STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

REGENTS OF THE UNIVERSITY OF MICHIGAN,
Respondent-Public Employer in Case No. C00 B-15,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 and LOCAL 1583,
Respondent-Labor Organization in Case No. CU00 B-6,

-and-

LEWIS IRBY, JR.,
An Individual Charging Party.
_____/

APPEARANCES:

David J. Masson, Esq., Senior University Attorney, for the Public Employer

Lewis Irby, Jr., In Pro Per

DECISION AND ORDER

On May 16, 2000, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondents did not violate Section 10 of the Public Employment Relations Act (PERA), 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

_____
Maris Stella Swift, Commission Chair

_____
Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Date: _____

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An Individual - Charging Party
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APPEARANCES:

David J. Masson, Esq., Senior University Attorney, for the Public Employer

Lewis Irby, Jr., Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

On February 2, 2000, Lewis Irby, Jr., an individual Charging Party, filed unfair labor practice charges against Respondents Regents of the University of Michigan and the AFSCME, Coucil 25, and its affiliate, Local 1583.

> The University of Michigan and its agents (bargaining team) are in violation of the AFSCME collective bargaining agreement, Article IV non-discrimination. Also including but not limited to the NLRA of 1935 (Wagner Act). Article I Section 8(2)(1) - freedom to engage in concerted activities for the purpose of collective bargaining; 8(2)(2) - using influence over same union representation; 8(2)(5) failure to bargain in good faith as it relates to P. T. O. vs separate sick and vacation.
>
> The Union thru negligence; intentional omittion (sic) failed to disclose relevant information to members of impact on benefits already enjoyed as it relates to P. T. O.; and subsequent loss of accured (sic) vacation. Openly dening (sic) the agreement involved changes to than

separate vacation & sick leave accural (sic).

Charging Party's March 8, 2000, response to the Employer's February 24, 2000, request for a bill of particulars detailed efforts by some bargaining unit members to defeat a ratification vote on a 1997 tentative agreement which contained provisions to reduce the amount of paid time off (PTO) members could accrue after July 1, 1999. Charging Party also complained in its bill of particulars that the Employer and the Union entered into a letter of agreement on June 10, 1999, without a vote of the membership. Pertinent parts of the June 10, letter of agreement read:

> 3. Employees may go over maximum accrual (paragraph 229b) without losing accrual hours through December 31, 1999. After that date there will be no exceptions to the maximum accruals stated in paragraph 220b - time must be "used or lost."

On March 20, 2000, the Employer filed a motion to dismiss. It claimed Charging Party's February 2, 2000, charge was not filed within six months of the alleged violation as required by MCL 423.216(a) of PERA. Charging Party opposed the Motion. He claimed his charge was timely because it was filed within six months of December 31, 1999, when limits on accrual of PTO benefits took effect.

Conclusions of Law:

The six-month limitation period for filing unfair labor practice charges is jurisdictional and may not be waived. *Walkerville Rural Comm Schools,* 1994 MERC Lab Op 582. A motion for summary dismissal may appropriately be granted where allegations are based upon events which occurred more than six months prior to the charge. *Shiawasee County Road Commission,* 1978 MERC Lab Op 1182. It is well-established that where a collective bargaining agreement or contract is being challenged, the date of execution of the alleged unlawful contract is controlling for purposes of the six months limitation period. *City of Adrian,* 1970 MERC Lab Op 579, 581, 584-584; *Highland Park Community College,* 1982 MERC Lab Op 1269; *City of Flint,* 1996 MERC Lab Op 1, 9-10.

In this case, the six month statute of limitation began to run on June 10, 1999, when the parties entered into a letter of agreement to limit the use of accrued PTO after December 31, 1999. However, the charges against the Union and the Employer were not filed until February 2, 2000, more than six months later. The Employer's motion to dismiss is therefore granted. Charging Party's charge against the Union is also dismissed since it challenges the Union's conduct in executing the June 10, letter of agreement.

Based on the above discussion, I recommend that the Commission issue the order set forth below:

Order

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____