

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

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF WATER & SEWERAGE),
Public Employer-Respondent

Case No. C11 C-040

-and-

RAJU K. MARKOSE,
An Individual-Charging Party.

APPEARANCES:

Raju K. Markose, *In Propria Persona*

DECISION AND ORDER

On May 18, 2011, 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. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF WATER & SEWERAGE)
Public Employer-Respondent,

Case No. C11 C-040

-and-

RAJU MARKOSE,
An Individual-Charging Party.

Raju Markose, appearing for himself

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

On March 9, 2011, Raju Markose filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against his employer, the City of Detroit, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Pursuant to Section 16, the charge was assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

Markose is employed by Respondent as a water systems chemist in its department of water and sewerage. The charge alleges that Respondent unlawfully discriminated against Markose by denying him promotion(s). Markose alleges that in October 2009, Respondent discriminated against him by refusing to place him on the selection list for the position of senior water systems chemist, even though Markose was the most senior, most experienced, and most qualified candidate for this position. The charge also alleges that Respondent took other specific actions to avoid promoting him to the senior water systems chemist and other positions within the department. However, the charge does not give the dates of any of these other actions. From documents attached to the charge, it appears that Markose may be alleging that Respondent's actions were in retaliation for his filing of a previous unfair labor practice charge in 2007 and, therefore, constituted unlawful discrimination against him under Section 10(1)(d) of PERA. However, the charge does not specifically explain why Respondent's attempts to avoid promoting him violated PERA.

On March 16, 2011, pursuant to Rule 165 of the Commission General Rules, 2002 AACSR, R 423.165, I issued an order to Markose to show cause in writing why his charge should not be dismissed because it failed to allege a violation of PERA and/or was untimely filed. In the order to show cause, I noted that Commission Rule 151(2)(c) requires that an unfair labor practice charge include a clear and complete statement of the facts which allege a violation of PERA, including the date of occurrence of each particular act. Markose was explicitly directed to include in his response

to my order the dates of the actions constituting the alleged unfair labor practice and a brief explanation of why these actions violated PERA. Markose was cautioned that if he did not respond to the order, I would recommend that his charge be dismissed. Markose did not respond to the order.

Based upon the above facts set forth in the charge, I make the following conclusions of law and recommend that the Commission issue the following order.

Discussion and Conclusions of Law:

Section 16(a) of PERA states that the Commission lacks jurisdiction to find an 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 party against whom the charge is made. An unfair labor practice charge that is filed more than six months after the commission of the alleged unfair labor practice is untimely. The limitation contained in Section 16(a) of PERA is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Police Officers Labor Council, Local 355*, 2002 MERC Lab Op 145; *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 582. The six-month period begins to run when the charging party knows, or should have known, of the alleged violation, i.e. when it knows of the injury and had good reason to believe that it was improper. *City of Detroit*, 18 MPER 73 (2005); *AFSCME Local 1583*, 18 MPER 42 (2005); *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836.

The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In this case, Markose filed a charge on March 9, 2011 that alleged that Respondent discriminated against him by a series of actions. The first of these actions apparently occurred in October 2009, but the dates of the others were not given. Therefore, the charge, as filed, did not allege that Respondent committed any unfair labor practice within six months of the date the charge was filed. Although Markose was given the opportunity to amend his charge to correct this defect, he did not do so. I conclude, therefore, that his charge should be dismissed as untimely filed and because it fails to state a claim upon which relief can be granted under PERA. 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
Michigan Administrative Hearing System

Date: _____