STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT BOARD OF EDUCATION,
Respondent-Public Employer in Case No. C99 K-217,

-and-

ORGANIZATION OF CLASSIFIED CUSTODIANS, MICHIGAN FEDERATION OF TEACHERS & SCHOOL RELATED PERSONNEL, AMERICAN FEDERATION OF TEACHERS, AFL-CIO,
Respondents-Labor Organizations in Case No. CU99 K-47,

-and-

WILLIAM P. GULLAS,
An Individual Charging Party.
_____/

APPEARANCES:

Office of Labor Affairs, by Gordon J. Anderson, Esq., for the Public Employer

Joe Crowell, Jr., Staff Representative, for the Labor Organizations

William P. Gullas, in pro per

DECISION AND ORDER

On July 26, 2000, Administrative Law Judge James P. Kurtz issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

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C. Barry Ott, Commission Member

Dated: _____

STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT BOARD OF EDUCATION,
Public Employer-Respondent in Case No. C99 K-217

- and -

ORGANIZATION OF CLASSIFIED CUSTODIANS (OCC), MICHIGAN FEDERATION OF TEACHERS & SCHOOL RELATED PERSONNEL, AMERICAN FEDERATION OF TEACHERS, AFL-CIO,
Labor Organizations-Respondents in Case No. CU99 K-47

- and -

WILLIAM P. GULLAS,
Individual Charging Party
_____/

APPEARANCES:

Gordon J. Anderson, Atty, Office of Labor Affairs, for the Public Employer

Joe Crowell, Jr., Staff Representative, for the Labor Organizations

William P. Gullas, Charging Party, pro se

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

These cases came on for hearing at Detroit, Michigan on December 22, 1999, before James P. Kurtz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission, pursuant to a consolidated complaint and notice of hearing dated November 24, 1999, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379 and 1973 PA 25, as amended, MCL 423.216, MSA 17.455(16). Based upon the pleadings and the record received on or about February 8, 2000, the undersigned makes the following findings of fact, conclusions of law, and recommended order under Section 16(b) of PERA, and Section 81 of the Administrative Procedures Act of 1969, MCL 24.281, MSA 3.560(181):

Charges and Motion to Dismiss:

On November 19, 1999, Charging Party, Gullas, filed these charges against his former employer, the Detroit Board of Education, and his collective bargaining representative, the Organization of Classified Custodians (OCC).[1] The charge against the Public Employer alleged that Gullas, a head custodian, had been wrongfully terminated after 17 years of employment because of false accusations of wrong doing by students who were in special education because of their trouble making activities. The charge contends, among other allegations, that the Charging Party's career as a third generation employee, his reputation, and his pension were lost because of "learning disabled, trouble making, habitual lying students," because of the harassment and ineptitude of Employer officials, and because he is white. The charge argued that Gullas was initially denied unemployment compensation, but when he appealed he was granted compensation "because there was NO evidence." Both charges noted that the accusations of wrong doing were made on December 22, 1997; that he was fired on April 28, 1998; that his discharge went to arbitration before arbitrator John Claya on November 17, 1998; and that he lost at arbitration by an opinion issued January 11, 1999.

The charge against the Union alleged "misrepresentation" on its part in the handling and presentation of Charging Party's discharge grievance. Gullas alleged that he was fired because of lies and he wanted his case presented on the basis of his innocence and prior work history, whereas the Union would not let him testify in his own defense, or present statements by school staff attesting to his innocence and good work record. The Union allegedly argued the case on the basis that the proper procedure had not been followed by the Employer in the termination. The charge contends that the case was lost because the Union would not present the case in the way that Gullas wanted, and that there were procedural irregularities in the proceedings. The charge alleges, inter alia, that the Union mistreated Charging Party throughout the processing of his grievance; would not return his telephone calls; misled and gave him bad advice, especially in regard to the final and binding nature of arbitration proceedings; and in general mistreated, lied, and worked against him because he is white.

