

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

In the Matter of:

REGION VII AREA AGENCY ON AGING,
Respondent – Employer,

-and-

NANCY SMITH,
An Individual Charging Party.

Case No. C03 G-157

APPEARANCES:

Cohl, Stoker, Toskey & McGlinchey, P.C., by David G. Stoker, Esq., for the Public Employer

Frank and Foster, P.C., by Michael Foster, Esq., for Charging Party

DECISION AND ORDER

On November 25, 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

Nora Lynch, Commission Chairman

Harry Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____

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Frank and Foster, P.C., by Michael J. Foster, Esq., for Charging Party

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

On July 25, 2003, Charging Party Nancy Smith filed an unfair labor practice charge against Respondent Region VII Area Agency on Aging, alleging that on January 9, 2003, she was terminated because of her union activities. Respondent filed an answer and affirmative defenses on August 18, 2003. Respondent denied the allegations and asserted that the charge: was filed more than six months after Charging Party's termination; is preempted by the National Labor Relations Act (NLRA), 29 USC 151 *et seq.*; and is barred by the National Labor Relations Board's (NLRB) prior decision on the identical issue raised in this case. On November 4, 2003, Respondent filed a motion for summary disposition. Charging Party filed a response to the motion on November 14, 2003.

Facts:

Prior to Smith's January 9, 2003 termination, she was employed by Region VII Area Agency on Aging as its fiscal manager. According to Smith, she was active in helping employees establish a union, signed a union card, and after she assisted an employee in processing a grievance, Respondent initiated a series of adverse actions against her that ultimately led to her discharge.

On June 4, 2003, Smith filed an unfair labor practice charge against Respondent with the NLRB. She claimed that Respondent, a non-profit agency, terminated her employment on January 9, 2003, because of her union activities. On July 14, 2003,

NLRB's regional director informed Smith that after investigating her complaint, the evidence demonstrated that she, as either a supervisor or a manager, was not an employee as defined by the Act and did not enjoy its statutory protection. Smith was also notified that there was insufficient evidence to establish that she was discharged for giving testimony adverse to the Employer, refusing to commit unfair labor practices or failing to prevent unionization. Smith was advised of her right to file an appeal by July 28, 2003. Smith did not file an appeal. Rather, on July 25, 2003, she filed an identical charge with this Commission.

Conclusions of Law:

In addition to claiming that the charge should be dismissed because it was filed more than six months after the alleged violation, Respondent contends that the matter is preempted by the NLRA and is barred by the NLRB's prior decision on the same issue raised in this case. Charging Party claims that the six-month limitation period was tolled while her unfair labor practice charge was pending before the NLRB. She also claims that the NLRB did not render a decision of the merits of her complaint and declined to assert jurisdiction over her charge by finding that she was not an employee covered by the NLRA.

Section 16(a) of the Public Employment Relations Act states that no unfair labor practice complaint shall issue based upon any unfair labor practice occurring more than six months prior to filing a charge. The Commission has held that in cases of alleged discriminatory discharge, the six-month statute of limitation runs from the effective date of the termination. *Superiorland Library*, 1983 MERC Lab Op 140. The Commission has also found that the statute of limitation is not tolled by an employee's attempts to seek remedies elsewhere, or while other matters are pending involving the same dispute. *Wayne County Probate Court*, 1992 MERC Lab Op 385; *Wayne County Community College*, 1988 MERC Lab Op 213; *Southfield Public Schools*, 1984 MERC Lab Op 1084.

I find that Smith's July 25, 2003, charge is untimely since it was filed more than six months after her January 9, 2003 termination. In view of this finding, it is unnecessary to decide whether the charge is preempted by the NLRA or is barred by the NLRB's prior decision. I recommend that 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: _____