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

In the Matter of:

WAYNE STATE UNIVERSITY,
Public Employer-Respondent,

Case No. C08 I-178

-and-

DEVETTE S. BROWN,
An Individual-Charging Party.
_____/

APPEARANCES:

DeVette S. Brown, *In Propria Persona*

## DECISION AND ORDER

On December 30, 2008, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the unfair labor practice charge filed by Charging Party, DeVette S. Brown against Respondent, Wayne State University (Employer) was time-barred and failed to state a claim upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. After determining that the initial charge did not include a claim against Respondent, the ALJ ordered Charging Party to provide a more definite statement of the alleged violation by addressing five specific questions outlined in the order. In her response, Charging Party alleged being unlawfully terminated by Respondent due to race and gender bias, but failed to address the specific issues requested by the ALJ. Concluding that the allegations were untimely and did not suggest any employer discrimination due to anti-union animus, the ALJ recommended summary dismissal of the charge. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On January 22, 2009, Charging Party filed exceptions to the ALJ's decision, to which Respondent did not file a response.

In her exceptions, Charging Party contends that the ALJ erred by recommending dismissal of her charge in light of the Employer's discriminatory pattern of "constructive[ly] discharg[ing]" African-American females. We have thoroughly reviewed Charging Party's exceptions and find them to be without merit.

Discussion and Conclusions of Law:

As correctly noted by the ALJ, PERA does not prohibit all types of discrimination or unfair treatment by public employers. *Detroit Pub Sch,* 22 MPER 16 (2009). Instead, PERA seeks to prohibit an employer's "unfair" actions that interfere with or restrain an employee's right to engage in lawful concerted activity as set forth in Section 9 of that law. *MERC v Reeths-Puffer Sch Dist,* 391 Mich 253, 259 (1974). Charging Party alleges in her pleadings and exceptions that her termination in June 2007[1] was discriminatorily motivated and part of the Employer's ongoing scheme against minority women of color. However, these assertions fail to establish a reasonable connection between the discharge by the Employer and Charging Party's exercise of activity protected by PERA.

Additionally, Section 16 (a) of PERA imposes a six month maximum period for filing an unfair labor practice charge, which for instances of an alleged discriminatory discharge, the Commission has consistently held runs from the effective date of the termination. *Superiorland Library Coop,* 1983 MERC Lab Op 140. Charging Party filed this charge on September 3, 2008, more than thirteen months after her discharge date and well beyond the six- month relief period allowed under the Act. Since the charge lacks a valid claim and is time-barred under the Act, it is subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165. Accordingly, we adopt the ALJ's findings of fact and conclusions of law and dismiss this charge on summary disposition for failure to state a claim upon which relief can be granted and for untimeliness.

ORDER

The unfair labor practice charge is dismissed in its entirety.

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: _____

[1]Charging Party filed a previous charge in C07 l-275 on this same discharge action that raised different allegations against the Employer. In an order issued May 23, 2008, the Commission adopted an ALJ's Decision and Recommended Order dismissing that matter for untimeliness and failure to state a claim under PERA.

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APPEARANCES:

DeVette S. Brown, Charging Party appearing on her own behalf

**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.

The Unfair Labor Practice Charge:

On September 3, 2008, a Charge was filed in this matter by DeVette S. Brown asserting that unspecified representatives of Wayne State University (WSU or the Employer) had violated the Act. A prior charge brought by Brown against WSU in Case No. C07 L-275 was dismissed for failure to state a claim and as untimely. The most recent Charge stated no factual claim against the Employer at all, but only repeated the claims made in a related charge against the Union. Since the allegations failed to meet the minimum pleading requirements set forth in R 423.151(2), the Charging Party was ordered to provide a more definite statement of the charge against the Employer. Charging Party was directed to file a response that provided a clear and complete statement of the facts which allege a violation of PERA, and which factually addressed the following deficits in the Charge:

1. The date(s) of the alleged occurrences.
2. The names of each agent of the Employer who is alleged to have engaged in the claimed improper conduct.
3. A factual description of the conduct that is alleged to violate the Act.

4. A factual description of the adverse employment action taken against the Charging Party and when that adverse employment action occurred.
5. A specific factual description of how the current Charge differs from the Charge earlier filed on December 21, 2007 in MERC Case No. C07 L-275, which was previously dismissed.

Charging Party filed a timely response that was not in compliance with the order for more definite statement. The response discussed her dissatisfaction with her treatment at WSU, which she attributes to discrimination against her based on her ethnicity and gender. In particular, while Charging Party asserted that the allegedly unlawful conduct was her termination from employment, she failed to respond to the question of when her employment was terminated. In her prior case, in which Brown asserted that her termination violated her rights under the federal Family and Medical Leave Act (FMLA), it was established that Brown's employment was terminated in June of 2007. Neither in the present charge nor in the response to the order does Brown identify any more recent allegedly improper act by WSU.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to R423.165. The failure to respond to an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Here Brown has failed to substantively address the identified factual deficiencies in her charge. Regardless, under PERA, there is a strict six-month statute of limitations 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. With Brown's employment terminated in June of 2007, her September 2008 charge is untimely.

Additionally, PERA does not prohibit all types of discrimination or unfair treatment. In the present case, Brown asserts that her termination was premised on bias based on her ethnicity and gender, while in the prior case she asserted that the termination was a violation of the FMLA. Absent a factually supported allegation that the Employer was motivated 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.

The charge was filed more than six months after Brown's termination and fails to state any claim upon which relief could be granted by MERC. Dismissal for lack of jurisdiction and for failure to state a claim is warranted.

## RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated:_____