

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

In the Matter of:

WASHTENAW COMMUNITY COLLEGE
Public Employer-Respondent,

MERC Case No. 21-J-1938-CE

-and-

KIMBERLY DOSEY,
An Individual Charging Party.

APPEARANCES:

Miller, Canfield, Paddock and Stone, P.L.C., by Scott R. Eldridge and Ahmad A. Chehab, for Respondent

Kimberly Dosey, appearing on her own behalf

DECISION AND ORDER

Charging Party filed an unfair labor practice charge against Washtenaw Community College (Respondent or Employer) alleging that she was discriminated against on the basis of her age after being terminated from her position as a Recruitment and Outreach Specialist. On December 20, 2021, Administrative Law Judge (ALJ) Peltz issued his Decision and Recommended Order¹ recommending summary dismissal of the charge for failure to state a valid PERA claim.

Following the ALJ's Decision and Recommended Order, Charging Party filed a document with the Commission requesting to "appeal" the ALJ's decision. A review of the "appeal" demonstrates that Charging Party has failed to comply with the requirements for filing exceptions as outlined under Rule 176 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R423.176. Further, Charging Party's filing is procedurally deficient as described below, and lacks any specifics upon which we could discern the basis for her appeal. Accordingly, the filing is rejected pursuant to Rule 176.

I. Factual Summary and Procedural Background:

We adopt the factual summary and conclusions set forth in ALJ Peltz's Decision and Recommended Order, except as otherwise repeated or modified below.

¹ MOAHR Hearing Docket No. 21-028068

Charging Party Kimberly Dosey was employed by Washtenaw Community College as a Recruitment and Outreach Specialist, an “at-will” position. On May 5, 2021, Respondent discharged Dosey for allegedly engaging in misconduct for inappropriately sharing restricted student data. Dosey contends that she did not receive a verbal or written warning prior to her termination and was not given the opportunity for corrective action. Dosey also notes during her tenure with the College, she received positive performance evaluations.

According to Dosey, she was 48 years old at the time of her termination and replaced by an individual who was 22 years old.

On October 12, 2021, Dosey filed the present charge alleging that she was unfairly terminated and discriminated against due to her age. In an order issued on November 1, 2021, the ALJ directed Dosey to show cause why the charge should not be dismissed on summary disposition for failure to state a claim upon which relief could be granted under PERA. On December 3, 2021, Dosey filed a timely response to the show cause order, along with a number of other attachments.

On December 20, 2021, after reviewing Dosey’s response, the ALJ issued a Decision and Recommended Order on Summary Disposition which recommended dismissal of the charge.

On January 12, 2022, Charging Party submitted an email to the Commission stating:

Please accept this communication as my "appeal to the judgement" made by the Administrative Law Judge. I am requesting this appeal of my case be reviewed by the Michigan Employment Relations Commission.

On January 21, 2022, Respondent submitted a Brief in Support of the ALJ's Decision and Recommended Order, in which Respondent asserted that Charging Party’s appeal was procedurally defective as well as substantively defective.

II. Discussion:

A. Charging Party’s Exceptions Fail to Comply with Rule 176

The filing of exceptions to an ALJ’s Decision and Recommended Order is governed by Rule 176. In accordance with Subsection 4 of Rule 176, exceptions must--(a) Set forth specifically the question of procedure, fact, law, or policy to which exceptions are taken, (b) Identify that part of the administrative law judge’s decision and recommended order to which objection is made, (c) Designate, by precise citation of page, the portions of the record relied on, and (d) State the grounds for the exceptions and include the citation of authorities, if any, unless set forth in a supporting brief. Under Subsection 7 of Rule 176, “[a]n exception that fails to comply with this rule may be disregarded.”

