

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

In the Matter of:

DETROIT RETIREMENT SYSTEM
Public Employer-Respondent,

MERC Case No. 20-D-0750-CE

-and-

LENNIE JACKSON,
An Individual Charging Party.

/

APPEARANCES:

VanOverbeke, Michaud & Timmony, P.C., by Michael VanOverbeke, Francis E. Judd & Jacqueline C. Sobczyk, for Respondent

Lennie Jackson, appearing on his own behalf

DECISION AND ORDER

On October 14, 2020, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order¹ in the above matter, finding that Respondent did not violate § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ found that Charging Party failed to state a valid claim for which relief can be granted under PERA.

On October 14, 2020, Charging Party submitted exceptions to the ALJ's Decision and Recommended Order and a Brief in Support of His Exceptions on October 16, 2020². Charging Party

¹ MOAHR Hearing Docket No. 20-007613

² Charging Party's exceptions and related pleadings fail to comply with Rule 176 of the Commission's General Rules. As we recently explained in *Grand Rapids Employees Independent Union*, Case No. CU18 E-009 (Nov. 12, 2020), we have previously considered non-compliant exceptions filed by pro se parties—at least “to the extent we were able to discern the issues on which the excepting party has requested review.” Because Jackson filed his exceptions and related exceptions without the benefit of counsel we have followed that practice here. But, as we emphasized in our recent *Grand Rapids Employees Independent Union* decision, in the future we reserve the right to reject exceptions filed by a party represented by legal counsel where the exceptions fail to comply with the requirements of the rule, regardless of whether we are otherwise able to discern the issues on which review is requested. As we understand it, in his exceptions, Charging Party argues that Respondent violated the City Charter 47-2-2 (b)(1) of 1980, Michigan law §38.1683 of the PERA Act (the Public Employee Retirement Benefit Protection Act, Act 100 of 2002) and Article 9, § 24 of the Michigan Constitution. On this basis, he contends that the ALJ's order was arbitrary and capricious. We will focus on those arguments in our opinion.

submitted another Brief in Support of His Exceptions on or about October 16, 2020. On October 30, 2020, Respondent submitted a Response to Charging Party's Exceptions³.

After reviewing Charging Party's exceptions and related pleadings, we believe they are without merit and agree that Charging Party failed to state a claim under PERA.

Factual Summary:

On April 17, 2020, Lennie Jackson filed the instant charge against the Detroit Retirement System. In this charge, Charging Party alleged that the Respondent "committed an egregious error by assigning Mr. Jackson pension rights to a statue depriving him of his pension benefits." According to Charging Party, Respondent's actions violated "MCL 38.1683" (the Public Employee Retirement Benefit Protection Act, Act 100 of 2002). After the charge was filed, Charging Party filed numerous documents with the Commission, including various motions and multiple amendments to the charge, as described by the ALJ in footnote 1 of his Decision and Recommended Order.

On April 28, 2020, the ALJ issued an order requiring Charging Party to show cause why the instant charge should not be dismissed and Charging Party filed a response to the order on April 30, 2020. Oral argument was then held regarding the order on May 26, 2020. At the conclusion of the hearing, the ALJ indicated that he would be issuing a written decision recommending dismissal of the charge.

Discussion and Conclusions of Law:

PERA 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).

³ In its Response, Respondent argues that it is not and was not Charging Party's employer or a labor organization that represented him. In view of the fact that this argument was not raised as an exception or cross-exception to the ALJ's Decision and Recommended Order under Rule 176 of the Commission's General Rules, however, we will not consider the argument. See *Grand Rapids Community Schools*, 29 MPER 67 (2016). Although Respondent filed its Response under Rule 792.10132 of LARA's Administrative Hearings Rules, this rule does not apply to proceedings held before the Michigan Employment Relations Commission.

In his exceptions and related documents, Charging Party argues that Respondent violated the City Charter 47-2-2 (b)(1) of 1980, Michigan law §38.1683 of the PERA Act (the Public Employee Retirement Benefit Protection Act, Act 100 of 2002) and Article 9, § 24 of the Michigan Constitution.

The Commission's jurisdiction, however, is limited to determining whether the 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. *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, as we understand the record, that the Respondent engaged in conduct that violated the Public Employment Relations Act.

Although Charging Party appears to contend that the ALJ demonstrated bias in favor of the Respondent, he has not identified anything in the record that might indicate bias toward any party. See *Schoolcraft Community College*, 33 MPER 46 (2020). Ruling in favor of a party is not sufficient to establish judicial bias or partiality.

In view of the foregoing, we believe the ALJ properly found that Charging Party failed to state a claim under the Act and 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

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

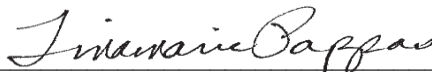
MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Samuel R. Bagenstos, Commission Chair



Robert S. LaBrant, Commission Member



Tinamarie Pappas, Commission Member

Issued: December 8, 2020

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

In the Matter of:

DETROIT RETIREMENT SYSTEM,
Respondent-Public Employer,

Case No. 20-D-0750-CE
Docket No. 20-007613-MERC

-and-

LENNIE JACKSON,
An Individual Charging Party.

