

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

In the Matter of:

UNIVERSITY OF MICHIGAN,  
Public Employer-Respondent,

Case No. C09 H-126

-and-

CHARTE DUNN,  
An Individual-Charging Party.

---

**APPEARANCES:**

David J. Masson, Esq., Assistant General Counsel, for Respondent Employer

Paschal Law Firm, P.L.L.C., by Paschal C. Ukpabi, Esq., for Charging Party

**DECISION AND ORDER**

On October 14, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that the unfair labor practice charge filed by Charging Party, Charte Dunn, against Respondent, University of Michigan (Employer), was time-barred by Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216. Specifically, the ALJ concluded that the charge fell outside of this Commission's jurisdiction as it was not served on Respondent within the limitations period. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On October 26, 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. She argues that neither the "charge form" nor Commission staff indicated that providing a copy to the Employer was required to complete the filing process on her complaint. We have thoroughly reviewed Charging Party's exceptions and find them to be without merit.

**Factual Summary**

We adopt the facts set forth in the ALJ's Decision and Recommended Order; they will not be repeated here, except where necessary. For the purpose of reviewing the ALJ's conclusions, we accept as true Charging Party's allegations as contained in the record. On February 12, 2009, Respondent terminated Charging Party for attendance violations. Exactly six months later on October 12, 2009, Charging Party filed this charge with the Bureau of Employment Relations against Respondent alleging that the discharge stemmed from her exercise of protected activity as Union steward. She did not, however, serve Respondent with a copy of the charge. Respondent

filed for summary dismissal asserting that the charge was not properly filed because service was not attempted within the six month period allowed under PERA. Charging Party objected to the dismissal request asserting that she had no obligation to serve the charge on Respondent.

Discussion and Conclusions of Law:

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any alleged unfair labor practice occurring more than six months prior to the filing of the charge. Rule 151 of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R423.151, requires that “upon the filing of a charge, the charging party . . . shall be responsible for the timely and proper service of a copy . . . upon the charged party. . . and [both] filing and service must be completed within the applicable period of limitations”. Charging Party filed her complaint with the Commission on the close of the limitations period, but did not provide a copy of the charge to Respondent as required under R423.151. We agree with the ALJ that the allegations are barred from relief under PERA due to Charging Party’s failure to effect proper service upon Respondent within the statutory period. Charging Party’s failure to meet the service requirement can not be excused even assuming she reasonably relied on the absence of service instructions on the charge form, or that Commission staff had not mentioned the requirement while assisting her.<sup>1</sup> Further, the limitations period and service requirement is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004). Since the charge is time barred, it is subject to dismissal under R423.165.

Finally, we have carefully examined the remaining issues raised by Charging Party and find that they would not change the results. Accordingly, we affirm the ALJ’s Decision and Recommended Order dismissing this charge on summary disposition.

**ORDER**

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

\_\_\_\_\_  
Christine A. Dardarian, Commission Chair

\_\_\_\_\_  
Nino E. Green, Commission Member

\_\_\_\_\_  
Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

\_\_\_\_\_  
<sup>1</sup> A number of Commission approved handouts and other information indicate the service requirement in filing a charge. These materials are readily accessible to the public from the vestibule area of the Commission offices in Detroit, MI., and Lansing, MI., as well as from the website at [www.michigan.gov/merc](http://www.michigan.gov/merc).

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

In the Matter of:

UNIVERSITY OF MICHIGAN,  
Public Employer-Respondent,

Case No. C09 H-126

-and-

CHARTE DUNN,  
An Individual-Charging Party.

---

**APPEARANCES:**

David J. Masson, Esq., Assistant General Counsel, for Respondent

Paschal C. Ukpabi, Esq., for Charging Party

**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE  
ON MOTION FOR SUMMARY DISPOSITION**

On August 12, 2009, Charte Dunn filed the above charge with the Michigan Employment Relations Commission against her former employer, the University of Michigan, alleging that the Respondent Employer violated Sections 10(1) (a) and (c) of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210 by discharging her because of her union and other activities protected by the Act. Dunn also filed a charge against her collective bargaining representative, AFSCME Local 1583, on this same date (Case No. CU09 H-026). The charges were consolidated and assigned to Julia C. Stern, administrative law judge with the State Office of Administrative Hearings and Rules.

