STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF PONTIAC,
Public Employer - Respondent in Case No. C05 F-128,

-and-

PONTIAC HOUSING COMMISSION,
Public Employer - Respondent in Case Nos. C05 F-128 & C07 C-049,

-and-

AFSCME COUNCIL 25,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Clark Hill, PLC, by Reginald M. Turner, Jr., Esq., and Anne Marie Vercruysse Welch, Esq., for Respondent City of Pontiac

Law Offices of Shirley Rand, by Shirley Rand, Esq., for Respondent Pontiac Housing Commission

Miller Cohen, PLC, by Eric I. Frankie, Esq., for Charging Party

DECISION AND ORDER

On December 27, 2007, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above cases finding no genuine issue of material fact with respect to either charge. In Case No. C05 F-128, filed against Respondent City of Pontiac (City), the ALJ found that the City did not violate Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by laying off certain members of the bargaining unit represented by Charging Party, American Federation of State, County, and Municipal Employees Council 25 (AFSCME or the Union), and subcontracting the work formerly performed by those individuals to temporary non-union employees. Finding that the City is not a co-employer with Respondent Pontiac Housing Commission (PHC) and that PHC was the sole and independent employer of the laid off employees, the ALJ granted the City's motion for summary disposition. The ALJ also found that AFSCME's attempt to amend its charge to add PHC as a Respondent was untimely pursuant to PERA's six-month statute of limitations.

In Case No. C07 C-049, the ALJ found that AFSCME's claim that PHC violated its duty to bargain is defective in that the charge does not contain an allegation that AFSCME made a timely bargaining demand on PHC. The ALJ held further that there is only one individual still working at PHC in an AFSCME-represented position; hence, there no longer exists a valid AFSCME bargaining unit with which PHC is required to bargain. The ALJ recommended that we dismiss both unfair labor practice charges in their entireties.

The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On February 21, 2008, AFSCME filed exceptions and a request for oral argument. Respondent City timely requested and was granted an extension of time in which to file its response and, on April 4, 2008, the City filed a brief in support of the ALJ's Decision and Recommended Order. Respondent PHC's March 6, 2008 request for an extension of time to file a response to the exceptions was denied as untimely. On February 26, 2009, almost a year after record closure, Charging Party filed a Submission of Additional Case Law to Exceptions, requesting that the Commission, in judging the merits of its exceptions, consider certain case law not mentioned in its previously-filed exceptions. Respondent City filed a brief in opposition to this submission on March 9, 2009. Given the untimely nature of the Union's submission, its request that we consider additional case law is denied. Finally, because the Commission concludes that oral argument will not materially assist us in reaching a conclusion in this case, the request for oral argument is denied.

In its exceptions, AFSCME alleges that the ALJ erred by finding in a summary fashion that the collective bargaining agreement between AFSCME and the City was neither a sufficiently valid resolution nor a specific and affirmative action per the requirements of Section 5(3) of the Housing Facilities Act, 1996 PA 338, MCL 125.655(3), in order to maintain a co-employer relationship with PHC. AFSCME asserts that the ALJ erred in finding that PHC is the sole employer of AFSCME represented employees. They further assert error in the ALJ's finding that the amended charge against PHC was untimely. We have reviewed AFSCME's exceptions and find them to be without merit.

Factual Summary

We adopt the factual findings of the ALJ and repeat them only as necessary here. AFSCME is the collective bargaining representative for a unit of non-supervisory employees of the City of Pontiac. The applicable contract, covering the period of July 1, 2002 through June 30, 2005, contains wage rates for hundreds of employees within some seventy-two separate bargaining unit positions across multiple departments. In March of 2005, the City, through its director of human resources/labor relations, notified AFSCME that eight employees at PHC were to be laid off, effective April 2005. Their work was assigned to temporary non-union employees.

