STATE OF MICHIGAN

COURT OF APPEALS

GRANDVUE MEDICAL CARE FACILITY, Respondent-Appellee,	UNPUBLISHED March 17, 2015
v	No. 319699 MERC
JANET RENKIEWICZ and TAMARA WOOD, Charging Parties-Appellants.	LC No. 10-000084

Before: JANSEN, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Charging parties, Janet Renkiewicz and Tamara Wood, appeal by right an order of the Michigan Employment Relations Commission (MERC) accepting the recommendations of the administrative law judge (ALJ) to dismiss the charges filed by charging parties. MERC found that charging parties' employment discipline was not improperly motivated, that it was not caused by charging parties' participation in concerted activity, and that a no-discussion rule implemented by respondent, Grandvue Medical Care Facility, did not violate petitioners' rights to act collectively to resolve workplace issues. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent operates a long-term care facility with multiple units; the instant case involved the Horizonvue unit that provided care for patients with dementia. Kevin Evans was, at all times pertinent, the director of respondent. Carol Timmer was the director of nursing; she reported to Evans. Renkiewicz, a nurse and certified dementia practitioner, was the manager responsible for the Horizonvue unit. Renkiewicz reported to Timmer. Wood was a social worker at the Horizonvue unit.

On December 25, 2009, a Horizonvue resident reported to two nurses' aides that she had been sexually assaulted by a male employee as well as a male visitor. Because of the resident's mental state, staff on the unit did not believe the allegation and, although it was charted, they did not report it to Evans. Renkiewicz was on vacation at the time of the allegation, and did not return to work until December 28, 2009. On December 30, 2009, Wood, Renkiewicz and the rest of the resident care committee met to discuss the resident and others. Someone reported at the meeting that the resident made remarks about "sexual innuendo," but no one mentioned a sexual assault allegation. Following the meeting, Wood reviewed the resident's chart and discovered the sexual assault allegation.

On January 1, 2010, the resident reported a similar claim of sexual assault against another male employee. This allegation was entered into the central nursing notes. On January 5, 2010, Sherry Spurrier, the assistant director of nursing, discovered the allegations and reported them to Evans. Renkiewicz learned about the incident from Spurrier. She met briefly with Spurrier and two nurses, both of whom stated that they did not report the allegations because they did not believe them, about the allegations. Thereafter, the group, along with Wood, proceeded to meet with Evans about the December 25, 2009 alleged assault.

At this first meeting, it was reported to Evans that no one with knowledge of the allegations reported the incident because they did not believe it was true. Wood told Evans that she did not report it because she did not suspect that the assault occurred; she recalled that Renkiewicz said the same thing. Evans suspected that the employees spoke about the allegation before the meeting because they gave consistent responses. According to Renkiewicz, Evans was angry at what he believed was a systematic failure to report a sexual assault allegation; however, he also believed the allegations were unfounded. According to Wood, Evans said there was a chain of command that required someone to report the allegation. Evans believed that the facility's written policies required an immediate report of the assault allegations, regardless of whether they seemed plausible. Renkiewicz defended the employees' actions because, in her mind, the assault was not suspected. Multiple meeting attendants recalled that Evans was visibly angry during the meeting and spoke about possible consequences for the failure to report the allegation. Those consequences included the loss of public funding. At the end of the meeting, Evans requested that Wood and Renkiewicz assist him in investigating the matter.

After the meeting ended, Renkiewicz began investigating the December 25, 2009 allegation and learned that the same resident had also made the January 1, 2010 allegation. Subsequently, Evans learned about the alleged sexual assault on January 1, 2010. After speaking with counsel and the police, Evans called Renkiewicz and Wood back into his office for another meeting. At this second meeting, Evans told Renkiewicz and Wood that they would no longer be taking part in conducting the investigation. He met with both of them and asked them to write statements regarding the allegations and why they were not reported immediately. Evans believed that Renkiewicz's written statement largely did not address what was known and how the resident was protected. Evans expected Renkiewicz to respond with an understanding of the importance of reporting abuse allegations on behalf of the residents, rather than supporting staff in not reporting. Evans stated that all employees who heard the allegation were responsible for its reporting. He testified that he then asked Wood and Renkiewicz not to discuss the incident with any of their fellow employees, including each other, pending the outcome of the investigation.

Evans stated that it was a standard practice to disallow discussing an investigation while it was in progress. He was not worried that Renkiewicz or Wood would interfere with the investigation. Rather, Evans wished to avoid groupthink or hearsay influencing employees' first-hand accounts of the incident. Timmer also believed that the purpose of not allowing employees to discuss ongoing investigations was to protect the investigation from a group response.

