STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TROY SCHOOL DISTRICT,
Respondent-Public Employer,

Case No. C02 D-080

-and-

KENNETH FARHAT,
Individual Charging Party.
_____/

APPEARANCES:

Lange & Cholack, P.C., by Craig W. Lange Esq., and Barbara F. Doolittle, Esq., for Respondent

Vitale, Flemming & Crosby, P.C., by Richard Rockwood, Esq., for Charging Party

DECISION AND ORDER

On October 15, 2002, Administrative Law Judge Roy L. Roulhac (ALJ) issued his Decision and Recommended Order in the above matter finding that Charging Party Kenneth Farhat's unfair labor practice charge against Respondent Troy School District (District or Employer) is barred by Section 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216(a), and recommending that the charge and complaint be dismissed.

The Decision and Recommended Order were served on the interested parties in accord with Section 16 of PERA. On December 9, 2002, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order asserting, among other things, that the statute of limitations was tolled during the pendency of the grievance procedure that he instituted alleging breach of duty of fair representation. Respondent filed a timely brief in support of the ALJ's Decision and Recommended Order on December 16, 2002.

The facts in this case were set forth fully in the Decision and Recommended Order and need not be repeated in detail here. Charging Party Kenneth Farhat was employed as a custodian for Respondent from 1985 until his termination on September 18, 2000. While employed at the District, he was an active member of his union, the Troy Educational Personnel Association, MEA/NEA (TESPA). Charging Party maintains that Respondent terminated him in retaliation for his participation in protected union activities. Subsequent to his termination, Charging Party filed a grievance against

Respondent. TESPA processed his grievance through the arbitration stage of the grievance procedure outlined in their collective bargaining agreement and reached a tentative settlement with Respondent. TESPA withdrew its representation of Charging Party when he refused to sign the tentative settlement agreement. Thereafter, Charging Party filed a grievance against TESPA for breach of the duty of fair representation. Charging Party's final internal union appeal was denied on November 9, 2001. Charging Party filed the instant unfair labor charge against Respondent on April 4, 2002.

Discussion and Conclusions of Law:

Charging Party asserts in his charge filed on April 4, 2002, that Respondent terminated him in retaliation for concerted union activities, including his allegations of corruption within TESPA. Respondent contends that the statute of limitations began to run September 18, 2000, the effective date of Charging Party's termination and, therefore, the charge is untimely.

MCL 423.216(a) governs the statute of limitations for unfair labor practice charges and states in relevant part:

> No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made. . . .

The Commission has held that the statute of limitations is jurisdictional in nature. *Shaiwassee Co Road Comm*, 1978 MERC Lab Op 1182, 1183. Moreover, statutes of limitations are strictly construed. *Mair* v *Consumers Power Co*, 419 Mich. 74, 80; 384 NW2d 256 (1984). In the case of an unfair labor practice charge based on allegations of wrongful discharge, the statute of limitations begins to run on the effective date of the termination. See *Kent Community Hospital*, 1987 MERC Lab Op 459; *Superiorland Library Cooperative*, 1983 MERC Lab Op 140.

Charging Party contends that he was prohibited by the collective bargaining agreement from filing an unfair labor practice charge against the Employer until the grievance procedure had been exhausted. He argues that the grievance procedure was his exclusive remedy against the Employer and, as such, the statute of limitations should be tolled until the grievance procedure was exhausted. We find no merit in this argument since the collective bargaining agreement does not limit Charging Party's ability to prosecute charges of violations of his statutory rights under PERA.

Charging Party also asserts that the six-month statute of limitations should be tolled during the pendency of his internal union appeal, which ended on November 9, 2001. Contending that Respondent acted in collusion with TESPA, Charging Party relies on the holding in *Silbert* v *Lakeview Educ Ass'n*, 187 Mich App 21; 446 NW2d 333 (1991), for the proposition that a charging party's internal union appeal tolls the statute of limitations with respect to filing a charge with MERC. *Id.* at 25. However, Silbert

involved a charge against a union for breach of the duty of fair representation. This principle has no application to a case as this where Charging Party alleges that his employer discharged him in retaliation for union activities.

