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

In the Matter of:

WAKEFIELD-MARENISCO SCHOOL DISTRICT,
Public Employer-Respondent,

Case No. C07 J-244

-and-

WAKEFIELD-MARENISCO EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Charging Party.
_____/

APPEARANCES:

Gregory, Farrell & Associates, by W. Craig Farrell, for Respondent

Jeffrey C. Murphy, Esq., Michigan Education Association, for Charging Party

## DECISION AND ORDER

On January 14, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter[1] finding that the charge filed by Charging Party, Wakefield-Marenisco Education Association, MEA/NEA (Union), against Respondent, Wakefield-Marenisco School District (Employer), was barred by the six-month statute of limitations set by Section 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.216(a). The ALJ recommended we dismiss the charge that alleged the Employer breached its duty to bargain in good faith by appointing a former Michigan Education Association (MEA) representative, W. Craig Farrell, as its chief bargaining and labor representative over the objections of the Union. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On February 19, 2009, Charging Party filed exceptions to the ALJ's Decision and Recommended Order along with a supporting brief. Respondent requested and received an extension of time to file a response to the exceptions, and filed its response on March 23, 2009.

In its exceptions, Charging Party contends the ALJ erred in determining the date of injury and in concluding the charge was untimely. The Charging Party also asserts error where, despite finding the charge was untimely, the ALJ proceeded to discuss the merits of the case and concluded the charge could not be sustained.

The Commission has reviewed the Charging Party's exceptions, and finds them to be without merit.

[1] Upon the discovery that the ALJ's decision had been mailed to an incorrect address for Respondent's representative, it was re-issued on January 26, 2009.

Factual Summary:

Charging Party contends it was an unfair labor practice for Respondent to appoint former MEA representative W. Craig Farrell as the chief bargainer and labor representative for the school district. Farrell was an employee of the MEA from 1985 until his retirement in 2003. For most of that period, he worked as the UniServ Director providing assistance to various small MEA affiliates in the northern part of the state, including those in the Wakefield and Marenisco school districts. Farrell's responsibilities included contract negotiation, contract maintenance, grievance processing, political action, and public relations services.

After his retirement from the MEA, Farrell was hired by Charging Party as a contract employee to represent it in labor negotiations. Farrell negotiated several contracts for Charging Party, the last of which had an expiration date in June of 2007. After June of 2006, however, Farrell had no further employment relationship with the MEA. In February 2007, Farrell and Lou Gregory established their own labor relations firm, Gregory, Farrell and Associates, to provide labor services in the Ironwood area.

In the spring of 2007, Farrell was hired by Respondent, Wakefield-Marensico School District, to represent it as its chief spokesperson in upcoming negotiations with its teachers unit, which was represented by Charging Party. The MEA objected to Farrell's participation in the negotiations at the first bargaining session, on April 24, 2007. The meeting ended with Charging Party leaving the bargaining session to caucus, after Farrell said that Respondent has the right to choose its own bargaining representative. Charging Party eventually left the building without returning to the bargaining table.

On April 27, Farrell gave a memo to Charging Party indicating additional dates that Respondent was available to negotiate and urging it to see his position as Respondent's negotiator as beneficial to Charging Party. Farrell also asserted it would be a violation of PERA if Charging Party refused to bargain based on Respondent's choice of negotiator. Charging Party did not respond to the memo. On May 15, Respondent sent another memo to Charging Party offering new bargaining dates. Charging Party's UniServ Director, Steve Smith, thereafter approached Farrell's partner, Lou Gregory, and asked if he would consider replacing Farrell as Respondent's chief negotiator. Gregory did not give Smith a definite answer at that time. On May 31, Farrell sent a third memo offering Charging Party bargaining dates. Charging Party responded with different dates on June 6, and the parties agreed upon June 21 and 25.