APPEARANCES:

Lennie Jackson, appearing on his own behalf

VanOverbeke, Michaud & Timmony, P.C., by Michael VanOverbeke, Francis E. Judd & Jacqueline C. Sobczyk, for Respondent

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

This case arises from an unfair labor practice charge filed on April 17, 2020, by Lennie Jackson against the Detroit Retirement System. 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 Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (Commission).

Procedural History:

I. Case No. 20-C-0512-CE; Docket No. 20-005146-MERC

On March 3, 2020, Lennie Jackson filed an unfair labor practice charge in Case No. 20-C-0512-CE; Docket No. 20-005146-MERC naming the City of Detroit (Pension Bureau) as Respondent. The charge, as amended, alleged that the Respondent breached its duty to bargain in good faith under Section 15 of PERA and violated the Michigan Constitution by denying him the pension benefits to which he claims he was lawfully entitled. According to the charge, the Respondent applied the wrong City ordinance in determining his eligibility for retirement benefits.

In an order issued on March 31, 2020, I directed Charging Party to show cause why his charge should not be dismissed for failure to state a claim under PERA. Charging Party filed a

response to the Order to Show Cause on April 2, 2020. In his response, Jackson argued that the allegations set forth in the charge are within the scope of the Commission's jurisdiction because Respondent's actions constituted a repudiation of its collective bargaining obligation which had a significant impact on the bargaining unit. On April 7, 2020, I issued a Decision and Recommended Order dismissing the case on the ground that the charge failed to state a valid claim under PERA. The order was issued without a hearing, as neither party made a request for oral argument. See *AFSCME Council 25, Local 207*, 23 MPER 99 (2010).

II. Case No. 20-D-0750-CE; Docket No. 20-007613-MERC

Shortly after the issuance of the Decision and Recommended Order in Case No. 20-C-0512-CE; Docket No. 20-005146-MERC, Jackson filed the instant charge. Although this new charge names the Detroit Retirement System, rather than the City of Detroit (Pension Bureau), as Respondent, the allegations set forth by Jackson in both cases are fundamentally the same. In this new matter, the charge alleges that Respondent unlawfully interfered with Charging Party's pension rights as guaranteed by state law by "assigning Mr. Jackson to a city charter that he was not eligible or qualified for and would subsequently impair and interfere with his guaranteed pension rights." After the charge was filed, Jackson proceeded to file numerous documents with the Commission, including various motions and multiple amendments to the charge.¹

On April 28, 2020, I issued an order requiring Charging Party to show cause why the instant charge should not be dismissed for failure to state a claim under PERA. Charging Party filed a response to the Order to Show Cause on April 30, 2020. Oral argument was held regarding the Order to Show Cause on May 26, 2020, during which Jackson was given a full and fair opportunity to explain the basis for his claim against Respondent. At the conclusion of the hearing, I indicated that I would be issuing a written decision recommending dismissal of the charge for failure to state a claim under the Act.

Discussion and Conclusions of Law:

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 under PERA by MOAHR, 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." Among the various grounds for summary dismissal of a charge is a failure by the charging party to state a claim upon which relief can be granted. See Rule 165(2)(d). Accepting all of the allegations set forth by Jackson as true, dismissal of the instant charge is warranted.

Section 9 of PERA 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 the Act include filing or pursuing a grievance pursuant to the terms of a union contract, participating in union activities,

¹ These filings include three proposed amendments, along with separate addendums, to the charge; a letter to the ALJ addressing the purpose of the charge; a motion for summary disposition; a subpoena request; a statement of jurisdiction; a motion to quash the allegations set forth by Respondent; an objection to Respondent's reliance on a particular City of Detroit ordinance; a motion for disqualification of the ALJ; and a motion to reopen the record.

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, nor does the Act provide a remedy for a breach of contract claim asserted by an individual employee. Furthermore, the Commission has no jurisdiction to interpret or enforce the Michigan constitution or the provisions of any city ordinance or charter. 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, Charging Party asserts that the Detroit Retirement System interfered with his right to pension benefits and that it is liable under PERA as an agent of his former employer, the City of Detroit. Even assuming arguendo that there is an agency relationship between Respondent and the City, none of the allegations set forth by Charging Party in this matter provide a factual basis which would support a finding that either entity subjected Jackson to discrimination or retaliation for engaging in, or refusing to engage in, protected activities in violation of the Act during the six-month period preceding the filing of the charge. Accordingly, the instant charge, like the one which preceded it in Case No. 20-C-0512-CE; Docket No. 20-005146-MERC, fails to state a valid claim for which relief can be granted under PERA.

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 Detroit Retirement System violated the Act. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Lennie Jackson against the Detroit Retirement System in Case No. 20-D-0750-CE; Docket No. 20-007613-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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

Dated: October 14, 2020