

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

In the Matter of:

CITY OF WESTLAND (POLICE DEPARTMENT),  
Public Employer-Respondent in Case No. 21-H-1709-CE,

-and-

WESTLAND LIEUTENANTS AND SERGEANTS ASSOCIATION,  
Labor Organization-Respondent in Case No. 21-H-1710-CU,

-and-

TIMOTHY HORVATH,  
An Individual Charging Party.

APPEARANCES:

Fausone Bohn, LLP, by James G. Fausone and Brandon M. Grysko, for the Public Employer

Frank Guido, General Counsel, for the Labor Organization

Timothy Horvath, appearing on his own behalf

**DECISION AND ORDER**

On February 10, 2022, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order<sup>1</sup> 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.

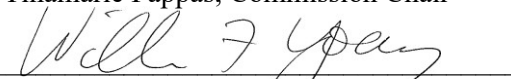
**ORDER**

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



Tinamarie Pappas, Commission Chair



William F. Young, Commission Member

Issued: April 11, 2022

<sup>1</sup> MOAHR Hearing Docket Nos. 21-021483 & 21-021487

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

In the Matter of:

CITY OF WESTLAND (POLICE DEPARTMENT),  
Respondent-Public Employer in Case No. 21-H-1709-CE; Docket No. 21-021483-  
MERC,

-and-

WESTLAND LIEUTENANTS AND SERGEANTS ASSOCIATION,  
Respondent-Labor Organization in Case No. 21-H-1710-CU; Docket No. 21-021487-  
MERC,

-and-

TIMOTHY HORVATH,  
An Individual Charging Party.

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**APPEARANCES:**

Fausone Bohn, LLP, by James G. Fausone and Brandon M. Grysko, for the Public Employer

Frank Guido, General Counsel, for the Labor Organization

Timothy Horvath, appearing on his own behalf

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

This case arises from unfair labor practice charges filed on August 30, 2021, by Timothy Horvath against the City of Westland (the Employer) and the Westland Lieutenants and Sergeants Association (WLSA or the Union). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (Commission).

**The Charges, Procedural History and Background Facts:**

The following facts are derived from the allegations in the unfair labor practice charges, Horvath's response to the Union's motion for summary disposition, along with the attachments

thereto, and his statements during oral argument, with all factual assertions set forth by Horvath accepted as true for purposes of determining whether summary disposition of the charges is appropriate.

Charging Party was employed by the City of Westland Police Department as a sergeant. On or about November 16, 2020, he was disciplined by the City for allegedly sexually harassing a fellow police officer. Horvath received an 84-hour unpaid suspension, 40 hours of required sexual harassment training and he was removed from the lieutenant promotional list. The Union filed a grievance on Charging Party's behalf challenging the discipline. The grievance was denied by the City on or before February 9, 2021. On February 10, 2021, the Union notified Horvath that it would not be taking the grievance to arbitration. Thereafter, Horvath requested a hearing before the WLSA executive board. The board denied Horvath's appeal on March 16, 2021.

The charge in Case No. 21-H-1709-CE; Docket No. 21-021483-MERC alleges that the Employer violated PERA by allowing a third party to interfere with its investigation of Horvath and by ordering the Union "not to get involved for when [sic] this goes to arbitration." In Case No. 21-H-1710-CU; Docket No. 21-021487, the charge asserts that the WLSA failed to represent Horvath with respect to the sexual harassment allegation, including by failing to review relevant evidence and by attempting to encourage Horvath not to pursue the grievance.

On September 8, 2021, the Employer filed a motion for summary disposition, arguing that the allegations set forth by Charging Party against the City must be dismissed pursuant to Section 16(a) of PERA because the discipline about which Horvath complains was issued more than six months prior to the filing of the charge in this matter. The WLSA filed its own motion for summary disposition on or about September 27, 2021. In the motion, the Union asserts that the allegations, even if taken in the light most favorable to Charging Party, fail to establish that its decision not to arbitrate Horvath's grievance was arbitrary, discriminatory or made in bad faith. In addition, the WLSA argues that the charge must be dismissed as untimely because it was filed more than six months after the Union notified Horvath that it had decided not to pursue the grievance to arbitration. Charging Party filed a written response to the Union's motion.