In June 2005, AFSCME filed its charge in Case No. C05 F-128 against the City of Pontiac alleging that the City subcontracted out its housing commission work and used temporary non-union employees to perform bargaining unit work without notice to Charging Party in violation of Section 10(1)(e) of PERA. AFSCME requested that the City restore the status quo by returning the subcontracted work to its bargaining unit and making the affected

employees whole. In August 2005, the City's director of human resources/labor relations responded by filing a motion to dismiss the Union's claim, asserting that the involved employees worked for PHC. The City further argued that PHC was a separate legal entity pursuant to the 1996 amendments to Section 11 of the Housing Facilities Act and, therefore, the City had no authority to remedy any alleged violation. In June 2006, AFSCME filed an amended charge naming both the City of Pontiac and PHC as Respondents. PHC filed an appearance in August 2006 and, in September of 2006, moved for dismissal arguing that the amended charge was barred by the six-month statute of limitations set forth in section 16(a) of PERA. PHC further argued that it was not a party to the 2002-2005 collective bargaining agreement between the City and AFSCME.

AFSCME asserted that Respondents remained co-employers after the amendments to the Housing Facilities Act. This assertion was based on the mayor's ratification of the 2002-2005 collective bargaining agreement, which set the scope of compensation and classifications to be implemented at PHC. With respect to the statute of limitations issue, AFSCME argued that the amended charge was not untimely because the allegations against PHC arise out of and relate back to the same set of facts that served as the foundation for its original claim against the City.

In March 2007, AFSCME filed its charge in Case No. C07 C-049, asserting that PHC, as the "successor employer" of the bargaining unit members, refused to recognize and bargain with the Union. In its response, the City filed a renewed motion for summary disposition, reiterating that the charge in Case No. C05 F-128 should be dismissed because the City was not the employer of the laid off employees at the time of the subcontracting. The Union responded that the charges should not be dismissed because the City was essentially acting as an agent of PHC by engaging in contract negotiations with it.

Discussion and Conclusions

The Commission agrees that there was no genuine issue of material fact that the City of Pontiac was not a co-employer of PHC employees and that it is entitled to summary disposition in Case No. C05 F-128. For the reasons cited by the ALJ, none of the action taken by the City with respect to PHC employees has any bearing on the legal conclusion that PHC was the sole and independent employer of employees whose work was subcontracted in April 2005. We also agree that any attempt to join PHC as a party to this case in March 2007 is barred by PERA's six-month statute of limitations. There is no merit in the Union's assertion that the amended charge should be considered timely. It is well-settled that an amendment which adds a new party creates a new cause of action and, in such case, there is no relation back to the original filing for statute of limitation purposes. See e.g., *Forest v Parmalee*, 60 Mich App 401, 411; 231 NW2d 378, 383 (1975) and cases cited by the ALJ supporting this premise. Dismissal of the Union's charge against PHC, therefore, is required per Section 16(a) of PERA.

We also agree with the ALJ that PHC is the sole and independent employer of its employees. It cannot be ordered to reinstate employees to their former positions as PHC was not made a party to the case in a timely manner. We disagree with AFSCME's assertion that it is a failure of justice to refuse to permit an amendment to the charge. The ALJ was correct in his

conclusion that AFSCME and its legal staff surely were on notice that the employment relationship between housing commissions and their incorporating cities had been severed as a matter of law after the 1996 amendments to the Housing Facilities Act. See 1996 PA 338, MCL 125.655(3). Indeed, Charging Party was the plaintiff in the litigation before the Michigan Supreme Court in the case of *AFSCME v City of Detroit*, 468 Mich 388 (2003), where the Court re-affirmed the premise that the employment relationship between housing commissions and their incorporating cities had been severed as a matter of law and that housing commissions were the presumptive employer of their employees.

While AFSCME argues that the collective bargaining agreement constituted "specific and affirmative action" invoking the alternatives set forth in the above-mentioned statute so as to establish the City and the Housing Commission as co-employers of the AFSCME-represented employees, the language of the Michigan Supreme Court case refutes that notion. The Court stated, "[t]he only way to establish a co-employment relationship is under the unambiguous language of MCL 125.655(3): upon the recommendation of the appointing authority, the governing body may adopt a resolution regarding the compensation and classification of housing commission employees." *Id*. at 415. For the reasons explained by the ALJ in the analysis in his decision, there was no valid resolution in this case, and action taken by the City with regard to PHC employees is of no significance in establishing a valid employment relationship.

