

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

In the Matter of:

MICHIGAN AFSCME COUNCIL 25,
Labor Organization-Respondent,

Case No. CU08 I-044

-and-

DEVETTE S. BROWN,
An Individual-Charging Party.

APPEARANCES:

Cassandra D. Harmon-Higgins, Esq., for the Labor Organization

DeVette S. Brown, *In Propria Persona*

DECISION AND ORDER

On December 30, 2008, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the unfair labor practice charge filed by Charging Party, DeVette S. Brown, against Respondent, Michigan AFSCME Council 25 (Union), was time-barred by Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On January 22, 2009, Charging Party filed exceptions to the ALJ's decision, to which Respondent did not file a response.

In her exceptions, Charging Party contends that the ALJ erred by recommending dismissal of her charge as untimely. She argues that the charge was timely filed based on the Union's notice, dated March 3, 2008, that indicates a "final" closure to her grievances. We have thoroughly reviewed Charging Party's exceptions and find them to be without merit.

Factual Summary

The facts were set forth in the ALJ's Decision and Recommended Order and will not be repeated here, except where necessary. For the purpose of reviewing the ALJ's conclusions, we accept as true Charging Party's allegations as contained in the record. In June 2007, Charging Party was discharged by her former employer, Wayne State University. She filed several grievances challenging the discharge, which were later withdrawn by Respondent Union. Overall, her grievances (including internal appeals) were rejected for arbitration by the Union on August 24, 2007, October 23, 2007,

December 5, 2007, and, again, on March 3, 2008. On September 3, 2008, Charging Party filed this charge against Respondent Union alleging a breach of the duty of fair representation based on the arbitration denials. The Union responded by refuting the charge and asserting that it had acted in good faith when it decided to withdraw the grievances prior to arbitration.

Discussion and Conclusions of Law:

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any alleged unfair labor practice occurring more than six months prior to the filing of the charge. This Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004). Further, the limitations period commences when a charging party knows or should have known of the acts constituting the alleged unfair labor practice. *City of Detroit*, 18 MPER 73 (2005). As the ALJ noted, Charging Party learned that the Union denied her initial grievances as early as August 2007. By December 2007, all grievances had been rejected for arbitration; yet, she did not file a charge against the Union until nearly eight months later on September 3, 2008. Charging Party contends that the Union's letter of March 3, 2008 served as the "final" rejection that triggered the limitations period. We disagree, and find, instead, that the later notice only reiterated the earlier denials communicated to Charging Party from August 2007 through December 2007. To view otherwise would permit a charging party to "resurrect" a stale claim against a union by initiating a new internal appeal of a previously denied grievance. *AFSCME, Local 1583*, 18 MPER 42 (2005). Since this charge is time barred, it is subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R 423.165.

Finally, we have carefully examined the remaining issues raised by Charging Party and find that they would not change the results. Accordingly, we affirm the ALJ's Decision and Recommended Order dismissing this charge on summary disposition.

ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, 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:

MICHIGAN AFSCME COUNCIL 25,
Labor Organization-Respondent,

-and-

Case No. CU08 I-044

DEVETTE S. BROWN,
Individual Charging Party.

_____/

DeVette S. Brown, Charging Party appearing on her own behalf

Cassandra D. Harmon-Higgins, for Respondent

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

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) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge:

On September 3, 2008, a Charge was filed in this matter by DeVette S. Brown (the Charging Party) asserting that the Michigan AFSCME 25 (the Union) had violated the Act by withdrawing certain grievances. It appeared from the Charge that the several grievances were rejected by the Union on November 30, 2007 and on December 5, 2007. A prior charge brought by Brown, in Case No. C07 L-275 against her former employer Wayne State University (WSU) related to the June 2007 termination of her employment was dismissed for failure to state a claim and as untimely.

The Charging Party was ordered, pursuant to Commission Rule R423.165 (2) to show cause why this charge against the Union should not be dismissed as barred by the statute of limitations. Charging Party filed a timely response to the order, which did not address directly when she first became aware of the Union's refusal to pursue a grievance over her termination from employment. Instead, Charging Party asserted that she had 'hoped' they would change their mind. In her response to an order in the recently filed

related case against the Employer in Case No. C08 I-178, Charging Party acknowledged being aware as early as August of 2007 that the Union would not pursue her grievances.

Discussion and Conclusions of Law:

The Charge filed in this matter arises from Brown's termination from employment in June of 2007. The Union's initial adverse decision regarding grievances related to Brown's termination occurred in August of 2007. Brown was notified in November and December of 2007 that the Union had denied her internal appeal of the decision to not pursue grievances on her behalf. Brown did not pursue any further internal appeal of the Union's decision. Brown did not file this Charge until September 3, 2008, at least nine months after the final rejection of her internal Union appeal.

Accepting as true all of the allegations in the charge, the response to the order to show cause and the supporting documentation, dismissal of this matter is warranted. 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. The limitations period begins to run when a charging party knew, or should have known, of the acts constituting an unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983).

Although AFSCME Council 25 sent out notices closing its files regarding the Brown grievances on March 3, 2008, exactly six-months before the filing of the charge in this matter, the notices of the closing of those files were simply ministerial acts of no real consequence with respect to the applicability of the statute of limitations. The documents supplied by Charging Party establish that the grievances were rejected long before that date and that Brown was well aware of the Union's decisions. The Union notified Charging Party of its rejection of the grievance on multiple occasions beginning in August of 2007. Thereafter, AFSCME informed Brown in writing in November and December of 2007 that her appeals had been denied and that the grievances remained rejected. Yet, Charging Party did not file her charge with the Commission until September 2008. Clearly, Charging Party knew or should have known of the alleged PERA violation by the Union more than six months prior to the filing of the instant charge on September 3, 2008. Accordingly, the charge must be dismissed as untimely under Section 16(a) of the Act.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____