STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ZEELAND PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C99 D-74,

-and-

ZEELAND EDUCATION ASSOCIATION,
MICHIGAN EDUCATION ASSOCIATION,
AND NATIONAL EDUCATION ASSOCIATION,
Respondent-Labor Organization in Case No. CU99 D-13,

-and-

GERALD BUSH,
An Individual Charging Party.
_____/

APPEARANCES:

Miller, Johnson, Snell & Cummiskey, by Craig A. Mutch, Esq., for the Public Employer

Michael K. Lee, Esq., Amberg, McNenly, Firestone & Lee, P.C., for the Labor Organization

Gerald Bush, In Pro Per

DECISION AND ORDER

On November 12, 1999, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 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

_____
Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Date: _____

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RECOMMENDED DECISION AND ORDER ON
MOTION TO DISMISS AND
MOTION FOR SUMMARY DISPOSITION

Pursuant to the provisions of Section 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter was assigned to Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The consolidated unfair labor practice charges were filed by individual Charging Party Gerald Bush on April 21, 1999. The identical charges allege that the Zeeland Public Schools and the Zeeland Education Association, MEA/NEA, have violated Section 10 of PERA and read in pertinent part:

> 3. The unions listed in 2. above [the Zeeland Education Association and the Michigan Education Association] have a duty by law to protect by representing Mr. Bush in all matters related to his employment, but have repeatedly failed to do so for a period of 20

years. Each union is jointly and severably responsible to represent Mr. Bush.

4. The unions have by their word and/or actions or inactions in refusing to represent Mr. Bush attempted to force and/or coerce Mr. Bush to join the union and/or pay dues in order to gain representation in violation of MCL 423.17 & 423.210.

5. The Employer, Zeeland Public Schools, has by and through its agents and actions attempted to force Mr. Bush to join the union in order to gain protection and representation in violation of 423.17 and 423.210. And violated 423.203.

6. The Union and/or its agents and the Employer and/or their agents have conspired to deprive Mr. Bush of (1) employment, and/or (2) rights under the contract and/or (3) representation and/or (4) protection in violation of MCL 423.24.

7. As a result of these actions and in furtherance thereof, ZPS terminated Mr. Bush on November 19, 1998.

8. The Union(s) in furtherance of the charges above, has taken no action to represent or protect Mr. Bush's employment, contractual rights or any other rights, either before or since the dismissal of November 19, 1999 (sic).

9. The employer knowing of the duty of representation and discrimination by the union against Mr. Bush has taken no action whosoever to prevent this discrimination. It therefore has joined the conspiracy by its inaction.

The Motions and Responses:

Both Respondents filed motions requesting that Charging Party be ordered to file a Bill of Particulars on the basis that no specific facts were alleged to support his vague and ambiguous charges, nor were any times or dates provided. On May 11, 1999, the undersigned issued an Order for Bill of Particulars, requiring that Charging Party comply with Rule 52(c) of the Commission's General Rules and Regulations which requires a clear and complete statement of facts supporting the unfair labor practice charge, including dates, times, and places of occurrence of each particular act alleged.

On June 16, 1999, Charging Party filed a document entitled "In Regards to the Order for Bill of Particulars." The first paragraph of this document stated the following:

> Gerald Bush responds that he does not know what a Bill of Particulars is in the first place. Secondly he believes the present complaint is adequate. Third, he believes that the respondents are continuing a pattern of harassment to cause him more work than necessary. There is no doubt whatever, that the respondents are completely familiar with all the facts, and/or the respective clients are at least, due to over 10 years of litigation, grievances, etc. and the 20 year history of this case.

The remainder of the document consists of general conclusionary statements and statutory citations; no specific acts with times, dates, and places of occurrence were set forth as required by Rule 52(c).

On June 21, 1999, Employer Respondent filed a Motion to Dismiss Charge on the basis that Bush failed to comply with Rule 52(c). The Employer asserted that as a result it could not reasonably frame an answer or prepare a defense and the charge should be dismissed. Charging Party responded to this motion on June 25, 1999, stating in part:

> Respondent Zeeland Public School moved to dismiss. It is clearly understood that such a guilty Employer would like to win in such easy fashion. But Mr. Bush would ask that such not be the case and that consideration be given the 20 years of history of this case.
>
> Mr. Bush has stated, and it is undisputed, that he has not worked at Zeeland Public Schools since 1993. Therefore, he could hardly be expected to be aware of or know much about who is in what positions or taken whatever actions either on the employers part or on the unions part.. . . But all those facts are not necessary to maintain a claim.

On June 24, 1999, Respondent Union filed a Motion for Summary Disposition asserting that the charge should be dismissed for several reasons including: Charging Party's refusal to comply with the ALJ's order for a Bill of Particulars; the allegations in the charge are barred by the statute of limitations since by their very language they occurred more than six months ago or were resolved by the decision of the Commission in a prior 1996 charge; Charging Party would be unable to show a refusal to provide representation because he never requested representation from the Union.

