

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

In the Matter of:

UNIVERSITY OF MICHIGAN (RADRICK FARM GOLF COURSE),
Public Employer - Respondent,

-and-

ERIC CHRISTIAN,
An Individual Charging Party in Case No. C11 J-166,

-and-

THEODORE KLEINERT,
An Individual Charging Party in Case No. C11 J-167.

APPEARANCES:

David Masson, Associate Vice President and Deputy General Counsel, for Respondent

Levine Benjamin, P.C. by Greg M. Liepschutz, for Charging Parties

DECISION AND ORDER

On November 17, 2011, Administrative Law Judge David M. Peltz issued a Decision and Recommended Order in the above matters 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 complaints.

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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Derdarian, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

UNIVERSITY OF MICHIGAN (RADRICK FARM GOLF COURSE),
Respondent-Public Employer,

-and-

ERIC CHRISTIAN,
An Individual Charging Party in Case No. C11 J-166

-and-

THEODORE KLEINERT,
An Individual Charging Party in Case No. C11 J-167.

APPEARANCES:

David J. Masson, Associate Vice President and Deputy General Counsel, for Respondent

Levine Benjamin, P.C., by Greg M. Liepshutz, for the Individual Charging Parties

DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION

On October 3, 2011, Eric Christian and Theodore Kleinert filed identical unfair labor practice charges against the University of Michigan (Radrick Farms Golf Course). 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) for the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission.

Charging Parties allege that on or about September 31, 2010, they were terminated shortly after expressing their desire to join a labor organization. In an order issued on October 14, 2011, I directed Charging Parties to show cause why the charges should not be dismissed as untimely under Section 16(a) of PERA. The response to the Order to Show Cause was due by the close of business on November 4, 2011. To date, no response has been received, nor have Charging Parties requested an extension of time in which to file such a response.

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 charges as true, dismissal of the charges on summary disposition is warranted.

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any 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 Comm Sch*, 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). The statute of limitations is not tolled by the attempts of an employee or a union to seek a remedy elsewhere, including the filing of a grievance, or while another proceeding involving the dispute is pending. See e.g. *Univ Of Michigan*, 23 MPER 6 (2010); *Wayne County*, 1998 MERC Lab Op 560. In the instant case, Charging Parties allege that they were terminated on September 31, 2010. Yet, they did not file their charges until October 3, 2011, more than a year later. Accordingly, the charges must be dismissed as untimely under Section 16(a) of the Act.

For the above reason, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C11 J-166 and C11 J-167 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 17, 2011