In this case, we find that Charging Party's “appeal” fails to comply with the requirements in Rule 176 (4) (a-d). Additionally, Charging Party fails to indicate with any specificity, which conclusions or findings contained in the ALJ's Decision and Recommended Order are those to which she takes exception. Notably, we have recognized in prior cases, primarily involving

laypersons acting *pro se*, that we would consider non-compliant exceptions to the extent we were able to discern the issues on which the excepting party had requested review. In this matter, however, we are unable to discern any issues on which Charging Party has requested our review. As such, we cannot conclude that Charging Party's January 12, 2022, email constitutes proper exceptions to the ALJ's Decision and Recommended Order under Rule 176. See *Wayne County (Department of Public Services)*, 35 MPER 29 (2021); *Healthsource Saginaw, LLC (Sodexo Management Team)*, 32 MPER 16 (2018); *Detroit Public Schools and AFSCME Local 345*, 30 MPER 32 (2016); *Wayne State University*, 29 MPER 22 (2015); and *Tuscola County Medical Care Facility*, 27 MPER 9 (2013). We reject Charging Party's "exceptions" and affirm the ALJ's decision.

B. Charging Party Failed to State a Claim Under PERA

Alternatively, even if Charging Party's emailed "appeal" had been accepted as properly filed exceptions, a review of the record establishes that the allegations contained in the charge, show cause response and attachments are insufficient to state a valid claim under PERA.

Under Commission Rule 165(2), summary disposition is appropriate where a charge fails to state a valid claim under PERA or where there is no genuine issue of material fact. In such instances, the ALJ is authorized to issue an order requiring a party to assert facts and arguments of law in support of its contention to avoid the grant of summary disposition in the opposing party's favor. *ATU Local 26*, 30 MPER 22 (2016); *Wayne Cnty*, 24 MPER 25 (2011). Relying on *Smith v Lansing Sch Dist*, 428 Mich 248 (1987), we have consistently held that an evidentiary hearing is not warranted where no material factual dispute exists. *AFSCME Council 25, Local 207*, 23 MPER 101 (2010); *Muskegon Hts Pub Sch Dist*, 1993 MERC Lab Op 869, 870; *Police Officers Labor Council*, 25 MPER 57 (2012). Where a material factual dispute exists, however, summary disposition is inappropriate. *Amalgamated Transit Union, Local 26*, 30 MPER 22 (2016).

In her charge and response to the ALJ's show case order, Charging Party argues that she was terminated unfairly and discriminated against on the basis of age.

PERA, however, does not authorize generalized claims of unfair treatment and an employee's allegation of unfair treatment, without more, does not state an actionable PERA claim. In *City of Detroit (Department of Transportation)*, 33 MPER 48 (2020), we noted:

PERA does not, however, authorize generalized claims of unfair treatment. See *Wayne County Sheriff and Police Officers Association of Michigan*, 33 MPER 25 (2019); *City of Detroit, Dept of Transp*, 30 MPER 61 (2017); *Ann Arbor Sch*, 16 MPER 15 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75. And an employer's breach of a collective bargaining agreement is not per se an unfair labor practice under Section 10 of PERA. See *City of Detroit*, 23 MPER 98 (2010); *Detroit Bd. of Ed.*, 1995 MERC Lab Op 75, 78; *City of Monroe*, 1994 MERC Lab Op 638 (no exceptions).

Additionally, the Commission's jurisdiction is limited to determining whether Respondent engaged in conduct that violated the Public Employment Relations Act. Consequently, a charge

alleging a violation of the State Constitution, a statute other than PERA or a city charter is beyond the jurisdiction of the Commission. *Detroit Retirement System*, 34 MPER 28 (2020); *Steffke v. Taylor Federation of Teachers, Local 1085*, 28 MPER 71 (2015); *Waverly Cmty Sch*, 26 MPER 34 (2012); *Michigan State Univ*, 17 MPER 75 (2004); *Detroit Public Schools*, 20 MPER 117 (2007) (no exceptions).

In the present case, Charging Party does not allege that Respondent engaged in conduct that violated the Public Employment Relations Act.

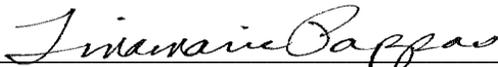
In view of the foregoing, we find that the ALJ properly concluded that Charging Party failed to state a claim under the Act and, therefore, properly recommended that the Commission dismiss the charge.

We have also considered all other arguments submitted by the Parties and conclude that they would not change the result in this case.