Farrell appeared at the bargaining session set for June 21. At that time, the parties discussed whether Farrell would remain as Respondent's chief negotiator or whether Gregory would replace him. Barbara Frisk, Charging Party's UniServ assistant, remarked that Charging Party would return to bargain on the next agreed upon date, June 25, if Gregory was present instead of Farrell. The session ended on that note.

At the June 25th session, Farrell told Charging Party's bargaining team that Respondent's board was not willing to replace Farrell with Gregory, and that he would remain as the board's representative. Frisk stated that Charging Party did not want to meet while Farrell was

Respondent's bargaining representative. The meeting ended and no further bargaining sessions were held.

Charging Party filed the charge in this matter on November 5, 2007, alleging that Respondent violated its duty to bargain by hiring Farrell as its bargaining representative.

Discussion and Conclusions of Law:

We agree with the ALJ that the charge in this matter was untimely. Under Section 16(a) of PERA, a charge must be filed with the Commission within six months of the date the claim accrued. The six-month period begins to run when the charging party knows or should have known of the alleged violation. See *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983), affg 1981 MERC Lab Op 836; *City of Detroit*, 18 MPER 73 (2005); *AFSCME Local 1583*, 18 MPER 42 (2005). Further, the statute of limitations contained in Section 16(a) of PERA is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health***,** 17 MPER 45 (2004); *Walkerville Rural Communities Sch*, 1994 MERC Lab Op 582.

On April 23, 2007, Farrell informed Charging Party that he would be representing Respondent in the upcoming negotiations. Charging Party sent its representatives to Respondent's board meeting that evening and objected to Farrell's representation of Respondent. Despite Charging Party's objections, Respondent's board approved the contract for Farrell's firm to provide it with representation in collective bargaining with Charging Party. On April 24, 2007, at the first bargaining session after Farrell was hired by Respondent, Farrell announced that he was Respondent's chief negotiator. Charging Party again raised objections. By that point, Charging Party was clearly aware of the actions that it now claims constitute an unfair labor practice. However, the charge in this case was not filed until November 5, 2007, more than six months after notice of the alleged unfair labor practice.

Charging Party, in its post-hearing brief, cites *Southfield Police Officers Ass'n v Southfield*[2], for the proposition that an unfair labor practice cannot be committed until the respondent makes a final decision regarding the contested issue. In *Southfield*, the charge contended that the employer violated PERA upon announcing a plan to permit private security guards to issue tickets to juvenile offenders for ordinance violations in shopping malls. The Michigan Court of Appeals upheld MERC's decision that the charge was not ripe for adjudication because the plan had not yet been implemented. MERC held that an employer's announcement of tentative plans do not give rise to a justiciable claim. *Southfield* is distinguishable from this case as the employer in *Southfield* informed the union of a decision it planned to implement at some point in the future. In this case, Charging Party was advised of the impending decision on April 23, and that decision was implemented on April 24. Farrell was representing the Respondent at all times from his announcement that he was the Employer's chief negotiator on April 24, 2007, throughout the bargaining process that ended on June 25. Based upon this fact, the Commission concurs in the ALJ's finding that Charging Party had notice Farrell was Respondent's chief negotiator as of the first negotiating session on April 24, 2007, and the limitations period commenced at that point.

[2] 162 Mich App 729, 734-735 (1987), *rev'd on other grounds* 433 Mich. 168 (1989).

Relying on *Univ of Michigan*, 18 MPER 5 (2005) (no exceptions), Charging Party asserts the statute of limitations period cannot begin when the employer is sending conflicting signals to the union. Charging Party contends that, based on Respondent's conduct prior to June 25, 2007, it reasonably believed Respondent was reconsidering its decision to be represented by Farrell. Charging Party's contention lacks factual support as it fails to identify any incident in which Respondent indicated it was reconsidering its choice of Farrell as its chief negotiator. Charging Party points to a discussion between Farrell and Frisk and to one between Gregory and Smith about the possibility of Gregory replacing Farrell as the chief negotiator. However, in neither case did Farrell or Gregory state that Respondent was considering a change. Moreover, we find no evidence in the record of action by Respondent that reasonably could have justified Charging Party believing that Respondent would change its decision to retain Farrell as its chief negotiator.

