

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

In the Matter of:

WASHTENAW INTERMEDIATE SCHOOL DISTRICT,
Public Employer-Respondent in MERC Case No. C15 K-147; Hearing Docket No. 15-059634,

-and-

AFSCME COUNCIL 25,
Labor Organization-Respondent in MERC Case No. CU15 K-038; Hearing Docket No. 15-059635,

-and-

MARANDA CAZARES,
An Individual Charging Party.

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APPEARANCES:

Tere McKinney, Staff Attorney, for the Labor Organization

Maranda Cazares, appearing on her own behalf

DECISION AND ORDER

On March 23, 2016, Administrative Law Judge David M. Peltz 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: May 12, 2016

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

In the Matter of:

WASHTENAW INTERMEDIATE SCHOOL DISTRICT,
Respondent-Public Employer in Case No. C15 K-147; Docket No. 15-059634-MERC,

-and-

AFSCME COUNCIL 25,
Respondent-Labor Organization in Case No. CU15 K-038; Docket No. 15-059635-MERC,

-and-

MARANDA CAZARES,
An Individual Charging Party.

APPEARANCES:

Tere McKinney, Staff Attorney, for the Labor Organization

Maranda Cazares, appearing on her own behalf

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

This case arises from unfair labor practice charges filed on November 9, 2015, by Maranda Cazares against her former employer, Washtenaw Intermediate School District (ISD), and her labor organization, AFSCME Council 25. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charges were assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

Charge Against the School District:

The charge in Case No. C15 K-147; Docket No. 15-059634-MERC asserts that the Respondent-Public Employer, Washtenaw Intermediate School District, violated PERA by issuing a termination letter which falsely stated the reason that Cazares was discharged.

On December 10, 2015, I issued an order directing Cazares to show cause why her charge against the school district should not be dismissed as untimely and for failure to state a claim under PERA. Charging Party was directed to file her response to the order to show cause by no later than January 4, 2016. To date, Charging Party has not filed a response to the order to show cause or requested an extension of time in which to do so.

Pursuant to Rule 165(1), R 423.165(1), of the General Rules and Regulations of the Employment Relations Commission, which govern practice and procedure in administrative hearings conducted by MAHS, the ALJ may “on [his] own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party.” See Rule 1501, R 792.11501, of the MAHS Administrative Hearing Rules. Among the various grounds for summary dismissal of a charge is the failure by the charging party to “respond to a dispositive motion or a show cause order.” Rule 165(h). See also *Detroit Federation of Teachers*, 21 MPER 3 (2008), in which the Commission recognized that the failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. In any event, accepting all of the allegations in the charge as true, dismissal of the charge against the Employer in Case No. C15 K-147; Docket No. 15-059634-MERC on summary disposition is warranted.

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any alleged unfair labor practice occurring more than six months prior to the filing of the charge with the Commission and the service of the charge upon each of the named respondents. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Cmty 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). In the instant case, the charge indicates that Cazares received a copy of the termination letter from the school district on April 20, 2015. Yet, she did not file her charge against the district until November 9, 2015, more than six months later. Accordingly, any allegation against Washtenaw ISD premised upon the termination letter issued by the school district must be dismissed as untimely under the Act.

Even if the allegation set forth by Cazares against Washtenaw ISD had been timely filed, dismissal of the charge in its entirety is nonetheless appropriate on the ground that Charging Party has failed to state a claim against the school district upon which relief can be granted under PERA. With respect to public employers, the Act does not prohibit all types of discrimination or unfair treatment, nor does the Act provide a remedy for an employer’s breach of a collective bargaining agreement. The Commission’s jurisdiction with respect to claims brought by individual employees against public employers is generally limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in union or other concerted activities protected by PERA. In the instant case, the charge against Washtenaw ISD does not provide a factual basis which would support a finding that Charging Party was subjected to discrimination or retaliation for engaging in protected activities in violation of the Act. For this reason, dismissal of the charge against the school district in Case No. C15 K-147; Docket No. 15-059634-MERC is warranted.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation which, if true, would establish that Respondent Washtenaw County ISD violated PERA. Accordingly, I conclude that the charge against the school district in Case No. C15 K-147; Docket No. 15-059634-MERC must be dismissed.

Charge Against the Labor Organization:

In Case No. CU15 K-038; Docket No. 15-059635-MERC, Cazares asserts that the Respondent-Labor Organization, AFSCME Council 25, breached its duty of fair representation by failing to take

action on her behalf with respect to the termination letter issued by the school district. In an order issued on December 10, 2015, I directed the Union to file a position statement addressing the allegations set forth by Cazares in the charge. Pursuant to that order, the Union's response was due by no later than the close of business on January 4, 2016. When that deadline passed without the filing of a position statement by AFSCME Council 25, I issued a supplemental pretrial order requiring the parties to appear for an evidentiary hearing on February 22, 2016.

The supplemental pretrial order was mailed to Charging Party at her address of record as listed in the unfair labor practice charge. On or about January 15, 2016, the order was returned to the MAHS office in Detroit with a notation from the United States Postal Service stating, "Return to Sender. Unclaimed. Unable to Forward." Charging Party did not provide an updated mailing address or otherwise contact my office regarding this matter.

On February 18, 2016, AFSCME staff attorney Tere McKinney requested an adjournment of the hearing in order to give the Union time to file a motion to dismiss the charge. McKinney indicated that the matter seemed to "have slipped through the cracks on the Union's end" and that there was an arguable basis for dismissing the charge as untimely under Section 16(a) of PERA. Upon receipt of the message from McKinney, my office attempted to contact Cazares via the email address and phone number listed in the charge. When those attempts proved unsuccessful, I adjourned the hearing.

On February 19, 2016, my office sent another email to Charging Party requesting that she provide MAHS with updated contact information within fourteen (14) days. That same information was conveyed to Cazares in a message left on Charging Party's voicemail, once again using the phone number listed on the charge form.

Charging Party never provided my office with updated contact information, nor has she responded in any manner to our various attempts to communicate with her regarding this case. For that reason, I conclude that the charge against AFSCME Council 25 in Case No. CU15 K-038; Docket No. 15-059635-MERC, has been abandoned by Cazares and must be dismissed on that basis.

RECOMMENDED ORDER

The unfair labor practice charges filed by Maranda Cazares against Washtenaw ISD and AFSCME Council 25 in Case No. C15 K-147; Docket No. 15-059634-MERC and Case No. CU15 K-038; Docket No. 15-059635-MERC are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: March 23, 2016