STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

RICHMOND LENNOX E.M.S. AMBULANCE AUTHORITY,
Respondent-Public Employer,

Case No. C98 D-62

-and-

JEFFREY PAUL YAROCH,
An Individual Charging Party.
_____/

APPEARANCES:

Berry Moorman P.C., by Sheryl A. Laughren, Esq. and David M. Foy, Esq., for the Respondent

Jeffrey P. Yaroch *in pro per*

DECISION AND ORDER

On December 28, 1998, Administrative Law Judge James P. Kurtz issued his Decision and Recommended Order in the above matter finding that the charge was untimely filed and served under Section 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charge 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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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date: _____

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Jeffrey P. Yaroch, In pro per

DECISION AND RECOMMENDED ORDER
ON
STIPULATED RECORD

A pretrial hearing or conference without a court reporter was held in this case at Detroit, Michigan, on June 18, 1998, before James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to a complaint and notice of hearing dated April 9, 1998, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216, MSA 17.455(16). Based upon the agreement of the parties made at this conference regarding the record in this matter, including the pleadings, stipulated exhibits, and briefs received on or before July 17, 1998, the undersigned makes the following findings of fact, conclusions of law, and recommended order under Section 16(b) of PERA:

Charge and Background Matters:

This unfair labor practice charge was filed and served on the Public Employer by the individual Charging Party, Jeffery P. Yaroch, on April 2, 1998. The charge alleged that since on or about November 22, 1996, the Employer had interfered with, restrained, and coerced Yaroch in regard to his job duties, promotions, and employment, all in retaliation for his involvement in a union organizing effort. Yaroch alleges that he was terminated on or about October 4, 1997, and it is this date that is at issue herein for purposes of the timeliness of the filing and service of his charge under the six-months limitation period of Section 16(a) of PERA.

The union activity referred to in the charge relates to the election and certification of the United Steelworkers as the bargaining representative of a unit of the Employer's paramedics, EMTs, and other nonsupervisory employees at its Richmond, Michigan station. The certification of the Steelworkers in Case No. C97 C-73 issued on November 26, 1997, and the Charging Party claims that he was active on its behalf and a member of its bargaining committee. The Steelworkers filed several charges against the Employer about the same time, including Case Nos. C96 J-242, C96 L-285, and C97 C-73, and all were eventually withdrawn. The Union was not involved in the instant proceeding.

The Employer's motion for a bill of particulars was filed on April 16, 1998, and they were supplied by the Charging Party on May 4. The Employer filed its answer on May 13, denying any wrongdoing and alleging a number of affirmative defenses, including the allegation that the charge was barred by the six-months statute of limitations. On June 12 the Employer filed a motion to dismiss based on the limitations period, with a brief in support. On the scheduled hearing date of June 18, the parties agreed to meet in a prehearing conference without a reporter, and to limit the record to the threshold issue of the timeliness of the charge. The record, as confirmed in the undersigned's letter of June 19, was stipulated to include the pleadings and six exhibits, four letters of the parties and two pages from the Employer's policy manual. Charging Party filed a response to the Employer's motion to dismiss on July 14, and a reply was filed by the Employer on July 17. The record was considered closed on August 3, 1998.

Stipulated Facts and Conclusions:

Charging Party Yaroch has worked for the Respondent-Employer for a number of years as a paramedic. At the time of his discharge he was working as a volunteer member of the Authority. Under the Employer's policies, volunteers are expected to work a minimum of 12 hours each month, and maintain mandatory training, health testing certification, and licensing, or they may be placed on inactive status. In these policies, a distinction is made between being "placed on inactive status," and being "removed from the EMS roster."

Under date of September 29, 1997, the Employer's deputy director sent a letter to Yaroch, which stated: "Effective this date, due to your failure to maintain required volunteer hours at Richmond Lennox E.M.S., you have been removed from our roster." She then wished him the "best of luck in his future endeavors." Charging Party responded to the deputy director in a letter dated October 1, 1997:

> I am writing to inform you that your decision to remove me from the roster is incorrect per the agency's policy. Per policy . . . , 'Volunteer members will receive notice after one month, 2 months, and 3 months and then considered non-active.' As this is my first notice, I should still be on the roster. Further, per policy . . . , 'inactive status may be granted for a period not to exceed six months.' This has definitely been past practice. I expect the necessary correction will be made to my status.

> On a personal note, my inactivity has been due to my sister's need for assistance while she underwent a bone marrow transplant. It is disheartening to me to be treated this way by an organization that I have served for seven years.

The Employer's director, rather than the deputy director, responded to the Charging Party's October 1 letter with two memoranda, both dated October 4, 1997, and both again terminating Yaroch for violations of other Employer policies. The first acknowledged receipt of Yaroch's response to the deputy director's September 29 correspondence. The director then set forth an incident that occurred on September 13, 1997, where Yaroch was seen at the location of a multiple injury accident but failed to notify dispatch of his availability or to render any care for the victims. The director concluded that this conduct was contrary to the Employer's current operating policy and procedure manual, and that "effective immediately by way of this letter, your volunteer status with Richmond Lenox E.M.S. is hereby terminated." The memorandum concluded that Yaroch was expected to turn in within five working days his pager, charger, identification badge, and any other property of the Employer.

