unfair labor practice charge. Accordingly, we find no basis for considering exceptions to the ALJ's interim order at this time. SEMHA will have the option of filing exceptions in accordance with Rule 176 after the ALJ issues the Decision and Recommended Order.

ORDER

SEMHA's request for leave to file exceptions to the ALJ's interim order denying SEMHA's motion for summary dismissal is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____