Charging Party requested, and was granted, the opportunity to file a written response to the motions before a decision was rendered. His response, filed on July 28, 1999, requested that the motions be denied and states that "This case involves discrimination, retaliation, and unfair labor practices by the Union where the employer has harassed Mr. Bush without mercy for over 20 years." Charging Party then listed a number of general allegations and events dating back several years. He took issue with the Union's claim that he never requested representation, asserting that PERA does

not require the employee to request Union assistance. Charging Party also claimed that the statute of limitations defense should be rejected because this is a "continuing offense" case. He also rejected the Union's argument that the prior litigation before the Commission resolves the matter. Finally, he protested the failure of Respondents to file an answer to his charges and maintains that as a result of this failure, summary judgment should be granted to him on all issues.

Discussion:

In September of 1996, the Commission affirmed the decision of Administrative Law Judge Kurtz dismissing charges filed by Bush against the Zeeland Education Association and Michigan Education Association. *Zeeland Education Association, MEA/NEA (Zeeland School District),* 1996 MERC Lab Op 499.[1] In that case, Bush's attempt to bypass PERA's six month statute of limitations and put at issue his entire employment history and relationship with the Union was rejected as follows:

> Relative to the ongoing and persistent attempt by Bush to open up his rather checkered employment history for adjudication herein, it suffices to say that the whole purpose of the statutory limitation period is to prevent just such attempts. The six-months limitation period of Section 16(a) of PERA is a jurisdictional prerequisite to the consideration of a charge and may not be waived. *Walkerville Rural Comm Schools,* 1994 MERC Lab Op 582, 583-4; *Superiorland Library Cooperative,* 1984 MERC Lab Op 701, 703. . . . With regard to the notion of a "continuing violation," the Commission has always adhered to the decision of the U.S. Supreme Court in *Local Lodge 1424 (Bryan Mfg Co) v NLRB,* 362 US 411, 45 LRRM 3212 (1960), holding that any violation of the statute must take place within the six-months period, and the finding of such violation cannot rely on facts occurring outside of that period. See for example, *City of Adrian,* 1970 MERC Lab Op 579. 581, 584-585; and *Lansing Board of Power and Light,* 1967 MERC Lab Op 90, 95-97.

The charges filed here are simply an attempt to retry matters which have been adjudicated and dismissed by the Commission in the above case. Although given ample opportunity to set forth facts in support of his claims in the Bill of Particulars or in his response to the motions of the Employer and Union, Charging Party failed to do so. In his June 25, 1999 response to the Employer's motion, Bush acknowledges that he has not worked at Zeeland Public Schools since 1993 and states that he "could hardly be expected to be aware of or know much about who is in what positions or taken whatever actions either on the employers part or on the unions part." Charging Party is mistaken in his assertion that such facts are not necessary to support a claim. Charging Party

[1]Bush's appeal of this decision was dismissed as untimely by the Michigan Court of Appeals on December 18, 1996.

must set forth specific facts supporting a timely cause of action under PERA; general statements and conclusionary allegations of unfair treatment will not withstand a summary motion.

Charging Party is also incorrect in other assertions made in his lengthy response to Respondents' motions. He maintains that because no answers to the charges were filed he is entitled to summary judgment. Filing an answer to an unfair labor practice charge is permissive, not required. The failure to file an answer does not admit the pleadings or form the basis for summary dismissal. *Michigan AFSCME Council 25, Local 62 and Local 1127*, 1994 MERC Lab Op 195; *Michigan State University, Dept of Public Safety*, 1983 MERC Lab Op 587. Furthermore, as Respondents in these cases were never put on notice as to specific actions alleged to violate PERA, they could hardly be expected to answer the charges.

Charging Party is also in error when he asserts that the Union is required to provide representation regardless of whether or not he requests it. An individual must take reasonable steps to inform the union that he or she wishes representation. Without such notice, no failure of the duty of fair representation can be found. *Wayne County (DPW)*, 1994 MERC Lab Op 855; *Muskegon Heights Public School Dist*, 1993 MERC Lab Op 654; *City of Detroit (Parks & Recreation)*, 1992 MERC Lab Op 672; *Wayne County Community College*, 1989 MERC Lab Op 973; *Detroit Board of Ed*, 1984 MERC Lab Op 94; *Amalgamated Transit Union, Local 25, AFL-CIO*, 1981 MERC Lab Op 137.

Since the statute of limitations is jurisdictional in nature, a motion for summary dismissal may be granted on the pleadings when allegations are based on events more than six months prior to the charge. *Shiawassee County Road Comm*, 1978 MERC Lab Op 1182. The charges are also subject to dismissal for failure to state a cause of action under PERA since they consist of generalized conclusionary allegations. *Lansing School District*, 1998 MERC Lab Op 403; *Wayne County Dept Public Health*, 1998 MERC Lab Op 590, 600.[2] Further, Charging Party has failed to comply with Commission Rule 52(c) as ordered by the undersigned. I find that no issue has been raised by Charging Party which would warrant a hearing in this case. It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that Respondents' motions be granted and the charges be dismissed.

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[2]Bush's complaint against the Employer and Union and their representatives filed in federal court alleging constitutional and statutory violations was dismissed on similar grounds after numerous motions by the parties. See Judgment and Opinion of Hon. Richard Alan Enslen, Chief Judge, U.S. District Court, Western District of Michigan. (File No. 1:96 CV 420). Judge Enslen granted defendants' motions for sanctions and ordered Bush not to attempt to file any other actions with respect to the issues raised in the complaint.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

DATED: _____