

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

In the Matter of:

AMALGAMATED TRANSIT UNION, LOCAL 26,
Labor Organization - Respondent,

Case No. CU08 F-030

-and-

PAUL HILL,
An Individual - Charging Party.

APPEARANCES:

John E. Eaton, Esq., for Respondent Labor Organization

Paul Hill, *In Propria Persona*

DECISION AND ORDER

On August 5, 2008, 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

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

AMALGAMATED TRANSIT UNION, LOCAL 26,
Respondent-Labor Organization,

-and-

Case No. CU08 F-030

PAUL HILL,
Charging Party.

APPEARANCES:

Paul Hill, Charging Party appearing personally

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY JUDGMENT

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) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). This matter is being decided pursuant to an order for more definite statement and an order to show cause why the charge should not be dismissed as barred by the statute of limitations.

The Unfair Labor Practice Charge:

On June 11, 2008, a Charge was filed in this matter by Paul Hill (the Charging Party) asserting that the Amalgamated Transit Union, Local 26 (the Union) had violated the Act, by failing in some unspecified way to represent the Charging Party, on unspecified dates. Such an allegation failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), the Charging Party was ordered to provide a more definite statement of the Charge against the Union.

Furthermore, the Charge filed in this matter asserted that the dispute arose from an event on July 16, 2007 and that following that event, and on or about September 6, 2007, the employer forced Hill to retire from employment. The Charging Party was ordered, pursuant to Commission Rules R 423.151(5), R423.165 (2), and R 423.182, to show cause why the charge should not be dismissed as barred by the statute of limitations. The Charging Party was directed to explain in writing when he first applied

to retire, when he actually retired, and why the charge was not barred by the statute of limitations.

Despite being advised in the order that a failure to respond would result in dismissal of the Charge without a hearing or other proceedings, Charging Party Hill did not file a response to either the order for more definite statement or the order to show cause within the twenty-one day limit set by the order.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, or is on its faced barred by the statute of limitations, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, the fact that a member expresses generalized dissatisfaction with their union's efforts or ultimate decision is insufficient to state a claim for a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855.

The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Section 16(a) of PERA also requires timely service of the complaint by Charging Party upon the person or entity 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. Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415. Here, the charge was filed at least nine months after the facts alleged as giving rise to the claim occurred, and the charge must, therefore, be dismissed as untimely.

The charge against the Union must be dismissed as it fails to state a claim upon which relief can be granted where there are no factual allegations in the Charge supporting the claim that the Union violated its statutory duties, where the allegations in the Charge as filed are barred by the statute of limitations, and where no response was filed to the order to show cause.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____