As to Case No. C07 C-049, the ALJ found that the charge was defective as there was no allegation that AFCSME had made a timely bargaining demand on PHC. We agree. The employer's duty to bargain is conditioned on a timely demand to bargain by the union. See e.g., *SEIU Local 586 v Village of Union City*, 135 Mich App 553 (1984); *Holland Pub Sch*, 1989 MERC Lab Op 346, 355. Finally, after the layoffs that precipitated the filing of the instant charge, there was only one individual working at the housing commission in an AFCSME represented position. It is well-settled that one person is not sufficient to constitute a bargaining unit warranting Commission recognition. *Grosse Pointe Pub Library*, 1999 MERC Lab Op 151, 163; 12 MPER 30032 (1999).

We do not address the question of whether the Pontiac Housing Commission is bound by the collective bargaining agreement because that issue is not properly before us.

We have considered all other arguments presented by the parties and conclude that they would not change the result in this case.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
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
EMPLOYMENT RELATIONS COMMISSION
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In the Matter of:

CITY OF PONTIAC,
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AFSCME COUNCIL 25,
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APPEARANCES:

Clark Hill, PLC, by Reginald M. Turner, Jr. and Anne Marie Vercruysse Welch, for Respondent City of Pontiac

Law Offices of Shirley Rand, by Shirley A. Rand, for Respondent Pontiac Housing Commission

Miller Cohen, PLC, by Eric I. Frankie, for Charging Party

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 David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charges, Subsequent Proceedings and Findings of Fact:

The American Federation of State, County and Municipal Employees (AFSCME) Council 25, Local 2002 is the collective bargaining representative for a unit of certain nonsupervisory employees of the City of Pontiac. The most recent collective bargaining

agreement between Local 2002 and the City covers the period July 1, 2002 through June 30, 2005. Attached to the contract as an appendix is a pay plan setting forth the wage rates by contract year for hundreds of employees within approximately 72 separate bargaining unit positions across multiple departments or "subunits", including employees working in the housing commission classifications of building systems tech, building maintenance caretaker and storekeeper. The agreement also contains a layoff/recall provision which provides that employees on layoff "shall be recalled in the order of their seniority to the same jobs or to jobs of equal or lower pay provided they are able to perform the job."

On or about March 29, 2005, Larry Marshall, the City's director of human resources/labor relations, notified the president of Local 2002 by letter that eight employees at the Pontiac Housing Commission (PHC) were to be laid off. In the letter, Marshall promised that the City's human resources department would "work closely with the Union and City departments in an effort to minimize this difficult period." Layoff notices were issued to the affected employees on City of Pontiac letterhead and signed by Marshall, as well as by the department head and the director of finance. Following the layoffs, which were effective in April of 2005, the bargaining unit work was assigned to temporary, non-union employees.

On June 21, 2005, AFSCME Council 25 filed its charge in Case No. C05 F-128 against the City of Pontiac. In the charge, the Union asserted that the City had "subcontracted out its housing commission work and used temporary employees to perform bargaining unit work" without notice to Charging Party in violation of Section 10(1)(e) of PERA. As a remedy in this matter, the Union seeks an order requiring the City to restore the status quo by returning the work to its bargaining unit and to make the affected employees whole for any losses they may have suffered as a result of the unlawful subcontracting.

On August 15, 2005, Marshall, in response to a grievance filed by AFSCME over the layoffs, asserted that the PHC was a separate legal entity and that the City had no authority to remedy the alleged contract violation.

