

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

In the Matter of:

MICHIGAN STATE UNIVERSITY
Public Employer-Respondent,

Case No. C06 L-305

-and-

JOHN MORALEZ,
An Individual-Charging Party.

APPEARANCES:

James D. Nash, Associate Director, Employee Relations, for Respondent

John Moralez, *In Propria Persona*

DECISION AND ORDER

On January 19, 2007, Administrative Law Judge Doyle O'Connor (ALJ) issued his Decision and Recommended Order on Order to Show Cause and on Summary Disposition finding that Charging Party John Moralez' claim against Respondent Michigan State University was untimely under Section 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216(a). The ALJ held that Charging Party became aware of his cause of action at least one and one-half years prior to filing his charge and, therefore, the charge was barred by the statute of limitations. Additionally, the ALJ found that the charge does not state a claim under PERA because Charging Party failed to allege that Respondent was motivated by union or other activity protected by PERA. Based on those findings, the ALJ recommended that we dismiss the charge. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

On January 19, 2007, Charging Party filed an amendment to his charge. This amendment was not considered by the ALJ because the Decision and Recommended Order had been issued earlier the same day. The ALJ's letter to Charging Party denying the proposed amendment stated that the proposed amendment would be denied as "futile" for several reasons, including the fact that it relates to charges occurring beyond the limitations period. On February 2, 2007, Charging Party filed exceptions to ALJ's Decision and Recommended Order. In his exceptions, Charging Party alleges that the

ALJ erred in denying Charging Party's previously-filed motion for summary disposition. In addition, he asserts that the ALJ erred in failing to find that the statute of limitations had been extended by what he contends was Respondent's concealment of the unfair labor practice. On February 9, 2007, Charging Party filed another motion for summary disposition. Respondent filed its memorandum in support of the Decision and Recommended Order of the ALJ on February 13, 2007. On February 20, 2007, Charging Party filed a motion to strike and supporting brief requesting that Respondent's memorandum be stricken from the record.

We have reviewed Charging Party's exceptions, motions for summary disposition, motion to strike and all of the other pleadings filed by the parties and agree with the ALJ's recommendation that the Charge should be dismissed.

Factual Summary:

On July 1, 2003, Morales was laid off by Respondent along with another employee, Corey Vowels. Over a year and one-half later, in February 2005, Morales heard that Vowels had been reinstated. He contacted the Union to determine if Vowels' case had any issues that pertained to him. A grievance was filed on Morales' behalf with the third step meeting taking place on April 7, 2005. The grievance was denied by the University. Ultimately, Morales was told by the Union that he had no further appeals. Morales filed an unfair labor practice charge on October 26, 2005. In that case, which was docketed as Case No. CU05 J-044, Morales contended that his Union failed to represent him regarding his lay-off. Finding that the Union did not violate its duty of fair representation, we dismissed that unfair labor practice charge in a Decision and Order issued on May 25, 2007.

Morales now claims that Respondent, Michigan State University, fraudulently concealed facts related to the propriety of his July 1, 2003, layoff, which in turn negatively affected the outcome in his previous charge against the Union.

Discussion and Conclusions of Law:

Morales claims to have discovered additional documents and asserts that they that were fraudulently concealed. The record, however, is silent as to when the documents were discovered; moreover, his allegation of fraud is conclusory, and he has not identified any newly discovered fact that is relevant or material to the current or previous charge. We find that the documents (even if recently-discovered) and the information contained therein would not have caused us to reach a different result in his previously-filed case against his union, docketed as Case No. CU05 J-044, and they warrant no relief in this matter and would not change in results of any of Morales' previous charges before this Commission.

In addition, we agree with the ALJ that the current charge sets forth no allegation that would constitute a PERA violation by Respondent; moreover, it does not permit us to

conclude that his charge was timely filed. Finally, there is no basis to consider a tolling of the six month statute of limitations.

ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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JOHN MORALEZ,
Individual Charging Party.

APPEARANCES:

John Moralez, in *propria persona* for Charging Party

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

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 was assigned for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including a motion for summary disposition by Charging Party, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge, Motion for Summary Disposition, and Findings of Fact:

John Moralez (Charging Party or Moralez) was laid off, allegedly for budgetary reasons, on June 30, 2003 from his position with Michigan State University (MSU or Employer). The Michigan State University Administrative Professional Association (the Association) ultimately filed a grievance asserting that Moralez's layoff violated the collective bargaining agreement. On May 11, 2005, after the Employer had denied the grievance at the third step of the contractual procedure, the Association notified Moralez that it had decided not to take his grievance to arbitration. Moralez filed an unfair labor practice charge against the Association in Commission case No. CU05 J-044, which was heard by an Administrative Law Judge for the Commission who issued a decision on March 8, 2006, recommending that the Association's motion for summary disposition be granted. Exceptions to that decision were filed and remain pending before the Commission.

