

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

In the Matter of:

CITY OF BENTON HARBOR,
Public Employer - Respondent in Case No. C06 G-165,

-and-

POLICE OFFICERS LABOR COUNCIL,
Labor Organization - Respondent in Case No. CU06 G-026,

-and-

DENNIE BROWN,
An Individual - Charging Party.

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APPEARANCES:

Mark P. Douma, Esq., for the Labor Organization

Dennie Brown *In Propria Persona*

DECISION AND ORDER

On August 31, 2006, 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 (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 76, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on September 25, 2006. Shortly before that date, Charging Party made a request for a one-month extension of time in which to file his exceptions. We granted the request and issued an order extending the time for filing exceptions to the Administrative Law Judge's decision to October 25, 2006.

No exceptions were filed on or before the specified date. Rather, we received Charging Party's exceptions on October 26, 2006. Although the package in which the exceptions were mailed was postmarked on October 24, 2006, it is well established that the date of filing of exceptions is the

date the document is received at the Commission's office, not the date posted. See e.g. *City of Detroit (Finance Dep't, Income Tax Div)*, 1999 MERC Lab Op 444,445; *Battle Creek Police Dep't*, 1998 MERC Lab Op 684, 686; *Frenchtown Charter Twp*, 1998 MERC Lab Op 106, 110. Moreover, our order granting the one-month extension explicitly stated that the exceptions must be *received* at a Commission office by the close of business on the specified date. Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

CITY OF BENTON HARBOR,
Respondent-Public Employer in Case No. C06 G-165,

-and-

POLICE OFFICERS LABOR COUNCIL,
Respondent-Labor Organization in Case No. CU06 G-026,

-and-

DENNIE BROWN,
An Individual Charging Party.

APPEARANCES:

Mark P. Douma, Esq., for the Labor Organization

Dennie Brown *in pro per*

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION**

On July 14, 2006, Dennie Brown filed unfair labor practice charges against the City of Benton Harbor and the Police Officers Labor Council (POLC).¹ The charge in Case No. C06 G-165, alleges that Brown's termination from employment with the City on July 9, 2004, constituted a violation of the U.S. Constitution and the collective bargaining agreement.

The charge in Case No. CU06 G-026 contends that the Union acted unlawfully when it refused to appeal an award issued by a grievance arbitrator on July 18, 2005 pertaining to Brown's termination, and when it withdrew a grievance which Brown filed on December 14, 2005. According to the charge, the Union told Brown of its decision to withdraw the grievance on December 22, 2005. Brown contends that the Union communicated its decision not to appeal the arbitration award on January 11, 2006.

¹ The charge erroneously identified the labor organization as the "Michigan Association of Police Organization."

The charges in this matter were consolidated and a hearing was scheduled for January 11, 2007. On August 14, 2006, Respondent POLC filed a motion for summary disposition, arguing that the charge against the Union is time barred under Section 16(a) of the Public Employment Relations Act (PERA), MCL 423.216(a). In an order issued on August 17, 2006, Charging Party was directed to show cause why both of the charges should not be dismissed as untimely and for failure to state a claim upon which relief can be granted under the Act.

Charging Party submitted a response to the order to show cause on August 28, 2006. Other than identifying the deadline for filing an appeal of the arbitration award, the response essentially repeated the allegations which Brown had previously set forth in the charges.

I find that Charging Party has not raised any issue cognizable under PERA. With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide an independent cause of action for an employer's breach of contract. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against the Charging Party for engaging in conduct protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524. In the instant case, neither the charge nor the response to the order to show cause contain any allegation that the City restrained, coerced or retaliated against Brown for engaging in protected concerted activities.

I also find that the charges filed by Brown are untimely under Section 16(a) of PERA, which requires that an unfair labor practice charge be filed within six months of the date of the challenged action. According to the charges, Brown was terminated on July 9, 2004, and the Union notified Charging Party that it would take no further action with respect to the grievance and the arbitration award on December 22, 2005 and January 11, 2006 respectively. Because these events all occurred more than six months prior to July 14, 2006, the date upon which the charges were filed, I find the allegations to be untimely and recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____