Dunn's charge against her Employer asserts that sometime prior to her discharge, her supervisor threatened to fire her if she did not stop being a union steward. She maintains that after she successfully grieved this threat, her supervisor falsified her attendance record. This led to her being disciplined and eventually terminated. Dunn asserts that at the time she was discharged she was the "last union employee" and also that during this period she was circulating a petition to decertify AFSCME Local 1583. Dunn attached to her charge a copy of a memo dated February 12, 2009 notifying her that she was terminated effective that date.

On September 24, 2009, the Respondent Employer filed a motion for summary disposition of the charge filed against it pursuant to Rule 165(2) (c) of the Commission's General Rules, 2002 AACRS, R 423.165. Respondent attached an affidavit to its motion stating that it was not served with a copy of this charge until August 17, 2009, when it received a notice of pre-trial

conference from the Commission with a copy of the charge attached. Respondent argues that the charge must be dismissed because it was not filed and served upon it within six months of the date of the alleged unfair labor practice, Dunn's discharge, as required by Section 16(a) of PERA. Dunn filed a response to this motion on October 6, 2009. Dunn does not dispute that she learned of her termination on or before February 12, 2009. She also does not dispute the Respondent Employer's assertion that it was not served with the charge until August 17, 2009. However, she argues that the charge should not be dismissed because the Respondent Employer was not prejudiced by the delay. She also argues that it was not her responsibility to serve the Respondent Employer with a copy of the charge because her union should have done this. However, she does not explain why she believes this was the Union's responsibility. Dunn does not assert that the Union promised to file the charge on her behalf.

Section 16(a) of PERA states:

No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission *and the service of a copy thereof upon the person against whom the charge is made*, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. [Emphasis added]

The Commission has held that the statute of limitation contained in Section 16(a) is jurisdictional. *Shiawassee Co Road Comm*, 1978 MERC Lab Op 1182, 1183; *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 582, 583. The six month period under Section 16(a) begins to run when the charging party knows, or should have known, of the alleged violation of the Act. *City of Detroit*, 18 MPER 73 (2005); *AFSCME Local 1583*, 18 MPER 42 (2005); *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. In the case of an unfair labor practice charge based on an allegation of unlawful discharge, the statute of limitations begins to run on the effective date of the termination unless the charging party does not learn of his or her termination after the effective date. In that case, the statute begins to run when the charging party first knows or should have know that he or she has been discharged. The running of the statute is not tolled by the filing of a grievance. *City of Detroit*, 21 MPER 39 (2008); *Troy Sch Dist*, 16 MPER 34 (2003). See also *Superiorland Library Cooperative*, 1983 MERC Lab Op 140.

Under Rules 151(4) and (5) of the Commission's General Rules, 2002 AACRS, R 423.151(4) and (5), a charging party is responsible for effecting timely service upon a respondent. These rules state:

(4) Upon filing of a charge, the charging party or parties shall be responsible for the timely and proper service of a copy thereof upon the charged party or parties against whom the charge is made as prescribed in R 423.182.

(5) Filing and service shall be effected within the applicable period of limitations.

The Commission's administrative law judges have interpreted the statute and rules to require dismissal of a charge filed, but not served on the charged party, within six months of the date of the alleged unfair labor practice(s). *Calhoun Co Medical Care Facility*, 21 MPER 71 (2008) (no exceptions); *Cadillac/Wexford Transit Authority*, 2002 MERC Lab Op 79 (no exceptions).

Dunn filed her charge against the Respondent Employer on August 12, 2009, exactly six months after the effective date of her termination. There is no dispute, however, that the charge was not served on the Respondent Employer within six months of the date of Dunn's allegedly unlawful termination. Therefore, under Section 16(a) the Commission lacks jurisdiction to issue an order finding Dunn's termination to have been a violation of PERA. I find that the charge must be dismissed. I recommend, therefore, that the Commission issue the following order.

**RECOMMENDED ORDER**

The charge against the Respondent University of Michigan is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

---

Julia C. Stern  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

Dated: \_\_\_\_\_