Two days after Evans's order not to discuss the matter (no-discussion order), Renkiewicz spoke with Susan Coyle, another nurse, and requested a copy of respondent's reporting policy. Coyle reported the contact to Evans, who concluded that Renkiewicz violated the no-discussion

order. Coyle also reported that she was unable to find the electronic version of respondent's reporting policy. Coyle told Renkiewicz that the policy "disappeared" one day and then returned the next day.

Among others who were disciplined in the wake of the events described above, Renkiewicz was fired on January 11, 2010, following a brief termination meeting. Evans, Timmer, and Jane Korthase, the human resources director, attended. Renkiewicz's communication with Coyle was not mentioned at the meeting.

Before the meeting, Timmer submitted a letter to Evans detailing her concerns with Renkiewicz's continued employment, such as her difficulty working in harmony with others. Timmer believed that Renkiewicz "had a systematic failure of leadership skills." Timmer testified that Renkiewicz's communication with Coyle was not a motivating factor in terminating her employment.

Korthase testified that at the termination meeting Evans never mentioned Renkiewicz's communication with Coyle as a reason for her termination. Korthase recalled that Evans told Renkiewicz that she was being discharged for two previous resident rights and dignity violations that led to a state investigation, as well as the systematic failure to report allegations.

According to Evans, there were several reasons to terminate Renkiewicz. Although she was not at work when the first allegation of sexual assault surfaced, she did not report either allegation when she first became aware of them. On a related note, Evans emphasized that none of the members of the staff whom Renkiewicz supervised reported the allegations. Evans found this to be indicative of Renkiewicz's failings as a leader. Further, Evans relied on two previous patient dignity incidents, each occurring on Renkiewicz's watch, in determining that her position should be terminated.

At a hearing on this matter, Evans testified that Renkiewicz was not discharged for talking to others about the investigation even though he knew Renkiewicz had asked Coyle for the reporting policy. He admitted that this contradicted a statement he made in a deposition in a related civil case. Evans recanted the contradictory statement in that same deposition.

Unlike Renkiewicz, Wood's employment was not terminated on January 11, 2010; rather, Wood was only suspended for three days with pay. However, she was subsequently fired on February 10, 2010. Prior to her termination, respondent discovered that Wood had purged her e-mail account, and that her e-mail account included nearly 2,000 e-mails, sent during working hours, on personal matters. According to Korthase, the sheer volume of the e-mails suggested that Wood spent a significant amount of time at work sending and reading personal e-mails. Korthase stated that any violation of the no-discussion order was not a factor in Wood's termination, and that she was not aware whether Wood violated the order.

After being terminated, Renkiewicz and Wood filed unfair labor practice charges against respondent under public employment relations act (PERA), MCL 423.201 et seq. They alleged that respondent, through Evans's no-discussion order, violated their right to concerted action. The ALJ who heard the matter recommended dismissing the charges. MERC affirmed, adopting the ALJ's findings and concluding that there was no merit to the unfair labor practice charges.

II. STANDARD OF REVIEW

MERC's findings of fact are conclusive if supported by competent, material, and substantial evidence on the record considered as a whole. MCL 423.216(e); *Bedford Pub Sch v Bedford Ed Ass'n MEA/NEA*, 305 Mich App 558, 564; 853 NW2d 452 (2014). This Court gives deference to the agency's findings, "especially when based on credibility determinations." *Dep't of Community Health v Anderson*, 299 Mich App 591, 598; 830 NW2d 814 (2013). The Court reviews MERC's legal conclusions de novo. *Ingham Co v Capitol City Lodge No 141 of the Fraternal Order of Police, Labor Program, Inc*, 275 Mich App 133, 141; 739 NW2d 95 (2007). Legal rulings of an administrative agency are set aside if they are in violation of the constitution or a statute, or affected by a substantial and material error of law. *Bedford Ed Ass'n*, 305 Mich App at 564.