The Employer appeared at the December 22 hearing and moved to dismiss the charge on the ground that the Commission has no jurisdiction to hear the charge since the allegations do not fall within PERA; and, secondly, the charge is untimely filed under the statutory limitations period, since more than six months had elapsed from the January 1999 issuance of the arbitration award to the filing of the charge(s) in November 1999. The Union did not appear at the hearing, allegedly because the charge was misdirected within the Union. The Union did respond to the letter of the undersigned sent after the hearing, as provided on the record. On January 13, 2000, the Commission received a letter from the staff representative of the Union, who stated that the charge was without merit; that Gullas was terminated "for fraternizing and unprofessional conduct with students;" that the Union

[1]This charge against the OCC also incorrectly named the Detroit Federation of Teachers as a Respondent. The name of Charging Party's bargaining representative, OCC, has been corrected in the caption, with the appropriate affiliations added.

represented him in arbitration; and that the arbitrator upheld the discharge action of the Employer.

At the hearing, the undersigned granted the Employer's motion to dismiss as to both charges on the ground that the six-month limitation period under Section 16(a) of PERA had clearly expired since the final action in this case, the issuance of the arbitration award; and that the Commission cannot review the merits of the award, or the tactics or procedure that preceded the issuance of the award. See *Woodhaven School Dist*, 1978 MERC Lab Op 53, 59-60, and cases cited therein. Since these cases are being decided on a motion to dismiss, the facts, which are not contested, are construed most favorably to Charging Party. *Central Mich Univ*, 1995 MERC Lab Op 112, 116, 120; *Detroit Water & Sewerage Dep't*, 1992 MERC Lab Op 486, 489; see also *Detroit Fire Dep't*, 1995 MERC Lab Op 178, 180; and *Detroit Health Dep't*, 1994 MERC Lab Op 657, 659.

Discussion and Conclusions:

The charges in this matter present the common two-pronged problem of substance and procedure that flow one from the other: They do not allege any matter or raise any issue that is on the face of the charges a violation of PERA; consequently and at the same time, no issue is raised by the charges within the six months limitation period of Section 16(a) of PERA. See, for example, *Detroit Police Dep't*, 2000 MERC Lab Op ___ (6-19-00); *Detroit Bd of Ed*, 2000 MERC Lab Op __ (6-13-00). In the instant case, the last event of any significance in Charging Party's chronology was the issuance of the adverse arbitration award on or about January 11, 1999. Since that date Charging Party alleges only consultations regarding the final and binding nature of arbitration awards. Thus, there is no PERA-related issue within the six months limitation period of Section 16(a) to litigate, or for that matter prior to that period, so the charges filed in this matter must be dismissed.

A further comment is in order regarding the substance of these charges. Given the final and binding nature of arbitration awards, whereby the arbitrator's award may be attacked only if it fails to follow the clear dictates or provisions of the contract itself, there could be no review of the grievance-arbitration proceedings, even if the charges had been timely filed. *Wayne County, Juvenile Detention Facility*, 1998 MERC Lab Op 268, 269; see regarding the refusal to enforce an arbitration award, *Port Huron Area Sch Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150-166, 123 LRRM 3293, 3295-3301 (1986), which includes a summary of the law in this area; *Lenawee County Sheriff v POLC*, 239 Mich App 111, 117-124, 163 LRRM 2952 (1999); *Pontiac v Pontiac Police Supervisors Ass'n*, 181 Mich App 632, 635 (1989); compare, where the award was enforced, *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 6-8 (1989). No such issue of the arbitrator exceeding the contractual authority is alleged or involved in this case. There being no allegations in these charges that involve a PERA-related violation on the part of either the Employer or the Union, the undersigned recommends that the Commission issue the following order:

ORDER DISMISSING

Based upon the discussion and conclusions set forth above, the unfair labor practice charges filed in this matter are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

James P. Kurtz
Administrative Law Judge

DATED: _____