

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C05 K-286

-and-

GEORGE BUSH,
An Individual-Charging Party.

APPEARANCES:

Gordon J. Anderson, Esq., for the Respondent

David N. Sinutko, Esq., for the Charging Party

DECISION AND ORDER

On November 17, 2006, Administrative Law Judge Julia C. Stern issued her 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

On November 30, 2005, George Bush filed an unfair labor practice charge against his former employer, the Detroit Public Schools, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. The charge was assigned for hearing to Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission.

Bush's charge alleged only that he was wrongfully discharged. Pursuant to my authority under Rule 165 of the Commission's General Rules, 2002 AACCS, R 423.165, on May 2, 2006, I ordered Bush to show cause why his charge should not be dismissed for failure to state a claim upon which relief could be granted under PERA. On May 22, Bush filed a response stating that he was "discriminated against because of his union activities and his discharge was retaliatory." On May 23, I directed Bush to amend his charge to provide a clear and complete statement of the facts that alleged the violation of PERA, including a description of Bush's union activity, when it occurred, and the date and circumstances of his termination. On July 7, 2006, Bush filed a statement that partially complied with my directive. The statement did not include the date of Bush's termination. A hearing was scheduled for October 27, 2006.

On October 2, 2006, I conducted a telephone pre-hearing conference with representatives of the parties. During that conference, Bush's counsel stated that Bush had been terminated on or about December 12, 2004, but that Bush's collective bargaining representative, the International Union of

Operating Engineers, had filed a grievance on his behalf on February 16, 2005. He asserted that Bush's claim was tolled while that grievance was pending. Under Commission Rules 165(1) and (2) (c)), an administrative law judge designated by the Commission may on his or her own motion recommend that a charge be summarily dismissed because it is barred by the applicable period of limitations. I notified the parties that I would hold oral argument on the question of whether the charge should be dismissed as untimely under Section 16(a) of PERA. Oral argument took place on October 27, the scheduled hearing date. During oral argument, Bush's counsel affirmed that Bush was discharged on December 12, 2004.

Under Section 16(a) of PERA, the Commission does not have the authority to remedy unfair labor practices occurring more than six months before the date the charge is filed and served on the charged party. The six-month statute of limitations is jurisdictional and cannot be waived. *Lapeer Co*, 19 MPER 45 (2006); *Police Officers Labor Council, Local 355*, 2002 MERC Lab Op 145; *Walkerville Rural Cmtys Schs*, 1994 MERC Lab Op 582. The limitation period under PERA commences when the charging party knows of the act that caused his injury and has good reason to believe that the act was improper or done in an improper manner. *City of Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). When the alleged unfair labor practice is a wrongful discharge, the statute of limitations normally begins to run on the effective date of the termination. *Troy Sch Dist*, 16 MPER 34 (2003); *Kent Cnty Hospital*, 1987 MERC Lab Op 459; *Superiorland Library Cooperative*, 1983 MERC Lab Op 140.

Although a terminated employee may have claims under a collective bargaining agreement, the employee's claim that he was discharged because he exercised rights protected by Section 9 of PERA is a statutory, not a contractual, claim. The filing of a grievance under a collective bargaining agreement alleging wrongful discharge does not toll the statute of limitations under Section 16(a) of PERA. *Troy Sch Dist*; *Wayne Co*, 1998 MERC Lab Op 560. In *Troy*, the charging party alleged that his termination constituted unlawful retaliation against him by his employer because of his concerted protected activities. After his discharge, the charging party's union filed a grievance on his behalf. The union and employer eventually settled the grievance. The collective bargaining agreement stated that the grievance procedure was "the exclusive means for resolving complaints by an employee based upon an event or conditions that is claimed to violate, misrepresent, or misapply the agreement." The Commission rejected charging party's argument that the statute of limitations on his charge against the employer was tolled while the grievance was pending, concluding that the contract did not limit charging party's ability to bring a charge alleging a violation of his statutory rights under PERA.

In this case, Bush did not file the instant unfair labor practice charge until almost eleven months after his termination. I conclude that Bush's charge was untimely under Section 16(a) of PERA, and that his statutory claim was not tolled when his union filed a grievance under its collective bargaining agreement alleging that he was wrongfully discharged. I recommend, therefore, that that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____