

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

In the Matter of:  
WAYNE STATE UNIVERSITY,  
Public Employer - Respondent,

Case No. C07 I-210

-and-

KIMBERLEY HICKS,  
An Individual - Charging Party.

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**APPEARANCES:**

A. L. Rainey, Jr., for Respondent

Kimberley Hicks, Charging Party, *In Propria Persona*

**DECISION AND ORDER**

On December 28, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent 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

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Christine A. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

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

In the Matter of:

WAYNE STATE UNIVERSITY  
Respondent-Public Employer,

Case No. C07 I-210

-and-

KIMBERLEY HICKS,  
Individual Charging Party.

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APPEARANCES:

Kimberley Hicks, Charging Party, appearing personally

A.L. Rainey, Jr., for Respondent

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

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. This matter is being decided pursuant to an order to show cause why the charge should not be dismissed as barred by the statute of limitations.

The Unfair Labor Practice Charge and Proceedings:

On September 18, 2007, a Charge was filed in this matter asserting that Wayne State University (the Employer) had violated the Act by discriminating against Kimberley Hicks (the Charging Party) regarding promotions and transfers and by terminating Charging Party's employment. There is no indication in the charge as to when the complained of events occurred. There was nothing indicating when or how the Employer was served with the Charge by Charging Party. However, a copy of the charge was served on Respondent by the Commission on September 25, 2007.

On October 3, 2007 the Employer filed a response to the charge in which it was asserted that the only transfers or promotions sought by Hicks which were denied her occurred prior to December 8, 2006. The Employer sought dismissal of the charge as it relates to the transfer or promotion disputes as being barred by the statute of limitations.

The Employer likewise sought dismissal of the charge as it relates to the termination of Hicks' employment, asserting that the actions complained of occurred outside the statute of limitations. The Employer asserted, and provided documentary support for its claim, that Hicks was placed on an unpaid indefinite suspension from employment, pending further investigation, effective February 21, 2007 and that she was terminated on March 20, 2007. The Employer asserted that to the extent Hicks believed she was discriminated against based on protected activity, she knew of her claim no later than February 21, 2007, at the beginning of her unpaid suspension. Additionally, the actual termination of Charging Party's employment occurred on March 20, 2007, more than six-months prior to the service of the charge upon the Employer. Finally, the Employer asserted that its decision making was premised on Charging Party's misuse of leave time to accept employment with a different employer and on Charging Party's failure to repay allegedly unearned income which she received through overpayment of wages.

On October 25, 2007 an order to show cause was issued directing Charging Party to address the statute of limitations issue. A timely response was filed by Charging Party in which she asserts that she personally served a copy of the Charge on Respondent on September 21, 2007.<sup>1</sup>

#### Discussion and Conclusions of Law:

Under PERA, there is a strict six month statute of limitations for the filing and service of charges, and a charge alleging an unfair labor practice occurring more than six months prior to the filing and service of the charge is untimely. The six month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Section 16(a) of PERA requires timely service of the complaint by the Charging Party upon the entity against whom the charge is brought. *Romulus Comm Schools*, 1996 MERC Lab Op 370, 373; *Ingham Medical Hosp*, 1970 MERC Lab Op 745, 747, 751. A claim accrues when the charging party knows, or should know, of the alleged unfair labor practice. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415.

While Charging Party's response addresses the merits of her claim for denied promotions and transfers, it does not challenge the Employer's assertion that all of the disputed transfer and promotion issues took place prior to December, 2006. I therefore find that those disputes are barred by the statute of limitations since they were first raised in a charge filed and served on September 21, 2007.

As acknowledged in Charging Party's response to the order to show cause, she was placed on an unpaid suspension on February 21, 2007, for what she asserts were unlawful

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<sup>1</sup> Charging Party's response additionally raises issues outside the jurisdiction of the Commission including allegations of violations of the Federal Family & Medical Leave Act, as well as allegations that the Respondent interfered with her employment at Michigan State University.

reasons. She concedes that she was terminated effective March 20, 2007. The charge was not filed and served until seven months after the beginning of the suspension and six months and one day after the termination. Charging Party asserts that even after the imposition of the unpaid suspension on February 21, 2007 she believed she would be reinstated; however, she acknowledges that she filed a claim for unemployment benefits within two weeks of the beginning of the suspension. That claim for unemployment benefits was therefore filed on or about March 7, 2007 and establishes that Charging Party was by then aware that the Employer had taken adverse action against her. As in *Huntington Woods v Wines, supra*, her claim accrued when she knew or had reason to know that the Employer had taken adverse action and her claim was not filed within six months of the suspension, the filing of the unemployment compensation claim, or the effective date of her termination. As in *Huntington Woods v Wines, supra*, all of her discipline related claims must be dismissed as untimely.

#### RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge

Dated: \_\_\_\_\_