

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

In the Matter of:

MICHIGAN STATE UNIVERSITY ADMINISTRATIVE-
PROFESSIONAL ASSOCIATION,
Labor Organization- Respondent in Case No. CU08 J-054

-and-

MICHIGAN STATE UNIVERSITY,
Public Employer-Respondent in Case No. C08 J-224

-and-

JOHN MORALEZ,
An Individual-Charging Party.

APPEARANCES:

James D. Nash, Associate Director of Human Resources, for the Public Employer

White, Schneider, Young & Chiodini P.C., by William F. Young, Esq., for the Labor
Organization

John Moralez, *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 matters finding that the unfair labor practice charges filed by Charging Party, John Moralez, against Respondents, Michigan State University (Employer) and Michigan State University Administrative-Professional Association, MEA/NEA (Union) were time barred and failed to state claims 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 charges did not contain any cognizable claims, the ALJ ordered Charging Party to explain why the charges should not be dismissed by addressing several specific questions outlined in the show cause order. In his responses, however, Charging Party failed to substantively address the ALJ's specific questions. The ALJ

concluded that the charges were untimely and failed to state valid PERA claims. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of the Act. On January 20, 2009, Charging Party filed exceptions, as well as, a motion for summary disposition. On January 30, 2009, the Union filed its response. The Employer did not respond.

After reviewing the exceptions and other pleadings filed by the parties, this Commission finds that oral argument would not materially assist us in deciding these matters. As such, we deny Charging Party's request for oral argument.

In his exceptions, Charging Party offers numerous objections to the ALJ's conclusions. He contends that the ALJ erred in applying the statute of limitations to dismiss his charges when neither Respondent had raised the issue as an "affirmative defense". He also contends that his charge against the Employer for contract violation should prevail since Respondents did not dispute his claim. After careful review of Charging Party's exceptions and other pleadings, we find them to be without merit.

Factual Summary:

The factual allegations were fully outlined by the ALJ in the decision and recommended order and will not be repeated here, except where necessary. We also have accepted as true, the facts as alleged by Charging Party for purposes of reviewing the appropriateness of summary disposition. These matters arise from Charging Party's job loss from Michigan State University in the summer of 2003. Since that time, Charging Party filed several charges against Respondents that this Commission has dismissed on summary disposition.¹ On October 3, 2008, he filed a new charge against Respondent Union alleging that it refused to file or process his grievance. On October 27, 2008, he filed a charge against Respondent Employer asserting that "newly discovered" evidence supports that the Employer made false representations in a previous MERC case involving this same 2003 job loss. However, neither charge contained any factual support for Charging Party's allegations.

Discussion and Conclusions of Law:

We note that Charging Party failed to adequately respond to the ALJ's show cause orders, which itself, warrants dismissal of these charges. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Nevertheless, he contends that dismissal of his charges for untimeliness is proper only where a party raises the limitations period as an "affirmative defense". We disagree. Under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R423.165, an ALJ "designated by the commission may, on its own motion . . . order dismissal of a charge. . . because of the expiration of the applicable period of limitations." (Emphasis added). Therefore, the ALJ may appropriately act, sua sponte, to apply the limitations bar and recommend dismissal of both charges. *City of Detroit*, 23 MPER 10 (2010).

¹ Refer to MERC cases CU 05 J-044, C06 L-305, C08 F-127 and CU08 D-018.

We also concur with the ALJ that both charges are time barred from relief by this Commission. 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. . . ”. This limitations period is jurisdictional and cannot be waived. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Charging Party’s allegations stem from his employment separation in June, 2003. He filed these charges more than five years later. As such, summary dismissal is proper where allegations are based upon events occurring more than six months prior to the filing of a charge. *Shiawassee Co Rd Comm*, 1978 MERC Lab Op 1182.

Finally, Charging Party has not presented any information that would cause us to reopen the record in these matters pursuant to Commission Rule 166, R423.166. All other arguments presented by Charging Party have been considered, and would not change the outcome in these matters. We also renew our previous admonition that we will dismiss any future charges filed by Charging Party against these Respondents that are predicated on matters arising from their employment relationship that ended in 2003. *Michigan State Univ*, 23 MPER 25 (2008). Accordingly, we adopt the factual findings and legal conclusions in the ALJ’s Decision and Recommended Order and summarily dismiss all charges.

ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

MSU ADMINISTRATIVE-PROFESSIONAL ASSOCIATION,
Labor Organization- Respondent,

-and-

Case Nos. CU08 J-054 &
C08 J-224

MICHIGAN STATE UNIVERSITY,
Public Employer-Respondent

-and-

JOHN MORALEZ,
Individual Charging Party.

APPEARANCES:

John Moralez, Charging Party appearing on his own behalf

William F. Young, for the Labor Organization

James D. Nash, for the Public Employer

**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, these two cases are assigned to Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC) and have been consolidated for administrative convenience.

The Unfair Labor Practice Charge against the Union:

On October 3, 2008, a Charge was filed in this matter by Charging Party John Moralez asserting that unspecified representatives of the Michigan State University Administrative-Professional Association, MEA-NEA, (the Union) had violated the Act by refusing to file and/or process an unspecified grievance on or about October 2, 2008. The Respondent Union filed a motion to dismiss on October 16, 2008 asserting that the

claim was barred by the statute of limitations and by the factual findings made in prior decisions.

I found that the allegations in the Charge were bereft of any factual claims supporting the legal conclusion asserted and therefore failed to state a claim and failed to meet the minimum pleading requirements set forth in R 423.151(2). On October 17, 2008, pursuant to R 423.165(2)(d), the Charging Party was ordered to respond to the Respondent's motion and, as set forth below, was ordered to show cause why the charge should not be dismissed for failure to state a claim upon which relief could be granted and why restrictions on future filings should not be imposed on Charging Party.

The Charging Party was directed, as expressly required by R 423.151(2), to factually and specifically address the following issues:

1. Whether or not Morales has been actively employed by MSU, and in a position represented by the Respondent Union, since May of 2005, and if so, in what capacity and on what dates;
2. What grievance did Respondent Union allegedly refuse to file or pursue, and on what date;
3. What issue did Morales seek to address in the disputed grievance;
4. When did the event giving rise to the proposed grievance occur;
5. The names of each agent of the Union who is alleged to have refused to file or pursue the disputed grievance;
6. A factual description of how the alleged refusal to file or process a grievance violated the Act;
7. Charging Party must attach to his response any proposed grievance which he in fact sought to file subsequent to April 3, 2008, as well as any correspondence addressed to Charging Party from the Respondent Union dated after April 3, 2008, but prior to the filing of this Charge;
8. Charging Party must address the question of whether or not a factual finding should be made that this Charge is frivolous and that he has pursued this Charge for the sole purpose of harassing and burdening the Respondent Union;
9. Charging Party must address the question of whether or not restrictions on any future filings by him against MSU and the Michigan State University Administrative-Professional Association, MEA-NEA should be imposed on Charging Party by the Commission premised on Charging Party's repeated pursuit of meritless Charges.

Charging Party was expressly cautioned that a failure to comply with that order, including by the filing of non-conforming pleadings, would result in the immediate dismissal of the Charge without further proceedings. Despite that warning, Charging Party filed two separate pleadings on October 27, 2008. The first was a motion seeking summary disposition in his favor. The second was a pleading purportedly in response to the Order to Show Cause, but which did not address any of the questions to which responses had been ordered.

As to the Charging Party's motion for summary disposition, pursuant to R 423.161(3), I directed that the Union not file a response until further order. I further directed that both the Union's and the Charging Party's motions be held in abeyance until further order. A significant part of the basis for holding those motions in abeyance was the failure, and seeming refusal, of Charging Party to comply with the prior Order in this case. Those motions were not to be further addressed until Charging Party complied with the October 30, 2008, Second Order to Show Cause.

In the Second Order to Show Cause, Charging Party was again ordered to address the nine numbered questions set forth in the original Order. Charging Party was directed to file a written response that addressed each question directly, factually, and specifically and in separate sections numbered to correspond to the numbering of the questions, with each section of his response to begin by repeating the question, with his answer to follow each numbered question.