ORDER

IT IS HEREBY ORDERED that the unfair labor practice charge is dismissed in its entirety and that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Tinamarie Pappas, Commission Chair



William F. Young, Commission Member

Issued: February 10, 2022

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

In the Matter of:

WASHTENAW COMMUNITY COLLEGE,
Respondent-Public Employer,

Case No. 21-J-1938-CE
Docket No. 21-028068-MERC

-and-

KIMBERLY DOSEY,
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APPEARANCES:

Miller, Canfield, Paddock and Stone, P.L.C., by Scott R. Eldridge and Ahmad A. Chehab, for the Public Employer

Kimberly Dosey, appearing on her own behalf

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

This case arises from an unfair labor practice charge filed on October 21, 2021, by Kimberly Dosey against Washtenaw Community College. 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 charge was assigned to David M. Peltz, Administrative Law Judge for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (the Commission).

The Unfair Labor Practice Charge and Procedural History:

The unfair labor practice charge, which was labeled “EEOC Charge Statement”, asserts that Dosey was terminated unfairly and that she was discriminated against on the basis of age. In an order issued on November 1, 2021, I directed Dosey to show cause why her charge should not be dismissed on summary disposition for failure to state a claim upon which relief could be granted under the Act. On December 8, 2021, Dosey filed a timely response to the order to show cause, along with a number of attachments.

Facts:

The following facts are derived from the unfair labor practice charge and Dosey’s response to the Order to Show Cause, with all allegations set forth therein accepted as true for

purposes of this decision. For eight years, Dosey was employed by Washtenaw Community College as a Recruitment and Outreach Specialist, an “at-will” position. On May 5, 2021, Respondent discharged Dosey for allegedly sharing restricted student data. Dosey did not receive a verbal or written warning prior to her termination, nor was she given the opportunity for corrective action. During her tenure with the College, Dosey received positive performance evaluations. Dosey was 48 years old at the time of her termination. She was replaced by a 22-year-old.

Discussion and Conclusions of Law:

The Commission does not investigate unfair labor practice charges filed with it. Charges that allege a violation of PERA and conform to the Commission's rules are set for hearing before a MOAHR administrative law judge.

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 MOAHR, the ALJ may “on [his or her] own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party.” Among the various grounds for summary dismissal of a charge is the failure by the charging party to state a claim upon which relief can be granted. Rule 165(2)(d).

Accepting all of the allegations set forth by Dosey as true, dismissal of the charge against Washtenaw Community College is warranted for failure to state a claim under the Act. Section 9 of the Act protects the rights of public employees to form, join or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. The types of activities protected by PERA include filing or pursuing a grievance pursuant to the terms of a union contract, participating in union activities, joining or refusing to join a union, and joining with other employees to protest or complain about working conditions. Sections 10(1)(a) and (c) of the Act prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities described above. PERA does not, however, prohibit all types of discrimination or unfair treatment by a public employer. The Commission's jurisdiction with respect to claims brought by individual employees against public employers is 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, or refusal to engage in, union or other concerted activities protected by PERA.

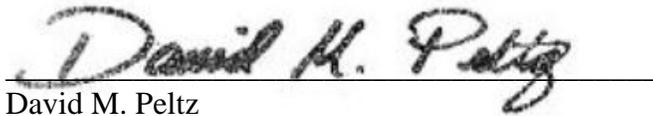
In the instant case, Dosey asserts that she did not commit the misconduct of which she was accused by the College and that she was the victim of discrimination on the basis of age. Even if true, such allegations do not establish a violation of PERA, as there is no claim that Dosey was subjected to discrimination or retaliation for engaging in, or refusing to engage in, activities protected under the Act.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to establish that a claim against Washtenaw Community College exists under PERA. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Kimberly Dosey against Washtenaw Community College in Case No. 21-J-1938-CE; Docket No. 21-028068-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink that reads "David M. Peltz". The signature is written in a cursive style and is positioned above a horizontal line.

David M. Peltz
Administrative Law Judge
Michigan Office of Administrative Hearings & Rules

Dated: December 20, 2021 _____