

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

In the Matter of:

WAYNE STATE UNIVERSITY,
Public Employer - Respondent,

Case No. C07 L-275

-and-

DEVETTE S. BROWN
Individual - Charging Party.

APPEARANCES:

Devette S. Brown, *In Propria Persona*

DECISION AND ORDER

On March 24, 2008, 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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In the Matter of:

WAYNE STATE UNIVERSITY,
Respondent-Public Employer,

Case No. C07 L-275

-and-

DEVETTE S. BROWN,
Individual Charging Party.

APPEARANCES:

DeVette S. Brown, Charging Party appearing personally

**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 for failure to state a claim and as barred by the statute of limitations.

The Unfair Labor Practice Charge:

On December 21, 2007, a Charge was filed in this matter by DeVette S. Brown asserting that unspecified representatives of the Employer had violated the Act, by discriminating against the Charging Party, on unspecified dates. Such an allegation failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), the Charging Party was ordered to provide a more definite statement of the charge against the Employer. Charging Party filed a timely response which was otherwise significantly not in compliance with the order for more definite statement. The response listed approximately six separate incidents and provided only minimal information as to each incident. In particular, Charging Party failed to provide a factual description of the allegedly unlawful conduct and failed to indicate what relief, if any, she was seeking. Additionally, the minimal facts as set forth by Charging Party's response to the order for more definite statement established that all but one alleged incident clearly occurred outside of the six month statute of limitations applicable to claims before the Commission.

The remaining alleged incident of June 25, 2007 required further clarification by Charging Party. Ms. Brown asserted that her employment was terminated effective June 25, 2007. In her charge and in her response to the order for more definite statement, Charging Party suggested that her termination violated her rights under the federal Family and Medical Leave Act (FMLA). An order to show cause of February 14, 2008. gave Charging Party a final opportunity to factually explain how her termination from employment violated the Public Employment Relations Act.

Additionally, Charging Party was directed to establish that the sole surviving claim, related to her termination from employment on June 25, 2007, was filed and served in a timely fashion. The Charging Party was directed to explain in writing when and how she served the Charge on the employer, if she in fact had timely served the Charge. Charging Party Brown did not respond to the order to show cause.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, under PERA, there is a strict six-month statute of limitations 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 also requires timely service of the complaint by the Charging Party upon the person 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. Dismissal is required when a charge is not timely or properly served on the respondent. See *City of Dearborn*, 1994 MERC Lab Op 413, 415.

On its face, the charge appeared barred by the statute of limitations and by failing to respond to the order Charging Party declined the opportunity to establish that her claim had been timely filed and served. Dismissal for lack of jurisdiction and for failure to state a claim is warranted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____