

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

In the Matter of:

WAYNE COUNTY,
Public Employer- Respondent,

Case No. C09 G-113

-and-

JOSEPH CHRAPKIEWICZ,
An Individual-Charging Party.

APPEARANCES:

Joseph Chrapkiewicz, *In Propria Persona*

DECISION AND ORDER

On September 3, 2009, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. On September 21, 2009, the Commission received a letter from Charging Party requesting that the charge be withdrawn. Charging Party's request is hereby approved. This Decision and Order and the Decision and Recommended Order of the Administrative Law Judge will be published in accordance with Commission policy.

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:

WAYNE COUNTY,
Respondent-Public Employer,

Case No. C09 G-113

-and-

JOSEPH CHRAPKIEWICZ,
Individual Charging Party.

APPEARANCES:

Joseph Chrapkiewicz, Charging Party, representing himself

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY JUDGMENT**

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). 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 and as barred by the statute of limitations.

The Unfair Labor Practice Charge:

On July 20, 2009, a Charge was filed by Joseph Chrapkiewicz asserting that Wayne County (the Employer) treated Charging Party improperly or unfairly in terminating his employment on April 22, 2008, and in the course of the later arbitration of a grievance related to his discharge from employment. Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2) and further appeared to be barred by the statute of limitations. Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, Charging Party was granted an opportunity to file a written statement explaining why the charges should not be dismissed prior to a hearing. Charging Party was cautioned that to avoid dismissal of the Charge, any response to that Order to Show Cause must provide a factual basis to proceed that establishes the existence of alleged discrimination in violation of PERA which occurred within six months of the filing of the charge. Charging Party was further expressly cautioned that a failure to substantively respond by the deadline set in the order would result in dismissal of the Charge without a hearing or other proceedings.

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 failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, PERA does not prohibit all types of discrimination or unfair treatment, 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's actions were motivated by union or other activity protected by Section 9 of PERA, the Commission is not allowed to judge the merits or fairness of the actions complained of by Charging Party in this matter. 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 is no allegation suggesting that the Employer was motivated by union or other activity protected by PERA, it appears that the charge against the Employer fails to state a claim upon which relief can be granted.

Furthermore, 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. Here the charge alleges that Chrapkiewicz was terminated from his employment on April 22, 2008, with the charge filed on July 20, 2009, well over the six month time limitation, and therefore outside the jurisdiction of MERC.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: September 3, 2009