III. CHALLENGES TO THE AGENCY'S FACTUAL FINDINGS

Charging parties first argue that no evidence supported seven factual findings made by the ALJ and adopted by MERC. The first involves the finding that the no-discussion order was appropriate because charging parties could "taint or skew the investigation or alter the likely testimony" of witnesses. Charging parties argue that this finding is contradicted by Evans' statement that he was not worried that charging parties would interfere with the investigation. However, Evans testified that the reason for implementing the no-discussion order was concern that "groupthink" or hearsay would influence employees' first-hand accounts of the incident during the investigation. Evans explained that he wished for witnesses to provide their individual impressions of events rather than an account that could have been influenced by the perceptions of others through conversation, so that the statements presented would be based on facts rather than a group's shared perception. Further, stating that charging parties' conversations with coworkers had the potential to influence testimony was a very broad and benign statement that was not the same as factually asserting that they *would* interfere with an investigation. This finding was "supported by competent, material, and substantial evidence on the record considered as a whole." *Bedford Pub Sch*, 305 Mich App at 564.

Next, charging parties dispute the finding that Renkiewicz was acting for her own interests, rather than for the interests of all involved, when she requested respondent's abuse reporting policy from Coyle after the no-discussion instruction. Charging parties infer that Renkiewicz asked for the policy on behalf of the group because she asked for it "right after" a January 5, 2010 meeting attended by charging parties and others where the language of the policy was in question. A separate activity that logically grows out of a concerted effort can be considered a continuation of the concerted activity. *Salisbury Hotel, Inc*, 283 NLRB 685, 687 (1987).[1] Individual action can be considered concerted where the concerns expressed by the individual are a logical outgrowth of the concerns expressed by the group. *C & D Charter Power Sys, Inc*, 318 NLRB 798 (1995). However, there was no evidence that the prior activity,

[1] In construing PERA, our courts frequently look to the interpretations of analogous provisions of the National Labor Relations Act by federal courts. *Grandville Muni Executive Ass'n City of Grandville*, 453 Mich 428, 436; 553 NW2d 917 (1996).

where charging parties were asked to convene in Evans' office, was the result of a group effort. The meeting began with discussion about why the individuals involved did not report the allegations of abuse, after which Evans began the investigation. The phone call between Renkiewicz and Coyle may have been a logical outgrowth of the meeting; however, that the events are logically connected does not demonstrate that either event involved an individual acting on behalf of a group. Neither Renkiewicz nor Evans, in speaking about his conversation with Coyle, stated that Renkiewicz spoke to Coyle on behalf of anyone or for any purpose related to protecting anyone. No witnesses testified that Renkiewicz was involved in obtaining a copy of the reporting policy to defend a group. Competent, material, and substantial evidence on the record as a whole is "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion[,]" and is "more than a scintilla" but "may be substantially less than a preponderance" of evidence. *St Clair Co Intermediate Sch Dist v St Clair Co Ed Ass'n*, 245 Mich App 498, 512-513; 630 NW2d 909 (2001) (citation and quotation marks omitted). Here, the finding that Renkiewicz was acting for her own interests when she requested the policy was "supported by competent, material, and substantial evidence on the record considered as a whole." *Bedford Pub Sch*, 305 Mich App at 564.

Next, charging parties argue that the factual finding that Wood was a managerial level employee was in error. However, MERC's findings went on to clarify that Wood was a "social worker with arguably special responsibilities related to the underlying events." Wood's professional position with important responsibilities equated to a position of responsibility on the unit with special responsibilities to her employer. And, at one point, Evans testified that "[Renkiewicz] was the Horizonvue manager *and Tammy [Wood] is one of those as well*." The challenged finding was "supported by competent, material, and substantial evidence on the record considered as a whole." *Bedford Pub Sch*, 305 Mich App at 564.

Next, charging parties argue that MERC erred in regard to the factual finding, made in the context of concluding that Renkiewicz was not dismissed because of the no-discussion rule or violations thereof, that former and current directors of nursing as well as the assistant director of nursing all recommended the termination of Renkiewicz. The evidence demonstrated that only the director of nursing, Timmer, recommended terminating Renkiewicz's employment, and that the violation of the no-discussion role played no decision in that recommendation. The previous director of nursing, Patty Wiltse, detailed her significant concerns about Renkiewicz's job performance to Evans but did not call for her termination. There was no testimony that the assistant director of nursing, Spurrier, recommended Renkiewicz's termination. Thus, this finding was in error in the sense that neither Spurrier nor Wiltse specifically called for Renkiewicz's termination. However, MERC discussed Wiltse's position in support of the finding that Renkiewicz was discharged for her *continuing* deficient performance as manager of the Alzheimer's unit. There was evidence that Wiltse had previously complained that Renkiewicz was not engaged in the policy of protecting residents, was combative with direction, and had resident rights issues on her shift that were not addressed. Furthermore, MERC gave credence to the testimony of Evans and Timmer when they explained that Renkiewicz's violation of the no-discussion rule played no role in their termination decision. Although charging parties doubt the credibility of those witnesses, we defer to the agency's credibility determinations. *Anderson*, 299 Mich App at 598. Therefore, although MERC was mistaken with regard to certain details, we find, on the whole record, that its conclusion as to the reason for Renkiewicz's

termination was supported by competent, material, and substantial evidence. See *Bedford Pub Sch*, 305 Mich App at 564.