Although Respondent gave Charging Party a formal response to its request that Respondent change its chief negotiator on June 25, 2007, that action did not change the limitations period for the alleged unfair labor practice; the limitations period commenced on April 24, 2007. Since this charge was brought more than six months after that date, it is untimely and must be dismissed.

Inasmuch as the charge is barred by the statute of limitations, we have no jurisdiction over the underlying merits of this matter. We find that the ALJ has accurately stated the law on the issue of whether Respondent committed an unfair labor practice by hiring Farrell to serve as its chief negotiator in its negotiations with Farrell's former employer. Nevertheless, we are concerned with the ethical and moral issues raised by someone representing one side in collective bargaining less than a year after they ceased to represent the other side in the same bargaining relationship. If Farrell were an attorney, there would be no question about the ethics involved, Farrell's actions would clearly be improper. The Michigan Rules of Professional Conduct provide at Rule 1.9(a):

> A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation.

Charging Party and Respondent are opposing parties at the bargaining table and it is clear that the Union does not consent to Farrell serving as the representative for the Employer in the upcoming contract negotiations. Thus, if Farrell were an attorney, he would likely be disqualified from representing Respondent. See e.g. *Auseon v Reading Brass Co*, 22 Mich App 505, 177 NW2d 662 (1970).

However, Farrell is not an attorney, he is an agent. As an agent, he has a duty of loyalty to his principal that lasts for the term of his employment. The Restatement of Agency provides, at section 396, as follows:

> Unless otherwise agreed, after the termination of the agency, the agent:
>
> (a) Has no duty not to compete with the principal; and

> (b) is subject to a duty to the principal not to use or disclose to third persons, on his own account or on account of others, in competition with the principal or to his injury, trade secrets, written lists of names, or other similar confidential matters given to him only for the principal's use or acquired by the agent in violation of duty.
>
> REST AGEN § 396

Farrell was an agent of Charging Party until June 2006. As a result, he was familiar with Charging Party's long-term bargaining goals and strategies and was the recipient of confidential bargaining information. Less than a year later, in April 2007, Farrell became an agent of Respondent. He came to that employment with confidential information that could shape his bargaining strategies in representing Respondent; thus, he had information that could be used to the detriment of Charging Party. As the former agent of Charging Party, he must not disclose whatever confidential information he learned during the course of his employment. As part of its duty to bargain in good faith, Respondent must respect Farrell's duty to keep secret and not use the confidential information he received while employed by Charging Party. The record does not contain any evidence that Farrell disclosed Charging Party's confidential information to Respondent or otherwise unlawfully used that information. Since there is no evidence that Respondent has unlawfully attempted to take advantage of the confidential information Farrell was privy to, we cannot find that Respondent has committed an unfair labor practice.

We have considered all other arguments submitted by the parties and conclude that they would not change the result in this case. Therefore, for the reasons set forth above, we find that the charge must be dismissed as untimely.

## 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

_____
Christine A. Derdarian, Commission Chair

_____
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:

WAKEFIELD-MARENISCO SCHOOL DISTRICT,
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APPEARANCES:

Gregory, Farrell & Associates, by W. Craig Farrell, for Respondent

Jeffrey C. Murphy, Esq., Michigan Education Association, for Charging Party

## DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, this case was heard at Lansing, Michigan on February 15, 2008, before Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before March 31, 2008, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Wakefield-Marenisco Education Association, MEA/NEA filed this charge against the Wakefield-Marenisco School District on November 5, 2007. Charging Party, an affiliate of the Michigan Education Association (MEA), represents a bargaining unit of professional employees, including teachers, employed by Respondent. The charge alleges that Respondent violated its duty to bargain in good faith by appointing W. Craig Farrell, a former MEA representative, as its chief bargainer and labor representative.

