STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WASHTENAW COMMUNITY MENTAL HEALTH,
Respondent-Public Employer in Case No. C03 C-061,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 25,
Respondent-Labor Organization in Case No. CU03 C-017,

-and-

MICHAEL SCHILS,
An Individual Charging Party.
_____/

APPEARANCES:

Gallagher & Gallagher, P.L.C., by Paul Gallagher, Esq., for the Public Employer

Miller Cohen, P.L.C., by Bruce A. Miller, Esq., and Richard G. Mack, Jr., Esq., for the Labor Organization

Michael Schils, In Propria Persona

DECISION AND ORDER

On November 26, 2003, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter dismissing Charging Party Michael Schils' unfair labor practice charges against Washtenaw Community Mental Health and American Federation of State, County and Municipal Employees (AFSCME) Council 25. At the hearing, the ALJ allowed oral argument on motions to dismiss filed by both Respondents. In his decision, the ALJ found that Charging Party failed to file his charges against Respondents within the six-month statute of limitations under Section 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.216(a). The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On January 13, 2004, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. He also requested that a motion for reconsideration, filed with the ALJ on December 4, 2003, be considered with the exceptions.

In his exceptions, Charging Party argues that he was given insufficient opportunity to present oral argument on the timeliness of his claims and requests a reopening of the record to submit additional evidence. We find that Charging Party was given sufficient opportunity to establish the timeliness of his claims and failed to do so. For reasons discussed below, we agree with the ALJ that the charges are untimely.

Discussion:

Under Section 16(a) of PERA, a charge must be filed with the Commission within six months of the date the claim accrued. A claim accrues when the charging party knows, or should know, of the alleged violation. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. The limitations period is jurisdictional and cannot be waived. *Walkerville Rural Community Schs*, 1994 MERC Lab Op 582. Under Rule 151(4) of the Commission's General Rules, 2002 AACS, R 423.151(4), the charging party bears the responsibility to ensure that the charges are filed properly. See *Dryden Community Schs*, 1982 MERC Lab Op 821. The statute of limitations is calculated from the date that a charging party properly files the charge with the Commission; in addition, it is the charging party's responsibility to timely serve the respondent(s). On March 7, 2003, Charging Party filed defective charges with the Commission, which were returned to him. Charging Party properly filed charges on March 18, 2003. Therefore, March 18, 2003, is the date we use to determine timeliness under Section 16(a) of PERA.[1]

As the ALJ noted, and as argued by Respondent Employer, the most recent event involving the Employer identified in the charge occurred on June 28, 2002, when according to Schils, the Employer refused to acknowledge a breach of federal regulations. As Charging Party has not alleged any action on the part of the Employer within the statutory period, we agree with the ALJ that all of the charges filed against Respondent Washtenaw Community Mental Health are untimely.

With respect to the charges filed against Respondent AFSCME Council 25, the ALJ identified three paragraphs of the charge referring to dates on which Charging Party complained to the Union that would arguably fall within the six-month statute of limitations: paragraphs 1, 3, and 4. The ALJ found that because the charge was filed more than six months after Charging Party *first* brought these complaints to AFSCME's attention, it was untimely. We agree with the ALJ that the charge is untimely. However, as discussed below, we apply a different standard with respect to when the statute of limitations began to run.

In his allegations, Charging Party essentially complains of the Union's inactivity on his behalf. In such cases, the statute of limitations begins to run when the charging party should have reasonably realized that the union would not act on his behalf. *Pantoja v Holland Motor Express, Inc*, 965 F2d 323 (CA7, 1992); *Shapiro v Cook United, Inc*, 762 F2d 49 (CA6, 1985); *Metz v Tootsie Roll Industries, Inc*, 715 F2d 299 (CA7, 1983). For example, in *Metz*, the plaintiff alleged that the union breached its duty of fair representation by failing to process her grievance after she was terminated. The union initially sent a letter to the employer stating that

[1] Charging Party argues that the earlier date should be used; for reasons discussed *infra*, the charges would be untimely even utilizing the earlier date.

the discharge violated the collective bargaining agreement. However, the union failed to take further action or even inform the plaintiff of its decision not to pursue her grievance despite her repeated complaints. Thirteen months later, the plaintiff filed suit against the union for allegedly breaching its duty of fair representation. The court dismissed the plaintiff's claim as untimely, stating, "[T]he alleged violation, which consisted of union inactivity, should have been discovered by a reasonably diligent claimant prior to the statutory period." *Id.* at 304.