Oral argument was held before the undersigned on October 5, 2021. At the hearing, Charging Party clarified his claim by asserting that the City and the Union colluded to deny him the opportunity for a hearing with the City's civil service commission. Horvath learned that the civil service claim had been rejected on or about December 1, 2020. Charging Party also alleges that the City violated PERA by failing to communicate with him about the status of his grievance.

#### Discussion and Conclusions of Law:

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 Comm Sch*, 1994 MERC Lab Op 582, 583. The limitations period commences when the charging party knows or should have known of the acts constituting the

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). The statute of limitations is not tolled by the attempts of an employee or a union to seek a remedy elsewhere, including the filing of a grievance, or while another proceeding involving the dispute is pending. See e.g., *Univ Of Michigan*, 23 MPER 6 (2010); *Wayne County*, 1998 MERC Lab Op 560.

In the instant case, there is no dispute that Horvath was disciplined by the City on November 16, 2020. Thereafter, the Union filed a grievance challenging the discipline and Horvath attempted to file a claim with the City's civil service commission. On December 9, 2020, Horvath was notified that his civil service claim had been rejected as untimely. The City denied the grievance on or before February 9, 2021. On February 10, 2021, the Union informed Horvath that it would not be advancing the grievance to arbitration. All of these actions took place more than six months before Horvath filed his charges with the Commission on August 30, 2021. For that reason, I find that the charges must be dismissed as untimely under Section 16(a) of the Act.

In so holding, I find no merit to Charging Party's contention that the statute of limitations for his claim against the WLSA was tolled while he pursued the Union's internal appeal process. In *Silbert v Lakeview Ed Ass'n*, 187 Mich App 21 (1991), the Court held that the limitations period did not begin to run with respect to the plaintiff's claim against his union for breach of the duty of fair representation until after the internal union appeal process was complete. However, *Silbert* arose in the context of a civil proceeding. It is well-established that an employee cannot file a civil complaint for breach of the duty of fair representation without first exhausting his or her internal union remedies. There is no such requirement for bringing an unfair labor practice under PERA and, therefore, the Commission has not applied *Silbert* to claims brought as unfair labor practice charges.


For example, in *General Teamsters Union, Local 406*, 1993 MERC Lab Op 537, an employee filed a charge alleging that the union had breached its duty of fair representation by refusing to pursue his grievance to arbitration. The charging party argued that the statute of limitations began to run on October 19, 1990, the date the union's executive board denied his internal appeal, rather than on August 17, 1990, the date upon which the union representative first informed the charging party that his grievance would not be taken to arbitration. The Commission disagreed with the charging party, finding that his attempt to avail himself of the internal union appeals procedure did not toll the running of the six-month statute of limitations as delineated in Section 16(a) of PERA. See also *Calhoun County Medical Care Facility*, 1991 MERC Lab Op 178; *AFSCME, Council 25, Local 2394*, 28 MPER 25 (2014); *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Michigan Council 25, AFSCME*, 1995 MERC Lab Op 147 (no exceptions); *Nursing and Convalescent Home Employees Div of Local 79*, 1991 MERC Lab Op 178.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to meet his burden of proving that either Respondent violated the Act within the period of six-months prior to the filing of the charges. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Timothy Horvath against the City of Westland in Case No. 21-H-1709-CE; Docket No. 21-021483-MERC and the charge against the Westland Lieutenants and Sergeants Association in Case No. 21-H-1710-CU; Docket No. 21-021487, are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "David M. Peltz". The signature is written in black ink and is positioned above a horizontal line.

David M. Peltz  
Administrative Law Judge  
Michigan Office of Administrative Hearings and Rules

Dated: February 10, 2022