Findings of Fact:

Farrell is Hired by Respondent and Charging Party Objects

W. Craig Farrell was an employee of the Michigan Education Association (MEA) from 1985 until his retirement in April 2003. For fourteen of these years, Farrell held the position of UniServ director at the MEA office in Ironwood, Michigan. As UniServ director, he provided contract negotiation, contract maintenance, grievance processing, political action, and public relations services to a number of small local MEA affiliates, including the bargaining agents representing teachers in the Wakefield School District and the Marenisco School District. Although the UniServ director is responsible for all these functions, the MEA frequently hires outside parties on limited term contracts to serve as chief negotiators in individual negotiations.

When Farrell retired, Steve Smith replaced him as UniServ director. About a year later, the Wakefield and Marenisco school districts consolidated to form Respondent. Respondent eventually recognized Charging Party as the bargaining representative for its teachers. However, before it did so, it changed its teachers' health insurance benefits by imposing a monetary cap. In 2004, the MEA hired Farrell as a contract employee to negotiate new agreements with Respondent for both the teachers' unit and a unit of support employees. Smith and Farrell agreed that eliminating the insurance cap was a long-term bargaining goal, but that maintaining existing levels of insurance benefits and wages was a higher priority. In 2005, the parties reached a contract for the teacher unit expiring in June 2006 and an agreement for the support unit expiring in June 2007. In 2006, the MEA again hired Farrell on contract to bargain a successor agreement for the teacher unit. In June 2006, Respondent and Charging Party ratified and finalized a one-year agreement expiring on June 30, 2007. In neither of these negotiations did Respondent agree to remove the insurance cap. After June 2006, Farrell had no employment relationship with the MEA.

In February 2007, Farrell established the firm of Gregory, Farrell and Associates to provide labor relations services to employers in the Ironwood area. Lou Gregory, the Gregory in the firm name, had an established business in the area providing similar services to employers. Farrell testified that he and Gregory were not partners, but the exact nature of their business relationship was not explained.

In March 2007, Respondent's superintendent, Larry Kapugia, approached Farrell and asked him if he would be interested in serving as Respondent's representative in its upcoming negotiations for the teacher unit. Farrell agreed. Farrell met with Respondent's board and helped draft its initial bargaining proposals. Farrell testified that he advised the board not to make insurance an issue in these negotiations and not to seek a wage freeze, and that the board accepted his advice.

Respondent and Charging Party scheduled their first bargaining session for April 24, 2007. On the morning of April 23, Farrell stopped at the MEA office in Ironwood and informed Barbara Frisk, the UniServ assistant, that he expected Respondent's school board at its meeting that evening to approve a contract for him to act as its chief bargainer. Frisk, who was assigned to serve as chief negotiator for Charging Party in these negotiations, was shocked. She

immediately contacted the members of Charging Party's bargaining team, and several teachers appeared at the board's meeting that evening. One read a prepared statement asserting that the board could better use the money it intended to pay Gregory Farrell and Associates to avoid laying off teachers. The board, however, voted at the meeting to approve a contract with Farrell's firm. The contract provided that the firm would represent Respondent in grievances up to the arbitration level and serve as its chief spokesperson at the bargaining table.

Respondent's bargaining team, which included several board members, appeared at the scheduled bargaining session on April 24, and Farrell introduced himself as its chief spokesperson. Frisk read a prepared statement objecting to Farrell's participation in the negotiations. She stated that Charging Party believed that it was unethical and a conflict of interest for Farrell to represent Respondent because of his past association with Charging Party. According to Farrell, Frisk also said that Charging Party would not bargain if Farrell was at the bargaining table, although Frisk denied making this statement. Farrell and Frisk agree that Farrell said that the board had the right under PERA to select its own bargaining representative and that Charging Party had an obligation under the law to bargain. Frisk and her bargaining team then left the room to caucus. As they stood up to leave, Farrell asked Frisk if her "reaction and that of the Association would have been different if Gregory had appeared as Respondent's representative," (according to Frisk), or if "the objection would have been the same if Gregory was at the table," (according to Farrell). Frisk did not respond, and no one else from either bargaining team said anything. Farrell followed Frisk into the caucus room. He handed her a copy of Respondent's proposals, and asked Frisk if she would give him Charging Party's proposals. Frisk said no, that she and her team were caucusing. After finishing their caucus, however, Charging Party's bargaining team left the building.

