

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C09 H-122

-and-

ELNORA CARTER,
An Individual-Charging Party.

APPEARANCES:

Elnora Carter, *In Propria Persona*

DECISION AND ORDER

On September 30, 2009, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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**

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C09 H-122

-and-

ELNORA CARTER,
Individual Charging Party.

APPEARANCES:

Elnora Carter, Charging Party appearing on her own behalf

**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 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.

The Unfair Labor Practice Charge:

On August 12, 2009, a Charge was filed in this matter asserting that the Detroit Public Schools (the Employer) had treated Elnora Carter (the Charging Party) improperly or unfairly. The charge in its entirety asserts: "*Unfair Practices (Labor Practices), Discrimination (age, color, gender), Inequality, Hardship, Pain and Suffering.*" Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). 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 filed a timely response to the Order to Show Cause, which added additional detail to her claims. In particular, the response made clear that the complaints arose from at least two separate events, one apparently occurring in 2004 and the other related to a lay-

off in the summer of 2009.¹ The response additionally reiterated Carter's assertion that the Employer had discriminated against her based on her age and gender. No facts were asserted regarding any discrimination on a basis covered by PERA.

Discussion and Conclusions of Law:

PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on 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. The Commission is without authority to resolve Carter's claims of age and gender discrimination. Because there is no allegation suggesting that the Employer was motivated by union or other activity protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted.

Further, the Commission is without authority to review allegations arising from those events referred to in the response to the Order which arose in, or before, 2004. 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.

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 30, 2009

¹ Charging Party filed a related Charge against her labor union, the Detroit Association of Educational Office Employees Local 4168. A similar order to show cause was issued in that matter, to which Charging Party filed the identical response. In neither case was oral argument requested. A separate Decision is being issued as to that matter.