STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent,

Case No. C09 L-252

-and-

TAJAUANA BELL,
An Individual-Charging Party.
_____/

APPEARANCES:

Renee Laster, Human Resources Consultant, for Respondent Employer

Tajauana Bell, *In Propria Persona*

DECISION AND ORDER

On January 26, 2010, 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, Tajauana Bell, against Respondent, City of Detroit (Employer), was time-barred and failed to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 - 423.217. Specifically, the ALJ concluded that Charging Party's allegations failed to support a claim that the Employer's actions were motivated by anti-union animus or other PERA protected activity, and that the charge was filed outside the six- month statutory period under PERA. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On February 18, 2010, Charging Party filed exceptions to the ALJ's decision, to which Respondent did not file a response.

In her exceptions, Charging Party does not raise any specific exceptions to the ALJ's conclusions. Instead she expands on her earlier protests regarding the Employer's decision to extend her probationary period and, subsequently, rescind her promotion. After carefully reviewing Charging Party's exceptions and other pleadings, we find them to be without merit.

Factual Summary

We adopt the facts set forth in the ALJ's Decision and Recommended Order and will not repeat them 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 March 24, 2008, Respondent promoted Charging Party to the position of Emergency Services Operator (ESO). During the next several months, Charging Party received various disciplinary reprimands and two unsatisfactory evaluations for poor work performance. On or about November 16, 2008, Respondent rescinded the ESO promotion and returned Charging Party to her prior position in the recreation department. On December 10, 2009, Charging Party filed an unfair labor practice charge alleging that Respondent had unfairly extended her probationary period beyond the six- month term outlined in the collective bargaining agreement. She also argued that the return to her former position was improper and contrary to PERA. In responding to the ALJ's show cause order, Charging Party further asserted that the Employer ". . . violated [section] 423.210 [by] restraining me from exercising my right of mutual aid and protection from the union . . . in fighting by reversion back to the recreation department. . . ". However, Charging Party did not provide factual support for these allegations.

Discussion and Conclusions of Law:

We concur with the ALJ that Charging Party's allegations 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. . . ". Further, the limitations period is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004). Charging Party filed her complaint with this Commission on December 10, 2009, or nearly thirteen months after the extension of her probationary term and her removal from the ESO position in November, 2008. As such, summary dismissal is proper where allegations are based upon events that occurred more than six months before Charging Party filed her charge. *Shiawassee Co Rd Comm*, 1978 MERC Lab Op 1182.

We also agree that dismissal is proper because the charge fails to state a cognizable claim under PERA. As the ALJ correctly notes, PERA does not forbid all types of discrimination or unfair treatment by public employers. *Detroit Pub Sch*, 22 MPER 16 (2009). Instead, it seeks to prohibit an employer's "unfair" actions that interfere with or restrain an employee's right to engage in lawful concerted activities set forth in Section 9. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). Charging Party alleges in her pleadings and exceptions that the extended probationary term and loss of promotion were contrary to the collective bargaining agreement and her rights under section 9 of PERA. However, she does not provide any factually based allegations to support her claim that this adverse treatment stemmed from her involvement in protected activity. Charging Party's allegation of a contact violation, without more, is insufficient grounds for establishing an unfair labor practice charge against a public employer. *Ann Arbor Pub Sch*, 16 MPER 15 (2003). Without a valid PERA claim, this

Commission is foreclosed from examining the fairness of Respondent's actions. *Detroit Pub Sch*, supra.

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

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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:

CITY OF DETROIT,
Respondent-Public Employer, Case No. C09 L-252

-and-

TAJAUANA BELL,
Individual Charging Party.
_____/

APPEARANCES:

Tajauana Bell, 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) of the State Office of Administrative Hearings and Rules (SOAHR), on behalf of the Michigan Employment Relations Commission. 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 upon which relief could be granted.