The second October 4 memorandum of the director, which Charging Party claims he did not receive prior to the prehearing conference, recited a section of the Employer's manual that prohibited employees from competing with the Employer for community or EMS training programs. The director stated that the Michigan Department of Consumer and Industry Services had confirmed that Yaroch was vice-president of Your Health Network, which in turn competes directly with the Employer in providing health education and relicensure training programs. The memorandum then stated, "As a result of your direct participation in direct competition you are being removed from the volunteer roles of the ambulance authority." The memorandum concluded with thanking Yaroch for his previous years of contribution.

Discussion and Conclusions:

This case presents the rather anomalous situation of an employee being terminated by three separate letters or memoranda within the same week by two different supervisors, the first of which documents is outside the statutory six-months limitation period of Section 16(a) of PERA, and the last two within the limitations period. The only issue to be considered in this case is whether the six-months period is computed from the receipt by the Charging Party of the September 29 letter of the deputy director on October 1, or whether the period must be computed from the October 4 date of the director's memoranda.[1] In the first instance, the filing and service of the charge on April 2, 1998

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[1]The Commission has always computed the six-months period by the calendar day, whereby a discharge noticed on October 1 means that the six-months period begins the following day and expires at the end of the day on April 1 of the following year. See ***Hurley Medical Center***, 1995 MERC Lab Op 463, 466. There is, however, precedent for using a 180-day measure for the six-months period, which has the effect of shortening the period, and which need not

is untimely by one day, whereas under the alternative of the Charging Party the charge was filed and served within the six-months period.

The filing and service of the charge within six months of the alleged unfair labor practice is jurisdictional and cannot be waived or avoided by the Commission. *Walkerville Rural Comm. Schools*, 1994 MERC Lab Op 582, 583. Therefore, it is critical to determine whether the first notice mailed to Charging Party on September 29, and received by October 1, effectively terminated Charging Party's employment. If such is the case, then this charge was untimely filed and must be dismissed. *Wines v Huntington Woods*, 97 Mich App 86, 89-91, 109 LRRM 2242 (1980), *rev'g and remand'g* 1979 MERC Lab Op 254.

Charging Party argues that different policies of the Employer govern the removal of employees from either the active and/or inactive rosters, and he believed that the deputy director had not properly construed such policies in her September 29 letter. He sent his October 1 reply to her in order to clarify what his status should be. Charging Party contends that based on past practice he believed that he was considered inactive for the period between September 29 until he received the director's memorandum after October 4, wherein he was advised of his termination. He notes that the last sentence of the director's memo, requesting him to turn in his equipment, was not included in the deputy director's letter.

The argument of the Charging Party is interesting, and the seeming overkill of the Employer's various termination documents calls for some sympathy with his position. The Commission, however, cannot consider the assumptions or motivations of the parties relative to the six-months limitations period. The standard is an objective one under *Wines* and the other case law construing Section 16(a) of PERA; namely, the limitations period commences running when the employee knows, or should have known, of the alleged unfair labor practice. As restated in the second *Wines* decision of the Court of Appeals, *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983), *aff'g* 1981 MERC Lab Op 836:

> . . . the limitation period commences when the person knows of the act which caused his injury and has good reason to believe that the act was improper or done in an improper manner.

The deputy director's September 29 letter to Yaroch stated that "you have been removed from our roster," and she wished him luck in his future endeavors. This statement clearly indicates that Charging Party is no longer an employee, no matter what disagreement he may have had relative to the reason given by her for the termination of his employment. Yaroch expressed in his October 1 letter the fact that he was disheartened by the treatment of the Employer after seven years of employment. This would hardly have been the case if he was merely being placed on inactive status, which can be reversed by resolving the deficiency in his hours or training. As provided by the Employer's policies, being "removed from the EMS roster" is clearly distinguished from being

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be discussed herein.

"placed on inactive status," and it was the former language that was used by the deputy director in her termination letter.

Whether the deputy director correctly interpreted the Employer's policies on maintaining the required volunteer hours is irrelevant with regard to the running of the limitation period, since it goes to the merits of the Employer's defense of its discharge action and whether the stated reason is merely a pretext for discriminatory action. All the facts relative to his case of discriminatory discharge had taken place months before the September 29 letter, since Charging Party had not worked for at least three months and the Union election proceedings took place almost a year earlier in November 1996. Nothing took place between October 1, when Yaroch received the letter, and the date he received the director's October 4 memorandum which could affect his case. Thus, Yaroch had to know on or before October 1 that his employment was being terminated, and if he wished to contest that termination on the ground that it was motivated by his union activity on behalf of the Steelworkers, he had six months from that date to file and serve his unfair labor practice charge. *Chelsea Bus Driver's Ass'n*, 1994 MERC Lab Op 310, 312-313. Since the charge in this case was not filed and served until April 2, one day after the end of the limitation period on April 1, 1998, it must be dismissed.

Based upon the above, the undersigned recommends that the Commission enter the following order:

ORDER DISMISSING CHARGE

IT IS HEREBY ORDERED that the unfair labor practice charge in this case be dismissed as untimely filed and served under Section 16(a) of PERA.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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James P. Kurtz,
Administrative Law Judge

Dated:_____