

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

In the Matter of:

WAYNE STATE UNIVERSITY,  
Public Employer-Respondent,

-and-

INTERNATIONAL UNION, UAW REGION 1,  
Labor Organization-Charging Party.

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Case No. C15 C-037  
Docket No. 15-021096-MERC

APPEARANCES:

John Cunningham, International Representative, for Charging Party

**DECISION AND ORDER**

On June 29, 2015, Administrative Law Judge David M. Peltz (ALJ) issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Charging Party failed to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. The ALJ recommended that the Commission dismiss the charge in its entirety. The Decision and Recommended Order was served on the interested parties in accord with § 16 of PERA.

Charging Party's exceptions to the Decision and Recommended Order were due to be filed by July 22, 2015. Charging Party requested and was granted an extension of time for filing until August 6, 2015. On August 6, 2015, Charging Party filed several documents: Order Extending Time to File Exceptions; ALJ's Order to Show Cause why the Charge Should not be Dismissed Without a Hearing; a copy of the Charge previously filed with the Commission; and a letter that accompanied the Charge along with several exhibits. Charging Party did not include exceptions with those documents, and failed to file a statement of service. The following day, Charging Party filed three copies of a letter, which we will treat as its exceptions, although it did not identify the letter as such. Since Charging Party's "exceptions" were untimely and did not include a statement of service, its filing did not comply with the Commission's General Rules.

Discussion and Conclusions of Law:

Rule 176(3) of the Commission's General Rules, Mich Admin Code, R 423.176(3), provides that "[e]xceptions and the supporting documents . . . shall be filed

with the commission . . . within 20 days of service of the decision and recommended order.” The Order granting Charging Party’s extension of time to file exceptions clearly stated “[a]ll exceptions to the Administrative Law Judge’s Decision and Recommended Order must be received at a Commission office by the close of business on August 6, 2015.” It is well established that exceptions that are not received at the Commission’s office by the close of business on the date they were due will not be considered. *City of Detroit (AFSCME Council 25 and Local 542)*, 25 MPER 17 (2011); *Police Officers Association of Michigan*, 18 MPER 14 (2005); *City of Detroit (Fire Department)*, 2001 MERC Lab Op 359.

In addition, Rule 176(2) contains several requirements for the filing of exceptions. These requirements include: filing an original and four copies of the exceptions and brief, two copies of any exhibits, two copies of each party’s post-hearing briefs, any motion that resulted in a ruling by the ALJ dismissing or sustaining the ULP charge in whole or part, any brief in support of the motion, the response to the motion filed, as well as a statement of service. As noted above, Charging Party failed to file a statement of service with its filing. Rule 182(5) provides that the Commission may decline to consider any document or pleading not served in accordance with the rules. Indeed, this Commission has declined to consider timely exceptions filed without a statement of service. *Wayne State University (Kirkland)*, 23 MPER 53 (2010); *Tuscola County Medical Care Facility*, 27 MPER 9 (2013).

Aside from the deficiencies mentioned above, Charging Party failed to set forth specifically the question of procedure, fact, law, or policy to which exceptions are taken nor did Charging Party identify the part of the ALJ’s Decision and Recommended Order to which an objection is made, state the grounds for the exceptions or provide a citation of authorities. All of these are requirements set forth in Commission Rule 176(4)(a), (b) & (d). The purpose of this rule is to provide the Commission with a basis for determining which of the ALJ’s rulings that a party believes were made in error and the reasons supporting such a belief. As provided in Rule 176(7), an exception that fails to comply with the rules may be disregarded. Yet, where a charging party’s timely exceptions fail to comply with the requirements of Rule 176(4), we may nevertheless consider them to the extent we are able to discern the issues on which the charging party has requested our review. *Detroit Transportation Corp.*, 28 MPER 64 (2015). Even if we do so in this case, those exceptions must be dismissed for failure to state a claim under PERA, as explained below.

Based upon the assertion that Respondent “showed no regard for the contract,” Charging Party appears to believe that Respondent repudiated the agreement by reclassifying a bargaining unit position following an audit, which resulted in the position being moved to a different local union. However, such a conclusory allegation, without more, fails to establish a violation of PERA. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

We will find an unfair labor practice based on an alleged breach of contract only where the charging party is able to show that the respondent has repudiated the

agreement. *University of Michigan*, 1988 MERC Lab Op 204; *City of Detroit*, 22 MPER 11 (2009). Repudiation exists only when: (1) the contract breach is substantial and has a significant impact on the bargaining unit; and (2) no bona fide dispute over interpretation of the contract is involved. *Wayne County*, 29 MPER 1 (2015). Repudiation warranting Commission action can be found only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. See *Gibraltar Sch Dist*, 16 MPER 36 (2003). Charging Party has failed to allege facts that establish a claim of repudiation. For these reasons, we agree with the ALJ that Charging Party failed to state a claim upon which relief may be granted under PERA.

In summary, Charging Party's exceptions were untimely; Charging Party failed to submit a statement of service; and it has failed to state a cognizable PERA claim. We, therefore, adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charge.