In *Silbert*, the Court of Appeals held that the limitations period did not begin to run with regard to the charging party's claim against the union for breach of the duty of fair representation until the internal union appeal procedure was complete. *Silbert*, at 24-25. Charging Party would have us expand on the holding in *Silbert* to include tolling of retaliation claims against the employer.

The Supreme Court has cautioned against creating exceptions to statutes of limitations. *Mair* at 85. Specifically, the Supreme Court stated:

> The statute of limitations…[is] of legislative creation. So too should be any further exceptions, and particularly any further exception which makes an administrative proceeding a tolling event. The vast number of administrative agencies and their varying procedures make this area one particularly appropriate for legislative action…[,] and one particularly inappropriate for ad hoc judgments of the judiciary.

Id.

The statutory language of PERA 16(a) provides only one exception to the statute of limitations. This exception is invoked when an employee is prevented from filing a charge by reason of his participation in the armed forces. MCL 423.216(a). In addition to the statutory exception, the courts have found that the six-month statute of limitations is tolled when the employee does not have knowledge of the unfair labor practice. See *Wines* v. *City of Huntington Woods*, 97 Mich App 86, 91; 293 NW2d 730 (1980). Also, with respect to a *breach of the duty of fair representation claim*, the limitations period will be tolled while the employee pursues internal union appeal procedures. See *Silbert*, at 25. Neither the plain language of the statute nor its narrow judicially created exceptions provide that the six-month statute of limitations is tolled during the pendency of an internal union appeal with regards to an unfair labor charge against an employer alleging retaliation, and we will not expand on those exceptions to toll the statute of limitations here.

Respondent relies on the Commission's decision in *Macomb Co Road Comm*, 1984 MERC Lab Op 31 (no exceptions). In that case, the Commission affirmed the ALJ's holding that steps taken by a labor organization in processing a grievance will not affect the statute of limitations with regard to unfair labor charges against an employer. *Id.* at 34. The facts of *Macomb Co Road Comm* squarely coincide with the facts of the instant case.

Accordingly, we find that the ALJ was correct in holding that the statute of limitations was not tolled with respect to the charge against the Employer during the pendency of the grievance procedure and the internal union appeal. We have considered each of Charging Party's arguments and, for the reasons set forth above, find the

exceptions to be without merit. We therefore adopt the Administrative Law Judge's findings of fact and conclusion of law.

ORDER

It is hereby ordered that the unfair labor practice charge filed by Kenneth Farhat against the Troy School District be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

_____
Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Dated:_____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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TROY SCHOOL DISTRICT,
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APPEARANCES:

Lange & Cholack, P. C., by Attorneys Craig W. Lange and Barbara F. Doolittle for the Respondent

Vitale, Flemming & Crosby, P.C., by Attorney Richard Rockwood for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

Charging Party Kenneth Farhat filed an unfair labor practice charge against Respondent Troy School District on April 4, 2002. Charging Party claims that Respondent terminated him on September 18, 2000, in retaliation for concerted activities that included his exposure of corrupt and illegal actions by Michigan Education Association representatives. The complaint and a notice of hearing were sent to Respondent on April 29, 2002. Respondent filed an answer, affirmative defenses, and a motion for summary disposition on August 9, 2002. Charging Party filed a response to the motion on September 3, 2002, Respondent filed a reply to Charging Party's response on September 16, 2002, and Charging Party filed a sur-rejoiner on September 25, 2002. Based on the record, I make the following findings, conclusions of law and recommended order pursuant to Section 16(b) of PERA, MCL 423.216:

Facts:

Charging Party was employed by Respondent as a custodian from 1985 until September 18, 2000, when he was terminated. During his employment, he was a member of the Troy Educational Support Personnel Association, MEA/NEA (TESPA) and held the following union positions: American Federation of State County and Municipal Employees steward, October 1990 until October 1996; local AFSCME vice president, October 1996 until October 1997; and since October 1999, MEA representative. Beginning in March 1998, he helped the MEA during its organizing campaign and ran for president in September 1998. According to Charging Party, as part of his duties in his various union positions, he advocated for fellow union members and in May 2000, wrote a letter to the TESPA president. He complained about alleged corruption and

mismanagement within the union and corruption and possible collusion between the union and management. In his letter, Charging Party named a union representative and an assistant superintendent. He claims that they concocted a campaign to terminate him.

