

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

In the Matter of:

UNIVERSITY OF MICHIGAN,
Public Employer-Respondent,

Case No. C08 I-193

-and-

ZOHREH PANAHI-KING,
An Individual-Charging Party.

APPEARANCES:

Zohreh Panahi-King, *In Propria Persona*

DECISION AND ORDER

On October 13, 2008, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the charge filed by Charging Party, Zohreh Panahi-King, against Respondent, University of Michigan (Employer) was time-barred pursuant to Section 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.216(a). Responding to the ALJ's show cause order that inquired why the charge should not be dismissed as untimely, Charging Party argued that the statute of limitations should start at the close of the internal grievance procedure challenging her discharge. Finding no material issue of fact and that the charge was untimely, the ALJ recommended summary dismissal. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. After requesting and receiving an extension of time, Charging Party filed exceptions on December 4, 2008. Respondent did not file a response to the exceptions.

In her exceptions, Charging Party contends that the ALJ erred by finding the charge untimely. She asserts that the statute of limitations commenced to run from the date on which a final decision was issued on her internal grievance, rather than at the time of her termination from employment. Charging Party also alleges that a possible bias or conflict of interest exists with the ALJ due to his actions in assisting the parties to settle a charge filed previously by Charging Party against Respondent, and from an outside affiliation between the ALJ and Respondent's vice general counsel. We have thoroughly reviewed the exceptions and find them to be without merit.

Discussions and Conclusions of Law

For the purpose of reviewing the appropriateness of summary disposition, we accept as true the facts alleged by Charging Party. The factual assertions in the charge and Charging Party's response to the show cause order were not contested by Respondent; therefore, we agree with the ALJ that there are no material facts in dispute. We further agree with the ALJ that the charge is untimely as a matter of law.

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. This Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *City of Lansing*, 21 MPER 9 (2008). Further, the limitations period commences when the charging party knows or should have known of the acts constituting the unfair labor practice. *City of Detroit*, 18 MPER 73 (2005). Charging Party, here, alleges that the Employer improperly discharged her in October 2007; yet, she filed her charge nearly eleven months later on September 23, 2008.

Charging Party contends that the time period for filing a charge commenced when the decision on her internal grievance became final. However, it is well settled that the processing of an internal grievance does not toll the statute of limitations on a charge filed against an employer. See e.g. *Troy Sch Dist*, 16 MPER 24 (2003); *Wayne Co (Pub Service Dep't)*, 1993 MERC Lab Op 560. As such, we concur with the ALJ that the charge against Respondent is barred due to untimeliness.

Charging Party also alleges the existence of possible bias or conflict of interest by the ALJ assigned to this case. However, she provides only conclusory statements without specific instances of conduct or other information to support her belief. An allegation of bias is established by showing that the judge or decision maker either: (1) has a financial interest in the outcome, (2) has been the target of personal abuse or criticism from the party claiming bias, (3) is entangled in other matters involving the party, or (4) may have prejudged the instant case because of the judge's prior participation as an accuser, investigator, fact finder, or initial decision maker. *Crampton v State Dep't*, 395 Mich 347, 235 NW2d 352 (1975). Here, Charging Party's assertion of bias stems from the ALJ presiding over her previous charge against this same employer. However, the level of involvement in the prior case must be as an accuser, investigator, prosecutor, or initial decision maker in the same matter, before that involvement will be considered to create a conflict that would preclude the same judge from adjudicating a new matter involving the same party or parties. *Id* at 354. The ALJ here assisted the parties in reaching a settlement in their prior case. That, by itself is insufficient to indicate the presence of a conflict of interest or bias that would bar the ALJ from presiding over this matter. Moreover, given the objective and uncontroverted facts establishing the untimeliness of the charge against the Employer, it is evident that summary dismissal of the charge is both appropriate and unrelated to any alleged bias or conflict of interest by the ALJ assigned to this matter.

Finally, all other arguments presented by Charging Party have been considered and would not change the results in this case. Therefore, we adopt the ALJ's Decision and Recommended Order dismissing the charge on summary disposition.

ORDER

This unfair practice labor charge is dismissed in its entirety.

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:

UNIVERSITY OF MICHIGAN,
Public Employer-Respondent,

-and-

Case No. C08 I-193

ZOHREH PANAH-KING,
Individual Charging Party.

APPEARANCES:

Zohreh Panahi-King, 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, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge:

On September 23, 2008, a Charge was filed in this matter by Zohreh Panahi-King (the Charging Party) asserting that the University of Michigan (the Employer) had violated the Act by terminating her employment.¹ In the Charge, and in the supporting materials filed with the Charge, it was revealed that Charging Party was terminated from her employment on October 24, 2007; had a grievance hearing on February 21, 2008 at which her termination was discussed; and received a final denial of her grievance over her termination which was dated March 17, 2008. An order to show cause directed Charging Party to file a written response which was to be "limited to the question of whether or not she filed and served her charge upon the Employer within six months of her termination from employment", as it appeared that each of the relevant events occurred more than six months prior to the filing of the Charge. Charging Party filed a response, which asserted her belief that the Charge was timely based on her filing it within six months of March 21, 2008, which is when she asserts she received the

¹ A copy of the Charge was sent via fax to the Commission on September 19, 2008.

Employer's March 17 certified letter denying her grievance over the October 2007 termination of her employment.

Discussion and Conclusions of Law:

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. A claim accrues, that is, the statute of limitations begins to run, when the charging party knows, or should know, of the alleged unfair labor practice. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. In *City of Adrian*, 1970 MERC Lab Op 579, the Commission adopted the holding of the U.S. Supreme Court in *Local Lodge 142 v NLRB (Bryan Mfg Co)*, 362 US 411 (1960), which rejected the doctrine of a continuing violation if the inception of the violation occurred more than six months prior to the filing of the charge.

Here, it is apparent based on the allegations by the Charging Party, which are accepted as true for the purpose of this ruling, that the Charge is untimely and is, therefore, barred by the statute of limitations. The Charge asserts that the termination of employment was unlawful. That event, which is the relevant event for purposes of the running of the statute of limitations, occurred in October of 2007. In her response to the order to show cause, Charging Party ignores the date of her termination from employment and, instead, argues that the statute of limitations should run from when the Employer denied her grievance over the termination. The Charge does not assert that it was the denial of the grievance that violated the Act; rather, the Charge asserts that the termination itself violated the Act. Charging Party knew, upon being terminated in October of 2007, that she had a substantive dispute with the Employer and a possible claim. The Charge challenging that termination is untimely, where it was not filed until eleven months after the termination.

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: _____