STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Public Employer - Respondent in Case No. C08 F-127,

-and-

MICHIGAN STATE UNIVERSITY ADMINISTRATIVE-PROFESSIONAL ASSOCIATION, MEA/NEA,
Labor Organization - Respondent in Case No. CU08 D-018,

-and-

JOHN MORALEZ,
An Individual - Charging Party.
_____/

APPEARANCES:

James D. Nash, Associate Director of Human Resources, for the Public Employer

White, Schneider, Young & Chiodini, by William F. Young, Esq., for the Labor Organization

John Moralez, *In Propria Persona*

DECISION AND ORDER

On August 4, 2008, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above case finding that Charging Party's charge against Respondent Michigan State University (Employer) and his charge against Respondent Michigan State University Administrative-Professional Association (Union) should be dismissed for failure to state a valid claim under the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.201-217. The ALJ also found both charges were barred by the statute of limitations. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On August 25, 2008, Charging Party filed exceptions to the ALJ's Decision and Recommended Order, and submitted a brief in support. Charging Party also requested oral argument. On September 4, 2008, Respondent Union filed a brief in support of the ALJ's Decision and Recommended Order on Summary Disposition. Respondent Employer did not file a response to the exceptions.

After reviewing the exceptions and briefs filed by the parties, we find that oral argument would not materially assist us in deciding this case. Therefore, Charging Party's request for oral argument is denied.

In his exceptions, Charging Party contends that Respondents breached their respective duties to bargain by failing to bargain over the Employer's decision to subcontract work formerly performed by Charging Party. Charging Party alleges that the ALJ erred by finding that Charging Party does not have standing to raise this issue. Charging Party asserts that the ALJ also erred by finding that the charges are barred by the statute of limitations. Further, Charging Party contends that the ALJ erred in his handling of the oral argument and by failing to grant any of Charging Party's numerous motions for summary disposition. Upon reviewing the record carefully and thoroughly, we find Charging Party's exceptions to be without merit.

In his Decision and Recommended Order on Summary Disposition, the ALJ has recited a detailed history and description of Charging Party's complaints against Respondents. We adopt the ALJ's recitation as our own without repeating it here.

Because the employment relationship between Respondent Employer and Charging Party was terminated by layoff on July 1, 2003, almost five years before he filed the charges in this matter, the charges are time barred. Under Section 16(a) of PERA, a charge must be filed with the Commission within six months of the date the claim accrued. The limitations period is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health***,** 17 MPER 45 (2004); aff'd, *Schils v Washtenaw Cmty Mental Health*, unpublished order of the Court of Appeals, entered January 5, 2005, reconsideration denied March 4, 2005 (Docket No. 259656). Thus, it is no longer possible for Charging Party to file a timely complaint under PERA against either of the Respondents based upon his past employment relationship. For that reason, we adopt the recommendation of the ALJ to dismiss the unfair labor practice charges in Case Nos. C08 F-127 and CU08 D-018 and deem it unnecessary to address the remaining issues raised by Charging Party in his exceptions. Any future charges filed by Charging Party against these Respondents upon matters arising out of the employment relationship terminated on July 1, 2003, will be dismissed summarily pursuant to PERA Section 16(a) and Rule 151(5) of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.151(5) which provides: "Filing and service shall be effected within the applicable period of limitations."

ORDER

The unfair labor practice charges in Case Nos. C08 F-127 and CU08 D-018 are dismissed in their entireties.

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: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Respondent-Public Employer in Case No. C08 F-127,

-and-

MICHIGAN STATE UNIVERSITY ADMINISTRATIVE-PROFESSIONAL ASSOCIATION, MEA/NEA,
Respondent-Labor Organization in Case No. CU08 D-018,

-and-

JOHN MORALEZ,
An Individual Charging Party.
_____/

APPEARANCES:

James D. Nash, Associate Director of Human Resources, for the Public Employer

White, Schneider, Young & Chiodini, by William F. Young, for the Labor Organization

John Moralez in pro per

DECISION AND RECOMMENDED ORDER 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 to David M. Peltz, Administrative Law Judge for the State Office of Administrative Hearings and Rules, on behalf of the Michigan Employment Relations Commission (MERC). This matter comes before the Commission on unfair labor practice charges filed by John Moralez on April 8, 2008 against his former Union, Michigan State University Administrative-Professional Association, and on June 19, 2008 against his former Employer, Michigan State University.