After his September 18, 2000 termination, Charging Party filed a grievance seeking reinstatement, back pay and other relief. The TESPA represented him and processed his grievance to the arbitration stage of the grievance procedure set forth in the collective bargaining agreement between Respondent and TESPA. Article 6 provides that the grievance procedure is the exclusive means for resolving complaints by an employee based upon an event or condition that is claimed to violate, misrepresent or misapply the agreement. On January 22, 2001, the date set for the arbitration hearing, TESPA and Respondent reached a tentative agreement to resolve the grievance. However, after Charging Party refused to sign the proposed settlement, the TESPA withdrew its representation of him. Charging Party's final internal union appeal of TESPA's withdrawal of representation was denied on November 9, 2001. The instant charge was filed on April 4, 2002.

Conclusions of Law:

It its motion to dismiss, Responded claims that Charging Party's April 4, 2002 charge was not filed within the six-month limitation period set forth in Section 16(a) of PERA. Charging Party concedes that his charge was filed more than six months after his termination, but cites *Silbert v Lakeview Education Association,* 187 Mich App 21 (1991*)*, for the view that the limitations period is tolled during an employee's internal union appeal of an adverse employment action. Charging Party asserts that the six-month limitations period did not begin to run until November 9, 2001, when his internal union appeal was denied and, therefore, his April 4, 2002, charge was timely filed.

Silbert, relied upon by Charging Party, involved an employee's claim that his union violated its duty of fair representation. There the Court of Appeals rejected the union's argument that the employee's claim against the union accrued on August 24, 2984, when the union refused to arbitrate her grievance, and consequently, her complaint, filed on February 26, 1985, was untimely since it was not filed within PERA's six-month limitations period. The Court held that because the employee's internal appeal of the union's August 24, 1984, refusal to arbitrate was not denied by the union's grievance committee until November 15, 1988, the employee's cause of action did not accrue, or at least the statute of limitations was tolled, until that date.

Respondent asserts that the instant case is governed by the Commission's decision in *Macomb County Road Commission,* 1984 MERC Lab Op 31, and that *Silbert* only applied to an employee's claim against his union and had nothing to do with an employee's claim against his employer, as in the instant case. In *Macomb*, the Commission refused to adopt charging party's contention that his unfair labor practice charge against the employer was timely because it was filed within six months of the date he learned that the union would not continue to process his grievances. The Commission stated:

> The question of timeliness is, however, determinative. It is clear from the facts alleged and argued that the charge was filed more than eight months after the

> January 1 date when Charging Party's layoff became effective . . . Steps taken by the labor organization in processing the grievance, or any delay in that process, will not affect that statute of limitations in regard to alleging the violation by the Employer. (Citations omitted.)

Charging Party contends that Respondent's reliance on *Macomb* is misplaced and leads to an absurd result. According to Charging Party, the collective bargaining agreement between the TESPA and Respondent provides that the grievance procedure is the exclusive means for resolving disputes between the employee and the employer relating to unfair labor practices. Charging Party reasons that if he is to have any recourse to MERC, it can only be after the resolution of his grievance. I find no merit to this argument.

First, the collective bargaining agreement does not provide, as Charging Party contends, that the grievance procedure is the exclusive means for resolving disputes relating to unfair labor practices. Rather, it defines a grievance as a complaint by an employee based upon an event that is claimed to violate, misrepresent, or misapply the agreement. Section 10 of PERA protects the rights of public employees to form unions by setting forth various employer and union unfair labor practices, while Section 16 provides a procedure for resolving alleged unfair labor practices. MCL 423.210 and 423.216. Second, the Commission's reasoning in *Macomb* applies to the facts of this case. Just as the statute of limitations is unaffected by steps taken by the labor organization to process a grievance, I find that it was not tolled by steps Charging Party took to appeal TESPA's decision to withdraw its representation. I conclude, therefore, that PERA's six-month limitations period began to run on September 18, 2000, the date Charging Party was terminated, and his April 4, 2002, charge alleging that his discharge violated PERA is untimely.

I have carefully considered all other arguments raised by the parties and conclude that they do not warrant a change in the result. Based on the above discussion, I recommend that the Commission grant Respondent's motion for summary disposition and issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____