The City made essentially the same argument on February 9, 2006, when it filed a motion for summary disposition in Case No. C05 F-128. In the motion, the City asserted that it was not the employer of the affected bargaining unit members when the layoffs occurred, and that the entity which actually employed those individuals and later made the decision to lay them off was, in fact, the PHC. The City alleged that the PHC became the sole employer of its employees pursuant to the 1996 amendments to Section 11 of the Housing Facilities Act, MCL 126.661. The City further claimed that notwithstanding the 1996 amendments, it attempted to find alternative positions for the affected AFSCME members after they were let go by the Housing Commission. According to the motion:

> The City immediately rehired four of the employees into other AFSCME bargaining unit positions. One of the employees was on long-term sick leave and continued to collect pay. The City was unable to place the other two employees, Katrina Davis and Dave Snow, until Ms. Davis was eventually rehired into a parking lot position in the AFSCME bargaining unit. Mr. Snow rejected such a position and has not been rehired.

Charging Party filed a response to the motion for summary disposition on March 1, 2006. In its response, the Union claimed that it was the City of Pontiac and not the PHC which made the decision to lay off its members. The Union further asserted that the City evinced its intent to maintain a coemployer relationship with the PHC when, subsequent to the 1996 amendments to the Housing Facilities Act, the mayor recommended, and the city council approved, the 2002-2005 collective bargaining agreement which established the compensation ranges and classifications to be used by the PHC in fixing the compensation of its officers and employees. In its response, the Union did not contradict or deny any of the City's assertions concerning the employment status of unit members following the April 2005 layoffs.

On March 9, 2006, the City filed a reply brief asserting that the contract provisions relied upon by Charging Party were insufficient to establish a coemployer relationship between the City and the PHC. The City characterized the inclusion of references to PHC job classifications in contracts entered into subsequent to the 1996 amendments to the Housing Facilities Act as "inadvertent" and argued that such references did not constitute an affirmative and specific statement by the mayor and the city council so as to effectively reestablish a coemployer relationship between the City and the PHC.

Oral argument was held regarding the City's motion for summary disposition on June 2, 2006. At that time, I raised the issue of whether the PHC is a necessary and indispensable party in Case No. C05 F-128 given that it is either the sole employer of the affected employees, as alleged by the City, or a coemployer with the City of those individuals, as argued by the Union. I directed both the Charging Party and Respondent to file supplemental briefs addressing whether the charge should be dismissed for nonjoinder of a necessary party. The City's motion for summary disposition was held in abeyance pending the filing of the supplemental briefs.

On June 7, 2006, AFSCME Council 25 filed an amended charge concerning the alleged unlawful subcontracting of bargaining unit work, naming both the City of Pontiac and the PHC as Respondents. The parties filed their respective briefs regarding joinder of the PHC approximately one month later, on July 10, 2006. In its supplemental brief, the Union asserted that MERC can render relief as to the PHC even if it does not participate in the underlying litigation because the PHC is "responsible for the unlawful subcontracting by its joint employer, the City."

Counsel for the PHC filed an appearance in this matter on August 10, 2006. On September 28, 2006, the PHC moved for dismissal of the amended charge, arguing that the allegations set forth therein are barred by Section 16(a) of PERA because that charge was filed on June 7, 2007, more than six months after the unfair labor practice allegedly occurred in April of 2005. The PHC further asserted that it is the sole employer of the affected employees and that the amended charge should be dismissed for failure to state a claim under PERA because the Housing Commission was not a party to the 2002-2005 collective bargaining agreement between the City and AFSCME.

The Union filed a response to the PHC's motion on October 23, 2006. With respect to the statute of limitations issue, AFSCME asserted that the amended charge was timely filed

because the allegations against the PHC arise out of, and relate back, to the same facts that served as the basis for the Union's original charge against the City of Pontiac.

On March 2, 2007, AFSCME Council 25 filed its charge in Case No. C07 C-049, alleging that the PHC, as the "successor employer" of bargaining unit members employed at the Housing Commission, refused to recognize and bargain with AFSCME. The City of Pontiac then filed a renewed motion for summary disposition on May 20, 2007, once again claiming that the charge in Case No. C05 F-128 should be dismissed because the City was not the Employer of the affected employees at the time the alleged subcontracting occurred. Charging Party filed a brief in response to the City's renewed motion for summary disposition on June 22, 2007, arguing, in part, that the charges should not be dismissed because the City was acting as an agent of the PHC when it negotiated its contract with AFSCME.