Background:

John Moralez was employed by Respondent Michigan State University as a public affairs television producer and on-air host for WKAR, a television station operated by the University. In that capacity, Moralez's primary duties involved hosting and producing two shows, "Michigan At Risk" and "Latinos in Lansing: Out of the Fields." On or about July 1, 2003, Moralez was laid off from his position at the television station.

On October 26, 2005, Moralez filed an unfair labor practice charge alleging that his collective bargaining representative, Michigan State University Administrative-Professional Association, violated its duty of fair representation under PERA with respect to its handling of a grievance concerning his layoff (Case No. CU05 J-044). Moralez asserted that the Union should have advanced his grievance to arbitration because he believed the documented facts established that the University violated the contract by using outside contractors to perform work of the sort previously assigned to him.[1]

On March 8, 2006, ALJ Julia Stern issued a decision recommending dismissal of the charge. On exception, MERC agreed with the ALJ's conclusion that the Union did not breach its duty of fair representation in refusing, on May 11, 2005, to take the grievance to arbitration. In so holding, the Commission rejected Moralez's request to reopen the record to admit documents which he alleged were fraudulently withheld and intentionally concealed by the Union. See 20 MPER 45 (2007). Moralez's appeal of the Commission's May 25, 2007 decision is currently pending before the Michigan Court of Appeals (Docket 281588).

On December 21, 2006, Moralez filed a charge against Michigan State University alleging that the Employer violated PERA in some unspecified manner after August 2006 (Case No. C06 L-305). In response to an order to show cause issued by the ALJ, Moralez moved for summary disposition, asserting that there were no genuine issues of material fact and, therefore, that judgment in his favor would be appropriate. In support of the motion, Moralez relied upon purportedly newly discovered evidence which he claimed served to toll the statute of limitations. According to Moralez, this evidence proved that the University and its agents conspired to avoid rehiring or recalling him to various vacant positions at WKAR, and that the Employer had unlawfully subcontracted out the work which he previously performed at the radio station.

On January 19, 2007, ALJ Doyle O'Connor issued a Decision and Recommended Order dismissing the charge. The ALJ found that the charge was untimely because it related to the propriety of his layoff, which occurred more than six months prior to the filing of the charge. In so holding, the ALJ explicitly rejected Moralez's argument that the "newly acquired evidence" tolled the statute of limitations. In addition, the ALJ found that the

[1] In his response to the Union's motion for summary disposition in Case No. CU05 J044, Moralez alleged that he provided the Union with three examples of outside contracts entered into by the University after February 2004 to produce shows that he had or could have produced. In addition, Moralez asserted that the Union questioned the Employer about its use of non-union employees at a third step grievance meeting on April 7, 2005. According to Moralez, the Employer acknowledged at that meeting that it had hired outside contractors to produce the two programs previously assigned to him, and that a third project, also being done by a contractor, would have been assigned to Moralez if he had still been working at the station.

charge failed to state a valid claim under PERA because Moralez had not alleged, or offered any evidence to support, a claim that the University was motivated by animus as a result of union or other activity protected by Section 9 of PERA. The ALJ's decision was affirmed by the Commission in an order issued on October 16, 2007. Case No. C06 L-305 is now also pending before the Court of Appeals (Docket No. 278415).[2]

The Instant Charges and Procedural History:

On April 8, 2008, Moralez filed his most recent charge against Respondent Michigan State University Administrative-Professional Association. The charge alleged that the Union had violated PERA in some unspecified way since April 1, 2008, and that MERC has "exclusive jurisdiction over the case." Because such allegations failed to meet the minimum pleading requirements set forth in Rule 15(2)(2) of the General Rules and Regulations of the Employment Relations Commission, R 423.151(2), I issued an order directing Moralez to show cause, by no later than April 29, 2008, why the charge should not be dismissed for failure to state a claim upon which relief can be granted. The order specifically required Moralez to explain how the allegations in the new charge differed from those which he made in the prior cases involving these same parties.

Rather than file a response to the order to show cause, Moralez instead filed on April 25, 2008, a motion for summary disposition and a brief in support thereof. Three days later, on April 28, 2008, he filed an amended charge against the Union, a supporting brief and a request for oral argument. On April 29, 2008, Moralez filed filed a second motion for summary disposition, supporting brief and request for oral argument. He filed a third motion for summary disposition and brief on May 5, 2008.[3] In these pleadings, Moralez argued that the instant case is distinguishable from the prior proceedings because of "newly discovered evidence" which was allegedly fraudulently concealed by the Union. Since Moralez had not yet responded to the order to show cause, I sua sponte issued an order on May 5, 2008, granting him an additional 14 days in which to comply with that order.