With respect to paragraph 1 of the charge, involving Freedom of Information Act (FOIA) inquiries, Charging Party was given the opportunity at hearing to demonstrate how such a claim would fall within the Commission's jurisdiction and failed to do so. However, even if legitimate, this claim would be untimely. Charging Party alleges that he first brought his FOIA complaint to AFSCME's attention on July 17, 2001, when he submitted a letter requesting that AFSCME address the Employer's failure to respond to his information requests. Despite the Union's failure to respond for over a year, Charging Party did not file the charge until March 18, 2003, twenty-one months later. Clearly, he did not pursue this claim with reasonable diligence, and we find it to be untimely.

We reach the same conclusion with regard to paragraph 3 of the charge involving the Union's alleged failure to act on his commercial driver's license complaint. On the face of the charge, Charging Party acknowledges that he complained to AFSCME Council 25 regarding this matter for two years without what he considered a satisfactory response. This allegation is also untimely.

Finally, Charging Party in paragraph 4 alleges that AFSCME ignored his legitimate dispute over the last chance agreement. Although the period between Charging Party's first complaint to AFSCME Council 25 and the filing of this charge did not span as many months as the two aforementioned charges, we note the frequency of Charging Party's complaints. Between June 4, and August 20, 2002, a period of approximately two and a half months, Charging Party submitted five complaints to AFSCME Council 25, but did not receive a single response. Charging Party, in the exercise of due diligence, should have discovered over six months prior to the date he filed these charges that Respondent AFSCME Council 25 would not respond to his continuing complaints. We also note that the arbitrator issued an award regarding the last chance agreement on April 30, 2002; thus, Charging Party had knowledge of that agreement in early May 2002. Accordingly, we find that the charges against AFSCME Council 25 are untimely. To hold otherwise would allow a charging party to infinitely extend the statute of limitations for a breach of duty of fair representation claim simply by submitting endless complaints to the union. Such a result would clearly be contrary to the legislative intent to provide for a fast resolution of labor disputes.

In examining the documents Charging Party submitted at hearing, as well as the argument he makes in his exceptions, it is clear that Charging Party misconstrues the role of the Commission in his employment dispute. There have been three arbitration awards regarding his termination; in his final decision, on September 10, 2002, the arbitrator held that by refusing to sign the last chance agreement, Charging Party voluntarily quit his employment. Charging Party appears to believe that he can reargue matters such as whether there was just cause for his dismissal and the validity of the last chance agreement before this Commission. These matters

have been appropriately resolved through the contractual grievance/arbitration process. This is not the forum in which to challenge an arbitrator's decision. *Detroit Public Schools*, 2004 MERC Lab Op ____ (Case Nos. C98 I-184 & CU98 I-45, decided June 30, 2004).

ORDER

The charges in this case are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Dated: _____

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Michael Schils, *In Pro Per*

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

This matter involves unfair labor practice charges filed by Charging Party Michael Schils against Respondents Washtenaw Community Mental Health (WCMH) and the American Federation of State, County and Municipal Employees Council 25 (AFSCME) in March 2003.

Charging Party, former member of AFSCME's bargaining unit, was discharged from his employment with WCMH on January 7, 2000. As a result of an August 8, 2001 arbitration award, he was reinstated. A month later, on September 7, 2001, he was discharged for failing a drug test. On April 30, 2002, pursuant to a second arbitration award, Charging Party was reinstatement, subject to conditions outlined in a last chance agreement. In a third award issued on September 10, 2002, the arbitrator found that Charging Party voluntarily terminated his employment by refusing to sign the last chance agreement. AFSCME sent Charging Party a copy of the third award on September 12, 2002.

Charging Party filed unfair labor practice charges against Respondents on March 7, 2003. Because the charge forms had been altered, a Commission representative returned the charges.

The charges were re-filed on March 18, 2003, on unaltered forms. Charging Party testified that he hand-delivered a copy of his charge to WCMH on February 28, 2003, and that on March 6, 2003, he sent certified copies to Respondents. According to Charging Party, Respondents' representative signed certified mail receipts indicating that they received the charges on March 8, 2003. In accordance with General Rule R 423.152, this agency sent copies of the complaint and notices on hearing to Respondents on April 20, 2003.