Next, charging parties argue that MERC's finding that Evans went through a litany of reasons to support Renkiewicz's discharge at her termination meeting was erroneous. Korthase, Evans, and Timmer explained that, in the termination meeting, Evans told Renkiewicz that she was being discharged for two resident rights and dignity violations, leading to a state investigation, as well as the systematic failure to report three recent abuse allegations. Thus, there was a list, or litany, of reasons for Renkiewicz's dismissal. This finding was "supported by competent, material, and substantial evidence on the record considered as a whole." *Bedford Pub Sch*, 305 Mich App at 564.

Next, charging parties argue that the ALJ erred in finding that Renkiewicz was responsible for an in-service training on reporting patient abuse. In his finding of facts, the ALJ wrote that "Renkiewicz was "specifically responsible" for doing in-service training for her subordinate staff on their reporting obligations." MERC adopted the ALJ's factual findings but did not repeat the finding regarding an in-service. Wood and the chief social worker, Linda Mansfield, presented a staff in-service on reporting resident abuse. However, as the manager of the unit, Evans testified, Renkiewicz was "specifically responsible" for her area and its reporting of resident abuse issues. Accordingly, this finding was "supported by competent, material, and substantial evidence on the record considered as a whole." *Bedford Pub Sch*, 305 Mich App at 564.

Next, charging parties argue that the ALJ erred in finding that Renkiewicz failed to promptly report abuse allegations when she became aware of them. MERC did not state this finding but summarily accepted the ALJ's findings. In the challenged portion of the ALJ's opinion and order cited by charging parties, the ALJ did not, as charging parties contend, find that Renkiewicz failed to promptly report the abuse allegations when she became aware of them. Rather, the challenged portion of the ALJ's opinion and order simply states, when summarizing Evans' stated reasons for firing Renkiewicz, that Evans was of the belief that Renkiewicz did not timely report the allegations. The opinion and order then notes that Renkiewicz was on vacation when the first allegation surfaced and initial failure to report occurred. Thus, it is not apparent that the ALJ even made the allegedly erroneous finding of fact. We see no merit to charging parties' challenge on this matter.

Charging parties also argue that MERC failed to find "devious" conduct by respondent that would negatively affect the credibility of respondent's witnesses. However, the ALJ heard all the testimony and charging parties' arguments in the context of the hearing and made determinations regarding the credibility of witnesses. In reviewing the findings of fact, due deference must be given to the credibility findings of the ALJ. *Anderson*, 299 Mich App at 598.

IV. CONCERTED ACTIVITY

Charging parties next argue that they were improperly disciplined as a result of their participation in protected concerted activity. MCL 423.210(1)(a) provides that a public employer shall not "[i]nterfere with, restrain, or coerce public employees in the exercise of their rights guaranteed in section 9." Section 9, MCL 423.209(1)(a), provides, in part, that public

employees may "engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection[.]" An employer may not discharge an employee for exercising rights guaranteed by section 9. *Ingham County*, 275 Mich App at 143. Where discriminatory conduct is alleged, a charging party is required to demonstrate that protected conduct under PERA was a motivating or substantial factor in the employer's action. *Mich Ed Support Personnel Ass'n v Evart Pub Sch*, 125 Mich App 71, 74; 336 NW2d 235 (1983), citing *Nat'l Labor Relations Bd v Wright Line, A Division of Wright Line, Inc*, 662 F 2d 899 (CA 1, 1981). After charging parties' showing, the burden shifts to the employer to produce evidence that the same action would have taken place in the absence of the protected conduct. *Id.* Where the employer meets the burden of challenging charging party's prima facie case, the burden shifts back to charging party. *Id.*

Charging parties argue that they were disciplined for the protected behavior of engaging in concerted activity to aid each other and protect themselves. They assert that four activities were concerted efforts: meeting as a group to discuss the reporting of a resident's abuse allegation before meeting with Evans, meeting as a group with Evans, Evans instructing them to not discuss the investigation, and Renkiewicz's phone conversation with Coyle regarding the policy. Assuming for purposes of discussion that these four situations constituted concerted activities under the PERA, charging parties were unable to meet their burden of demonstrating that protected conduct under the PERA was a motivating or substantial factor in the employer's discipline. Charging parties argue that they demonstrated discriminatory retaliation with evidence of Evans' increasing anger at a meeting where four of his staff members stated they did not report the assault allegation because they did not suspect that it was true. However, it is conjecture to guess that Evans was angry in response to his employees meeting with him or meeting prior to meeting with him. In fact, Evans said he was angry at what he termed a systematic failure to report an abuse allegation in contravention of what he believed state and federal regulations required as reflected in respondent's policy.

