

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

In the Matter of:

ANN ARBOR PUBLIC SCHOOLS,
Petitioner,

-and-

TEAMSTERS STATE, COUNTY & MUNICIPAL WORKERS LOCAL 214,
Respondent-Labor Organization,

-and-

LADEEDRA CONNERS, ET AL.
Individual Respondents.

Case No. S02 B-001
(001) – (040)

APPEARANCES:

Esordi Hornby, P.L.L.C., by Scott G. Hornby, Esq., for Petitioner

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for Respondent- Labor Organization

**DECISION AND ORDER ON
MOTION FOR PARTIAL RECONSIDERATION OF COMMISSION ORDER
AND FOR AMENDMENT OF PETITION**

On April 19, 2002, we issued our Decision and Order in the above case finding that seven of the forty named Respondents engaged in a strike on December 20, 2001, in violation of Section 2 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.202. Our decision also found that the Administrative Law Judge (ALJ) who conducted the hearing dismissed the petition sua sponte as to one of the Individual Respondents, Wendy Smith. We noted that we did not agree with the ALJ's rationale for dismissing the petition as to Ms. Smith, but because Petitioner did not object to the dismissal at the hearing or in its post hearing brief, we found the issue to have been waived.

On May 8, 2002, Petitioner filed a motion for partial reconsideration of that portion of the decision and for amendment of its petition. The Respondents have filed no response.

This proceeding is governed by Section 2a of PERA, 1994 PA 112 (Act 112), and Administrative Rules 191-194, 2002 MR 1, R 423.191-.194. Neither provide for reconsideration of a Commission decision issued in a proceeding of this nature. Although the Rules do not specifically state that R 423.167, the rule governing motions for reconsideration in other Commission matters, is

inapplicable to Act 112 proceedings, it is evident from both Section 2a of PERA and Rule 194 that there is no provision for reconsideration of a Commission decision in an Act 112 proceeding.

Both Section 2a of PERA and Rule 194 provide that the Commission's decision and order shall be issued within sixty days of the filing of the Notice of Public School Strike. In this case, the Commission's decision and order was issued a few days before the expiration of the sixty-day time limit. Petitioner's motion was filed well after the expiration of the sixty-day limit. Thus, in this case, a reconsidered decision and order would necessarily be issued beyond the statutory time limit. Accordingly, we do not believe the Legislature intended that we would reconsider a decision issued in an Act 112 proceeding.

Similarly, neither the applicable rules nor the statutory provisions permit the petition to be amended after the Commission has issued its decision. Given the time constraints imposed by both the statute and the Administrative Rules, amendments or objections that may necessitate the taking of additional evidence must be raised at the time of hearing.

Therefore, but for the fact that the decision and order in this case is the first we have issued under Section 2a of PERA and Rules 191-194, we would be inclined to merely dismiss the Petitioner's motion administratively. However, we choose to respond to Petitioner's motion to clarify these issues for the parties.

In its motion, Petitioner argues that it prosecuted its case as though the petition against Ms. Smith had not been dismissed by the ALJ. Petitioner contends that "the transcript/record does not disclose or indicate that the petition was actually dismissed" and, in support, points to pages 287- 291 of volume two of the transcript.

A careful review of the transcript pages cited by Petitioner reveals that on page 287 the ALJ questioned the need to take any evidence regarding Ms. Smith since she is no longer employed by Petitioner and, according to the ALJ's interpretation of Act 112, only those persons currently employed by Petitioner could be fined. Petitioner's Counsel did not indicate that he disagreed with the ALJ's interpretation of Act 112 and did not object to any rulings by the ALJ based on that interpretation. In fact, Counsel stated, on page 287, "I will leave it up to your honor to make a decision with regard to Ms. Smith."

On pages 287 and 288, the ALJ asked Petitioner's Counsel if he wanted to withdraw Ms. Smith's name from the petition since no fine could be assessed against her. Counsel requested a moment to consider the matter. After considering the issue, Counsel asserted, on page 289, that Petitioner had discharged Ms. Smith because Petitioner believed she had been one of the employees responsible for orchestrating the strike. The ALJ then pointed out that the basis for Ms. Smith's discharge was not the issue before him and asked Petitioner's Counsel if he was calling the witness to assess a fine under PERA. Counsel responded, "No. I would just like to state and clarify on the record that was the reason she was discharged." It therefore appears that at that point, Petitioner's Counsel had conceded that no fine could be assessed against Ms. Smith.

The ALJ then asked Petitioner's Counsel to confirm that he would be withdrawing the charge against Ms. Smith because she was no longer employed by Petitioner. Instead of objecting or refusing to withdraw the charge, Counsel responded that he "could do that" after he put on testimony establishing the discharge. Again, Petitioner's Counsel did not question the ALJ's interpretation of

Act 112 and expressed no opposition to the ALJ's refusal to consider evidence that Ms. Smith acted in violation of Section 2 of PERA.

Next, Petitioner's witness, Ed Light, testified that Ms. Smith had been discharged on February 8, 2002, due to Petitioner's belief that she had been involved in the strike. Petitioner's Counsel then stated that he had no further evidence to offer with respect to Ms. Smith. Monica Wafford, who was representing some of the Individual Respondents, then proceeded to cross-examine Mr. Light. The ALJ interrupted her cross-examination, on page 291, stating that he was not going to entertain any evidence on the issue of whether Ms. Smith was involved in orchestrating the strike.

The transcript pages cited by Petitioner reveal that the ALJ made it clear to the parties that he saw no need to take evidence regarding Ms. Smith's alleged involvement in the strike because, under his reading of Section 2a of PERA, no fine could be assessed against her. We find it implausible that Petitioner now denies knowing that the ALJ had dismissed the petition with respect to Ms. Smith.

Although the ALJ limited the evidence regarding Ms. Smith's alleged involvement in the strike, and did not provide Ms. Smith with an opportunity to present her own case, Petitioner now requests that the Commission find that Ms. Smith violated Section 2 of PERA and that she is subject to a fine of a day's pay. Such a request obviously presents due process problems.

Petitioner had numerous opportunities to express disagreement with the ALJ's interpretation of Section 2a, yet failed to raise any objection. The failure to raise a timely objection constitutes a waiver of that objection. See *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 540. If the rules provided for reconsideration of a Commission decision in an Act 112 proceeding, we would deny reconsideration because Petitioner's newly raised objection to the dismissal of charges against Ms. Smith would be untimely.

Inasmuch as reconsideration of our decision is inappropriate in an Act 112 case, we do not reconsider our decision, but have explained these points merely for the edification of the parties. Accordingly, Petitioner's motion for reconsideration is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____