On December 21, 2006, a charge was filed in this matter by Moralez asserting that unspecified representatives of the Employer had violated the Act, in some unspecified way, on

unspecified date(s) occurring after August 2, 2006. It was asserted that the employer's conduct violated PERA Section 10 (1)(a) and PERA Section 10 (1)(e).¹ Such allegations failed to meet the minimum pleading requirements set forth in Commission Rule R 423.151(2). Pursuant to R 423.165(2)(d), Charging Party was ordered to show cause, by no later than January 12, 2007, why the charge should not be dismissed for failure to state a claim upon which relief can be granted.

On January 11, 2007, Charging Party filed a motion for summary disposition pursuant to Commission Rule 165, asserting that there were no genuine issues of material fact and, therefore, that judgment in his favor would be appropriate. The motion relies upon purportedly newly discovered evidence, in particular, a January 8, 2005 arbitration award issued by Kenneth Frankland against Respondent MSU. Charging Party's motion additionally relies on several e-mails and internal MSU documents, which are assertedly relevant to the factual merits of the Charging Party's underlying dispute with MSU over the layoff. While Moralez's motion asserts that this is all newly discovered evidence, Moralez does not indicate when the evidence was purportedly first discovered, and the prior Administrative Law Judge decision of March 8, 2006, noted that the Frankland arbitration award was submitted to the Commission by Moralez on February 21, 2006 in connection with his case against his union.

As set forth in the motion for summary disposition by Moralez, his June 30, 2003 layoff from employment with MSU has not been rectified. He has not been actively employed by MSU since June of 2003.

Discussion and Conclusions of Law:

It is undisputed that Moralez has not been employed by MSU since June 2003. The December 2006 charge asserts, in conclusory terms, that MSU violated the Act after August 2006. The Charging Party's motion for summary judgment makes clear that this charge relates to the propriety of the June 2003 layoff, and that MSU has committed no act towards Moralez within the six-month period preceding December 2006. Rather, Moralez seeks to toll the statute of limitations, based on the assertion that he has newly acquired evidence.

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. Indeed, dismissal is required when a charge is not timely filed. See *City of Dearborn*, 1994 MERC Lab Op 413, 415. The limitations period under PERA commences when the person knows or reasonably should know of the claimed offense 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), aff'g 1981 MERC Lab Op 836.

¹ Moralez lacks standing to bring a charge under PERA Section 10 (1)(e), which regulates the relationship between an employer and a labor organization certified as an exclusive bargaining agent and which does not create individual rights. *Coldwater Community Schools*, 1993 MERC Lab Op 94.

Here, Moralez challenged the propriety of his layoff as early as the grievance of February 28, 2005, which was premised in part on the Frankland arbitration award. While Moralez may have discovered additional documents which he believes support his claims, it is apparent that he was aware of his dispute with MSU several years before he filed the current charge. The Commission's decision in *Wines, supra*, makes clear that the significant event, for determining when the statute of limitations beginning to run, is the knowledge that harm has occurred, not the securing of all possible evidence in support of a claim arising from that harm. *Wines* was denied a promotion and it was not until long after the denial of the promotion that he finally secured from the employer documentary evidence, which he believed supported his claim that he had been improperly denied the promotion in question. The Commission held, and the Court of Appeals affirmed, that the statute of limitations began to run in *Wines* when *Wines* was denied the promotion, not when he later was able to secure documentation to support his claim that the employer acted improperly when it denied him that promotion.

Moralez relies on MCL 600.5855, which can extend certain statutes of limitation where there has been fraudulent concealment of the identity of a person liable for harm, or where there has been fraudulent concealment of the very existence of a claim. It has long been held under MCL 600.5855 that the individual does not need to know the details of the evidence required to establish his cause of action, but only needs to know that the cause of action existed, in order for the statute of limitations to begin to run. See, *Weast v Duffie*, 272 Mich 534 (1935). Here, Charging Party was aware of the existence of the claim at least one and one-half years prior to filing the current charge. The charge in this matter was not filed within six months of when the claim accrued, nor was it based upon events that occurred within six months of the filing of the charge, and the charge must therefore be dismissed as untimely.

Additionally, the Charging Party has not alleged, or offered any evidence to support, a claim that the Employer was motivated by animus as a result of union or other activity protected by Section 9 of PERA. Absent such conduct, the Commission does not have jurisdiction to make a judgment on the merits or fairness of adverse employment actions taken against an individual. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation that the employer was motivated by union or other activity protected by PERA, the charge against the employer fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____