STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Public Employer - Respondent,

Case No. C08 E-087

-and-

NASHELLE BRYANT,
An Individual Charging Party.
_____/

APPEARANCES:

Barbara J. Johnson, Esq., Chief Labor Relations Analyst, for the Respondent

Thomas Richards, Union Representative, AFSCME Local 101, for the Individual Charging Party

DECISION AND ORDER

On June 3, 2009, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent 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

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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

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Respondent-Public Employer,

-and-

NASHELLE BRYANT,
An Individual Charging Party.
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APPEARANCES:

Barbara J. Johnson, Chief Labor Relations Analyst, for the Respondent

Thomas Richards for the Individual Charging Party

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on May 14, 2008 by Nashelle Bryant against her employer, Wayne County. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charges were assigned to David M. Peltz, Administrative Law Judge (ALJ) for the State Office of Administrative Hearings & Rules, acting on behalf of the Michigan Employment Relations Commission (MERC).

In the charge, Bryant asserts that her employment with the County was terminated on some unspecified date for something that she "did not do" and that when she was later rehired, the County refused to allow her to return her original work location. The charge further asserts that the County acted improperly by requiring her to seek the approval of her supervisor before engaging in discussions with members of the bargaining unit and by prohibiting her from using a copy machine for Union business. According to the charge, these actions were in retaliation for her activities as a union steward and the result of discrimination on the basis of race.

The County filed an answer to the charge on June 6, 2008 and a Motion for Summary Disposition on September 10, 2008. Charging Party filed a response to the motion on September 30, 2008. Oral argument was held before the undersigned on October 7, 2008.

Findings of Fact:

The following facts are not in dispute. Charging Party was employed as a clerical specialist in the equipment division of the County's Department of Public Services (DPS) and was a member of a bargaining unit represented by AFSCME Local 101. She became a Union steward in January of 2007. In that capacity, Bryant filed various grievances on behalf of members of the AFSCME bargaining unit. On November 17, 2007, she was terminated based upon allegations that she conspired to falsify an employment verification form. The Union filed a grievance on Charging Party's behalf, which proceeded through Step 3 of the grievance procedure.

Around the time that a Step 4 hearing was scheduled to occur, the County proposed that the parties enter into a last chance agreement which would allow Bryant to return to work subject to certain conditions, one of which was that she would be reinstated to the first available clerical specialist position within the administrative division of the DPS, rather than returned to her former position in the equipment division. The last chance agreement remained on the table for approximately one month, during which time Charging Party consulted with various Union officials, including the local president and vice-president. Ultimately, both the Union and Bryant agreed to the terms set forth in the last chance agreement.

On or about March 14, 2008, Charging Party signed the last chance agreement, along with an acknowledgement that the agreement constituted a waiver of Bryant's rights "under the collective bargaining agreement or in law to grieve, arbitrate or litigate" her termination. The agreement was also signed by the local president and by the County's labor relations and DPS directors. Thereafter, Charging Party was reinstated to a clerical specialist position within the administrative division of the DPS, where she remained at the time of the oral argument in this matter.

Discussions and Conclusions of Law:

Charging Party contends that she was unfairly terminated from her position as a clerical specialist in the equipment division of the County's Department of Public Services (DPS) on November 16, 2007, and that she was discriminated against on the basis of race and because of her Union activities upon her return to work. The Commission has no jurisdiction to remedy ordinary contract breaches, nor is it MERC's role to hear civil rights claims, including allegations of discrimination on the basis of race, gender, religion or national origin, or other generalized claims of unfair treatment. With respect to a claim brought by an individual employee against a public employer, the Commission's jurisdiction with respect to public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in *union or other protected concerted activities*. Absent a factually supported allegation that the public employer interfered with, restrained, coerced or retaliated against the employee for engaging in such activities, the Commission is foreclosed from making a judgment on the merits or fairness of the employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd. of Ed.*, 1987 MERC Lab Op 523, 524.

Accepting the allegations set forth by Bryant in this matter as true, I find that summary dismissal of the charge is appropriate. Charging Party has failed to set forth any factually supported claim that she was subject to anti-union discrimination, other than the conclusory allegation that the Employer's actions were in retaliation for her protected activities. Although Charging Party was a Union steward prior to her termination, she voluntarily signed a last chance agreement pursuant to which the County was obligated to return her to work in a position within the administrative division of the DPS, rather than in her former position in the equipment division. As part of that agreement, Bryant explicitly waived her right to challenge her termination under "the collective bargaining agreement or in law." Bryant had about a month to consider whether to accept the agreement, which she ultimately signed after consulting with her Union representatives. There is no dispute that Bryant was returned to work in accordance with the terms of the last chance agreement and that she was still employed as a clerical specialist in the administrative division at the time of oral argument in this matter. Under such circumstances, there can be no finding that the County discriminated against Bryant in violation of PERA by "refusing" to return her to the position she held prior to her termination.

Charging Party further contends that the County violated the Act by treating her differently than other Union representatives with respect to her use of a copy machine and by prohibiting her from discussing Union matters with employees absent permission from a supervisor. 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 with the Commission and the service of the charge upon each of the named respondents. 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. The limitations period commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). In the instant case, Bryant concedes that restrictions on her use of the copier were put into place in January of 2007 and that the County began prohibiting her from meeting with her fellow employees regarding Union issues sometime prior to April of 2007. However, she did not file the instant charge until May 14, 2008. Accordingly, these allegations must be dismissed as untimely under Section 16(a) of the Act.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge in Case No. C08 E-084 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____