STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C09 L-236

-and-

CHERYL L. HARVEY,
An Individual-Charging Party.
_____/

APPEARANCES:

The Mungo Law Firm, P.L.C., by Leonard Mungo, Esq., for Charging Party

DECISION AND ORDER

On April 8, 2010, 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

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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:_____

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer, Case No. C09 L-236

-and-

CHERYL L. HARVEY,
Individual Charging Party.
_____/

APPEARANCES:

Leonard Mungo, for Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 et seq, this case was assigned to Doyle O'Connor, 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 to show cause why the charge should not be dismissed for failure to state a claim.

The Unfair Labor Practice Charge:

On December 2, 2009, Cheryl L. Harvey (Charging Party) filed a Charge in this matter asserting that the Employer, Detroit Public Schools, has treated Charging Party improperly or unfairly. The Charge asserted that Harvey was wrongfully terminated, and defamed, based on false accusations on February 13, 2009.

Pursuant to R 423.165(2)(d), on December 17, 2009, the Charging Party was ordered to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted and as barred by the applicable statute of limitations. Charging Party was advised in that Order that a timely response to the Order would be reviewed to determine whether a proper claim had been made and whether a hearing should therefore be scheduled. Charging Party was further cautioned that if the Charge and her response to the Order did not state a valid claim, or if the Charge was not timely filed, a decision recommending that the Charge be dismissed without a

hearing would be issued. Charging Party sought and was granted an extension of time to secure counsel, who filed a timely response to the Order on January 29, 2010.

Charging Party's response to the Order confirmed that Harvey was terminated on February 13, 2009. The response offered no additional factual basis for asserting that the termination decision itself violated the Act. The response did propose amending the Charge to include a claim that the Employer violated the Act by failing to issue a written 2nd step grievance response within the contractually mandated time frame, with Harvey asserting that the Employer's alleged abandonment of the grievance procedure violated PERA. Harvey asserts that she was not aware until June 3, 2009 of the Employer's failure to provide a timely written answer following the 2nd step grievance meeting of March 26, 2009. Regardless of the Employer's alleged failure to timely respond to the grievance, the Union chose to not pursue the grievance matter to arbitration.1

Discussion and Conclusions of Law:

Where a charge is untimely or fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. This matter is being decided based on the initial Charge and the response by Charging Party to the order to show cause why the matter should not be dismissed, with the facts asserted therein assumed to be true for purposes of this Decision.

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 by unlawful antagonism based on 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 Employer's actions. 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. Here, Charging Party asserts no more than her belief that her termination from employment was unjust. Because there is no factually supported 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 and is subject to summary dismissal.

Additionally, 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 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. Harvey was terminated from employment in February 2009 and the Charge was not filed until

1 A separate Charge was filed against the Union and is being addressed in a separate order in *Detroit Association of Educational Office Employees,* C10 K-041.

December 2009 and, therefore, any claims arising from the termination are barred by the statute of limitations and are subject to summary dismissal.

Finally, in her response to the Order, Harvey sought to amend her Charge to add a claim that the Employer had violated the Act by failing to provide a written answer to the 2nd step grievance within the contractual time limits. An abandonment of the grievance procedure can constitute a violation of the duty to bargain; however, the duty to bargain runs between the employer and the recognized bargaining agent, including the duty to process grievances, such that an individual employee lacks standing to bring a charge against an employer related to disputed grievance processing. *United Steelworkers of America, Local 14317 (Murray and Sturgeon)*, 2002 MERC Lab Op 167; *Coldwater Community Schools*, 1993 MERC Lab Op 94; *Detroit Public Schools*, 1985 MERC Lab Op 789.

Because there is no allegation in the Charge supporting a claim that the Employer violated any cognizable statutory obligation, and because the Charge was filed more than six months after the termination of Charging Party that gave rise to the claims, the Charge against the Employer must be dismissed as it fails to state a claim upon which relief can be granted and is barred by the statute of limitations.

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: April 8, 2010