On April 27, Farrell sent Frisk a memo in which he said that it was a violation of PERA for Charging Party to refuse to bargain unless the board changed negotiators. Farrell also tried to persuade Frisk that his knowledge of Charging Party's bargaining unit was a plus for the union and not a negative. In his memo, Farrell included a list of dates Respondent was available to bargain.

Farrell received no response to his April 27 memo. On May 15, Farrell sent Frisk another memo offering bargaining dates and suggesting that the parties begin by discussing the calendar. Around this time, Smith held a meeting with members of the area coordinating council, a group of representatives from all the local MEA affiliates served by the Ironwood office. Smith asked the representatives how they felt about Farrell bargaining for the Respondent. None of the representatives liked the idea. Shortly thereafter, Smith attended a bargaining session at another school district where Lou Gregory was representing the employer. Smith told Gregory that the MEA members were "really uncomfortable" with Farrell sitting at the table in Wakefield-Marenisco. Smith asked Gregory if he would consider replacing Farrell as Respondent's chief spokesperson. According to Smith, Gregory did not give him a definite answer, but left Smith with the impression that he would talk to Farrell about it.

On May 31, Farrell sent a third memo to Frisk offering bargaining dates. On June 6, Frisk sent a memo to superintendent Kapugia offering different dates. Kapugia replied, accepting the dates of June 21 and June 25.

When the parties met on June 21, Farrell again appeared as Respondent's chief spokesperson. Farrell testified that Frisk began by stating again that it was Charging Party's position that it would not bargain if Farrell was at the table; Frisk denied making this statement. Frisk and Farrell agree that Frisk asked if Gregory could be there in place of Farrell, and Farrell responded that "this was a decision that the board would have to make." Frisk asked Farrell why he thought that this was not a viable option, and he replied that Gregory would have additional travel expenses because he lived further away. Frisk reminded Farrell that they had another bargaining date the following week, and said that Charging Party would agree to bargain if Gregory came to the table instead. No one else from either team said anything. Charging Party's bargaining team then left the building.

On June 25, Farrell told Charging Party's bargaining team that Respondent's board was not willing to replace him with Gregory, and that he would be the board's representative. Frisk replied that she was still not comfortable with the situation. She said that Charging Party did not want to meet with Farrell across the table. Farrell then suggested that they try some modified version of bargaining, either by mail or through a mediator, so that they would not have to meet face to face. Frisk told him that she would have to discuss it with her team. This was the end of this meeting. Insofar as the record discloses, the parties did not meet again before the date of the hearing in this case in February 2008.

Basis for Charging Party's Objections to Farrell

Charging Party's witnesses testified without contradiction that the MEA's local affiliates in its Ironwood district, including Charging Party, are small and not very self-sufficient, and that they depend on their UniServ director to be their leader at the bargaining table and in dealing with their employers. As a result, the UniServ director becomes intimately familiar with the personalities of the local union leaders and members of the union bargaining teams and the issues the bargaining units consider important.