Oral argument on the parties' respective motions was held on June 27, 2007. At the hearing, counsel for Charging Party represented to the undersigned that as a result of the layoffs, there is only one employee, Kurt Pryor, still working at the PHC in an AFSCME-represented classification. Another individual, Dane Snowdon, initially accepted a job with the City of Pontiac, but has since stopped working in that position and, according to the Union, is on layoff status.

Discussion and Conclusions of Law:

Case No. C05 F-128

The primary issue presented on summary disposition is whether the PHC is an independent employer of its employees, or whether the PHC and the City of Pontiac are coemployers of individuals working at the Housing Commission. The powers and duties of the PHC are governed by the Housing Facilities Act, MCL 125.651 *et seq.* The Housing Facilities Act authorizes cities, villages and townships to create, by ordinance, commissions to provide housing for low-income persons and to eliminate poor housing conditions. Prior to June of 1996, Section 5(3) of the Housing Facilities Act, MCL 125.655(3), provided that a housing commission could appoint a director and fix the compensation of employees only "with the approval of the appointing authority." In the absence of this authority, a housing commission was not a separate employer, but rather a coemployer, with the incorporating unit. See *City of Grand Rapids, supra.*

In June of 1996, the Legislature passed 1996 PA 338, which substantially amended the Housing Facilities Act. As amended, MCL 125.655(3) now provides, in pertinent part:

> A president and vice-president and other officers designated by the commission shall be elected by the commission. *The commission may employ and fix the compensation of its director, who may also serve as secretary, and other employees as necessary. Upon the recommendation of the appointing authority, the governing body of an incorporating unit may adopt a resolution either conditioning the establishment of any compensation of an officer or employee of a commission upon the approval of the governing body or establishing the*

> *compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees*. The commission shall prescribe the duties of its officers and employees and shall transfer to its officer and direct those functions and that authority which the commission has prescribed. [Emphasis supplied.]

The Michigan Supreme Court had occasion to consider the nature of the relationship between a housing commission and its appointing authority following the 1996 amendments to the Housing Facilities Act in *AFSCME v City of Detroit*, 468 Mich 388 (2003). In 2001, the mayor of the city of Detroit, relying upon the 1996 amendments, sought the approval from city council of an intergovernmental agreement which would effectively sever the city's employment relationship with employees of the Detroit Housing Commission (DHC). After the city council rejected the mayor's proposals, AFSCME Council 25, the same statewide labor organization which brought the instant charges, filed suit against the city and the DHC seeking an injunction to prohibit severance and for declaratory relief as to whether the 1996 amendments in fact gave the city power to divest itself of the housing commission. The city council then intervened as a plaintiff in the matter.

On appeal, the Supreme Court held that the 1996 amendments to the Housing Facilities Act severed the city's relations with the DHC as a matter of law. The Court based its finding on the "clear and unambiguous" language of MCL 125.655(3), which it held explicitly authorized a housing commission to act as an independent employer of its director, officers and other staff. The Court held that as a result of the 1996 amendments, a coemployer relationship between a housing commission and its incorporating city can be found only if the city's appointing authority and its governing body take specific action as outlined in the statute. According to the Court:

> MCL 125.655(3) automatically gives housing commission unfettered authority *unless* the appointing authority engages the alternative in the statute . . . by making a recommendation to the governing body.
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> * * *
>
> Only upon the recommendation of the appointing authority and the adoption of a resolution by the governing body establishing the compensation of DHC employees could the city be regarded as a coemployer. *Id.* at 403 [Emphasis in original.]

