

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

In the Matter of:

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

Case No. C05 E-101

-and-

ROY S. OCHOA,  
An Individual Charging Party.

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**DECISION AND ORDER**

On November 28, 2005, Administrative Law Judge David M. Peltz 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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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

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**DECISION AND RECOMMENDED ORDER**  
**OF ADMINISTRATIVE LAW JUDGE**

On May 5, 2005, Roy S. Ochoa filed an unfair labor practice charge against the City of Detroit (Water & Sewerage Department). The charge alleges:

Violation of collective bargaining agreement. (Equalization of overtime agreement).

The City of Detroit Water and Sewerage Department has, for the past few YEARS cheated me out of tens of thousands of dollars worth of overtime pay by not asking me to work overtime, but asking all of the rest of the plumbers and steamfitters in the maintenance department. [Emphasis in original.]

On October 4, 2005, Charging Party was granted fourteen days in which to show cause why his charge should not be dismissed as untimely under Section 16(a) of the Public Employment Relations Act (PERA), MCL 423.216(a), and for failure to state a claim upon which relief could be granted under the Act. Charging Party did not file a response to the order.

Pursuant to Section 16(a) of PERA, 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. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Based upon Ochoa's allegation that the unlawful conduct by the Employer has been occurring for several years, I find that the charge in this matter was not filed within the time limits set forth in Section 16(a) and must be dismissed on that basis.

Even if the charge was timely filed, Ochoa has not stated a claim for which relief can be granted under PERA. PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were

followed. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against Charging Party because he engaged in conduct protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the Employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. In the instant case, Ochoa has not alleged that the Employer discriminated or retaliated against him because of union or other protected concerted activity. I, therefore, recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge

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