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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT,
Public Employer-Respondent,

MERC Case No. C18 K-104

-and-

ALFRED FIELDS, JR,
An Individual Charging Party.
_____/

APPEARANCES:

Andre L. Poplar, Executive Director of Labor Relations, for Respondent

Malita Barrett, for Charging Party

DECISION AND ORDER

On October 4, 2019, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order[1] in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service, and no exceptions have been filed by either of the parties.

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

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Issued: NOV 27 2019

[1] MOAHR Hearing Docket No. 18-021074

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

In the Matter of:

DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT,
Public Employer-Respondent,

Case No. C18 K-104
Docket No. 18-021074-MERC

-and-

ALFRED FIELDS, JR,
An Individual-Charging Party.
_____/

APPEARANCES:

Andre L. Poplar, Executive Director of Labor Relations, Detroit Public Schools Community District, for Respondent

Malita Barrett, for Charging Party Alfred Fields, Jr.

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

On November 1, 2018, Alfred Fields, Jr. filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against his former employer, the Detroit Public Schools Community District 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 case was heard on May 21, 2019, before Administrative Law Judge (ALJ) Julia C. Stern of the Michigan Office of Administrative Hearings and Rules (formerly the Michigan Administrative Hearing System) for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by both parties on June 19, 2019, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and History:

Fields was employed as a teacher at Respondent's Denby High School during the 2017-2018 school year. During his employment, Fields was represented by a union, the Detroit Federation of Teachers (DFT or the Union). On May 23, 2018, Fields was suspended pending investigation based on charges which included unprofessional conduct, fraternizing with students, and abusive and inappropriate language directed toward students. Fields' employment was terminated on October 16, 2018.

Fields' charge, as originally filed, stated only that he was challenging the allegations of misconduct made against him. On November 9, 2018, pursuant to Rule 165 of the Commission's General Rules, R 423.165, 2002 AACS, 2014 AACS, I sent Fields an order to show cause why his charge should not be dismissed for failure to state a claim upon which relief can be granted under PERA. On December 23, 2018, Fields filed a response in which he described the difficult behavior of students at Denby, what Fields believed was the inadequate disciplinary system in place there, and the unsafe and unsanitary conditions at the school. He also asserted that other Denby teachers with misbehaving students sent them to Fields' classroom to "take care of" them, making his situation worse. Fields alleged that his discipline and discharge constituted racial discrimination against him as a black man. Fields also alleged that the Union building representative at Denby was told by Denby's principal to lie about her identification and representation and to report all Fields' "issues and concerns" to her. Finally, Fields alleged that Denby's principal "interfered [with] my right to participate in or support teachers' union upon arrival and thereafter."

On January 4, 2019, I issued an order, pursuant to Commission Rule 162, R 423.162, requiring Fields to provide a more complete statement of the facts supporting his allegation that his principal interfered with his rights to participate in or support a union. Fields filed a response to this order on January 25, 2019. In this response, Fields alleged that the Employer denied him access to Union representation during the disciplinary process by failing to provide him with the name of his Union building representative or tell him that a Union representative was available to assist him. Fields also alleged that after students complained about him, he inquired about Union representation and was told by the Union building representative, Loren Hayes, that Fields' principal, Tanisha Manningham, instructed Hayes that "whatever happens in any of my situations of needing representation to report all my issues to [Manningham] and not to the DFT – whenever I sought for DFT in the building for anything [sic] was to be reported to the school principal Manningham."

Findings of Fact:

Fields, who is a certified teacher, worked for Respondent off and on for about 15 years before his termination. During the 2016-2017 school year he was working for Respondent as a substitute teacher. In October or November 2017, he was hired by Respondent as a full-time teacher and assigned to teach ninth grade social studies at its Denby High School.

Prior to the beginning of the 2017-2018 school year, Loren Hayes, then teaching ninth grade math at Denby, was nominated to be the Union building representative for that school year. However, no election was conducted among building staff for that position. When the school year began, DFT Labor Relations Administrator Karin

Whittler informed Hayes and Manningham that Hayes could not serve as a building representative, and could not represent employees in meetings with Respondent, because she was not an elected representative. Whittler told Hayes that anytime a teacher came to her needing union representation she was to direct them to Whittler. However, Hayes would act as a Union "go-between," handing out grievance forms, collecting them, and sending them along to Whittler.