The Unfair Labor Practice Charge against the Employer:

On October 27, 2008, a Charge was filed in this matter asserting that on or about October 21, 2008, a representative of the Respondent Michigan State University (the Employer or MSU) violated the Act. This was only the most recent of multiple Charges filed by Morales relating to his separation from employment with MSU, which occurred in June of 2003. The sole factual allegation was the assertion that the Employer filed an allegedly "patently false" motion for summary disposition in Commission Case No. C08 F-127. The Commission records reflect that in that case, in fact, the Administrative Law Judge issued an Order to Show Cause why the Charge should not be dismissed for failure to state a claim, and then, based on Charging Party's response to that Order, that ALJ issued a Decision and Recommended Order dismissing the Charge for failure to state a claim.

In the instant case, the allegations in the Charge were bereft of any factual claims supporting the legal conclusions asserted and therefore failed to state a claim and fail to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), the Charging Party was ordered to show cause why the charge should not be dismissed for failure to state a claim upon which relief could be granted, and as barred by the statute of limitations. The Charging Party was also ordered to show cause why restrictions on future filings related to his former employment with MSU should not be imposed on Charging Party.

Charging Party was ordered to address the seven (7) numbered questions set forth below directly, factually, and specifically and in separate sections numbered to correspond to the numbering of the questions, with each section of his response to begin by repeating the question, with his answer to follow each numbered question. Charging Party's written response was to be received by the Commission by no later than November 21, 2008.

The Charging Party was directed, as required by R 423.151(2), to address the following factual deficits in the Charge:

1. Whether or not Moralez has been actively employed by MSU at any point since June of 2003, and if so, in what capacity and on what dates, taking into account the factual findings in the prior matter of *MSU, C08 F-127*;
2. The date(s) of the alleged occurrences;
3. A factual description of the conduct that is alleged to violate the Act;
4. Charging Party must address the question of precisely what newly discovered evidence exists, when it was discovered, why it could not have been reasonably discovered and produced earlier, and how the allegedly newly discovered evidence would require a different outcome;
5. Charging Party must address the question of whether or not a factual finding should be made that this Charge is frivolous and that he has pursued this Charge for the sole purpose of harassing and burdening the Respondent Union;
6. Charging Party must address the question of whether or not restrictions on any future filings by him against MSU and the Michigan State University Administrative-Professional Association, MEA-NEA should be imposed on Charging Party by the Commission premised on Charging Party's repeated pursuit of meritless Charges;
7. Charging Party is further directed to provide a concise and specific description of the relief requested for each claimed violation of the Act.

Charging Party's Responses to the October 30, 2008 Orders

On October 30, 2008, orders were issued in each of these cases, pursuant to R 423.161 (2), directing the Charging Party John Moralez to show cause why each case should not be dismissed. In each case, Charging Party was directed to respond to specific questions regarding apparent factual deficits in his charges as filed. Charging Party was cautioned that a refusal to comply with the several orders, including by attempting to file non-conforming pleadings, would not be tolerated. The parties were further advised by those orders that upon Charging Party's compliance with the orders, and only then, a briefing schedule would be set for responses, and that the matter either would then be set for an evidentiary hearing or would be set for oral argument. Charging Party was further cautioned that a continued refusal to comply with the orders of this tribunal, including by the filing of non-conforming pleadings, could result in the dismissal of the Charge without any further proceedings.

On November 20, 2008, Charging Party delivered pleadings to the Commission's office that did not substantively address the specific questions directed to Charging Party in the two orders to show cause issued October 30, 2008.

On November 26, 2008, an Interim Order was issued in which Charging Party was cautioned that a briefing schedule for responses by the Respondents would not be set, and that an evidentiary hearing or oral argument would not be scheduled, absent his

compliance with the orders to show cause. The time for Respondents to file any responsive pleadings was again extended as a consequence of Charging Party's failure to comply with the prior orders of the tribunal.

