STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CORUNNA PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C06 H-198

-and-

DARLYS COWAN,
An Individual Charging Party.
_____/

APPEARANCES:

Thrun Law Firm, P.C., by Donald J. Bonato, Esq., for the Public Employer

Canady Law Offices, by Barbara B. Herdus, Esq., for the Charging Party

DECISION AND ORDER

On September 27, 2006, Administrative Law Judge Doyle O'Connor 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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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated:_____

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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case came before Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings and briefs filed by the parties in response to an order to show cause why the charge should not be dismissed, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Darlys Cowan filed a charge on August 29, 2006 asserting that her Employer, Corunna Schools, had, since June of 2005, improperly denied her request for inclusion in a bargaining unit of teachers. The sole relief sought was that Cowan "be allowed to accrete to the bargaining unit. . . . "

An order to show cause why the charge should not be dismissed was issued on August 31, 2006, directing Charging Party to address the jurisdictional issue of the statute of limitations and the question of her standing to bring what amounted to an individual unit clarification petition. A response to the order to show cause was filed by the Charging Party on September 15, 2006, and by the Respondent on September 18, 2006.

Findings of Fact:

The findings of fact are derived from the Charge and the uncontested facts in the respective responses to the order to show cause.

Cowan is an employee of Corunna Public Schools. She alleges that in June of 2005, she requested that the Employer place her in an existing bargaining unit represented by the Corunna Education Association. That request was denied in writing in November of 2005. Cowan, through counsel, contacted the Employer in June of 2006 to renew her request for placement in the bargaining unit. In July of 2006, the Employer again rejected that request. The charge was filed by Cowan on August 29, 2006.

The sole relief sought is an accretion to an existing bargaining unit. The collective bargaining agent for the relevant bargaining unit is not a party to this matter.

Discussion and Conclusions of Law:

Section 16(a) of PERA states that "no complaint shall issue upon any unfair labor practice occurring more than 6 months prior to the filing of the Charge…". The statute of limitations is jurisdictional in nature and conclusively bars the finding of a violation where the action complained of occurred more than six months prior to filing a charge. *City of Detroit (Department of Public Works)*, 2000 MERC Lab Op 149. The limitation period under PERA commences when the person knows of the act that caused his injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). In *City of Adrian*, 1970 MERC Lab Op 579, the Commission adopted the holding of the U.S. Supreme Court in *Local Lodge 142 v NLRB (Bryan Mfg Co)*, 362 US 411 (1960), which rejected the doctrine of a continuing violation if the inception of the violation occurred more than six months prior to the filing of the charge. Here, Cowan knew in November 2005 that the Employer would not grant her request to be accreted to the bargaining unit. The charge was filed well after the expiration of the statute of limitations. The June 2006 renewal of the request for relief by Charging Party to her employer did not extend the statute of limitations and the charge is, therefore, barred.

Additionally, this charge, filed by an individual, seeks as relief an accretion to an existing bargaining unit. Such relief can only be sought through a petition for unit clarification. Pursuant to Rule 423.143 (1), of the General Rules and Regulations of the Employment Relations Commission, such petitions may only be filed by an *"…employer or by a labor organization representing an existing bargaining unit."* I conclude that Cowan has failed to state a claim upon which relief could be granted.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated: