

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES (AFSCME), LOCAL 1499,
Labor Organization - Respondent,

Case No. CU08 E-023

-and-

CINDY SUE FARLEY,
An Individual - Charging Party.

APPEARANCES:

Cindy Sue Farley, *In Propria Persona*

DECISION AND ORDER

On July 10, 2008, Administrative Law Judge Julia C. Stern issued her 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: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES (AFSCME), LOCAL 1499,
Labor Organization-Respondent,

Case No: CU08 E-023

-and-

CINDY SUE FARLEY,
An Individual-Charging Party.

APPEARANCES:

Cindy Sue Farley, appearing for herself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On May 13, 2008, Cindy Sue Farley, an employee of the Ingham County Road Commission, filed the above charge with the Michigan Employment Relations Commission against her collective bargaining representative, the American Federation of State, County and Municipal Employees (AFSCME) Local 1499, pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules pursuant to Section 16 of the Act.

On May 20, 2008, pursuant to Rule 165 of the Commission's General Rules, 2002 AACSR 423.165, I issued an order to Farley to show cause why her charge should not be dismissed as untimely filed under Section 16(a) of PERA and because it failed to state a claim upon which relief could be granted under the Act. On June 23, 2008, Farley filed a timely response to that order.

The Unfair Labor Practice Charge:

Farley alleges that since February 2007, Respondent has breached its duty of fair representation toward her by refusing to file a grievance over alleged harassment of her by other employees. According to Farley, in January 2007 she witnessed two employees putting a knife to the throat of another employee in the workplace and threatening to cut his ear off. Farley was only one of many witnesses to this incident, but she was the only one who reported it. Sometime later, one of the two perpetrators tried to attack her during a meeting of the Ingham County Road

Commission. This perpetrator was eventually fired, but the other was not. None of the other witnesses were disciplined for failing to report the incident. Farley asserts that after she reported the knife incident, other employees began trying to get her in trouble by telling lies about her and sabotaging her equipment. Also, Farley's supervisor told her that he would not make her a crew chief because the other employees would not work for her.

According to Farley, in February 2007, and on numerous occasions thereafter, she asked Respondent to file a grievance or take other action on her behalf to stop the harassment. Respondent representatives told her that they would not file a grievance that might result in discipline for other employees.

Discussion and Conclusions of Law:

Section 16(a) of PERA states, "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 and the service of a copy thereof upon the person against whom the charge is made." The Commission does not have authority to remedy unfair labor practices occurring more than six months before the date that the charge is filed and served on the respondent. The statute of limitations in Section 16(a) is jurisdictional, and the Respondent is not required to raise it as a defense. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. The limitation period under PERA commences when the person knows of the act which caused his injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). When the claim is that a union has failed or refused to file a grievance on behalf of a member, the statute of limitations begins to run when the charging party should have reasonably realized that the union would not act on his or her behalf. *Washtenaw Co Cmty Mental Health*, 17 MPER 45 (2004). According to the charge, Farley was first told by Respondent in about February 2007 that it would not file a grievance over the harassment of her by other employees because it might result in the discipline of other members of their unit. The charge, filed fifteen months later, is therefore untimely under Section 16(a). I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____