STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT HOUSING COMMISSION,
Public Employer-Respondent,

Case No. C11 C-051
-and- Docket No. 11-000799-MERC

NEIL SWEAT,
An Individual-Charging Party.
____/

APPEARANCES:

Neil Sweat, appearing on his own behalf

DECISION AND ORDER

On December 20, 2013, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the charges against Respondent Detroit Housing Commission were not filed within the six-month statute of limitations mandated by PERA, 1965 PA 379, as amended, MCL 423.210. The ALJ further found that even if the charge was timely, it failed to state a claim upon which relief could be granted because Charging Party did not provide a factual basis which would support a finding that he engaged in union activities for which he was subject to discrimination or retaliation in violation of PERA. The ALJ recommended dismissal of the unfair labor practice charge in its entirety. The Decision and Recommended Order on Summary Disposition was served on the parties in accordance with § 16 of PERA.

On January 9, 2014, Charging Party requested a 30 day extension of time in which to file exceptions to the ALJ's Decision and Recommended Order. The request was granted, and Charging Party filed exceptions on February 6, 2014. Respondent did not file a response.

In his exceptions, Charging Party argues that the ALJ erred in finding that the charge was untimely. He asserts that the charge was timely because he first had to exhaust his internal union remedies before filing an unfair labor practice charge. Charging Party also contends that since he was terminated without just cause and in violation of the progressive disciplinary policy while he held a union position, his coworkers will be discouraged from engaging in union activity and, therefore, he claims, he demonstrated that Respondent violated the collective bargaining agreement.

We have reviewed Charging Party's Exceptions and find them to be without merit.

Factual Summary:

We adopt the facts as found by the ALJ since this matter is being decided on Summary Disposition and repeat them here only as necessary. We agree with the ALJ that there are no material facts at issue.

Charging Party filed this unfair labor practice charge on March 18, 2011, alleging that Respondent violated the collective bargaining agreement when it terminated him without just cause on May 20, 2009. His allegations were "wrongful termination" and "age and disability" discrimination.

Discussion and Conclusions of Law:

Pursuant to § 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 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). Charging Party states that he was terminated on May 20, 2009. However, he waited almost two years to file this charge. Charging Party's exceptions argue that the ALJ erred because he was required to "exhaust his administrative remedies with the union before a breach of contract claim can be made against the employer." However, it is well-established that 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. *Univ of Michigan*, 23 MPER 6 (2010). The ALJ is correct that because Charging Party did not file his charge within six-months of his May 20, 2009 termination, the charge must be dismissed as untimely under § 16(a).

We also agree with the ALJ that even if the charge had been timely filed, it nevertheless fails to state a claim upon which relief can be granted. The ALJ found that with respect to individual charging parties' claims against public employers, the Commission is limited to determining whether the employer interfered with, restrained, and/or coerced the employee with respect to his or her right to engage in union or other protected concerted activities or discriminated against the employee in order to encourage or discourage union activity. Charging Party does not allege facts which support a finding that he engaged in union activities for which he was subjected to either discrimination or retaliation in violation of PERA. The charge states that his complaint against Respondent is "wrongful termination." It also alleges age and disability discrimination. The ALJ noted that "[i]t is not MERC's role to hear whistleblower claims, allegations of discrimination on the basis of race, gender, religion, disability, national origin, or other generalized claims of unfair treatment." We agree with the ALJ that the lack of allegations by Charging Party that he engaged in concerted protected union activity fails to state a claim. We also agree that we do not have jurisdiction to consider claims of race, age, gender, disability, religion or national origin discrimination. Since the age and disability discrimination allegations do not state a valid claim under any law within our jurisdiction, those claims are subject to dismissal under the General Rules of the Michigan Employment Relations

Commission, 2002 AACS, R 423.165. Accordingly, we concur with the ALJ that even if timely filed, the unfair labor practice charge should be dismissed for failure to state a claim upon which relief can be granted.

Accordingly, we issue the following Order:

ORDER

The unfair labor practice charge is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: August 14, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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Docket No. 11-000799-MERC

DETROIT HOUSING COMMISSION,
Respondent-Public Employer,

-and-

NEIL SWEAT,
An Individual Charging Party.
_______________________________________/

APPEARANCES:

Tyrone D. Davidson, for the Charging Party

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on March 18, 2011, by Neil Sweat against his former employer, the Detroit Housing Commission. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The charge alleges that the Detroit Housing Commission ("DHC" or "the Employer") violated PERA by terminating Sweat without just cause on May 20, 2009. In an order issued on April 22, 2011, I directed Charging Party to show cause why the charge against the DHC should not be dismissed as untimely and for failure to state a claim upon which relief can be granted under the Act. Sweat filed his response to the order to show cause on May 12, 2011. Based on Charging Party's response to the order to show cause, I issued a supplemental order on June 30, 2011, in which I indicated that I would be recommending dismissal of the charge against the DHC.[1]

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[1] At the time, this case was consolidated with an earlier charge filed by Sweat against his labor organization, the American Federation of State, County and Municipal Employees (AFSCME) Council 25, Local 2394 in Case No. CU10 I-039; Docket No. 10-000070-MERC. A Decision and Recommended Order in that related matter is being issued contemporaneously with the instant decision.

Discussion and Conclusions 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 with the Commission and the service of the charge upon each of the named respondents. 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). In the instant case, Charging Party concedes that he was terminated on May 20, 2009. Yet, he did not file his charge against the DHC until March 18, 2011, almost two years later. In his response to the order to show cause, Charging Party argued that the charge against the Employer should be considered timely because Sweat "was required to seek a remedy" from his Union before he could file the charge. However, it is well-established that 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. Because Sweat did not file his charge against the DHC within six-months of his May 20, 2009 termination, the charge must be dismissed as untimely under Section 16(a) of the Act.

Even if the allegation set forth by Sweat was timely, dismissal of the charge in its entirety is nonetheless appropriate on the ground that Charging Party has failed to state a claim against the DHC upon which relief can be granted under PERA. With respect to public employers, the Act does not prohibit all types of discrimination or unfair treatment, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. Furthermore, it is not MERC's role to hear whistleblower claims, allegations of discrimination on the basis of race, gender, religion, disability, national origin, or other generalized claims of unfair treatment. Rather, the Commission's jurisdiction with respect to claims brought by individual charging parties against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced the employee with respect to his or her right to engage in union or other protected concerted activities or discriminated against the employee in order to encourage or discourage union activity. In the instant case, the charge against the DHC does not provide a factual basis which would support a finding that Sweat engaged in union activities for which he was subjected to discrimination or retaliation in violation of the Act. Absent such an allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's action. Therefore, dismissal of the charge is warranted.

Despite having been given ample opportunity to do so, Charging Party has failed to set forth any facts which, if proven, would establish that the DHC violated PERA. Therefore, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge filed by Neil Sweat against the Detroit Housing Commission in Case No. C11 C-051; Docket No. 11-000799-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: December 20, 2013