As noted above, Fields came to Denby after the 2017-2018 school year began. Manningham did not tell Fields, when he arrived, that there was or was not a Union building representative or say anything to him about who was assigned to represent teachers at Denby. Fields did not testify that he asked Manningham, or any other administrator, for the name of the Union building representative either when he first arrived at Denby or later.

While at Denby, Fields experienced ongoing problems with student behavior. Fields believed that the school administration's disciplinary policy was not effective or strict enough, and he complained to Manningham on different occasions during the school year about student behavior, disciplinary policy, and other issues. Sometime in early 2018, Fields asked other teachers in the building who the Union building representative was and was directed to Hayes. Fields testified that when he spoke to Hayes, she told him that she was not the Union representative. According to Fields, she also said that if he had any problems or issues they should be reported to Manningham. Hayes did not offer to supply Fields with a Union grievance form or, evidently, tell him to get in touch with Whittler. Hayes, however, testified that Fields never brought any complaints to her or asked for her help until after he was placed on administrative leave late in the school year. [1]

Sometime in March 2018, Manningham received an allegation of misconduct by Fields from a student. Manningham set up a meeting with Fields to discuss the allegation after school on the same day that she received the complaint. Four people were present at this meeting, Fields, Manningham, Denby's assistant principal, and another Denby administrator. According to Manningham, the purpose of the meeting was to let Fields know that the allegation had been made. It was not clear from the record whether Manningham or any other administrator questioned Fields about the allegation.

[1] As noted in the statement of charges, in his January 25, 2018, pleading Fields alleged that Hayes told him that Manningham had instructed Hayes to report any issues or concerns Fields brought to her to Manningham and not to bring them to the attention of the Union. Both Manningham and Hayes were called as witnesses by Charging Party but testified before Fields himself took the stand. Fields' counsel did not ask either Hayes or Manningham about this incident. However, in response to questions from Respondent's counsel, Hayes denied telling Fields that Manningham had instructed her to report his complaints to her or not to bring them to the Union. Both Hayes and Manningham also denied that any conversation similar to the one set out in Fields' pleading took place between them. Fields' account at the hearing of his conversation with Hayes about Manningham, however, was different from the allegation in his pleading. Hayes was not asked about that account.

Manningham did not arrange for a Union representative to be present at this meeting, tell Fields that he had a right to a Union representative or inform him that Whittler was his Union representative before or during this meeting. However, Manningham testified that she did inform Fields sufficiently in advance so that he could have arranged for a Union representative to attend the meeting. Fields did not ask to have a Union representative present either before or during the meeting.

After the meeting in March, Fields went to the DFT's offices for advice. There he happened to talk to Whittler and was referred by her to DFT President Terrance Martin. Respondent, however, did not follow up on the March complaint and Fields did not meet with Respondent administrators again until May 23, 2018. In May 2018, Manningham received additional complaints from students about Fields' alleged misconduct. This time Manningham notified Respondent's central administration about the allegations but did not meet with Fields herself. On May 23, 2018, Respondent's Office of Employee Relations sent Manningham a notice placing Fields on paid administrative leave pending investigation of the complaints against him. Manningham, accompanied by three administrators, met with Fields to hand him his copy of the notice but they did not discuss the recent allegations. A Union representative was not present at this meeting and Fields did not ask for one.

After receiving this notice, Fields again asked another teacher if she knew who the union representative was for the building and was again told to speak to Hayes. Fields and Hayes agreed that Fields called Hayes and said he needed union representation. Hayes told Fields that he needed to contact Whittler and texted him Whittler's contact information.

Fields was still on administrative leave when the 2018-2019 school year began. Sometime in September 2018, Fields had a meeting or hearing with Respondent administrators at which he was represented by Terrance Martin. On October 16, 2018, Respondent sent Fields a termination notice.

Discussion and Conclusions of Law:

Section 9 of PERA, MCL 423.209, 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 under a union contract, seeking union representation, holding union office, joining or refusing to join a union, and joining with other employees to protest or complain about working conditions. Section 10(1)(a) of PERA prohibits a public employer from interfering with, restraining, or coercing its employees in the exercise of their Section 9 rights. This includes, but is not limited to, retaliating against employees because they have engaged in

concerted activities not involving a union. Section 10(1)(c) of PERA, MCL 423.21(1)(c) makes it an unfair labor practice for a public employer to discriminate against its employees with respect to their terms and conditions of employment in order to encourage or discourage union membership. For example, an employer who disciplines or discharges an employee because the employee has sought union representation or filed a grievance under a union contract violates Section 10(1)(c) of PERA.

