STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization-Respondent,

-and

Case No. CU10 E-018

ANDREA S. EASTMAN,
An Individual-Charging Party,

-and-

VILLAGE OF HOLLY,
Public Employer-Interested Party.
_____/

APPEARANCES:

Law Office of Wayne A. Rudell, P.L.C., by Wayne A. Rudell, for Respondent

Andrea S. Eastman, *In Propria Persona*

Keller Thoma, P.C., by Gary P. King, for the Interested Party

DECISION AND ORDER

On January 11, 2012, Administrative Law Judge Doyle O'Connor 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 charge 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

_____
Edward D. Callaghan, Commission Chair

_____
Nino E. Green, Commission Member

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Christine A. Derdarian, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

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Respondent-Labor Organization,

-and- Case No. CU10 E-018

ANDREA S. EASTMAN,
An Individual Charging Party,

-and-

VILLAGE OF HOLLY,
Interested Party-Employer.
_____/

APPEARANCES:

Andrea S. Eastman, for the Charging Party, on her own behalf

Wayne A. Rudell, on behalf of Respondent-Labor Organization

Gary P. King, on behalf of Interested Party-Employer

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

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 Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge and Proceedings:

The Charge, which was filed on May 4, 2010, against Respondent Teamsters Local 214 (the Union) alleged that the contract between the Village of Holly and

the Teamsters Union unlawfully disadvantaged the Charging Party, Andrea S. Eastman. A contractual rule regarding calculation of seniority was applied to Eastman when she joined the Union's bargaining unit in 2008, such that her seniority for purposes of layoff and recall was calculated from the placement of her position in the bargaining unit, rather than from her much earlier original date of hire into a non-unit position.

Eastman filed a timely response to an earlier Order, clarifying the nature of her claims. The Teamsters Union filed a motion for summary disposition; however, finding that there were material disputes of fact, and as the motion was not supported by affidavit, I set the matter for trial. On further review, on October 12, 2011, I *sua sponte* gave the Employer notice of the pendency of the matter as it appeared that the nature of the relief sought, recision of a portion of the collective bargaining agreement, made them a necessary party. I instructed the Employer to file a position statement responding to the allegations in the Charge and addressing whether the Employer was a necessary party. The Employer filed a response concurring that it was a necessary party, and asserting that the Charge was unmeritorious and was regardless barred by the statute of limitations, based in part on factual assertions made in Eastman's May 26, 2010, response to the initial Order.

On November 7, 2011, I directed the parties to provide a more detailed factual basis for the competing claims, in particular, that the contracts in question and the resulting workplace postings of the seniority list be provided. Additionally, I directed Eastman to better describe how and when she learned of the apparent change in her seniority status. Timely responses were received from all three parties. Those responses, in particular, the response by Eastman, eliminated any material disputes of fact, at least as to the statute of limitations issue.

In her response dated November 21, 2011, Eastman asserted that on October 23, 2009, she observed the seniority roster which had been posted in the workplace. That roster showed Eastman as the least senior employee in her department, with a seniority date of November 1, 2008, despite the fact that her original date of hire was in 1995. Eastman recounts that she discussed her seniority status with her Teamsters Union steward at work on October 23, 2009, and Eastman asserts she was told that day that she was the least senior employee in her department and would therefore be the first to be laid off in event that layoffs occurred.

Eastman asserted that at the time, she reported her October 23, 2009, conversation with the steward regarding her seniority status to two co-workers and to her supervisor. Additionally, Eastman provided a copy of her letter of November 18, 2009, to the Teamsters Local Union President, in which Eastman asserted "*Since joining the union, I am on the bottom of the seniority list and showing only one year of seniority*."

While Eastman does not acknowledge having seen the posted seniority roster before October 23, 2009, a copy provided with the Employer's response is dated April 29, 2009, and shows Eastman with the November 2008 seniority date, consistent with her change in status in 2008. The posting of seniority rosters is pursuant to a contractual obligation and each posting carries the same notice that *"If your records are different than the above please notify the payroll department"*.