Charging Party made no effort, following the issuance of the November 26 Interim Order, to cure his non-compliance with the several prior orders to show cause.

The Intervening Commission Decision in Case Nos. C08 F-127 and CU08 D-018

On December 18, 2008, the Commission issued its Decision affirming the earlier ALJ recommended dismissal of Moralez' prior claims against the Employer and the Union in Case Nos. C08 F-127 and CU08 D-018. The Commission adopted the factual findings of the ALJ in those combined cases and expressly held that Moralez' employment relationship was terminated in July of 2003. The Commission held that Section 16(a) of PERA required that a charge be filed within six months of when the claim accrued.

The Commission further directed that any subsequent claims brought by Moralez against these same Respondents arising out of the employment relationship that terminated in 2003 would be summarily dismissed as barred by the statute of limitations.

The Intervening Court of Appeals Decision in CA No. 278415 (MERC Case No. CU05 J-044)

On December 16, 2008, the Michigan Court of Appeals issued a decision affirming the Commission's earlier decision in Case No. CU05 J-044, dismissing Moralez' original claims against the Union and denying Moralez' motions to reopen the record or to amend his charges. Significantly, in that decision, the Court found that Moralez' employment with MSU ended in 2003 and there had been no breach of the collective bargaining agreement by the Employer regarding his separation from employment or the later hiring of contractors to perform work which might otherwise have been performed by Moralez, and that, therefore, the Union could not have breached its duty to Moralez when it declined to further pursue grievances on his behalf.

Discussion and Conclusions of Law:

The combined effect of the recently issued Decisions of the Court of Appeals and of the Commission is to preclude any possible legally recognizable or good faith argument in support of any claims by Moralez under PERA against either the Employer or the Union.

While the Charging Party has sought oral argument on the question of summary disposition in this latest of many cases, I find that granting oral argument would not materially assist in deciding the matter and would instead be inappropriate for several reasons. The Commission Rules allow for the issuance of orders to show cause why a charge should not be dismissed for failing to state a claim. See, R 423.165(2)(d). The

Rules further place on the assigned ALJ the obligation to regulate the course of the proceedings and if appropriate or necessary exclude persons from the hearing process for contemptuous conduct. See, R 423.172. The Rules likewise grant an ALJ authority to strike any “redundant” pleading. See, R 423.163. Each of these rules functions to protect the hearing process from being abused and places the onus on the ALJ to enforce those rules. It is apparent that Charging Party’s compliance with the ordinary obligations set forth by the Rules cannot be secured. Additionally, it is apparent, particularly given the intervening Decisions of the Court of Appeals and of the Commission, that there are no good faith arguments that have been, or could be, advanced in support of the Charging Party’s claims, which have all previously been dismissed. For all of these reasons, this matter will not be set for oral argument, as doing so would not advance the cause of justice.

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure, as here, to substantively respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). The mere fact that Charging Party filed pleadings subsequent to being ordered to respond to specific factual deficits in his Charge does not mean that he has substantively responded to the orders of this tribunal. The pleadings filed by Moralez willfully failed to address the central, and jurisdictional, factual questions of when his relationship with the two Respondents terminated and when, according to Charging Party, the complained of offenses occurred. Here, the refusal of Charging Party to substantively respond to specific orders by the tribunal warrants the dismissal of the two pending Charges, and further, warrants that the dismissals come without any further proceedings, as Charging Party was expressly and repeatedly cautioned would occur if his non-compliance with orders was not rectified.

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. Section 16(a) of PERA states that “no complaint shall issue upon any unfair labor practice occurring more than 6 months prior to the filing of the Charge...”. 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. The limitation period under PERA commences when the person knows of the act that caused his injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983).

It is apparent that Moralez firmly believes he was treated unfairly by his former Employer and by his former Union. Even accepting his concerns as valid does not, and cannot, alter the fact that his claims are barred by the statute of limitations. The last time Moralez worked for MSU was in 2003. His relationship with his Union likewise ended

that year. The claims in the present Charges, having been filed in October 2008, are barred by the statute of limitations, as were all of his prior claims and as would be any future charges. Accordingly, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____