**ORDER**

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

\_\_\_\_\_/s/  
Edward D. Callaghan, Commission Chair

\_\_\_\_\_/s/  
Robert S. LaBrant, Commission Member

\_\_\_\_\_/s/  
Natalie P. Yaw, Commission Member

Dated: September 24, 2015

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

In the Matter of:

WAYNE STATE UNIVERSITY,  
Respondent-Public Employer,

-and-

Case No. C15 C-037  
Docket No. 15-021096-MERC

INTERNATIONAL UNION, UAW REGION 1,  
Charging Party-Labor Organization.

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**APPEARANCES:**

John Cunningham, International Representative, for Charging Party

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

This case arises from an unfair labor practice charge filed on March 13, 2015, by International Union, UAW Region 1 against Wayne State University. 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 (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

**The Unfair Labor Practice Charge and Procedural History:**

The unfair labor practice charge alleges that Wayne State University violated PERA by reclassifying the position held by Senna Farmer and by refusing to allow Farmer to exercise her contractual bumping rights. In an order issued on April 28, 2015, I directed Charging Party to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted under PERA. The response to the order to show cause was originally due by the close of business on May 19, 2015. By request of Charging Party, the filing deadline was extended to the close of business on May 29, 2015. No response was received by that date, nor did Charging Party make a timely request for a second extension. Charging Party finally filed its response to the order to show cause by email on June 19, 2015. Contrary to Rule 109, R 792.10109, of the MAHS hearing rules, Charging Party did not seek prior permission to file its response by email, nor did Charging Party follow up its electronic filing with hard copies of the response.

Facts:

The following facts are derived from the charge and the Union's response to the order to show cause. Senna Farmer was employed by Wayne State University as an Administrative Assistant I and was a member of a bargaining unit represented by UAW Local 1979. Farmer requested that the University conduct an audit of her position because she believed that there were conflicts between the duties she was being asked to perform and the Administrative Assistant I position description created by Respondent.

On September 11, 2014, Farmer's supervisor received notice that Respondent's Classification and Compensation Team had determined that the work being performed by Farmer should be reclassified to a Senior Accounting Clerk, a position which is represented for purposes of collective bargaining by UAW Local 2071. As a result of the reclassification, Farmer's salary was significantly reduced and, because of the transfer to a different bargaining unit, she lost all of her seniority. Farmer was not permitted to exercise her contractual right to bump into another administrative position within Local 1979.

Discussion and Conclusions of Law:

The failure of a charging party to file a timely response to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In the instant case, Charging Party attempts to justify its failure to timely respond to the order to show cause by asserting that it was waiting for the University to provide information which the Union had requested under the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.* Even if true, that does not excuse Charging Party's failure to contact my office and seek a second extension of the filing deadline, nor does it justify the Union's failure to seek permission to file its untimely response by email.

Assuming *arguendo* that the response had been timely and properly filed, I would nevertheless conclude that Charging Party has failed to demonstrate that an evidentiary hearing is warranted in this matter. The removal of bargaining unit work by a public employer may constitute a violation of the duty to bargain under PERA. See e.g. *Southfield Police Officers Ass'n v Southfield*, 162 Mich App 729 (1987), *aff'g* in part 1985 MERC Lab Op 1025; *Lansing Fire Fighters Local 421 v. Lansing*, 133 Mich App 56 (1984), *aff'g* 1983 MERC Lab Op 97. In the instant case, however, Charging Party has failed to articulate any comprehensible theory as to how the University's actions were unlawful. According to the charge, Farmer requested a job audit out of a concern that the duties she was performing as an Administrative Assistant I were in conflict with the job description. The University conducted the audit and determined that the work being performed by Farmer was more in line with the duties and responsibilities of the Senior Accounting Clerk, a position represented by a different UAW local. Although Charging Party set forth numerous assertions of fact apparently relating to the history of the two positions in its response to the order to show cause, the Union failed to explain the purported relevancy of any of those facts or make any cognizable claim as to how the reclassification of Farmer's position constituted an unlawful removal of bargaining unit

work. Rather, it appears that the entire basis for the charge is the Union's assertion that the reclassification was unfair to a longtime employee, a claim which does not, by itself, constitute a PERA violation.

With respect to Respondent's alleged refusal to allow Farmer to bump into another bargaining unit position, there is nothing in either the charge or the response to the order to show cause which would indicate that this action was anything other than a contract issue. It is not the function of the Commission to remedy ordinary breach of contract claims. See e.g. *City of Detroit, Dept. of Transp*, 1990 MERC Lab Op 254, 257; *County of Oakland Sheriff's Dept*, 1983 MERC Lab Op 538, 542.

For the reasons stated above, I recommend that the Commission issue the following order.

#### RECOMMENDED ORDER

The unfair labor practice charge filed by International Union, UAW Region 1 against Wayne State University in Case No. C15 B-037; Docket No. 15-021096-MERC, is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: June 29, 2015