

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Respondent-Public Employer,

Case No. C02 K-246

- and -

CLERICAL-TECHNICAL UNION OF MICHIGAN
STATE UNIVERSITY,
Charging Party-Labor Organization.

APPEARANCES:

Samuel A. Baker, Director of Labor Relations, for the Public Employer

John Klusinske, Contract Administrator, for the Labor Organization

DECISION AND ORDER

On January 16, 2003, Administrative Law Judge Roy L. Roulhac issued his 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 FOR SUMMARY DISPOSITION

On November 15, 2002, Charging Party Clerical-Technical Union of Michigan State University filed a charge against Respondent Michigan State University. The charge alleged that Respondent violated Sections 10(1)(a), (c) and (e) of the Public Employment Relations Act (PERA), MCL 423.210, by engaging in the following conduct:

On or about April 26, 2002, Thomas Luccock, a management official and agent of Respondent, unilaterally (without notice to or bargaining with Charging Party) and coercively prohibited employee Amanda VanKoeving, a duly designated Union Representative and member of Charging Party, from posting in her non-public work area an AFL-CIO poster commemorating the September 11 tragedy and the efforts of organized workers to locate and save victims. Luccock's actions were undertaken in the absence of any existing University policy regarding the display of materials in the work place and in a manner which unlawfully interfered with and discriminated against VanKoeving's (sic) for engaging in protected concerted activity in posting the AFL-CIO September 11 poster in her work area.

On December 11, 2002, Respondent filed a motion for summary disposition. It assert that

the charge, filed six months and twenty days after the alleged unfair labor practice, was untimely. On December 19, 2002, I directed Charging Party to respond to Respondent's motion within 10 days. On December 30, 2002, Charging Party responded to the motion as follows:

A motion to dismiss C02 K-246 was received today from your office by FAX after my inquiry. The motion was not received prior. Please note that C02 K-246 was mailed 7/5/02 and then mailed again after inquiry to the Michigan Employment Relations Commission as to scheduling revealed that your office did not have it on file. I hereby request denial of the request to dismiss.

Section 16(a) of PERA, MCL 423.216(a) provides that no complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge. Commission Rule 151 (R 423.151) requires that an original and four copies of the charge shall be filed with the commission, and upon filing the charge, the charging party shall, within the applicable period of limitations, be responsible for the timely and proper service of a copy thereof upon the charged party.

The December 11, 2002 charge was filed more than six months after April 26, 2002, the date of the alleged violation. Charging Party's mere assertion that the charge was filed on July 5, 2002, is insufficient to waive the limitations period set forth in Section 16(a). Charging Party failed to present proof that a charge was filed on July 5, 2002, or that a copy of a July 5, 2002, charge was served upon the Respondent. The only charge docketed by the Commission in this case was filed on November 15, 2002. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582; *Washtenaw County*, 1992 MERC Lab Op 471. Therefore, I recommend that the charge be dismissed as untimely and the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____