On May 6, 2008, the Union filed a response to the amended charge and to Moralez's second motion for summary disposition. On May 15, 2008, Moralez filed a motion and brief to strike the Union's responsive pleadings on the ground that the Union had failed to provide documentary evidence supporting its claims, and because the pleadings stated affirmative defenses which, according to Moralez, were both factually and legally deficient. Moralez finally responded to the original order to show cause in a brief which he filed with the Commission on May 19, 2008.

On June 3, 2008, the Union filed a motion for summary disposition and a response to Charging Party's third motion for summary dispostion, asserting that the charge was

[2] There are two other cases pending before the Court of Appeals which appear to involve John Moralez and Michigan State University (Docket Nos. 281440 and 279792).

[3] Although Moralez again requested oral argument on the cover page of the motion, he argued in his brief that "oral argument on these matters would clearly be a waste of time and resources." Subsequent pleadings filed by Moralez in this matter contain similar, seemingly contradictory, assertions with respect to whether oral argument should be held in this matter.

untimely because Moralez had failed to present any facts which would establish that the Union had treated him arbitrarily, capriciously or in bad faith. In addition, the Union argued that the Commission lacks jurisdiction over this matter because the charge sets forth allegations identical to those in the case currently pending before the Court of Appeals pertaining to Moralez and the Union.

I issued an order denying Moralez's motions for summary disposition and adjourning the matter without date pending the issuance of a decision by the Court of Appeals on his earlier charges. The order specified that no further motions or briefs were to be filed by either party until after the final resolution of the related appellate proceedings. The parties were directed to notify the Commission when the appellate process had been exhausted.

Despite my order to the contrary, Moralez filed a motion or brief with the Commission on June 17, 2008 in which he claimed that he was entitled to an order granting his various motions for summary disposition on the ground that the Union's responsive pleading was completely devoid of any "valid stated administrative defenses" and that the Union had failed to establish the existence of any genuine issues of material fact. Moralez filed an almost identical motion or brief the following day. On June 23, 2008, I issued an order scheduling this matter for oral argument to address the various substantive matters raised by the parties in their respective motions, as well as the issues set forth in my original order adjourning the case without date. Pursuant to this order, oral argument was to be held by telephone on July 18, 2008.

On June 19, 2008, Moralez filed the instant charge against Respondent Michigan State University asserting that the Employer had acted in violation of PERA in some unspecified manner since June 10, 2008. On June 25, 2008, the University filed a motion for summary disposition and/or for bill of particulars. In its motion, the University argued that the charge was untimely filed and that it failed to state a claim upon which relief can be granted under PERA.

On June 27, 2008, I issued an order consolidating the charges against the Union and the Employer and directing Moralez to show cause why the charge against the University in Case No. C08 F-127 should not be dismissed for failure to state a claim upon which relief can be granted. The order indicated that oral argument would proceed as scheduled on July 18, 2008 on all pending motions filed by the parties in the consolidated cases.

Moralez filed another lengthy untitled pleading on July 7, 2008, once again asserting that I should grant summary disposition in his favor with respect to the Union. On July 8, 2008, Moralez moved to adjourn the July 18, 2008, oral argument on the ground that he was never properly served with a copy of the University's motion for summary disposition. In addition, Moralez asserted that his charges against the Employer and the Union should not have been consolidated. Two days later, on July 10, 2008, Moralez filed a motion and brief for summary disposition against the Employer in Case No. C08 F-127, which included a request for oral argument. By order dated July 9, 2008, I denied Moralez's motion to adjourn the oral argument.

On July 14, 2008, Moralez once again moved to adjourn the July 18, 2008 oral argument, this time asserting that an adjournment was necessary to allow the Union an opportunity to examine his most recent filings in this matter. On July 16, 2008, Moralez filed a brief in opposition to the University's June 25, 2008 motion for summary disposition which included another request to adjourn the oral argument "until the Respondents are afforded proper due process considerations." Moralez also filed a brief in response to the University's June 25, 2008 motion for summary disposition. That same day, the Union filed a response to Moralez's July 7, 2008 motion for summary disposition. On July 17, 2008, Moralez filed a second motion for summary disposition with respect to his charge against the University.