The ALJ found that Evans fired Renkiewicz for a number of instances that demonstrated deficient performance as a manager that had not improved. Evans cited two prior incidents of failure to protect patient dignity as well as the failure to protect a resident by failing to report more than one allegation of patient abuse. Evans also had information from Wiltse and Timmer that was critical of Renkiewicz's performance as manager. Evans stated that Renkiewicz was fired for failing to meet expectations as a manager, citing the lack of progress as well as the failure of the system that Renkiewicz managed to protect the resident and the facility by reporting allegations of abuse. Wood was disciplined because she learned of the resident's allegations and did not report them. She was subsequently fired for sending, reading, and receiving voluminous amounts of personal e-mails on company time. When viewing the evidence as a whole, we find that MERC's finding that the employees were terminated for non-retaliatory reasons was supported by competent, material, and substantial evidence. See *Bedford Pub Sch*, 305 Mich App at 564.

In response to the above findings, charging parties again dispute the credibility of various witnesses' testimony and conclude that MERC should not have given any credence to the testimony that they believe to be incredible. However, we defer to the agency's credibility determinations. *Anderson*, 299 Mich App at 598. In addition, although charging parties have identified evidence that, arguably, could support their position that the discipline was retaliatory,

we will not set aside MERC's findings simply because alternative findings *could* potentially have been reached. See *Dep't of Community Health v Risch*, 274 Mich App 365, 373; 733 NW2d 403 (2007) ("A reviewing court may not set aside factual findings supported by the evidence merely because alternative findings could also have been supported by evidence on the record or because the court might have reached a different result.").

V. NO-DISCUSSION ORDER

Next, charging parties argue that Evans's order to not discuss the investigation was contrary to their rights to engage in concerted activity to aid and protect each other, according to Sections 9 and 10 of the PERA. They contend that MERC should have found that they established a violation of PERA by: (1) the implementation of the no-discussion rule; and (2) respondent's decision to discipline them for violating the no-discussion rule. As noted, we find no basis for overturning MERC's conclusion that charging parties were not disciplined for violating the no-discussion order. Therefore, we limit our analysis to determining whether the implementation of the no-discussion rule under this particular set of circumstances[2] interfered with charging parties' rights under PERA. In so doing, we evaluate the facts of the case "in light of the surrounding circumstances," *Desert Palace, Inc*, 336 NLRB 271, 272 (2001), and the question of whether an employee engaged in concerted activity is predominantly determined by the unique facts, *Whittaker Corp*, 289 NLRB 933, 933-934 (1988).

Employees have a "right to discuss discipline or disciplinary investigations involving fellow employees." *Desert Palace, Inc*, 336 NLRB at 272. For an activity to qualify as a protected concerted activity, it must have been engaged in "with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees." *Ingham Co*, 275 Mich App at 143 (citation and quotation omitted). Here, charging parties discussing the investigation with other employees in order to protect all of them who had or may have been subject to discipline for violating the reporting policy was likely a discussion for the benefit of a group. Discussion about the investigation for violating a reporting policy that was interpreted differently by the employers and employees between charging parties, others subject to discipline, and other employees that were required to execute the policy was for the protection and aid of all of respondent's employees. A general prohibition against discussing the investigation with other employees was contrary to sections 9 and 10 of PERA.

However, even though respondent's rule prohibiting discussion of the ongoing investigation may have affected charging parties' exercise of a protected concerted activity, respondent's rule may still be lawful and enforceable. *Desert Palace, Inc*, 336 NLRB at 272. In analyzing whether an employer can lawfully implement an employment rule that would interfere with or restrain employees in the exercise of what would otherwise be protected activity under PERA, this Court applies a three-part test. See *Ingham Co*, 275 Mich App at 141.

[2] Our review is solely limited to the application of the no-discussion rule in this particular case. We, like MERC, pass no judgment on respondent's no-discussion rule in general.

