

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

In the Matter of:

SEIU HEALTHCARE MICHIGAN,  
Respondent-Labor Organization,

Case No. CU15 J-036  
Docket No. 15-057027-MERC

-and-

CONNIE FLEISCHER,  
An Individual Charging Party.

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**APPEARANCES:**

Connie Fleischer appearing on her own behalf

**DECISION AND RECOMMENDED ORDER OF  
ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE**

On October 9, 2015, Connie Fleischer filed this present unfair labor practice charge against her former bargaining representative, SEIU Healthcare Michigan (“Union”). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this cases was assigned to Administrative Law Judge, Travis Calderwood, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission).

At the same time that this charge was filed against the Union, Charging Party also filed an identical charge, since withdrawn, against her former employer, the Beaconsire Nursing Center, Case No. C15 J-136; Docket No. 15-057026-MERC.

The charges as filed by Fleischer against both Beaconsire and the Union allege that Fleischer’s termination was “unjust” and that she was never given an employee handbook and both included:

- (1) A Grievance Mediation Request completed on a Commission provided form under its Mediation Division.<sup>1</sup>

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<sup>1</sup> By statute, the Commission’s duties are conducted through two separate divisions of the Bureau of Employment Relations (BER), the Labor Relations Division and the Mediation Division. The BER is an administrative agency within the Department of Licensing and Regulatory Affairs (LARA). The Labor Relations Division assists the Commission in resolving unfair labor practice charges and in determining appropriate bargaining units while the

- (2) A completed Health Facility Complaint Form provided by the Department of Licensing and Regulatory Affairs Department (LARA).<sup>2</sup>
- (3) A Beaconshire Nursing Center Disciplinary Notice dated September 25, 2015, indicating that Fleischer was terminated for violating work rules.

With respect to the Grievance Mediation Request and the Health Facility Complaint Form, there is no indication that either were actually submitted to the Commission's Mediation Division or BCHS respectively.

Upon review of the charges as filed it was not clear that the Commission possessed jurisdiction over the parties such that it could properly consider Fleischer's allegations. Additionally, ignoring the preceding jurisdictional concerns, it was the opinion of the undersigned that the charges as filed failed to state a claim upon which relief could be granted under PERA. As such, I convened a pre-hearing telephone conference on November 23, 2015, to discuss these issues with the parties. At the conclusion of that call it was my understanding that Charging Party would provide my office with a written withdrawal of both charges. On November 24, 2015, I received notice from Charging Party that she was withdrawing her charge against Beaconshire Nursing Center.<sup>3</sup> I then directed my secretary to contact Charging Party and confirm that she wished to proceed with her charge against SEIU Healthcare Michigan. Charging Party confirmed such on December 8, 2015.

On December 22, 2015, I directed Charging Party to show cause in writing why the charge against SEIU Healthcare Michigan should not be dismissed because the Commission lacks jurisdiction over the parties and/or because the charge as filed fails to state an actionable claim upon which relief could be granted under PERA.

Charging Party filed her response on January 5, 2016, in which she did not address the issue of the Commission's jurisdiction over the parties and instead focused on listing several alleged deficiencies and compliance issues she claimed she witnessed or had been a part of during her employment at the Beaconshire Nursing Center.

Ignoring Charging Party's failure to address the question of the Commission's jurisdiction over the parties, it is the opinion of the undersigned that summary dismissal of the charge against SEIU Healthcare Michigan is appropriate because, even if one were to assume that the Commission has jurisdiction, the fact remains that Charging Party has not plead or alleged with any specificity an actionable claim under PERA for which relief could be granted.

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Mediation Division assists in the settlement of contract negotiations and grievances in both the public and private sectors.

<sup>2</sup> The Bureau of Community and Health Systems (BCHS), also an administrative agency within LARA, performs state licensing and federal certification regulatory duties as required by state and federal laws. The Health Facility Complaint Form completed by Charging Party and attached to her charges is provided by the BCHS to allow individuals to file complaints against various state licensed and federally certified health facilities, agencies, and programs.

<sup>3</sup> Pursuant to that notice an Order of Withdrawal in Case No. C15 J-136; Docket No. 15-057026-MERC was issued on December 14, 2015.

In addressing charges levied against a union, it is well established law that a union's obligation to its members is comprised of three responsibilities: (1) to serve the interest of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty; and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v City of Detroit*, 419 Michigan 651 (1984). Furthermore, a union's actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991).

As filed, the allegations made against the SEIU Healthcare Michigan fail to establish any actionable claim under PERA, i.e., there is no allegation that the Union failed to fulfil its duty to fairly represent Charging Party. Charging Party, in her response to my December 22, 2015, directive did not correct that deficiency. Instead, as stated above, Charging Party's filings consist of listing several alleged deficiencies and compliance issues she claimed she witnessed or had been a part of during her employment at the Beaconshire Nursing Center.

Accordingly, for the reasons set forth herein, I recommend that the Commission issue the following order:

**RECOMMENDED ORDER**

It is hereby ordered that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: February 17, 2016

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

In the Matter of:

SEIU HEALTHCARE MICHIGAN,  
Labor Organization-Respondent,

-and-

CONNIE FLEISCHER,  
An Individual Charging Party.

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MERC Case No. CU15 J-036  
Hearing Docket No. 15-057027

APPEARANCES:

Connie Fleischer, appearing on her own behalf

**DECISION AND ORDER**

On February 17, 2016, Administrative Law Judge (ALJ) Travis Calderwood issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charge. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 176, R423.176, of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on March 8, 2016.

No exceptions were filed on or before the due date. Rather, on April 18, 2016, Charging Party submitted two completed NLRB unfair labor practice charge forms to the Commission's Detroit office. The Commission's staff then contacted Charging Party to determine why she submitted the forms and, on April 27, 2016, wrote Charging Party to inform her:

...if you wish to file exceptions, you need to do so as soon as possible and must also file a Motion for Retroactive Extension showing good cause as to why your exceptions were not filed within 20 days.

Hearing nothing further from Charging Party, the Commission's staff again wrote her on June 13, 2016 stating that "we are planning to close your case unless we hear from you by June 21, 2016."

On June 20, 2016, Charging Party submitted her exceptions to the Administrative Law Judge's Decision and Recommended Order, without a Motion for Retroactive Extension or statement of service.

The filing of exceptions with the Commission is governed by Rule 176, R423.176, of the General Rules of the Michigan Employment Relations Commission. In accordance with Rule 176, exceptions must be filed no later than twenty days of service of the ALJ's Decision and Recommended Order, and "[c]opies of the exceptions . . . shall be served at the same time on each party to the proceedings, and a statement of service shall be filed under R 423.182 . . . . An exception that fails to comply with this rule may be disregarded."

In this case, Charging Party failed to file exceptions within twenty days of service of the ALJ's Decision and Recommended Order. Additionally, Charging Party failed to file a Motion for Retroactive Extension showing good cause as to why her exceptions were not filed within 20 days and failed to submit a statement of service under Rule 423.182 attesting that her exceptions were timely served upon Respondent. Under such circumstances, Charging Party's exceptions will not be considered by the Commission.

Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charge.

**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

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: August 10, 2016