To demonstrate the close relationship between the UniServ director and his or her bargaining unit, UniServ director Smith testified that when he serves as a chief spokesperson, he prepares by asking the local unit to survey their membership about what they want to see in the contract. He then goes over the contract to identify language changes that might be needed, and meets with the local bargaining team to put together bargaining proposals. In preparing for negotiations, he assigns priorities to proposals. Certain proposals are identified as long term goals. These proposals are put on the table to introduce the employer to the concept. However, unless the employer responds positively, the proposal is immediately dropped. The union does not necessarily tell the employer what priority it has given to particular bargaining proposals. In addition, Smith testified that as UniServ director he often meets individually with teachers identified by their employers as having attendance or performance issues, and that during these discussions he encouraged the teachers to speak frankly to him about their problems. Smith questioned Farrell's testimony that he did not possess any confidential information about Respondent's teachers. He also testified that he was concerned that if there was confidential information passed between teachers and Farrell and there was an ongoing disciplinary dispute, Farrell might feel obligated to pass this information on to his client. Smith admitted that there

were no ongoing disciplinary disputes involving teachers at Wakefield or Marenisco, but Smith was nevertheless concerned that this issue might arise if Farrell were to be hired by another district in the area. Smith summed up his objections to Farrell as follows, "I just know that the role of the UniServ director is we are [sic] the keeper of secrets; we have files of secrets and [Farrell] put 14 years of these files together."

Frisk, who worked with Farrell when he was UniServ director, testified that she believed that Farrell was privy to information about persons and issues which she considered secret, although she did not provide any specifics. The president of another local MEA affiliate in the area, Kim Saari, said that she felt violated by Farrell's taking employment with Respondent because she had had so many meetings with Farrell concerning problems in her district and felt he knew too many secrets to be sitting on the other side.

Farrell categorically denied that his former duties as UniServ representative or his role as chief negotiator for Charging Party in its last two negotiations gave him access to any information otherwise unavailable to Respondent. Farrell testified that until about 1998, he met as UniServ director with a coordinating council including representatives of all the units in his area to set general goals for bargaining in all units. However, by the time he retired the council had stopped meeting. Moreover, according to Farrell, the last two negotiations between Respondent and Charging Party were narrowly focused on only two issues, wages and health insurance. Farrell testified that in both these negotiations, Charging Party's openly stated long-term goal was to remove the insurance cap while otherwise maintaining existing wages and insurance benefits, while Respondent openly sought to get the teachers to agree to pay a portion of their insurance costs. Farrell did not deny that he was familiar with the personalities of the teachers on Charging Party's bargaining team. However, he denied that in the course of representing the teachers in the Marenisco and Wakefield district he had learned any information about any individual teacher that could be used against him or her that was not part of the public record. Farrell pointed out that most information concerning public school employees, including personnel files and grievances, are subject to disclosure under the Michigan Freedom of Information Act. Farrell also emphasized that in all his years as UniServ director he had only filed one grievance on behalf of an individual teacher, and that this teacher was no longer employed in the district. As indicated above, Smith testified that he regularly meets with teachers with performance problems even though no formal grievance is ever filed. Farrell did not indicate whether he had such meetings when he was the UniServ director.

Discussion and Conclusions of Law:

Pursuant to Section 16(a) of PERA, an unfair labor practice charge that is filed more than six months after the commission of the alleged unfair labor practice is untimely. The limitation contained in Section 16(a) of PERA is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health,* 17 MPER 45 (2004); *Police Officers Labor Council, Local 355,* 2002 MERC Lab Op 145; *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 582. The six-month period begins to run when the charging party knows, or should have known, of the alleged violation, i.e. when a person knows of the act which caused the injury, and has good reason to believe that the act was improper or done in an improper manner. *Huntington Woods v Wines,* 122 Mich App

650, 652 (1983), aff'g 1981 MERC Lab Op 836; *City of Detroit*, 18 MPER 73 (2005); *AFSCME Local 1583*, 18 MPER 42 (2005).

As Charging Party correctly notes in its brief, the six month limitation period does not begin to run until the unlawful act is committed. In the instant case, the acts which constituted the alleged unfair labor practice were, first, Respondent's hiring of Gregory Farrell and Associates as its labor relations representatives and, second, its selection of Farrell in particular to serve as its chief spokesperson in its negotiations with Charging Party. Both actions occurred before the first negotiation session on April 24, 2007. Moreover, I find that Charging Party received unequivocal notice of the former when members of its bargaining team attended the April 23 board meeting, and unequivocal notice of the latter when Farrell appeared with Respondent's bargaining team at the April 24 bargaining session.