The Unfair Labor Practice Charge and Findings of Fact:

On December 10, 2009, a Charge was filed in this matter by Tajauana Bell (the Charging Party) against the City of Detroit (the Employer) regarding her treatment while employed as an emergency services operator by the City. It appeared from the Charge that the last day worked as an emergency service operator was in November of 2008. It appeared that the allegations filed in the above matter did not properly state a claim under PERA, the statute that this agency enforces, and were regardless barred by the statute of limitations. For those reasons, and pursuant to R423.165, Bell was ordered to show cause why the Charge should not be dismissed without a hearing. In that order, Bell was cautioned that if the Charge and her response to the order did not state a valid claim, or if Bell did not establish that the Charge was timely filed, a decision recommending that the Charge be dismissed without a hearing would be issued.

Bell was directed that her response to the order to show cause must, as expressly required by R 423.151(2), provide a clear and complete statement of the facts which allege a violation of PERA, and must factually address the following deficits in the Charge:

1. The date(s) of the alleged occurrences.
2. When Bell last worked as an emergency service operator.
3. The date when Bell first became aware of the action, or inaction, by the Employer which she claims was improper.
4. The names of each agent of the Employer who is alleged to have engaged in the claimed improper conduct.
5. A factual description of the conduct that is alleged to violate the Act, including an explanation of what it is that the Employer did, or did not do, which is claimed to be a violation of PERA.

Bell filed a timely response to the order. The factual assertions in Bell's Charge and in her response to the order to show cause are presumed true for the purpose of determining if she has stated a claim under the Act.[1]

Bell had been working for the City of Detroit as an apparently part-time life guard in the recreation department and she sought and received an upgrade to a full-time emergency services phone operator position in March of 2008. By November of 2008, after several disciplinary write-ups and an extension of her probationary period, Bell was demoted, or "reverted", to her former position and department based on the Employer's assertion that she had failed her extended probationary period in the new job. Bell sought assistance from the Union which represents emergency services operators, met with a Union representative on November 16, 2008, and was told at that time unequivocally that there was nothing the Union could do for her regarding her failure to succeed as a probationary employee. Bell wrote to the Employer, most recently on February 4, 2009, unsuccessfully complaining of her removal from the emergency services operator position.

In Bell's response to the order to show cause, she affirms that her last employment in the disputed position was in November of 2008. Bell asserts, in a conclusory manner that the Employer violated the Act by reverting her to her former position. Bell makes clear her belief that the Employer acted improperly in extending her initial probation period of six months and then removing her form the position after eight months of probation. Bell does not assert any facts which, if proved, would support a claim that the Employer acted towards Bell out of any unlawful motive.

The Charge in this matter was filed December 10, 2009, well more than six months after her removal from the emergency services operator position effective November 16, 2008, and more than six months after her written complaints to the Employer asserting unfair treatment.

[1] A related Charge was filed by Bell against her Union, AFSCME Local 1023, in Case No. CU09 L-043, which was similarly the subject of a recommended order of dismissal issued January 21, 2010.

Discussion and Conclusions of Law:

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 claims raised in this matter are barred by the statute of limitations and regardless fail to state a claim under PERA.

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 statute of limitations is jurisdictional in nature and conclusively bars the finding of a violation where the action complained of occurred more than six months prior to filing a charge. *City of Detroit (Department of Public Works),* 2000 MERC Lab Op 149. 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). In *City of Adrian*, 1970 MERC Lab Op 579, the Commission adopted the holding of the U.S. Supreme Court in *Local Lodge 142 v NLRB (Bryan Mfg Co),* 362 US 411 (1960), which rejected the doctrine of a continuing violation if the inception of the violation occurred more than six months prior to the filing of the charge. Here, Bell did not file her Charge within six months of her removal from the disputed position or even within six months of her written complaints to the Employer asserting her belief that she had been treated unfairly. All of the claims are barred by the statute of limitations, such that this agency has no authority to act further upon them.

Regardless, even if the matter had been pursued within the statute of limitations, Bell's claims would be subject to summary dismissal. PERA does not prohibit all types of discrimination or unfair treatment by a public employer, nor is the Commission charged with interpreting a 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. Because there are no factual allegations even 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.

The claims made by Bell are barred by the statute of limitations and must therefore be dismissed. Further, the Charge asserts only what amounts to a breach of contract claim and, therefore, fails to state a claim upon which relief can be granted against the Employer under PERA. For that additional reason, the Charge must be dismissed under R 423.165 (2)(d).

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: January 26, 2010