# STATE OF MICHIGAN

# COURT OF APPEALS

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AFSCME COUNCIL 25 AND LOCAL 2733,

Respondent-Appellee,

v

MICHAEL SCHILS,

Charging Party-Appellant.

UNPUBLISHED
February 28, 2008

No. 273103
MERC
LC No. 04-000042

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WASHTENAW COUNTY,

Respondent-Appellee,

v

MICHAEL SCHILS,

Charging Party-Appellant.

No. 273128
MERC
LC No. 04-000213

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Before: Wilder, P.J., and Saad, C.J., and Smolenski, J.

PER CURIAM.

Charging party appeals as of right the order of the Michigan Employment Relations Commission (MERC) dismissing his charges of unfair labor practices in violation of the Public Employment Relations Act, MCL 423.201 *et seq.* (PERA), as untimely, and for failure to state a claim upon which relief can be granted. We affirm.

Charging party asserts two arguments on appeal. First, he contends that MERC dismissed his charges as untimely in error, because the relation back doctrine of FRCP 15(c) permitted him to raise them. Charging party claims that at a hearing on previous cases he filed, Case Nos. C03 C-061 and CU03 C-017, the arbitrator accepted the March 7, 2003, filing date (as opposed to the March 18, 2003 date resulting from errors in charging party's first filing of the charges) as timely. According to charging party, however, this ruling was ignored in later proceedings, by both the arbitrator and MERC, resulting in what charging party considers a manifest injustice. According to charging party, the failure of MERC and respondents to address

both this evidence, and his so-called (and unexplained) "bound by contract" argument, is indicative of their bad faith.

Charging party argues that because the charges in Case No. CU03 C-017 were allegedly timely filed, the relation back doctrine of Federal Rule of Civil Procedure (FRCP) 15(c) allows him to present the same allegations he raised in that case in the cases now on appeal, Case Nos. C04 H-213 and C04 J-051. According to charging party, despite the fact that the cases on appeal were not filed within the six-month statute of limitations period of the alleged PERA violations, Case Nos. C04 H-213 and C04 J-051 are considered timely, based on FRCP 15(c), since the current charges are "related" to the earlier case. Section 16 of PERA provides, in pertinent part, that

> [n]o complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. [MCL 423.216(a).]

Charging party's argument is without merit, for several reasons.

First, the arbitrator did not find that the charges in Case No. CU03 C-017 were timely filed. In his opinion, the administrative law judge stated: "I agree with Respondents' assertions that the charges were not filed within six months of the alleged violation as required by Section 16(a)." The opinion further states that although the charges "refer[] to a date, September 30, 2002, that is within six months of March 8, 2003, when Charging party claims that AFSCME received the charge, it also contains earlier dates that demonstrate that he knew of the alleged violations prior to September 30, 2002. . . . Clearly, the charge was filed more than six months after Charging party first brought these matters to AFSCME's attention." Thus, while the arbitrator may have accepted charging party's earlier filing date, he did not find that the charges filed on this date were timely.Second, in a proceeding in a Michigan court concerning state-law claims, relation back of amendments is governed by the Michigan Court Rules, not by the Federal Rules of Civil Procedure. MCR 2.001; see *Erie R Co v Tompkins,* 304 US 64, 78; 58 S Ct 817; 82 L Ed 1188 (1938) (state and federal courts may utilize their own procedural rules). MCR 2.118(D) corresponds most closely to FRCP 15(c), and provides that "[a]n amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading." Charging party argues that because the charges in Case No. CU03 C-017 were timely, and his current charges relate to the earlier charges, his current charges should also be considered timely. As previously noted, the charges in Case No. CU03 C-017 were not found to be timely by the ALJ. In addition, charging party misinterprets the court rule. The rule allows amendments that add a claim or defense to a pleading to be considered timely if the amendments meet the conditions set forth in the rule. Charging party seeks to have a new case considered timely because it addresses the same issues that his earlier case addressed, a purpose outside the scope of the court rule. MCR 2.118(D).

Next, charging party argues that MERC erred by ruling that respondents were not required to give him certain information under PERA, which was contrary to public policy. MERC's written decision mentions PERA only in passing, stating that charging party failed to state a claim upon which relief can be granted under the statute. MERC further stated that charging party failed to point to any case law or provision of PERA that would require either respondent to provide him with the (unspecified) information he requested.

According to charging party, MERC has "provid[ed] a means for employers and unions to engage in conspiratorial acts against public employees, in violation of PERA." Charging party neither specifies which provision of PERA he relies upon, nor adequately describes what conspiratorial acts respondents allegedly committed. Therefore, this issue is not preserved. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Michael R. Smolenski