

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

In the Matter of:

KENT COUNTY,
Public Employer-Respondent,

CONSOLIDATED CASES

-and-

UAW INTERNATIONAL UNION, LOCAL 2600,
Labor Organization- Respondent,

-and-

Dawn D. Hessler,
An Individual-Charging Party in C10 F-159 and CU10 F-026

Scott G. Knoes,
An Individual-Charging Party in C10 F-160 and CU10 F-025

Christopher S. Gombar,
An Individual-Charging Party in C10 F-161 and CU10 F-024

Casey Gordon,
An Individual-Charging Party in C10 F-162 and CU10 F-027

Mary Serba,
An Individual-Charging Party in C10 F-163 and CU10 F-029

APPEARANCES:

James D. Wines, Esq., for Charging Parties

DECISION AND ORDER

On August 24, 2010, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondents 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

Christine A. Derdarian, 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

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APPEARANCES:

James D. Wines, for Charging Parties

**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 cases were consolidated and assigned for resolution 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 (MERC).

On June 22, 2010, multiple charges were filed on behalf of five individual employees: Dawn D. Hessler, Scott G. Knoes, Christopher S. Gombar, Casey Gordon and Mary Serba (collectively, the Charging Parties). Each individual filed an identical charge against Respondent Kent County (the

Employer) and each individual filed a separate, but again identical charge against Respondent UAW Local 2600 (the Union). The charges filed against the Employer each alleged that the Employer laid the employees off after entering into an agreement to subcontract out certain work in the Kent County jail. It was asserted in essence that the resulting layoffs, as a result of contracting with a non-union company, had the consequential effect of discouraging union membership and thereby constituted discrimination in violation of 423.210(1)(c). The charge against the Union asserted that the Union violated its duty to fairly represent the several Charging Parties by failing to offer the Employer alternatives to subcontracting and by failing to confer with the Charging Parties. Pursuant to R 423.165(2)(d), on July 23, 2010, the Charging Parties were ordered to explain in writing why the two sets of Charges should not be dismissed for failure to state claims upon which relief can be granted and as barred by the statute of limitations.

A timely response was filed by the Charging Parties, which did not address the apparent failure to state claims under PERA, but which did affirmatively acknowledge that the claims were barred by the applicable statute of limitations. The response by Charging Parties expressly recognized that the Commission's prior decision applying the statute of limitations in *MSU and MSU Administrative-Professional Assoc*, 23 MPER 25 (2010), was indistinguishable and controlling. Charging Parties' submission proposed the voluntary withdrawal of the Charges so that Charging Parties could "proceed in other jurisdictions".

Discussion and Conclusions of Law

Where, as here Charges fail to state claims under the Act, they are subject to dismissal pursuant to an order to show cause issued under R423.165. The failure to substantively respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Here, Charging Parties have chosen to not respond to the order on the question of the failure to state valid claims, and the Charges are therefore subject to 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. Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415. The Charging Parties bear the burden of timely service of their Charge. Here, premised on the factual assertions in the Charges, the statute of limitations for filing a Charge with MERC would have expired on June 23, 2010, and with the Proof of Service filed with the Charge asserting that the Charges were placed in the US mail on June 22nd for delivery to the Respondent Employer, there arose a question concerning jurisdiction. Charging Parties' response to the order to show cause acknowledges that their claims before MERC are barred by the statute of limitations.

Nonetheless, Charging Parties propose a voluntary withdrawal in order to "proceed in other jurisdictions". Voluntary withdrawals of MERC charges are governed by R423.153 which requires the approval of the administrative law judge of such a voluntary withdrawal. As held by the Commission in *MSU and MSU Administrative-Professional Assoc*, 23 MPER 25 (2010), "it is no longer possible for Charging Part[ies] to file a timely complaint under PERA against either of the

Respondents based upon [their] past employment relationship". It would be inappropriate to approve the voluntary withdrawal for the stated purpose of allowing Charging Parties to attempt to proceed in another jurisdiction, where the only other appropriate jurisdiction would be the Circuit Court, and where any such effort would necessarily be likewise barred by the statute of limitations. See, *Leider v Fitzgerald Ed Ass'n*, 167 Mich App 210 (1988). As noted above, dismissal is required when a charge is not timely or properly served as was admittedly the case here.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety with prejudice.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: August __, 2010