Not all types of unfair treatment of its employees by a public employer violate PERA, however, and PERA does not provide employees with a mechanism for appealing disciplinary actions that violate other statutes or are merely unjust. Fields has not alleged here that his suspension or discharge constituted retaliation against him for engaging in any kind of activity protected by PERA. Rather, Fields alleges that Respondent interfered with his right to engage in union activity, in violation of Section 10(1)(a) of PERA, by failing to provide him with information regarding his union representative and/or arrange for him to have union representation at the meeting held in March 2018 after a student made an allegation against him.

As Manningham and Hayes testified, there was no Union building representative at Denby during the 2017-2018 school year. Although Hayes handed out grievance forms, the responsibility for providing Union representation to employees who needed it was assumed by DFT representative Karin Whittler. However, no one, including Hayes or any of his other fellow teachers, evidently told Fields when he first came to Denby that Whittler was his Union representative. Fields does not allege that Manningham, or any other Denby administrator, gave him wrong information about his Union representation. Rather, Field alleges that Manningham had an affirmative duty to tell him, without being asked, who from the Union was assigned to represent him. Fields cites no case law for that proposition. I note that while Fields apparently received contradictory information from his fellow teachers about Hayes' role, Fields admittedly knew that as a teacher at Denby he was represented by the DFT. Whatever Fields knew or did not know, I find that Manningham did not interfere with Fields' Section 9 rights by failing to inform him that DFT had assigned Whittler as his Union representative.

I also find that Manningham did not violate Section 10(1)(a) of PERA by failing to provide Fields with a Union representative at the meeting that took place shortly after the first student complained about him. As became clear at the hearing, this meeting took place sometime in March 2018, but Fields' charge here was not filed until November 1, 2018. Under Section 16(a) of PERA, the Commission is prohibited from finding an unfair labor practice occurring more than six months prior to the filing of the charge with the Commission and the service of a copy thereof upon the party against whom the charge is made. The statute of limitations contained in Section 16(a) is jurisdictional, cannot be waived, and is not tolled by the pursuit of other remedies. *Walkerville Rural Communities Sch*, 1994 MERC Lab Op 582; *Detroit Fed of Teachers Local 231, AFT, AFL-CIO*, 1989 MERC Lab Op 882; *Detroit Public Schools*, 1982 MERC Lab Op 1058. The statute of limitations period begins to run when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe that the acts were improper or done in an improper manner. It is not necessary that the charging party

know that these acts violated his or her legal rights. *Huntington Woods v Wines,* 122 Mich App 650 (1982). I find that while Fields' charge was timely with respect to his discharge on October 16, 2018, the allegation that Respondent violated PERA by failing to provide him with Union representation at the March 2018 meeting was untimely and must be dismissed on that basis alone.

In *NLRB v Weingarten, Inc*, 420 US 251 (1975), the Supreme Court agreed with the National Labor Relations Board (NLRB) that under Section 8(a)(1) of the National Labor Relations Act (NLRB), 29 USC 158, an employee has a right, upon request, to the presence of a union representative at an investigatory interview when the employee reasonably believes that the interview may lead to discipline. The Commission has adopted the Board's reasoning in cases arising under PERA. See e.g. *Univ of Michigan*, 1977 MERC Lab Op 496. However, it is well established that this obligation arises only when the employee actually requests representation by the Union. *Grand Haven Bd of Water and Light*, 18 MPER 80 (2005); *Charter Twp of West Bloomfield,* 30 MPER 83 (2017) (no exceptions); *City of Marine City (Police Dep't)*, 2002 MERC Lab Op 219 (no exceptions). Since Fields did not request that a Union representative be present at the March 2018 meeting, Respondent had no obligation under PERA to provide one even if the meeting was investigatory in nature. I conclude that Fields' allegation that Respondent violated PERA by failing to provide Fields with a Union representative at their March 2018 meeting should be dismissed on both timeliness and substantive grounds.

Finally, while Fields alleged in his pleading that he was told by Hayes that Manningham instructed Hayes to report to her any issues or concerns raised by Fields and not to the Union, Fields' own testimony did not support this allegation. According to Fields' testimony, after informing him that she was not, in fact, the Union building representative, Hayes merely said that if he had any problems or issues, he should report them to Manningham. No evidence was presented at the hearing that Manningham tried to gain access to or otherwise interfered with communications between Fields and the Union. I conclude, therefore, that this allegation should also be dismissed.

Based upon the facts and conclusions of law set out above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: October 4, 2019