STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C07 H-202

-and-

BESSIE Y. STEWARD,
An Individual-Charging Party.
_____/

APPEARANCES:

Bessie Y. Steward, *In Propria Persona*

DECISION AND ORDER

On September 26, 2007, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition finding that Charging Party Bessie Steward's allegations against Respondent Detroit Public Schools (Employer) do not state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended.

In her charge, Charging Party alleges that the Employer violated PERA when it laid her off and then rehired her to do the same job at a lower pay rate and in a different classification. The ALJ issued an Order to Show Cause to provide Charging Party with an opportunity to assert additional facts to support her claim and to show why it was not time-barred. Upon review of the charge and Charging Party's response to the Order to Show Cause, the ALJ found that the charge did not assert facts occurring within six months of its filing and it, therefore, was barred by the statute of limitations. The ALJ also concluded that there were no allegations that the Employer discriminated against Charging Party because of union or other protected activity and that the charge states no more than a breach of contract claim. Based on these conclusions, he recommended dismissal of the charge. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

In a letter dated October 14, 2008, Charging Party excepts to the ALJ's Decision and Recommended Order.[1] In her letter, she alleges that the ALJ erred in determining the

[1] In her October 14, 2007 correspondence, Charging Party states that she will file exceptions and a brief.

disputed issue. First, she reiterates that she was recalled to do the same job with the same duties and responsibilities for approximately half the pay and in a different classification. She then asserts for the first time that her charge against Respondent is in response to the failure of her union, the Detroit Federation of Teachers (DFT), to specifically include her "group" (Limited License to Instruct –LLI) in a class action civil lawsuit filed against the Employer. In this litigation, she states, the union prevailed and obtained relief for other bargaining unit members. Charging Party claims that as a result of the DFT's failure, the Employer was able to discriminate against her by not paying her "just compensation."

We have reviewed Charging Party's exceptions and find them to be without merit.

Charging Party was laid off by Respondent on August 4, 2004. Her recall to a different position at the lower wage about which she complains occurred pursuant to a letter sent to her by Respondent on September 20, 2004. She filed the charge in this matter on August 31, 2007.

The ALJ explained, and we agree, that 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 Communities Schs*, 1994 MERC Lab Op 582, 583. A claim accrues when the charging party knows, or should know, of the alleged unfair labor practice. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. The charge in this case was based on events occurring in 2004; yet, it was not filed until three years later in 2007. The complaint against the DFT that was raised belatedly in Charging Party's exceptions is similarly untimely. Moreover, the DFT was never served with a copy of the charge and was not made a party to this case.

Furthermore, as the ALJ stated, the charge fails to allege conduct that violates PERA. There are no allegations alleging that the Employer was in any way motivated in its actions by union or other PERA-protected activity. The allegations, at most, suggest a violation that might have been remedied via the dispute resolution procedures set forth in the contract

For these reasons, we adopt the recommended order of the ALJ.

She, however, failed to request the necessary extension of time that would have made such filing timely and never filed any other document. We, therefore, treat her correspondence as exceptions.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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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Individual Charging Party.
_____/

APPEARANCES:

Bessie Y. Steward, for Charging Party, appearing personally

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE 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 Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission.

On August 31, 2007, a charge was filed in this matter asserting that the Detroit Public Schools (Employer) has violated the Act by laying off Bessie Y. Steward (Charging Party) from her position and then later rehiring her at a lower rate of pay or classification. The attachments to the Charge indicate that the layoff occurred in August of 2004, with the return to work occurring in September, 2004. 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 for failure to state a claim and as barred by the statute of limitations. A timely response was filed.

The Charge and Findings of Fact:

The basis of the Charge is that Steward was laid off and then rehired under a different classification at a lower rate of pay. The response to the order to show cause reasserts that same allegation, that Charging Party believes that she was improperly laid off in July of 2004 and improperly classified upon her recall to employment in September of 2004. No factual assertion is made that the Employer acted out of improper animus or because of any protected activity by Steward.

Discussion and Conclusions of Law:

The allegations of the Charge and of the response to the order to show cause, read in the light most favorable to Charging Party, state no more than a breach of contract claim. The Commission has the authority to interpret the terms of a collective bargaining agreement where necessary to determine whether a party has breached its statutory collective bargaining obligations. *University of Michigan*, 1978 MERC Lab Op 994, 996, citing *NLRB v C & C Plywood Corp*, 385 US 421 (1967). However, if the term or condition in dispute is "covered by" a provision in the collective bargaining agreement, and the parties have agreed to a grievance resolution procedure ending in binding arbitration, the details and enforceability of the provision are generally left to arbitration. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich. 309, 317-321 (1996); *St Clair Co Road Comm*, 1992 MERC Lab Op 538. The proper rate of pay for Charging Party is just such a matter covered by the collective bargaining agreement and its grievance procedure.

PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer was motivated to discriminate against the Charging Party by union or other activity protected by Section 9 of PERA, the Commission is foreclosed 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.

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. Section 16(a) of PERA also requires timely service of the complaint by Charging Party upon the person 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 events in dispute occurred in August and September of 2004, with the Charge not filed until three years later in August of 2007.

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 the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated:_____