

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

In the Matter of:

CITY OF DETROIT (POLICE DEPARTMENT),
Public Employer - Respondent, in Case No. C06 J-256,

-and-

CITY OF DETROIT POLICEMEN AND
FIREMEN RETIREMENT SYSTEM,
Respondent, in Case No. C06 J-255,

-and-

DETROIT POLICE OFFICERS ASSOCIATION,
Labor Organization - Respondent, in Case No. CU06 J-049,

-and-

GERALDINE SMITH,
An Individual - Charging Party.

_____ /

APPEARANCES:

Geraldine Smith, *In Propria Persona*

DECISION AND ORDER

On November 30, 2006, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondents 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
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT (POLICE DEPARTMENT),
Respondent-Public Employer, in Case No. C06 J-256,

-and-

CITY OF DETROIT POLICEMEN AND
FIREMEN RETIREMENT SYSTEM,
Respondent, in Case No. C06 J-255,

-and-

DETROIT POLICE OFFICERS ASSOCIATION,
Respondent Labor Organization, in Case No. CU06 J-049,

-and-

GERALDINE SMITH,
An Individual Charging Party.

_____ /

APPEARANCES:

Geraldine Smith, in *pro per*, for the Charging Party

**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 for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Findings of Fact:

Geraldine Smith filed charges on October 25, 2006. Smith asserted that her former union, the Detroit Police Officers Association (DPOA), had improperly represented her, had violated her civil rights, and had withheld information or provided false information. In support of that charge, Smith provided the explanation that her Union had, in 1987, entered into an agreement with her former

employer that required that she dismiss a pending civil rights charge. Smith asserts that since 1988 she has been receiving Workers Compensation benefits and has been unsuccessfully seeking a disability pension from the Detroit Policemen and Firemen Retirement System.

Charging Party similarly asserted that her former employer, City of Detroit, had, beginning in 1986 and culminating in 1987, violated her civil rights and had caused her humiliation, embarrassment, and physical harm. Smith likewise asserted that the Detroit Policemen and Firemen Retirement System had violated her civil rights and had improperly interfered with her effort to secure a disability pension.

By letter of October 27, 2006, I advised Charging Party that her claims against the City were subject to dismissal as such claimed violations of the civil rights statutes were not within this agency's jurisdiction, and as it appeared that the six-month statute of limitations had expired. Similarly, Charging Party was advised that her claims against the Retirement System were subject to dismissal as it had never been her employer. Finally, Smith was advised that it appeared the six-month statute of limitations had expired as to her claims against her former Union. In a telephone conference of October 31, 2006, Charging Party assented to the dismissal of the charges against the City of Detroit, and those against the Retirement System, but sought the opportunity to support her claim that more recent events involving the Union had occurred which might fall within the statute of limitations.

An order to show cause why the charge against the Union should not be dismissed as untimely was issued pursuant to R423.165 (2)(c) on November 3, 2006 granting the Charging Party fourteen days to respond. Charging Party did not file a response to the order to show cause.

Discussion and Conclusions of Law:

The failure of a Charging Party to respond to an order to show cause may in itself warrant dismissal of a charge. Accepting the allegations in the charge as true, the last complained of affirmative conduct by the Union occurred in 1988. The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. A claim accrues when the charging party knows, or should know, of the alleged unfair labor practice. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. Additionally, the law is clear that when a complaint against a union is based on the union's alleged inactivity, the statute of limitations begins to run when the charging party should have reasonably realized that the union would not act on her behalf. *Pantoja v Holland Motor Express, Inc*, 965 F2d 323 (CA7, 1992); *Shapiro v Cook United, Inc*, 762 F2d 49 (CA6, 1985); *Metz v Tootsie Roll Industries, Inc*, 715 F2d 299 (CA7, 1983). Where the disputed events occurred in 1988, the 2006 Charge in this matter was not timely filed.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____