STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Respondent-Public Employer,

Case No. C05 E-114

-and-

RAMON RUIZ,
An Individual-Charging Party.
_____/

APPEARANCES:

James D. Nash, Associate Human Resources Director, for the Public Employer

Ramon Ruiz, In Propria Persona

DECISION AND ORDER

On July 29, 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

_____
Nora Lynch, Commission Chairman

_____
Nino E. Green, Commission Member

Dated: _____

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

On May 27, 2005, Charging Party Ramon Ruiz filed an unfair labor practice charge alleging that Respondent Michigan State University violated the Public Employment Relations Act (PERA), MCL 423.210 *et. seq.*, by engaging in "discrimination, unfair labor practices."

On July 1, 2005, Respondent filed a motion for summary disposition and/or for a more definite statement. According to Respondent, Ruiz failed to articulate a factual basis for his charge and does not specify dates, names, places or sections of PERA to support his allegations. Respondent states that at all times relevant to Charging Party's employment, he was a member of AFSCME, Council 25, Local 1585, which was a party to a collective bargaining agreement that covered the period August 1, 2002 through July 31, 2006. Additionally, Respondent states that on or about November 12, 2003, Charging Party was suspended pending an investigation for not reporting for overtime on November 8, 2003, and was terminated on December 5, 2003, for "Unsatisfactory employment – failure to report for mandatory overtime on 11/08/03." On March 18, 2005, an arbitrator issued an opinion and award denying a grievance filed on Charging Party's behalf and sustaining Charging Party's discharge. Respondent argues that based on these facts, the charge fails to state a claim for which relief can be granted and it was untimely filed.

Charging Party responded to Respondent's motion on July 19, 2005. He states that many months before he was fired, a union steward came to see him about derogatory statements that his department manager had made about him. According to Charging Party, he declined the steward's invitation to initiate a grievance in hopes of repairing his relationship with the manager. Unfortunately, according to Charging Party, the hostility and harassment continued and it led to a final warning letter regarding mandatory overtime that he was made to sign without

proper Union representation. Then, Charging Party states, he was required to work an overtime schedule that his immediate supervisor failed to inform him about. For these reasons, Charging Party asserts, this tribunal should pursue his case.

I agree with Respondent's assertion that the charge was untimely filed and does not state a claim for which relief can be granted under PERA. Section 16(a) of PERA, MCL 423.216(a), requires that an unfair labor practice charge be filed within six months of an alleged violation. The record in this case indicates that Charging Party was terminated from his employment on December 5, 2003, more than seventeen months before the charge was filed. The statute of limitations is jurisdictional and cannot be waived. *Washtenaw Co*, 1992 MERC Lab Op 471. Moreover, the statute is not tolled by an employee's attempt to seek a remedy elsewhere, or while another proceeding involving the dispute is pending. *Detroit Bd of Ed*, 1990 MERC Lab Op 781.

Even if the charge had been filed timely, summary disposition is warranted because the charge does not state a claim for which relief can be granted under PERA. Absent an allegation that Respondent interfered with, restrained, coerced or retaliated against a public employee because he or she engaged in conduct protected by Section 9 of PERA, the Commission is prohibited from make a judgment on the merits or fairness of Respondent's action. *City of Detroit (Fire Dept)*, 1998 MERC Lab Op 561. I, therefore, recommend that the Michigan Employment Relations 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: