

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

In the Matter of:

PONTIAC SCHOOL DISTRICT,  
Public Employer-Respondent in Case No. C18 E-043,

-and-

PONTIAC EDUCATIONAL SECRETARIES ASSOCIATION,  
Labor Organization-Respondent in Case No. CU18 E-015,

-and-

MARCY JOHNSON,  
An Individual Charging Party.

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APPEARANCES:

Marcy Johnson, appearing on her own behalf

**DECISION AND ORDER**

On November 26, 2018, Administrative Law Judge (ALJ) Travis Calderwood issued his Decision and Recommended Order on Order to Show Cause<sup>1</sup> in the above matter finding that Respondents did not violate § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ concluded that Charging Party's claims against both Respondents were barred by PERA's statute of limitations and recommended that the Commission dismiss the charges in their entirety.

The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with § 16 of PERA.

On December 11, 2018, Charging Party requested an extension of time within which to file exceptions to the ALJ's Decision and Recommended Order. On December 12, 2018, the Commission's staff notified Charging Party by letter that the time for her to file exceptions was extended until January 18, 2019. Charging Party was further informed in the letter that exceptions to the ALJ's Decision and Recommended Order must be received at a Commission office by the close of business on January 18, 2019.

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<sup>1</sup> MAHS Hearing Docket Nos. 18-010908 and 18-011038

No exceptions were filed on or before the due date. On January 25, 2019, Charging Party submitted her exceptions to the ALJ's Decision and Recommended Order, without a Motion for Retroactive Extension or a statement of service.

The filing of exceptions with the Commission is governed by Rule 176, 2002 AACRS R 423.176, of the General Rules of the Michigan Employment Relations Commission. In accordance with Rule 176, exceptions must be filed no later than 20 days of service of the ALJ's Decision and Recommended Order, and "[c]opies of the exceptions . . . shall be served at the same time on each party to the proceedings, and a statement of service shall be filed under R 423.182... An exception that fails to comply with this rule may be disregarded."

In this case, Charging Party was granted an extension of time to file exceptions but failed to file her exceptions within this time period. Additionally, Charging Party failed to file a Motion for Retroactive Extension showing good cause as to why her exceptions were not timely filed and failed to submit a statement of service under Rule 423.182 attesting that her exceptions were timely served upon Respondents. Under such circumstances, Charging Party's exceptions will not be considered by the Commission. See *SEIU Healthcare Michigan*, 30 MPER 17 (2016); *Detroit Public Schools and AFSCME Local 345*, 30 MPER 32 (2016); *Wayne State University*, 29 MPER 22 (2015); and *Tuscola County Medical Care Facility*, 27 MPER 9 (2013).

Accordingly, we hereby adopt the recommended order of the ALJ as our final order and dismiss the charges.

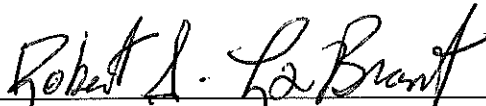
**ORDER**

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

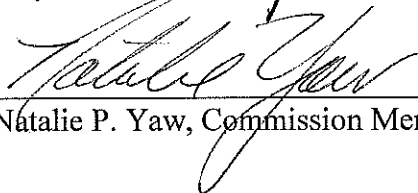
MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Edward D. Callaghan, Commission Chair



Robert S. LaBrant, Commission Member



Natalie P. Yaw, Commission Member

**AUG 19 2019**

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

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

In the Matter of:

PONTIAC SCHOOL DISTRICT,  
Public Employer-Respondent in Case No. C18 E-043; Docket No. 18-010908-MERC,

-and-

PONTIAC EDUCATIONAL SECRETARIES ASSOCIATION,  
Labor Organization-Respondent in Case No. CU18 E-015; Docket No. 18-011038-MERC,

-and-

MARCY JOHNSON,  
An Individual Charging Party.