After Frisk objected to Farrell as Respondent's spokesperson, Farrell raised the possibility that Respondent might rescind its selection and appoint Gregory instead when he asked if Charging Party would also object to Gregory. Charging Party argues that the statute of limitations in this case did not begin to run until June 25, 2007, when Respondent conveyed its final decision on the identity of its representative to Charging Party. In support of this argument, it relies on Commission cases holding that when an employee is told in advance that he is to be discharged or other adverse employment action is to be taken against him, the statute of limitations runs from the effective date of the discharge or discipline and not the date of the notice. *Northpointe Behavioral Healthcare Systems,* 1997 MERC Lab Op 530; *City of Detroit (Police Dept),* 1992 MERC Lab Op 497; *Superiorland Library Cooperative,* 1983 MERC Lab Op 140 and 1984 MERC Lab Op 701. Charging Party argues that these cases indicate that the Commission recognizes that the statute should not begin to run while there is possibility that the employer might reverse its decision. However, as pointed out in *Northpointe*, the Commission follows this rule in discrimination cases because it views the employee's last day worked or the effective date of his discipline as the date of his injury. In the instant case, the date Charging Party was first allegedly injured by Respondent's conduct was April 24, 2007, when Farrell showed up with Respondent's bargaining team and introduced himself as its chief spokesperson.

I also note that Charging Party was told by Farrell that Respondent would not change its mind on June 25, 2007, only two months after Charging Party received notice of the alleged unfair labor practice. Therefore, Charging Party cannot argue in this case that Respondent lulled it into sitting on its rights by leaving open the possibility that it might decide to use Gregory instead until the statute had run. I conclude that the charge in this case was untimely filed and must be dismissed on this basis.

Because I have concluded that the charge must be dismissed as untimely, I need not address Charging Party's argument that the situation in this case presents an exception to the general rule that each party has the right to choose its own representative and the opposite party has the obligation to bargain with that representative. However, I note that the case upon which Charging Party primarily relies, *NLRB v International Ladies Garment Workers Union (Slate Belt),* 274 F2d 376 (CA 3, 1960), was a decision by the federal Court of Appeals reversing a decision of the National Labor Relations Board (NLRB). The Court, but not the NLRB, found in that case that the union did not violate its duty to bargain in good faith by refusing to deal with

an employer representative who had previously held several highly confidential positions with the union in the same territory. In a subsequent case, *Brotherhood of Teamsters, Local 70 (Kockos Bros),* 183 NLRB 1330 (1970), *aff'd* 459 F2d 694 (CA 9, 1972), the NLRB and its administrative law judge concluded that a union did violate the National Labor Relations Act (NLRA), 29 USC 150 et seq, by refusing to bargain with two employers because they were represented by the union's ex-president. The administrative law judge distinguished *Slate Belt* on the grounds that in that case the employer had demonstrated its bad faith by tauntingly telling the union that it had "put one over on it," and "had put it on the spot" by hiring its ex-representative, and concluded that the employers in *Kockos Bros* had not violated their duties to bargain because they were at all times prepared to deal with the union in good faith. The Board in *Local 70* concluded as follows:

> While we are not unmindful of the possible ethical problem posed by a former union official seeking or accepting a position as a representative of a company with which the union has a bargaining relationship, we find, in the absence of persuasive evidence that Royster's presence as a bargaining representative of management would result in such "ill will . . . or conflict of interest as to make good faith bargaining impractical," *General Electric Co v NLRB,* 412 F2d 512 (CA 2, 1968) that the employers herein properly exercised their statutory right in selecting Royster as their representative for purposes of collective bargaining or the adjustment of grievances.

As noted above, I conclude, based on the findings of fact and conclusions of law above, that the charge in this case was untimely filed and must be dismissed. I recommend, therefore, that the Commission issue the following order.

## RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____