In *AFSCME v City of Detroit*, the plaintiffs set forth various arguments in support of their assertion that the mayor of the City of Detroit and the Detroit city council had in fact taken the necessary action to retain coemployer status with the DHC, including the assertion that a lump sum budget proposed by the mayor for the entire city covering the period July 2001 through June 2002 constituted a "recommendation" of the mayor. The plaintiffs claimed that the budget established that the city had not fully divested itself of the DHC because it referenced the city of Detroit *White Book*, which identified compensation ranges and classifications for all employment positions within city government, including positions that were unique to the DHC. The Supreme Court disagreed with the plaintiffs, concluding that the mayor's submission of the

budget did not constitute a recommendation from the mayor on which the city council could have taken action sufficient to satisfy the MCL 125.655(3) alternatives. Specifically, the Court stated:

> We decline to accept the inference that the mayor, by submitting a budget that encompassed all of the operating costs for the entire city, was recommending that all DHC employees remain city employees. The budget submission is too broad in scope to allow the specific conclusion that the mayor was recommending that the city council adopt a resolution regarding DHC employees' compensation and classification. *Id.* at 407-408.

In the instant case, Charging Party asserts that the City of Pontiac and the PHC have maintained a coemployment relationship because the City, based upon the recommendation of the mayor, ratified and executed a collective bargaining agreement with AFSCME which includes, as an appendix, a pay plan establishing the compensation ranges and job classifications for housing commission positions. The decision in *AFSCME v City of Detroit* mandates that I reject this argument. The mere inclusion of three AFSCME-represented PHC positions in a pay plan covering hundreds of employees in approximately 72 bargaining unit positions across multiple City departments or "subunits" is not sufficiently narrow in scope so as to constitute the type of detailed resolution contemplated by the 1996 amendments to the Housing Facilities Act. As the Supreme Court's decision in *AFSCME v City of Detroit* made clear, those amendments severed the employment relationship between housing commissions and their incorporating cities as a matter of law, essentially creating a presumption that a housing commission is the sole employer of its employees. The only way to establish the existence of a coemployer relationship based upon the Court's interpretation of the 1996 amendments is to show that the appointing authority and its governing body took specific and affirmative action invoking the alternatives set forth in MCL 125.655(3). Charging Party has failed to set forth any facts which, if true, would prove that the mayor and the city council took such action.

In support of its contention that Respondents were coemployers of PHC employees, Charging Party cites the fact that the March 29, 2005 letter notifying the Union president of the layoffs was written on City of Pontiac letterhead and signed by the City's director human resources/labor relations, as were the individual layoff notices. In addition, Charging Party notes that the City rehired members of the bargaining unit who had been laid off from their positions with the Housing Commission. The Union contends that these and other actions establish that the City maintained control over the Pontiac Housing Commission and its employees, thereby warranting a finding of coemployer status for purposes of PERA. The Union made a similar argument in *AFSCME v City of Detroit,* which the Supreme Court explicitly rejected:

> AFSCME maintains that the Court of Appeals analysis does not take into account the current status of DHC employees, which is the product of seven years of "proposals," both before and after the 1996 amendments. However, we note that the city's actions as a coemployer with the DHC, in the absence of any valid resolution, do not negate the legal status of the DHC as an independent employer. Merely because the city has been acting as a coemployer with the DHC does not

> mean that MCL 125.655(3) does not sever the employment relationship as a matter of law. *Id.* at 402.

Since there was no valid resolution in the instant case, any action the City of Pontiac may have taken with respect to PHC employees is of no significance with respect to the Housing Commission's status as the sole and independent employer of PHC employees.

Accepting all of the allegations set forth by Charging Party in its briefs and at oral argument as true, I find that that no genuine issue of material fact exists with respect to the status of the City of Pontiac as a coemployer of PHC employees and that the City is entitled to summary disposition in Case No. C05 F-128.

