STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer – Respondent in Case No. C05 K-281,

- and -

DETROIT FEDERATION OF TEACHERS,
Labor Organization – Respondent in Case No. CU05 J-040,

- and -

NICHOLAS PARHAM,
An Individual – Charging Party.
_____/

APPEARANCES:

Gordon Anderson, Esq., for the Public Employer

Sachs Waldman, P.C., by Mary Ellen Gurewitz, Esq. for the Labor Organization

Nicholas Parham, *In Propria Persona*

DECISION AND ORDER

On March 23, 2006, Administrative Law Judge Roy L. Roulhac (ALJ) issued his Decision and Recommended Order in the above matter finding no violation of Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210. Concluding that both Nicholas Parham's charge that Respondent Detroit Federation of Teachers (the Union or the DFT) breached its duty of fair representation and his charge that Respondent Detroit Public Schools wrongfully discharged him were filed more than six months after the alleged violations, the ALJ recommended that the charges be dismissed.

The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On March 28, 2006, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order. In his exceptions, which relate to the ALJ's findings concerning his allegations against the DFT only, Charging Party contends that "[a]s recent as October 3, 2005 . . . [he] knew for certain that [he] was not receiving fair union

representation" and that, therefore, the ALJ erred in finding his charges untimely.[1] We have reviewed the Charging Party's exceptions and find them to be without merit.

Factual Summary:

Charging Party filed an unfair labor practice charge against the Respondents, Detroit Federation of Teachers and Detroit Public Schools, on October 4, 2005 and November 29, 2005 respectively. At the hearing, he asserted that the Union failed to represent him at a disciplinary hearing occurring in January 2004, which resulted in his termination on September 14, 2004. In his exceptions, Charging Party alleges:

> I Nicholas Parham respectfully request that the Honorable Court reconsider hearing my case. Not all my allegations against the Union occurred during January 2004. As I stated in my initial charge with MERC: "Keith R. Johnson flat-out refuses to acknowledge my evidence. As recent as October 3, 2005, Keith Johnson has expressed to me that I should admit my wrong doings and that he heard me threaten Bonan. I told him that I would not nor would I be intimidated by him." This is when I knew for certain that I was not receiving fair union representation, so the very next day I filed a complaint against the Union with MERC. So with all due respect I say to the Honorable Court that the charge I filed on October 4, 2005 was submitted within a timely fashion. I submitted my charge on the very next day when I knew for certain that my union representation was totally unfair.

Discussion and Conclusions of Law:

Pursuant to Section 16(a) of PERA, MCL 423.216(a), an unfair labor practice charge must be filed within six months of the alleged violation. The statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Communities Schs*, 1994 MERC Lab Op 582. It is well-settled that a claim accrues when the charging party knows, or should have known, of the alleged unfair labor practice. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836.

As noted by the ALJ in his Decision and Recommended Order, attached to Charging Party's post-hearing brief were two letters from the Union, dated October 13, 2005 and November 30, 2005. Charging Party did not seek to introduce those documents into the record at the hearing; therefore, they are not a part of the record before us on review. Had he done so, however, we still would have dismissed as untimely his fair representation charge against the Union. We reiterate that the statute of limitations begins to run on the date when Charging Party knew or should have known that the union was not representing him. Based on the allegations set forth in his Charge and his testimony at the hearing, this occurred at the time of his disciplinary hearing in January 2004.

In Charging Party's exceptions, he refers to the statement set forth in his Charge that Respondent Union's representative Keith Johnson told him in October 2005 that he [Charging Party] should admit his wrong doings. Even assuming that this statement was in fact uttered, it

[1] No response was filed to the exceptions.

alone cannot bootstrap Charging Party's allegations into a timely claim for breach of the duty of fair representation. Based on our review of the record, we believe that Charging Party knew or should have known that the Union was not representing him well before this time. The fact that this statement was made during the statutory period does not change our view that Charging Party's claim against Respondent Union is untimely.

The Commission is in agreement with the ALJ that the Charges in this matter are barred by the statute of limitations and issues the following order:

ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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DETROIT PUBLIC SCHOOLS,
Respondent–Public Employer in Case No. C05 K-281,

- and -

DETROIT FEDERATION OF TEACHERS,
Charging Party-Labor Organization in Case No. CU05 J-040,

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NICHOLAS PARHAM,
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APPEARANCES:

Gordon Anderson, Esq., for the Public Employer

Sach Waldman, P.C., by Mary Ellen Gurewitz, Esq., for the Labor Organization

Nicholas Parham, *in propria persona*

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on January 6, 2006, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and a post-hearing brief filed by Charging Party on February 15, 2006, I make the following findings of fact and conclusions of law:

The Unfair Labor Practice Charge:

On October 4, 2005 and November 29, 2005, Charging Party filed unfair labor practice charges against Respondents Detroit Federation of Teachers and the Detroit Public Schools, respectively. The charge against the Union reads:

> Failure to represent, conspiracy, harassment, and intimidation. Since May 20, 2003 I've seeked representation on the matter of my alleged work rule violations which lead to my termination. [sic]

The charge against the Employer reads:

> As a result of Lauri D. Washington, Executive Director, for the Detroit Public School system negligible investigation into my case at MacKenzie High School I was wrongfully discharged. Her conclusions were of false statements about me. I was terminated on September 13, 2004.

Conclusions of Law:

During the hearing, Charging Party claimed that the Union violated its duty to fairly represent him during a disciplinary hearing in January 2004, and that the Employer's decision to terminate him on September 13, 2004, was based on false information. 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.[2] The statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Communities Schs*, 1994 MERC Lab Op 582. Charging Party's October 4, 2005 and November 29, 2005 unfair labor practice charges were filed more than six months after the alleged violations. Therefore, the charges must be dismissed as untimely.[3] I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Roy L. Roulhac
Administrative Law Judge

Dated: _____

[2]Section 16(a) of PERA reads: No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

[3]Charging Party's post-hearing brief includes two letters to him from the Union dated October 13, 2005 and November 30, 2005, informing him that his grievance would not be advanced to arbitration. Neither letter was introduced as exhibits during the hearing. These letters, even if they had been properly admitted as exhibits, do not affect the dismissal of the charge as untimely. As noted above, Charging Party's only allegation against the Union during the hearing was that it failed to fairly represent him during his January 2004 disciplinary hearing.