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

In the Matter of:

CITY OF DETROIT (DEP'T OF TRANSPORTATION),
Respondent-Public Employer in Case No. C00 K-198,

-and-

AMALGAMATED TRANSIT UNION LOCAL 26, AFL-CIO,
Respondent-Labor Organization in Case No. CU00 K-44,

-and-

TIMOTHY LEE LAMAR,
An Individual Charging Party.
_____/

APPEARANCES:

Shannon A. Holmes, Esq., Senior Assistant Corporation Counsel, for the Public Employer

John A. Eaton, Esq., for the Labor Organization

Ronald D. Roberts, Esq., for the Charging Party

## DECISION AND ORDER

On May 14, 2001, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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 any 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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (DEPT OF TRANSPORTATION),
Public Employer-Respondent in Case No. C00 K-198,

-and-

AMALGAMATED TRANSIT UNION LOCAL 26, AFL-CIO,
Labor Organization- Respondent in Case No. CU00 K-44,

-and-

TIMOTHY LEE LAMAR,
An Individual – Charging Party.
_____/

APPEARANCES:

Shannon A. Holmes, Senior Assistant Corporation Counsel, for the Public Employer Respondent

John A. Eaton, Esq., for the Labor Organization Respondent

Ronald D. Roberts, Esq., for the Charging Party

## DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTIONS TO DISMISS

Timothy Lee Lamar, an individual, filed the charge in Case No.C00 K-198 on November 13, 2000, against his former employer, the City of Detroit. Lamar filed the charge in Case No.CU00 K-44 against his bargaining agent, Amalgamated Transit Union Local 26 on this same date. The charges were assigned to Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission for hearing. Pursuant to Sections 10 and 16 of the Michigan Employment Relations Act (PERA), 1965 PA 379, as amended, a consolidated complaint and notice of hearing was issued on November 20, 2000. On January 12, 2001, the Respondent Union filed a motion to dismiss the charge against it, asserting, in part, that the charge was untimely filed under Section 16(a) of PERA. A motion to dismiss was also filed by the Respondent Employer, on January 24, 2001. The Employer also asserts that the charge against was untimely filed. It also maintains that Lamar failed to state a claim against it under PERA.

On January 25, 2001, I ordered Lamar to show cause in writing on or before February 15, 2001 why his charges should not be dismissed. Lamar requested an extension of time to obtain counsel. On April 17, 2001, Lamar filed a timely response to the Employer's motion.

All statements of fact made in the charges and in the pleadings have been taken as true where not explicitly denied by another party. I find that this case contains no issue of material fact. Based on the charges, the motions filed by Respondents and Charging Party's response to the to the motion, I make the following conclusions of law recommend that the Commission issue the order that follows.

The Unfair Labor Practice Charges:

Both charges read as follows:

> I was terminated from employment while on approved medical leave by my employer, City of Detroit, January 30, 98. I learned of the termination when I return(ed) to work. When I sought union representation I was told by my union representative on May 13, 2000 that the union would not be able to represent me because my union dues was not paid. I explained that I was on sick and accident and receiving benefits and (my) dues were being paid. He then told me that somebody from the City, Elaine Tower, human resources officer, didn't like me. No reinstatement.

Facts:

Lamar was employed by the City of Detroit, Department of Transportation, as an equipment operator. His position is included in a bargaining unit represented by ATU Local 26. In late 1997, Lamar went on an approved unpaid leave of absence. Between November 24, 1997 and January 23, 1998, Lamar collected the sickness and accident benefits provided by the union contract; union dues were deducted from his benefit checks until they stopped.