On July 17, 2003 and September 8, 2003, WCMH and AFSCME, respectively, filed motions for summary disposition. They contend that the charges were not filed within six months of the alleged violations as required by Section 16(a) of the Public Employment Relations Act (PERA), MCL 423.216(a). This Section 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. Charging Party filed written responses and the parties presented oral argument on October 7, 2003. Respondent WCMH and Charging Party filed briefs on November 17, 2003.

In considering whether to grant or deny Respondents' motions for summary disposition, all factual allegations in support of the charges are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts, and construed in the light most favorable to Charging Party. *Maiden v Rozwood*, 461 Mich 109, 118. The charge against WCMH is set forth in twenty-three numbered paragraphs. The latest date mentioned, June 28, 2002, is contained in paragraph seven, which reads: "Refusal to acknowledge breach of Federal Regulations pointed out by Schils (6-28-2002)." The charge against AFSCMC Council 25 is enumerated in eleven paragraphs. It refers to numerous events that occurred between February 2, 2000 and September 30, 2002. Paragraphs that refer to dates within six months of March 8, 2003, when Charging Party alleges that he served the charge upon AFSCME, read:

> 1. Refused to acknowledge FOIA request response from Heidt despite numerous attempts by Schils to bring it to their attention (letter 7-17-01, 7-19-01 and 9-30-02). AFSCME claims that this was already arbitrated, but there's no record of it. Letter from Betty Gaston (8-15-02) indicates that AFSCME had already decided that Schils's employment had been terminated (voluntary quit) while WCMH was still waiting for direction for the arbitrator. Such desertion of duties is a gross failure to represent.
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> 3. Refused to acknowledge that Ford F350's do not require a CDL to operate, despite the many times staff attempted to bring it to AFSCME's attention (letter 2-19-02, emails 1-31-02, 5-13-02, 7-19-02, 9-30-02 and numerous verbal exchanges going back over two years). AFSCME's standard reply has been, "The CDL issue is being taken care of," (6-12, 13-02) or the CDL Policy and Bargaining Agreement are not part of the grievance. (5-16-02)
>
> 4. AFSCME ignores Schils' legitimate dispute over Last Chance Agreement and agrees with WCMH that Schils quit (emails and letters from 6-04-02, 7-15-02, 7-16-02, 8-14-02, 8-20-02, 9-30-02).

I agree with Respondents' assertions that the charges were not filed within six months of the alleged violation as required by Section 16(a). The six-month limitation period in Section 16(a) of PERA commences when the aggrieved party "knows of the act which caused his injury

and has good reason to believe that the act was improper or done in an improper manner." *City of Huntington Woods v. Wines*, 122 Mich 650 (1983). Accepting as true Charging Party's claim that he hand-delivered a copy of the charge to Respondent WCMH on February 28, 2002, the most recent event set forth in his charge occurred on June 28, 2002, eight months before February 28, 2002. The charge against AFSCME is also untimely. Although it refers to a date, September 30, 2002, that is within six months of March 8, 2003, when Charging Party claims that AFSCME received the charge, it also contains earlier dates that demonstrate that he knew of the alleged violations prior to September 30, 2002. In paragraphs 1, 2 and 4, Charging Party states that AFSCME either refused to acknowledge or ignored concerns he expressed about a freedom of information act request, a CDL license, and the last chance agreement on July 17, 2001, January 31, 2002 and June 4, 2002, respectively. Clearly, the charge was filed more than six months after Charging Party first brought these matters to AFSCME's attention. The charge that Charging Party claims he served on AFSCME on March 8, 2003, does not comply with statute of limitation set forth in Section 16(a) of PERA.

I have carefully considered all arguments raised by Charging Party and conclude that they do not warrant a change in the result. Included is his claim that his charges were timely since they were filed within six months after AFSCME refused his request to appeal the arbitrator's September 10, 2002 award.[2]

I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____

[2]In his brief, Charging Party attached a September 30, 2002, letter to AFSCME requesting that the arbitrator's September 10, 2002, award be appealed and an October 17, 2000, letter from AFSCME denying his appeal. Charging Party indicates that the attached documents are submitted in case his other arguments failed and to demonstrate that the limitations period should be extended to mid-April 2003.