STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT FEDERATION OF TEACHERS, LOCAL 231,
Labor Organization- Respondent,

Case No. CU01 K-060

-and-

ANNETTA WELLMAN,
An Individual Charging Party,
_____/

APPEARANCES:

Sachs Waldman, by Eileen Nowikowski, Esq., for the Respondent

Annetta Wellman, in pro per

DECISION AND ORDER

On May 7, 2002, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent 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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION TO DISMISS

On November 19, 2001, Annetta Wellman filed the above charge against her collective bargaining representative, Detroit Federation of Teachers, Local 231. Wellman alleged that the Respondent violated its duty of fair representation under Section 10(3)(a)(i) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, by refusing to file grievances on her behalf. Wellman's charge came up for hearing on February 20, 2002, at Detroit, Michigan, before me, Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. At the hearing Respondent made, and I granted, a motion to dismiss the charge as untimely under Section 16(a) of PERA. Based on the facts as alleged in the charge, and for reasons stated at the hearing and restated below, I conclude that the instant charge is untimely and I recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Background:

Wellman is a teacher employed by the Detroit Board of Education and a member of a bargaining unit represented by Respondent. Wellman alleged that on January 24, 2001 she presented a number of documents to her union building representative and asked the Respondent to file grievances over several matters. These included claims that the Employer had failed to support order in the classroom, had failed to respond to Wellman's physical assault by another teacher, and had disciplined Wellman by putting her on

"directed absence with pay" without just cause. Wellman further alleged that on January 29, 2001 Respondent's president told her that Respondent would not file a grievance over her discipline because he felt it was justified. The president told her that her other grievances "would be held in abeyance" pending her return to work. According to her charge, Wellman did not return to work but was placed on "medical leave without pay," on February 6, 2001.

On November 27, 2001, I sent Wellman a letter noting that her charge did not, on its face, allege that she had any further contact with Respondent after January 29, 2001. I directed Wellman to show cause why her charge should not be dismissed as untimely under Section 16(a) because it was apparently filed more than six months after the date of the alleged unfair practice.

Wellman responded to my letter on December 4, 2001. In this letter she asserted that her failure to file the charge within six months after being told that Respondent would not file grievances for her was due to a debilitating psychological condition, which she developed after enduring a series of traumatic events in January 2001. Wellman asserted that her illness began on January 24, when the Employer forcibly removed her from her classroom. She further asserted that she subsequently had a psychological breakdown. Between January 27 and July 5, 2001, Wellman was evaluated by five psychiatrists, including two designated by the Employer. All the psychiatrists agreed that she was unable to return to work.

As noted above, at the hearing on February 20, 2002, Respondent made a motion to dismiss the charge as untimely. Respondent argued that based on the allegations in the charge, Wellman knew on January 29, 2001 that Respondent did not intend to take any action on her behalf. Respondent also noted that the six-month statute of limitations in PERA is jurisdictional and is strictly construed. Respondent argued that Wellman's claim that she was suffering a mental illness during the period in which she should have filed the charge did not toll the statute.

Discussion and Conclusions of Law:

Section 16(a), MCL 423.216(a) provides in pertinent part:

> No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of a charge with the commission and service of a copy thereof upon the person against whom the charge was made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6 month period shall be computed from the day of his discharge.

The Commission has held that it does not have jurisdiction under PERA to take action on unfair labor practices filed beyond the six-month period, and therefore the parties cannot waive the six-month limit. *Superiorland Library Cooperative,* 1984 MERC Lab Op 701; *Shiawassee Road Commission,* 1978 MERC Lab Op 1182. Moreover, the Commission has strictly construed this time limit. In *Lake Shore PS,* 1981 MERC Lab Op 418, the Commission held that the statute was not tolled because the

Charging Party was under severe mental and emotional stress, and because several members of his family suffered severe illnesses during the six months after the events alleged to constitute the unfair labor practice. In *Walkerville Rural Communities Schools*, 1994 MERC Lab Op 582, the Commission concluded that the statute was not tolled when Charging Party asserted that she was emotionally unable to consider the events that formed the basis of her charge for over a year after they occurred. The Commission in *Walkerville* held generally that the six-month statute of limitations in PERA is not tolled by the pursuit of other remedies, physical disability, or personal hardship. In support of that proposition it relied upon and implicitly adopted the decision of its administrative law judge granting a motion to dismiss in *City of Trenton*, 1990 MERC Lab Op 505. In *Trenton*, the Charging Party asserted that he was totally disabled during the entire six months following the alleged unfair labor practice; the administrative law judge held that this would not be sufficient to toll the statute.

As noted, the cases above indicate that the six-month statute of limitations in PERA is to be strictly construed. Based on the cases cited above, I find that Charging Party's assertion that she was disabled due to a mental disorder does not form a basis for creating an exception to the statute. I find that the charge in this case was untimely filed, and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____