

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

In the Matter of:

CITY OF PONTIAC (PUBLIC UTILITIES DEPARTMENT),
Respondent-Public Employer in Case No. C04 B-046,

-and-

AFSME, COUNCIL 25, LOCAL 2002,
Respondent-Labor Organization in Case No. CU04 B-014,

-and-

CHARLES LEE HUTSON,
An Individual Charging Party.

_____ /

DECISION AND ORDER

On May 25, 2004, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents 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 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

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

On February 18, 2004, Charles Lee Hutson filed unfair labor practice charges against the City of Pontiac and AFSCME, Council 25, Local 2002. Hutson alleges that he was employed by the City's Public Utilities Department from May 11, 1985 to June of 1998, during which time he was subject to "unfair and unjust" acts of discipline; mistreated due to his size and appearance; taken advantage of because of his poor reading skills; denied disability benefits; and discriminated against on the basis of race. Hutson contends that his appeals for help regarding these matters went unanswered by management and his union representatives.

On March 11, 2004, Charging Party was directed to show cause why his charges should not be dismissed as untimely under Section 16(a) of the Public Employment Relations Act (PERA), MCL 423.216(a), and for failure to state a claim upon which relief could be granted under the Act. In his March 25, 2004, response, Charging Party wrote, in pertinent part:

I was not told about time limits or my case would be closed. I don't think my case should be dismissed because I have been treated unfairly by my past employer, tricked out of my job because they were trying to get rid of me My Union always tried to represent me but I don't think my best interest was always the concern.

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The Commission has

consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. In the instant case, Hutson has not been employed by the City of Pontiac since June of 1998, yet he did not file the unfair labor practice charges until February 18, 2004, almost six years later. Clearly, the charges in this matter were not filed within the time limits set forth in Section 16(a) and must be dismissed on that basis.

Even if the charges were timely, Hutson has not stated a viable PERA claim as to either Respondent. There is no allegation that the City was motivated by union or other activity protected by Section 9 of PERA, nor does Hutson contend that that the Union's conduct was arbitrary, discriminatory or in bad faith. I, therefore, recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____