STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

MUSKEGON COUNTY JUVENILE DETENTION CENTER,
Respondent – Public Employer,

Case No. C05 B-046

- and -

RUTH A. JOHNSON,
An Individual Charging Party.
_____/

APPEARANCES:

Williams, Hughes & Stapleton, P.L.L.C., by Theodore N. Williams, Jr., Esq. for the Public Employer

Ruth A. Johnson, In Propria Persona

DECISION AND ORDER

On April 28, 2005, 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

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Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

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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 25, 2005, Charging Party Ruth A. Johnson filed an unfair labor practice charge against Respondent Muskegon County Juvenile Detention Center. The charge reads:

> Employers [sic] grounds for discharge were not adequate as stated by the M.E.S.C. findings under "Misconduct." Employer lied when questioned by M.E.S.C. Law Judge. Employer changed termination charge of falsifying time card to "being on central registry" and then back again. Employer has violated the contract in different category's [sic] including discrimination and grievance procedures. Also harassment during reprimand.

The dismissal notice, which Charging Party attached to the charge, indicates that she was terminated on June 1, 2004.

On March 20, 2005, Respondent filed an answer and a motion for summary disposition. In its motion, Respondent claims that the February 25, 2005 charge was filed more that six months after Charging Party's June 1, 2004 termination and was, therefore, beyond the six-month statute of limitations contained in Section 16(a) of the Public Employment Relations Act (PERA), MCL 423.216(a). Further, Respondent argues that the charge is based upon a ruling under a different statute and different standard than is contained in PERA and is not an appropriate subject for an unfair labor practice charge.

On April 12, 2005, Charging Party filed a response to the motion for summary disposition. She claims that she filed her charge late because her Union and the Employer were "untimely going through the union process and I never got my final answer from my appeal until after the six months." She also contends that her union representative misled her and told her not to file any suit with anyone else until her appeal was final. Additionally, Charging Party argues that Respondent was not honest with the unemployment judge and that her discrimination charge is valid.

I find that Charging Party has failed to state a claim for which relief can be granted under PERA. The Charging Party does not allege that Respondent discriminated against her because of her union activity or other activity protected by Section 9 of PERA. Absent an allegation that Respondent interfered with, restrained, coerced or retaliated against her for engaging in protected activity, the Commission is prohibited from making a judgment on the merits or fairness of Respondent's action. *City of Detroit (Fire Dept*.), 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. The Commission can only determine whether PERA has been violated and is without authority to decide whether an employer violated a contract or provided truthful testimony in a different forum.

Summary dismissal is also warranted because the charge was not timely filed. Section 16(a) of PERA states that no unfair labor practice complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge. The Commission has held that in cases of alleged discriminatory discharge, the six-month statute of limitations runs from the effective date of the termination. *Superiorland Library*, 1983 MERC Lab Op 140. Charging Party was terminated on June 1, 2004. Her charge was not filed until February 25, 2005, more than six months later. The Commission has also found that the statute of limitations 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. The six-month time limit, therefore, was not tolled pending the outcome of the "union process," as Charging Party alleges. 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

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Roy L. Roulhac
Administrative Law Judge

Dated: _____