

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

In the Matter of:

TRINITY CONTINUING CARE,  
Employer-Respondent,

Case No. C09 E-075

-and-

SUSAN G. WISE,  
An Individual Charging Party.

APPEARANCES:

Susan G. Wise, *In Propria Persona*

**DECISION AND ORDER**

On June 18, 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 the Labor Relations and Mediation Act, 1939 PA 176, 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 23 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 23 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**

In the Matter of:

Case No. C09 E-075

TRINITY CONTINUING CARE,  
Respondent-Employer,

-and-

SUSAN G. WISE,  
An Individual Charging Party.

APPEARANCES:

Susan G. Wise appearing on her own behalf

**DECISION AND RECOMMENDED ORDER  
ON SUMMARY DISPOSITION**

On May 22, 2009, Susan G. Wise filed an unfair labor practice charge against her former employer, Trinity Continuing Care. Pursuant to Sections 16 and 23 of the Labor Mediation Act (LMA), 1939 PA 176, as amended, MCL 423.16 & 423.23, this case was 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.

Charging Party alleges that she was wrongfully terminated by Respondent on August 1, 2008. In an order issued on June 3, 2009, I directed Charging Party to show cause why the charge should not be dismissed as untimely and for failure to state a claim under the LMA. Charging Party did not file a response to that order.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, accepting all of the allegations in the charge as true, dismissal of the charge on summary disposition is warranted.

Pursuant to Section 23(2)(a) of the LMA, 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. 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, Charging Party alleges that she was terminated on August 1, 2008. Yet, she did not file her charge against the Employer until May 22, 2009. Accordingly, the charge must be dismissed as untimely under Section 23(2) of the Act.

The charge also fails to state a valid claim under the LMA. The Act does not prohibit all types of discrimination or unfair treatment by an employer, nor does the LMA provide a remedy for an employer's breach of a collective bargaining agreement. Rather, the Commission's jurisdiction with respect to employers is limited to determining whether the employer interfered with, restrained, or coerced an employee with respect to his or her right to engage in union or other protected concerted activities. In the instant case, the charge does not provide a factual basis which would support a finding that Wise engaged in any protected concerted activity for which she was subject to discrimination or retaliation. Absent such an allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's action. Accordingly, the charge must be dismissed for failure to state a claim upon which relief can be granted.

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. C09 E-075 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

---

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

Dated: \_\_\_\_\_