STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

KALAMAZOO PUBLIC SCHOOLS,
Public Employer-Respondent,

- and - Case No. C07 D-088

EUNICE ALEXANDER,
Individual Charging Party.
_____/

APPEARANCES:

Eunice Alexander, *In Propria Persona*

DECISION AND ORDER

On May 30, 2007, 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

_____
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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An Individual Charging Party.
_____/

APPEARANCES:

Eunice Alexander, Charging Party, appearing personally

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 was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission.

The Unfair Labor Practice Charge, Order to Show Cause, and Findings of Fact:

On April 26, 2007, a charge was filed in this matter asserting that the Employer unlawfully discharged Charging Party Eunice Alexander on October 27, 2006 while she was under care by a physician and a therapist.

Because there was no allegation suggesting that the Employer was motivated by union or other activity protected by PERA, it appeared that the charge against the Employer failed to state a claim upon which relief can be granted. Additionally, no statement of service was filed with the charge indicating when, how, or if the Employer was served with the Charge.1 The timing of the filing of the charge was such that, absent simultaneous service on the Employer by Charging Party, the charge would be untimely.

On May 7, 2007, the Charging Party was ordered, pursuant to Commission Rules R 423.151(5), R423.165 (2), and R 423.182, to show cause within twenty-one days why the charge should not be dismissed for failure to state a claim, as well as for being barred by the

1 The failure to file a statement of service does not affect the validity of service, if service is accomplished timely. R 423.182

statute of limitations. The Charging Party was directed to provide a factual basis establishing the existence of alleged discrimination in violation of PERA and to explain when and how the Charge was served on the employer.

A timely response to the order was filed on May 14, 2007. Charging Party did not address the earlier failure to assert facts supporting a claimed violation of the Act, but did assert that she placed a copy of the charge in regular mail to the Employer on April 26, 2007. Charging Party did not establish that the Employer received the charge within six months of the complained of event.

Discussion and Conclusions of Law:

Charging Party has alleged that her former Employer acted improperly in terminating her employment while she was under a doctor's care. The Public Employment Relations Act (PERA) does not prohibit all types of discrimination or unfair treatment. Absent a factually supported allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. 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 suggesting 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. *Knoke v East Jackson Sch Dist*, 201 Mich App 480 (1993); *Utica Comty Schools*, 2000 MERC Lab Op 268; *Detroit Bd of Ed*, 1995 MERC Lab Op 75.

Moreover, under PERA, there is a strict six-month statute of limitations for the filing and service of charges, and a charge alleging an unfair labor practice occurring more than six months prior to the filing and service of the charge is untimely. The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Under Section 16(a) of PERA, the Charging Party has the obligation to timely serve the complaint upon the employer against whom the charge is brought. *Romulus Comm Schools*, 1996 MERC Lab Op 370, 373; *Ingham Medical Hosp*, 1970 MERC Lab Op 745, 747, 751. Pursuant to Commission Rule R 423.182(2) the date of service of an unfair labor practice charge on a respondent is the date of actual receipt of the charge. Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415.

Here, it appears that the charge was not filed and served upon the Employer within six months of the allegedly unlawful action taken by the Employer. The question of timely service, and therefore of jurisdiction over the charge, was raised in the order to show cause. Under Commission Rule R 423.182 (4), Charging Party at that point had the affirmative obligation to establish that proper service had actually occurred. To establish proper and timely service, Charging Party needed to show that the Employer in fact received the charge within six months of the termination of employment, not merely that she had mailed the charge on the last day before expiration of the statute of limitations. In sending the charge by regular mail, Charging Party bore the risk that delay in delivery would make her charge

untimely. *City of East Grand Rapids*, ___MPER__ (May 24, 2007); *Talamantes-Penalver v INS*, 51 F3rd 133 (CA 8, 1995).

Taking each factual allegation in the charge and in the response to the order in the light most favorable to Charging Party, the allegations do not state a claim against the Employer under PERA and the charge is therefore subject to summary dismissal. Moreover, Charging Party has failed to establish that the charge was timely served.

RECOMMENDED ORDER

The charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated:_____