> Under the first prong of the test, we look at whether the employer's action adversely affected the employee's protected right to engage in lawful concerted activities under PERA. Under the second prong, we look at whether the employer has met its burden to demonstrate a legitimate and substantial business justification for instituting and applying the rule. Finally, under the third prong, we balance the diminution of the employee's rights because of application of the rule against the employer's interests that are protected by the rule. In addressing this final prong, we must remain cognizant that [it] is the primary responsibility of the [agency] and not of the courts to strike the proper balance between the asserted business justifications and the invasion of the employee rights in light of [PERA] and its policy. [*Id.* (internal citations and quotation marks omitted).]

Under the first prong, the no-discussion order did adversely affect charging parties' protected right to engage in lawful concerted activities under PERA. Although respondent argues that charging parties engaged in conversations about the investigation regardless of the rule, the no-discussion order continued to prohibit such conversations. However, under the second prong, respondent met its burden of demonstrating a legitimate and substantial business justification for the rule. The rule was implemented to protect the integrity of the investigation, the result of which could have potentially had a significant effect on respondent's funding. Evans only implemented the rule after he met with employees to discuss the first set of allegations and subsequently learned that those employees had not told him about a second allegation that occurred on January 1. At that point, he had reason to be concerned that the investigation should focus on Renkiewicz and Wood. According to Evans' testimony, which MERC credited, the scope of the no-discussion rule was tailored to the investigation. Further, the consequences of a failure to properly investigate and manage the reporting policy were potentially severe. Evans was concerned that "groupthink" or hearsay would influence employees' first-hand accounts and believed that employees' identical responses to his questions at the initial meeting was due to discussing the case. Evans explained that he wished for witnesses to provide their individual impressions of events rather than an account that may be influenced by the perceptions of others through conversation so that the statements would be based on facts rather than a group's shared perception.

Finally, under the third prong, the diminution of the employees' rights was substantially less than respondent's interests protected by the rule. Charging parties may have been deterred from exercising a right fully, but they nevertheless discussed the policy and investigation among themselves. Prior to instituting the rule, charging parties made clear their position and had discussed the incident. Further, the rule applied only to two employees that had increased responsibility for patient care on their unit. Conversely, the interests of respondent were the basis of the facility's purpose—to protect its residents. The importance of a reliable investigation was paramount considering the risk to residents and the possible sanctions as a result of a failure to report. Most importantly, respondent needed to sort out with certainty how its reporting policy was applied and perceived by the staff in order to ensure that any impediments to reporting possible abuse of residents were removed. Thus, although the no-discussion order impaired charging parties' protected right to concerted activity, the order was not illegal in this instance.

VI. ADDITIONAL CLAIM BY A NON-PARTY

Finally, charging parties argue that the ALJ erred in denying their motion to amend the charges by adding the claim of Joe Helsley, one of the disciplined nurses. However, MCL 423.216(a), a provision of PERA, provides in relevant part:

> No 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.

Here, there was no dispute that the unfair labor practice alleged by Helsley in the proposed amended charge exceeded the six-month limitations period. Charging parties argue that the ALJ should have allowed the addition of Helsley's claims because they related back, according to MCR 2.118(D), to the facts and circumstances listed in the initial charges, which were filed before the expiration of the period of limitations. In addition, they posit that the ALJ heard testimony, without objection, relating to Helsley's claims. Contrary to charging parties' contention, respondent objected to testimony concerning Helsley's claims. Further, despite what charging parties claim, Helsley is a new party, and "the relation-back doctrine does not extend to the addition of new parties." *Miller v Chapman Contracting*, 477 Mich 102, 105-106; 730 NW2d 462 (2007) (citation and quotation marks omitted).[3] In *In the Matter of City of Pontiac & Pontiac Housing Commission*, 22 MPER 46 (2009), MCR 2.118(D) was similarly applied in the administrative context; MERC noted: "It is well-settled that an amendment which adds a new party creates a new cause of action and, in such case, there is no relation back to the original filing for statute of limitation purposes." Thus, we find no reason to set aside the legal ruling of MERC on this issue. See *Bedford Ed Ass'n*, 305 Mich App at 564.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Jane M. Beckering

[3] Although an exception to this general rule exists to permit a new plaintiff to be added where that party's claim, among others, "arises out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading," see *Emergency Loan Bd v Blackwell*, 299 Mich App 727, 741; 832 NW2d 401 (2013) (citation and quotation omitted), charging parties do not argue that exception in this case. Moreover, we do not find that exception applicable in the instant matter.