After the close of business on July 17, 2008, Charging Party filed by facsimile a new motion to adjourn the oral argument scheduled for the next morning, this time asserting that the oral argument should be postponed due to an unspecified "family medical emergency" which necessitated that he travel out of the state later that evening. In the motion, Moralez wrote:

> If, for some reason, you cannot or will not immediately adjourn or postpone the hastily scheduled telephonic oral arguments on Friday, July 18, 2008 due to my absence (attributable to the out-of-state family medical emergency), please immediately alert your Court Reporter that I will need a written transcript of the oral argument proceedings and any audio recordings of the aforementioned July 18, 2008 telephonic oral arguments.

No details were given regarding this alleged medical emergency, nor did Moralez explain why his travels would prevent him from participating in oral argument by telephone. For these reasons, I decided to proceed with oral argument as scheduled on July 18, 2008. Both the Union and the Employer made brief statements on the record concerning the charges and the various motions which were pending at that time. I did not attempt to contact Moralez, as his motion made it clear that he was leaving the State on the evening of July 17th and that he would not be available to participate in the hearing even if his motion to adjourn was denied. Pursuant to his request, however, I did provide Moralez with instructions on obtaining a copy of the transcript.

On July 22, 2008, I issued an order which indicated that Moralez would be permitted to seek to have the record reopened for the purpose of oral argument. The order granted Moralez until August 1, 2008 to file a written statement explaining in detail the reason for his inability to participate in the July 18, 2008 telephone oral argument, along with supporting documentation.

On July 31, 2008, Charging Party filed a pleading in which he alleged that he had postponed his trip and remained at home all day on July 18, 2008 waiting for a telephone call from the undersigned. Moralez did not attach a note from a physician, a sworn affidavit or any other documentation proving the existence of the alleged family medical emergency.

Moralez's eleventh hour claim of "family medical emergency" which followed multiple requests to adjourn for other reasons and about which no supporting documentation was provided is simply not believable. That fact that Moralez did not contact my office on the morning of July 18, 2008 to ascertain whether his request for adjournment had been granted, or to advise that he had supposedly postponed his trip and was, therefore, available to participate in the oral argument, further undermines his claim. For these reasons, and because Moralez failed to comply with my July 22, 2008 order, I find that Charging Party has waived his right to oral argument in this matter.

In making this determination, I note that although Moralez requested oral argument in several of his pleadings, he also asserted that oral argument was in fact not necessary in this matter and insisted that I issue a decision and recommended order based solely upon the briefs and other pleadings. Regardless, Moralez has had the opportunity to thoroughly and voluminously address his claims in the approximately 17 substantive pleadings which he filed between April 25, 2008 and July 31, 2008, which amounts to somewhere in the neighborhood of 650 pages of material, inclusive of exhibits and attachments, such that oral argument would not have materially aided his effort to present his claims.

Discussion and Conclusions of Law:

The gravamen of Charging Party's case against Respondent Michigan State University is Moralez's allegation that the University violated PERA by failing to bargain with the Union over its use of outside contractors to perform bargaining unit work, including work previously performed by Moralez when he worked at WKAR. Such an allegation does not raise a valid claim under PERA. The Commission has consistently and repeatedly held that an individual bargaining unit member has no standing to assert that a public employer breached the duty to collectively bargain with the union, as such a claim can only be brought by a labor organization acting in its capacity as the employees' exclusive bargaining representative. See e.g. *City of Detroit (Bld & Safety Engineering)*, 1998 MERC Lab Op 359, 366; *Oakland University*, 1996 MERC Lap Op 338, 342-343; *Detroit Fire Dep't*, 1995 MERC Lab Op 604, 613-615; *AFSCME Council 25*, 1994 MERC Lab Op 195; *Detroit Pub Sch*, 1985 MERC Lab Op 789, 791-793; *Oakland County (Sheriff's Dep't)*, 1983 MERC Lab Op 538 542, enf'd Mich App Docket No. 72277 (12-6-84).