Based solely on the factual assertions by Eastman, it appeared that Eastman was aware of the change in her seniority date, and of its potential impact on her, by no later than the discussion she had with the Teamsters steward on October 23, 2009. The Charge was not filed until May 4, 2010, which is more than six months after Eastman admits knowledge of the posting of, and the Union's reliance on, the disputed seniority calculation.[1] It appeared that the latest a Charge could properly have been filed was April 23, 2010, and that, therefore, the allegations filed in the above matter were untimely under the applicable statute of limitations and the Charge was subject to dismissal without a hearing. Based on the above, and pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, I issued a second order to Charging Party to show cause why the charge should not be dismissed.

Charging Party was cautioned that it is well established under the law governing this agency, 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. Eastman was advised that to avoid dismissal of the Charge, the written response to the Order must assert facts that establish a violation of PERA, and that the response must address the question of whether Charging Party filed her Charge

[1] I note that the disputed seniority dates were apparently posted in April of 2009, which is a matter which Eastman arguably knew or should have known. Additionally, because there was no proof of service of the Charge filed, it is not apparent when the Charge was first received by the Teamsters; however, if the first service of the Charge on Respondent was when the agency issued the complaint, the Charge would be barred by the statute of limitations even if calculated from the date of Eastman's first written complaint to the Union in her letter of November 18, 2009.

within six months of when she first knew, or should have known, of the adjustment of her seniority date. Finally, the Order provided that if the Charge was not timely filed or if Eastman did not timely respond to the Order, a decision recommending that the Charge be dismissed without an evidentiary hearing would be issued. Eastman was given a deadline of January 3, 2012, in which to respond to the Order.

Eastman did not file a substantive response to the Order; rather, on December 21, 2011, Eastman merely submitted a letter indicating that she had been laid off from work.[2] On December 28, 2011, I wrote to Eastman to acknowledge receipt of her letter and to remind her of her obligation to file a response to the Order. No response was filed.

Findings of Fact:

Accepting as true all factual allegations made by Eastman, by no later than October 23, 2009, she had observed the seniority roster which had been posted in the workplace. That roster showed Eastman as the least senior employee in her department, with a seniority date of November 1, 2008, despite the fact that her original date of hire was in 1995. Eastman admits that she discussed her seniority status with her Teamsters Union steward at work on October 23, 2009, and that she was told that day that she was considered the least senior employee in her department and would therefore be the first to be laid off in the event that layoffs occurred. Eastman wrote to the Local Union President in November 2009 to complain that she was being improperly disadvantaged by the seniority system agreed to between the Union and the Employer.

The Charge was not filed and served until more than six months after Eastman admits she was aware of the disadvantageous seniority calculation and more than six months after she first asserted her understanding that it disadvantaged her and that she believed it to be unfair.

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).

[2] Despite my instructions, Eastman repeatedly failed to serve copies of her filings on the other parties.

The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. The limitation period under PERA commences when the person knows of the act that caused his injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). Section 16(a) of PERA also requires timely service of the complaint by Charging Party upon the person or entity against whom the charge is brought. *Romulus Comm Schools*, 1996 MERC Lab Op 370, 373; *Ingham Medical Hosp*, 1970 MERC Lab Op 745, 747, 751. 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 was not filed and served within six months of when Eastman admits she was aware of her claims.

Further, the facts alleged show only that Eastman disagreed with the Union over the balancing of competing interests of different groups within the bargaining unit. The elected officials of a union have the right, and the obligation, to reach a good faith conclusion as to the proper goals to be secured in negotiating a collective bargaining agreement in a particular situation, and are expected, and entitled, to act on behalf of the greater good of the bargaining unit, even to the disadvantage of certain employees. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973); *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218, *aff'd* Mich App No. 116345 (March 26, 1991), *lv app den* 439 Mich 955 (1992); *City of Flint*, 1996 MERC Lab Op 1. See also, *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991).

I have carefully considered all other arguments asserted by the Charging Party in this matter and have determined that they do not warrant a change in the result. For the reasons set forth above, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The Charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated: January 11, 2012