The Employer's policy provides that employees on unpaid leaves will be terminated after 30 days unless they provide documentation to substantiate their continued absence. On January 23, 1998, Elaine Tower, a human resources representative for the Employer sent Lamar a certified letter stating that if he did not provide medical documentation supporting his continued absence on or before February 6, 1998 he would be terminated. In March 1997, Lamar had changed his address on file with the Employer to a P.O. box; the certified letter sent in January 1998 was sent to a street address. Although Lamar admits that the address on this letter was his residence, there is no indication that Lamar signed the post office's return receipt for this letter. According to Lamar, he did not receive it. Lamar was terminated for failing to respond to this letter on February 8, 1998. On March 9, 1998, the Employer sent Lamar a letter signed by Tower by certified mail notifying him of his termination. This letter was mailed to a different address. The address on this second letter has the correct street number, what appears to be a scrambled form of his actual street, and a ZIP code different from his actual residence. Lamar also denies receiving this letter, and there is no signed return receipt indicating that he did.

Sometime thereafter in 1998, Lamar attempted to return to work and learned of his termination. In November 1998, Lamar contacted the Union. The Union filed a grievance on his behalf dated December 7, 1998, alleging that the letters above were sent to the wrong address. On or about February 10, 1999, the Union notified Lamar orally that it had decided not to process the grievance any further. On February 24, 1999, the Union sent the following letter to Lamar at his correct P.O. box address:

Dear Brother Lamar:

> This is to inform you that Local 26, A.T.U. have resolved the above grievance through the grievance procedure of their By-Laws.
>
> With kindest regards, I am
>
> Fraternally yours,
>
> Paul D. Bowen
> President/Business Agent

On May 13,2000, Lamar spoke to a Union representative who told him that the Union could not represent him because his dues were not paid and who also told him that Tower did not like him.

On November 13, 2000, Lamar filed the instant charges. Lamar did not provide any indication that he mailed copies of the charges to Respondents. The charges were served on the Respondents by this Commission along with the complaint and notice of hearing on November 20, 2000.

Discussion and Conclusions of Law:

The Employer asserts that Lamar has failed to state a cause of action against it under PERA. Lamar's claim against the Employer is that he was unjustly terminated while on approved medical leave without notice. Section 10(1)(a) of PERA prohibits a public employer from interfering with, restraining or coercing public employees in the exercise of their rights guaranteed by Section 9 of the Act, i.e. their rights to organize together or to form join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection. Section 10(1)(c) of PERA prohibits an employer from discriminating against employees in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization. PERA does not cover discharges which might be deemed "unfair," but which do not involve violations of the rights protected by the Act. Contrary to Lamar's assertion, PERA does not prohibit an employer from discharging an employee while that employee is on an approved medical leave, unless the termination is in fact motivated by the employee's exercise of rights protected by the Act. Lamar does not allege that his termination constituted retaliation against him for engaging in union or other activity under the statute. I conclude that Lamar has failed to state a cause of action against the Respondent Employer under PERA.

Section 16(a) of PERA states, in pertinent 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 . . .

The statute of limitations in Section 16(a) of PERA begins to run from the date that the employee knows or has reason to know of the alleged unfair labor practice, i.e. the date the employee first knows of the act which caused his injury and has good reason to believe that it was improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650 (1982).

Lamar was terminated in February 1998. He learned of his termination when he tried to return to work, sometime prior to November 1998. He did not file his unfair labor practice charge until November 13, 2000, and it was not served on the Employer until November 20, 2000. Lamar's charge against the Employer is clearly untimely under Section 16(a) of PERA.

I conclude that Lamar's charge against the Union is also untimely. Lamar learned of the act which caused him injury, i.e. the Union's decision to stop processing his grievance, in February 1999. This was more than 18 months before he filed the instant charge. Assuming arguendo that Lamar had no reason to suspect that the Union's decision was improper before May 13, 2000, when the union representative made the remark about Lamar's dues not being paid, the charge against the Union would still be untimely since it was not filed and served on the Union within six months of that date.

For the reasons set forth above, I conclude that Respondents' motions to dismiss the charges against them should be granted, and I recommend that the Commission issue the following order.

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## RECOMMENDED ORDER

The charges in this case are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____