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APPEARANCES:

Marcy Johnson on her own behalf

**DECISION AND RECOMMENDED ORDER OF  
ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE**

On May 21, 2018, Marcy Johnson filed the above captioned unfair labor practice charges against the Pontiac School District (District) and the Pontiac Educational Secretaries Association (Association). 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 cases were assigned to Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission).

Johnson, in her charge against the District, alleges that the District's failure to recall her to a secretarial position beginning sometime in August of 2015 violated the contract between the District and the Association. Regarding the Association, Johnson alleges that the Association's apparent failure to maintain her name on a recall list following her lay-off in December of 2013 violated the Association's statutory duty of fair representation.

Upon review of the charges as filed, it was the opinion of the undersigned that Charging Party's claims against both Respondents was barred by PERA's statute of limitations. Accordingly, on June 8, 2018, I issued an order directing Charging Party to show cause in writing

why her charges should not be dismissed without a hearing; Charging Party submitted her response to this order on July 5, 2018.

Background:

According to Charging Party, she was first laid off from her secretary position with the District in December of 2013. At the time of her layoff, the collective bargaining agreement entered into between the District and Association required that laid off employees be maintained on a layoff list for two years and that recalls from that list be made in reverse order.

Charging Party states that in August of 2015 a secretary position was posted within the District to which she should have been recalled. She later learned that her name had not been maintained on the recall list although her right to recall would not expire under the contract until November 29, 2016. Charging Party first attempted to get resolution through the Association, but to no avail. Charging Party then claims she filed unfair labor practice charges against both the District and Association in November of 2015.<sup>1</sup>

According to Charging Party, following her filing of the above charges with the Commission, the District and the Association offered to put her name back on the recall list for another year in exchange for her withdrawal of the charges. Charging Party states that she had been informed that a secretary, Robin McCoy, was planning on retiring and that she would receive that position when it came available. Charging Party then contacted McCoy and upon learning that she did in fact intend on retiring, accepted the Respondents' offer. Also, included within Charging Party's response is a copy of a February 12, 2016, letter to the Commission which, in addition to withdrawing the above referenced charges, also stated that Charging Party had met with the Respondents and that they had "reached a signed agreement." As of the filing of the present charges, Charging Party had not been recalled to a secretarial position.

Discussion and Conclusions of Law:

The Commission does not investigate charges filed with it. Charges which comply with the Commission's rules which are timely filed and allege a violation of PERA are set for hearing before an administrative law judge. In order to be timely filed, the charge must be filed within six months of the alleged unfair labor practice. MCL 423.216(a). The Commission has consistently held that the statute of limitations, contained within Section 16(a) of PERA, 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).

Rule 165 of the Commission's General Rules, R 423.165, states that the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the charge is untimely filed. R 423.16(2)(c).

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<sup>1</sup> A search of the records maintained by both the Bureau of Employment Relations (BER), the administrative agency that assists the Commission, and MAHS did not turn up any record of the charges or any subsequent withdrawal.

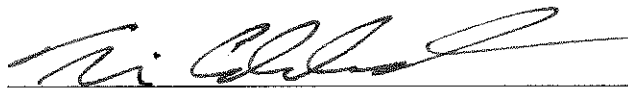
Upon careful review of the charges as filed, it is the conclusion of the undersigned that Johnson's allegations are untimely and must be dismissed. The impetus to the present involves the removal of Johnson's name from the recall list, an event that occurred sometime between 2013 and 2015. Accordingly, any charge based on that action is clearly outside PERA's six-month statute of limitations. Moving next to the alleged 2016 agreement between Johnson, the District, and the Association, that would have placed Charging Party on the recall list for another year, that agreement would have expired sometime prior to February 12, 2017, one year from the date that she withdrew her earlier charges with the Commission. Accordingly, any allegations based upon that agreement would have become time barred in mid-2017, while the present charge was not filed until May 21, 2018.

I have considered all other arguments as set forth by Charging Party and conclude that such does not justify a change in my conclusion. Accordingly, for the reasons set forth above, I recommend that the Commission issue the following Order:

RECOMMENDED ORDER

The charges are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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Travis Calderwood  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: November 26, 2018