

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

In the Matter of:

AFSCME COUNCIL 25,  
Labor Organization-Respondent,

-and-

KIMBERLY J. HICKS,  
Individual-Charging Party.

Case No. CU08 I-049

APPEARANCES:

Cassandra D. Harmon-Higgins, Esq., for Respondent

Kimberly J. Hicks, *In Propria Persona*

**DECISION AND ORDER**

On October 29, 2008, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order 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

\_\_\_\_\_  
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:

AFSCME COUNCIL 25,  
Respondent-Labor Organization,

Case No. CU08 I-049

-and-

KIMBERLY J. HICKS,  
An Individual Charging Party.

---

**APPEARANCES:**

Kimberly J. Hicks, appearing on her own behalf

Cassandra D. Harmon-Higgins for Respondent

**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 (ALJ) of the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission.

This matter comes before the Commission on an unfair labor practice charge filed by Kimberly J. Hicks on September 18, 2008, against her labor organization, AFSCME Council 25. The charge alleges that the Union violated PERA by failing or refusing to proceed to arbitration on a grievance pertaining to Hicks. Attached to the charge are copies of various letters and other correspondence between Hicks and the Union. These documents indicate that the grievance in question was rejected by the Union's arbitration review committee on May 22, 2007. The grievance committee reaffirmed that decision on June 12, 2007, July 3, 2007, and again on August 21, 2007. Hicks subsequently appealed that decision and the Union held a live hearing in the matter on January 16, 2008. Thereafter, the arbitration review committee once again renewed its rejection of the grievance as confirmed in a letter to Charging Party dated January 30, 2008. The letter stated, "Based upon the file and information provided at the live appeal, the Panel has not changed its previous determination; this matter remains in rejected status and is being processed to final closure." In a letter dated April 23, 2008, the Union notified Hicks that its file had been closed.

In an order entered on October 10, 2008, Charging Party was granted fourteen days in which to show cause why the charge should not be dismissed as untimely under Section 16(a) of PERA. Charging Party filed a response to the order to show cause on October 24, 2008. In her response, Hicks asserts that the charge was timely filed because the Union's arbitration review panel retained the authority to overturn its prior determination to reject the grievance within the six month period prior to the filing of the instant charge.

Accepting as true all of the allegations in the charge, the response to the order to show cause and the supporting documentation, I find that dismissal of this matter is warranted. 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. 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 under Section 16(a) 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).

Although AFSCME Council 25 apparently closed its file regarding the Hicks grievance in April of 2008, well within the six-month period preceding the filing of the charge in this matter, the closing of the file was simply a ministerial act of no real consequence with respect to the applicability of the statute of limitations. The documents supplied by Charging Party establish that the grievance itself was rejected long before that date and that Hicks was well aware of the Union's decision. The Union notified Charging Party of its rejection of the grievance on four separate occasions prior to the January 16, 2008, live appeal. Thereafter, AFSCME informed Hicks by letter dated January 30, 2008 that the appeal had been denied and that the grievance remained rejected. Yet, Charging Party did not file her charge with the Commission until September 18, 2008. Clearly, Charging Party knew or should have known of the alleged PERA violation by the Union more than six months prior to the filing of the instant charge on September 18, 2008. Accordingly, the charge must be dismissed as untimely under Section 16(a) of the Act.

#### RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

---

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

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