With respect to a claim brought by an individual employee against a public employer, the Commission's jurisdiction is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in union or other protected concerted activities. Absent a factually supported allegation that the public employer interfered with, restrained, coerced or retaliated against the employee for engaging in such activities, the Commission is foreclosed from making a judgment on the merits or fairness of the employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524. In the instant case, neither the charges nor the voluminous pleadings and briefs filed by Charging Party in this matter provide a factual basis which would support a finding that Moralez engaged in any protected concerted activity for which he was subject to discrimination or

retaliation. Accordingly, I conclude that the charge against Respondent Michigan State University in Case No. C08 F-127 must be dismissed for failure to state a claim under PERA.

Even assuming arguendo that the charge against the University in fact stated a claim under PERA by somehow alleging unlawful discrimination or retaliation, it would nonetheless be untimely under Section 16(a) of the Act. Pursuant to Section 16(a), no complaint may issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. The Commission has held that in cases of alleged discriminatory discharge or layoff, the six-month statute of limitations begins to run from the effective date of the termination or layoff. *AFSCME Council 25*, 1994 MERC Lab Op 195; *Superiorland Library*, 1983 MERC Lab Op 140. In the instant case, it is undisputed that Moralez last worked for the University in June of 2003, five years before the filing of the charge against the Employer in this matter. Under such circumstances, Moralez no longer has any possible claim against the University under PERA.

In Case No. CU08 D-018, Moralez alleges that Respondent Michigan State University Administrative-Professional Association violated PERA by fraudulently concealing documents which allegedly establish that the University has been using independent contractors to perform bargaining unit since 2005. Such an allegation does not state a valid claim under PERA. While it is true that public employers and labor organizations have a duty under the Act to supply relevant information to each other in a timely manner, see e.g. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387, there is no corresponding duty on the part of a union to provide individual members with specific information pertaining to their employment, nor does the union have any legal obligation to disclose the existence of such information to its members. Rather, the union's sole obligation is to carry out its bargaining responsibilities in good faith and without hostility or discrimination toward any individual member and to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Here, Charging Party has set forth no factually supported allegation which would even suggest that the Michigan State University Administrative-Professional Association violated this duty.

Moralez also contends that the Union violated PERA by failing to demand to bargain with the University over its allegedly unlawful subcontracting of bargaining unit work. This claim is clearly barred by the six-month statute of limitations. The limitations period under Section 16(a) of PERA commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. This limitations period is not extended as a result of the later claimed discovery of additional evidence which might support the allegations in the charge. See *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). It is well established that where a complaint against a union is based upon the union's inaction, the staute of limitations begins to run when the charging party knew or should have reasonably realized that the union would not act on his or her behalf. *Washtenaw Cmty Mental Health*, 17 MPERA 45 (2004); *Huntington Woods*, *supra*. See also *Pantoja v Holland Motor Express*, 965 F2d 323 (CA 7, 1992); *Shapiro v Cook United*, 762 F2d 49 (CA 6, 1985). As

the Commission's decision in Case No. CU05 J-044 makes clear, Moralez knew on May 11, 2005, long before the filing of the instant charge, that the Union would not be taking any further action to challenge his layoff.

Moralez argues that the statute of limitations should be tolled because, as a result of the Union's aforementioned alleged fraudulent concealment of documents, he was not aware that the University was subcontracting out bargaining unit work until just before he filed the instant charge against the Union. However, Moralez raised concerns over the Employer's use of independent contractors in connection with the 2005 grievance which the Union filed on his behalf. Moreover, Moralez argued in the both of the prior MERC cases involving Michigan State University and the Michigan State University Administrative-Professional Association that the Employer was engaging in unlawful subcontracting of bargaining unit work and that the Union was refusing to take action on his behalf to enforce contract provisions pertaining to the transfer of unit work. The charge in Case No. CU05 J-044 was filed on October 26, 2005, and the ALJ issued her decision in the matter on March 8, 2006. Thus, Moralez was clearly aware of the existence of the subcontracting which he asserts constitutes an unfair labor practice more than six months before the instant charge was filed. Accordingly, I find that the charge against Respondent Michigan State University Administrative-Professional Association is untimely under Section 16(a) of PERA.

Moralez's relationship with the Michigan State University Administrative-Professional Association ended in May of 2005, as did any duty which might be owed by that Union to Charging Party. Under such circumstances, Moralez has no PERA claim against the Michigan State University Administrative-Professional Association in this or any future case.

Accepting as true all of the allegations set forth by Moralez in the charges, motions and other pleadings, I conclude that Charging Party has failed to state valid claims upon which relief can be granted under PERA. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C08 F-127 and CU08 D-018 be dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____