While there was much discussion at oral argument concerning whether the PHC is a necessary party to the proceeding in Case No. C05 F-128, including many questions regarding joinder directed to the parties by the undersigned, it is not necessary that I address that issue in light of the above analysis. Based upon my conclusion that the Pontiac Housing Commission is the sole employer of its employees, the Housing Commission is more than a necessary party, it is, in fact, the only Respondent for purposes of the Union's challenge to the legality of the layoffs. Given that those layoffs were announced on March 29, 2005 and became effective in April of 2005, I find that the Union's attempt to amend its charge to add the Housing Commission as a Respondent in this matter is untimely, as the amended charge was filed on June 27, 2006, approximately fourteen months after the layoffs became effective and over a year after the City first asserted that the PHC was a separate employer. Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583.

I find no merit to the Union's assertion that the amended charge should be considered to have been timely filed because it involves events arising out to the same course of conduct which had been referred to in the original charge. It is well established that an amendment which adds a new party creates a new cause of action, and there is no relation back to the original filing for statute of limitations purposes. See e.g. *Miller v Chapman Contracting*, 477 Mich 102, 106-107 (2007); *Cowles v Bank West*, 263 Mich App 213, 229 (2004), aff'd in part, vacated in part, and remanded 476 Mich 1 (2006). See also *United States v Western Casualty & Surety Co*, 359 F2d 521, 523 (CA 6 1966). Accordingly, dismissal of the Union's amended charge against the PHC in Case No. C05 F-128 is warranted pursuant to Section 16(a) of the Act.

In conclusion, neither at oral argument nor in the many briefs which it filed in this matter has Charging Party set forth any facts or argument which would support a conclusion that a coemployment relationship exists between the City and the PHC for purposes of PERA. Rather, what appears to be driving this dispute is a perception on the part of the Union that the City acted unfairly in holding itself out as the sole employer of PHC employees, and that the bargaining unit members employed at the PHC relied upon such representations to their ultimate detriment. Even if the City did act with apparent authority in negotiating and administrating a contract with AFSCME covering PHC employees, Charging Party is not entitled to the broad make whole

remedy which the Union has repeatedly indicated it is seeking in this matter. By operation of law, the Pontiac Housing Commission is the sole and independent employer of its employees, and the PHC cannot be ordered to reinstate the affected employees to their former positions at the Housing Commission where, as here, it was not made a party to the case in a timely manner.

I also find that dismissal of the charge in Case No. C05 F-128 will not result in a failure of justice in this dispute. Although individual members of Charging Party's bargaining unit may have been unaware of the 1996 amendments to the Housing Facilities Act or the likely effect of that legislation on their terms and conditions of employment, AFSCME Council 25 itself was a plaintiff in the *City of Detroit* case discussed above. Clearly, the Union and its legal staff were on notice by no later than 2003, when the Supreme Court issued its decision, that the employment relationship between housing commissions and their incorporating cities had been severed as a matter of law, and that housing commissions, including the PHC, became the presumptive employers of their employees as a result of the 1996 amendments. AFSCME cannot credibly claim to have relied upon any conduct on the part of the City to suggest an outcome other than that which is mandated by the Supreme Court's decision. Under these circumstances, AFSCME's failure to properly charge the PHC at the outset of this dispute in 2005 cannot reasonably be characterized as excusable neglect.

Case No. C07 C-049

In Case No. C07 C-049, AFSCME asserts that the PHC, as the "successor employer" of bargaining unit members employed at the Housing Commission, refused to recognize and bargain with AFSCME. However, the charge is defective in that there is no allegation that AFSCME ever made a timely bargaining demand to the PHC. Moreover, the record is clear that as a result of the April 2005 layoffs, there is only one individual still working at the Housing Commission in an AFSCME-represented position. The Commission does not recognize single employee bargaining units. See e.g. *City of Hazel Park, Library Bd*, 1996 MERC Lab Op 287, 293; *Int'l Union of Bricklayers and Allied Craftsman, Local 31*, AFL-CIO, 1992 MERC Lab Op 677. Therefore, even assuming that the Housing Commission had a duty to bargain with Charging Party when the layoffs were first announced and that the Union made a proper and timely bargaining demand to the PHC, there is no longer any AFSCME unit at the Housing Commission with whom the Employer is required to bargain under PERA.

For the foregoing reasons, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are herby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated: _____