

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

In the Matter of:

CITY OF LANSING,
Respondent - Public Employer,

Case No. C04 B-063

-and-

HERMAN LOUIS JONES,
An Individual - Charging Party.

APPEARANCES:

Susan C. Graham, Labor Relations Specialist, for the Public Employer

Herman Louis Jones, In Propria Persona

DECISION AND ORDER

On August 16, 2004, 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 W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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

On February 4, 2004, Charging Party Herman Louis Jones filed identical unfair labor practice charges against Respondents City of Lansing and the Fraternal Order of Police. A copy of the charge and a notice of hearing were served upon the Employer on March 11, 2004. Documents attached to the charge include an October 3, 2003 discrimination complaint filed with the Michigan Department of Civil Rights (MDCR) and the Equal Employment Opportunity Commission (EEOC), newspaper articles, a freedom of information request, crime statistics and memoranda. August 28, 2003, the most recent event referenced in the charge is contained in statements in the discrimination complaint. They read:

Other Terms and Conditions 08/28/03 Race

I allege that Respondent's command hold minority officers to a higher level of performance than White officers. My performance evaluation (June 2003) accurately reflects this disparity. While White officers are verbally counseled or coached on job performance issues, minority officers are written [sic], investigated by Internal Affairs (IA), and disciplined. On August 28, 2003, an IA complaint was initiated against me based on alleged personal misconduct. I am aware of White officers not held to this standard.

Harassment/Not Sexual 08/28/03 Race

Respondent has refused to address my concerns that supervisor's and command officer's conduct have [sic] created a hostile work environment based on race.

On May 25, 2004, Respondent City of Lansing filed an answer and a motion for summary disposition. The Employer argues that the charge against it should be dismissed because it was not filed within six months of the alleged violation and that alleged violations of Civil Rights statutes are outside the scope of the Public Employment Relations Act (PERA), MCL 423.201, *et. seq.* On May 26, 2004, Charging Party was granted fourteen days to respond to the motion. Charging Party did not file a response and on August 11, 2004, Respondent City of Lansing renewed its motion.

Section 16(a) of PERA, MCL 423.216(a), states that no complaint shall issue based upon any unfair labor practice charges occurring more than six months prior to filing the charge with the Michigan Employment Relations Commission (MERC) and the service of a copy of the charge upon the person against whom the charge is made. The statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schs*, 1994 MERC Lab Op 582. The most recent events that Charging Party complains about allegedly occurred on August 28, 2003. The unfair labor practice charge against the City of Lansing was filed with MERC on February 4, 2004. However, it was not served upon the City until March 11, 2004, more than six months after August 28, 2003. Even if the charge were timely filed, it does not state a claim for which relief can be granted because alleged violations of Civil Rights statutes, such as complaints of racial discrimination and hostile work environment, are outside the scope of PERA. See e.g., *City of Highland Park Fire Dep't*, 1985 MERC Lab Op 1226.

Based on the above discussion, 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: _____