

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 1583,
Labor Organization-Respondent,

Case No. CU04 G-037

-and-

JOSEPH GANT,
An Individual Charging Party.

APPEARANCES :

Joseph Gant, *In Propria Persona*

DECISION AND ORDER

On August 31, 2004, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter summarily dismissing Charging Party Joseph Gant's unfair labor practice charges against Respondent American Federation of State, County and Municipal Employees, (AFSCME) Local 1583. After giving Charging Party the opportunity to show cause as to why the charge should not be dismissed, the ALJ held that the charge was untimely 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 was served upon the interested parties in accordance with Section 16 of PERA. Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order on October 25, 2004, but has not filed a statement attesting to service of those exceptions upon Respondent.

Upon reviewing the record carefully and thoroughly, we agree with the ALJ that the charge is untimely and must be dismissed. Under Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The statute of limitations contained in Section 16(a) of PERA is jurisdictional and cannot be waived. See *Walkerville Rural Communities Schs*, 1994 MERC Lab Op 582. The six-month period starts when the charging party knows, or should have known, of the alleged violation. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836.

Charging Party was afforded the opportunity to show that the charge was timely but failed to allege any unlawful act by Respondent occurring within six months of the date that the

charge was filed. The actions that form the basis of the charge occurred during or before 2000. Charging Party knew of these actions and had reason to believe they were improper at the time they occurred, about four years before he filed this charge (2004). We find the charge to be untimely and adopt the ALJ's Recommended Order.¹

ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

¹ We also note that the exceptions are procedurally deficient because we have no statement from Charging Party attesting to service of the exceptions on Respondent.

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JOSEPH GANT,
An Individual-Charging Party

APPEARANCES:

Joseph Gant, in pro per

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On July 27, 2004, Joseph Gant filed an unfair labor practice charge against his bargaining representative, the American Federation of State, County, and Municipal Employees (AFSCME), Local 1583, alleging that the Respondent violated its duty of fair representation toward him under Section 10(3)(a)(i) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Gant alleges that Respondent improperly handled grievances it filed over his suspension and discharge from his employment in 1999 and 2000. Gant also alleges that Respondent violated its duty of fair representation when Respondent's counsel allegedly made false statements about his case in a letter to the Equal Employment Opportunity Commission (EEOC) in March 2000. Finally, Gant alleges that Respondent committed an unfair labor practice when its agents Terry Reid and Ruth Montgomery disobeyed directives to "reopen" his case issued by AFSCME International Vice President Belinda Saverino in September and December 2003.

Pursuant to my authority under AACS 2002 423.165(1) & (3), on August 10, 2004 I issued an order to Gant to show cause why his charge should not be summarily dismissed as untimely under Section 16(a) of PERA. Gant filed a response to this order on August 23, 2004.

The facts as alleged by Gant in his charge and his August 23, 2004 response are as follows. Gant was employed as a custodian by the University of Michigan and was a member of a bargaining unit represented by Respondent. In 1999, Gant was suspended for allegedly

sleeping on the job. Respondent filed a grievance over this suspension, but did not take it to arbitration. On January 31, 2000, the University terminated Gant for again allegedly sleeping on the job. Respondent filed a grievance challenging Gant's termination as being without just cause. On March 14, 2000, Respondent's attorney sent a letter to the Equal Employment Opportunity Commission (EEOC) in response to a charge Gant had filed against Respondent with that agency. In this letter, the attorney made statements about the evidence in Gant's discharge case. According to Gant, the attorney knew these statements to be false. Gant's discharge grievance was arbitrated on December 6, 2000. On February 5, 2001, the arbitrator issued a decision denying the grievance and upholding Gant's termination.

Gant had, and has, many complaints about the quality of the representation he received from the Respondent. Sometime in 2003, Gant spoke to AFSCME International Vice President Belinda Saverino about his case. According to Gant, Saverino subsequently told Terry Reid, Respondent's area field service director, to "put the entire case back through the system." Gant later talked with Reid who, according to Gant, assured him that his case would be reopened. On September 8, 2003, Gant phoned AFSCME Council 25 Arbitration Director Ruth Montgomery and told her what Reid had said. Montgomery agreed to review his case. On September 12, 2003, Montgomery sent Gant a letter stating that she had reviewed the file in his case, that the arbitration decision was final and binding, that Gant had been advised of this fact, and that further action at this time was neither appropriate nor possible. On September 26, Reid wrote to Gant stating that no one from Respondent's international headquarters had promised him that his case would be reopened, that the decision of the arbitrator was final and binding, and that no further action was possible. On December 22, 2003, Gant sent Saverino copies of Montgomery's and Reid's letters. According to Gant, on December 30, 2003, Saverino again ordered Reid to reopen Gant's case. Gant had telephone conversations with Saverino on February 3 and February 10, 2004 in which he told her that Reid had refused to obey her orders. Gant told her that he was going to file an unfair labor practice charge. According to Gant, Saverino encouraged him to do so.

Section 16(a) of PERA states that the Commission may not issue a complaint based upon a unfair labor practice occurring more than six months before the filing of the charge with the Commission. The statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Comm Schools*, 1994 MERC Lab Op 582, 583. The limitations period under PERA commences when the person knows of the act which caused his injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). Gant alleges that Respondent committed unfair labor practices by refusing to arbitrate the grievance over his 1999 suspension, by failing to properly handle and present his discharge grievance to the arbitrator, and by the false statements made by its attorney that prejudiced his case before the EEOC. All these actions took place in or before 2000. Gant clearly knew of these actions and knew or should have known that they were improper at the time they occurred. Since the instant charge was not filed until July 27, 2004, Section 16(a) bars the Commission from finding these acts to be unfair labor practices under PERA.

Gant does not assert that Saverino's actions violated Respondent's duty of fair representation. However, Gant appears to argue that Reid and Montgomery's refusal to reopen his case constitutes a new and independent violation of his rights under PERA. Under this

argument, Gant could revive his untimely claim at any time simply by demanding that his case be reopened, as long as Reid and Montgomery continue to insist, as they did here, that Respondent cannot take any further action on Gant's behalf because the arbitration award was final and binding. This would defeat the purpose of Section 16(a), which like all statutes of limitations, is intended to, first, encourage plaintiffs to pursue claims diligently and, second, to protect defendants from having to defend against stale or fraudulent claims. *Larson v Johns-Manville Sales Corp*, 427 Mich 302, 311 (1986). For reasons set forth above, I conclude that Gant's charge is untimely under Section 16(a) of PERA. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The instant charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____