STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C01 J-213,

-and-

DETROIT FEDERATION OF TEACHERS,
Respondent-Labor Organization in Case No. CU01 J-057,

-and-

AMY MOORE,
An Individual Charging Party.
_____/

APPEARANCES:

Gordon J. Anderson, Esq., for Respondent-Public Employer

Sachs Waldman, P.C., by Eileen Nowikowski, Esq., for Respondent-Labor Organization

Amy Moore, Charging Party *in pro per*

DECISION AND ORDER

On March 26, 2003, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above matter finding that Petitioner, Amy Moore, failed to file her claim that the Respondents conspired to terminate her employment within the requisite six-month statute of limitations under Section 16(a) of PERA. The ALJ also dismissed Charging Party's claim that the Detroit Federation of Teachers breached its duty of fair representation. Finally, the ALJ found no justification to allow Charging Party to amend her claim.

The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. Charging Party was granted an extension to file exceptions to the ALJ's Decision and Recommended Order until May 19, 2003. On May 15, 2003, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. Respondent, the Detroit Federation of Teachers, requested and was granted an extension to file a response to the exceptions until June 26, 2003. On June 23, 2003, the Detroit Federation

of Teachers filed a timely brief in support of the ALJ's Decision and Recommended Order.[1]

In her exceptions, Charging Party argues that the ALJ should not have dismissed her claims and that the ALJ should have permitted her to amend her charge. We have carefully and thoroughly reviewed the record and have decided to affirm the findings and conclusions of the ALJ and adopt the recommended order. The ALJ found, and we agree, that Charging Party's conspiracy claim falls outside the requisite six-month statute of limitations. Moreover, the evidence does not support a finding that the Union breached its duty of fair representation. Further, we find that the ALJ properly rejected Charging Party's motion to amend her charge.

ORDER

The charges in this case are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Maris Stella Swift, Commission Member

Dated: _____

[1] On June 27, 2003, Respondent, Detroit Public Schools, filed an untimely brief in support of the ALJ's Decision and Recommended Order, which was not considered.

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Amy Moore, *in pro per*

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

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 heard at Detroit, Michigan on March 22, 2002, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings, transcript and exhibits, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

On October 29, 2001, Amy Moore filed unfair labor practice charges against her former employer, Detroit Public Schools, and her bargaining representative, Detroit Federation of Teachers. The identically-worded charges alleged that the Employer and the Union conspired to cause Moore's termination "[i]n violation of Public Act 336 Section 423.210 and Union Contract XIII(A)(C)(E)(G) and XXII."

At the start of the hearing, both Respondents moved for dismissal. The Employer argued that Moore had failed to state a claim under PERA and that the charge was not timely filed. I granted the motion on statute of limitations grounds, with a written order to follow.

The Union argued that dismissal was warranted on the ground that "conspiracy" did not constitute an actionable claim under PERA, and because Moore had failed to exhaust internal union remedies available to her as specified in the Union's by-laws and constitution. Moore was given the opportunity to clarify her charge against the Union and I concluded that the allegations, if proven, would state a claim for breach of the duty of fair representation. Accordingly, the Union's motion to dismiss for failure to state a claim under PERA was denied. With respect to the Union's contention that Moore had failed to exhaust her internal remedies, the Union's motion was taken under advisement.

During the hearing, I precluded Charging Party from presenting evidence concerning the Union's conduct preceding her termination on the ground that such events took place more than six months prior to the date on which the charge was filed. Following the conclusion of Charging Party's case-in-chief, the Union renewed its motion to dismiss, arguing that Moore had not proven a breach of the duty of fair representation. I agreed and granted the motion, with a written order to follow.

Post hearing briefs were due on June 30, 2002. On May 28, 2002, Moore filed a motion to amend the charges against the Employer and the Union, as well as a document entitled "Objections to Dismissal of the Detroit Public Schools." The Union filed its post-hearing brief on June 6, 2002. On June 18, 2002, the Union filed a motion to dismiss the amended charge.

Findings of Fact:

Amy Moore was employed by the Detroit Public Schools as a teacher at Boynton Middle School. She was terminated on January 29, 2001 for allegedly violating various work rules. Following Moore's termination, the Union filed a grievance on her behalf. The grievance was denied by the Employer in March of 2001. In May of 2001, the Union notified Moore that it had decided not to take the grievance to arbitration. Thereafter, Theodore Madison, the Union's administrative assistant, referred Moore to a private attorney. In July of 2001, Madison called Moore and told her that "there was nothing more that could be done for her."

Discussion and Conclusions of Law:

Charging Party's principal contention is that the Employer and the Union conspired to bring about her termination. To establish this claim, Moore relies on events which occurred prior to her January 29, 2001, discharge. 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. *Superiorland Library Cooperative*, 1984 MERC Lab Op 701; *Shiawassee County Road Comm*, 1978 MERC Lab Op 1182. A cause of action accrues when the union member knows, or has reason to know, of the facts constituting the alleged breach. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836.

In a typical fair representation case, the statutory period begins to run when the employee learns or should have learned, that the union has decided not to pursue a grievance against the employer for a breach of the collective bargaining agreement. See e.g. *Wayne County Community College*, 1988 MERC Lab Op 213. See also *Reese v Teamsters Local 541*, 993 F Supp 1376, 1380; 158 LRRM 2535 (D Kan 1998). As noted, however, the instant case involves a claim that the Union breached its duty of fair representation by conspiring to cause her termination. From the allegations, I find that Moore knew or should have known of the decisions and actions which gave rise to her claim on or around January 29, 2001, the date on which she was discharged. Since the charges were not filed until October 29, 2001, well over six months from the date on which the claim accrued, her "conspiracy" claim is untimely with respect to both the Employer and the Union. See e.g. *Allen v San Jose Teachers Association*, 19 PERC (LRP) P26,007 (1994) (charge untimely where events alleged to support claim that union and employer conspired to arrange employee's termination occurred prior to date statute of limitations period began to run).

The only other allegation set forth by Charging Party with respect to the Union relates to its representation of her following her termination. At the hearing, Charging Party asserted that the Union failed to properly advise her of its internal procedures for appealing a grievance decision. Since the Union notified Moore of its decision not to process the grievance to arbitration in May of 2001, this allegation would be timely under Section 16(a) of PERA. However, the facts asserted by Charging Party in support of this contention do not establish a breach of the duty of fair representation. It is a well-established principle that union members are obligated to be aware of the nature and availability of internal union remedies. See *Evangelista v Inlandboatmen's Union*, 777 F2d 1390; 121 LRRM 2570 (CA 9 1985) (union did not breach duty of fair representation by failing to inform its member of the existence of union's appeals process). See also *Rogers v Buena Vista Schools*, 2 F3d 163, 167; 143 LRRM 3083 (CA 6 1993); *Miller v General Motors Corp*, 675 F2d 146; 110 LRRM 2281 (CA 7 1982). Moreover, there is nothing in the record to indicate that the Union acted irrationally, arbitrarily or in bad faith with respect to its handling of Charging Party's grievance.

Finally, Charging Party requests that she be permitted to amend her charges in this matter. Rule 153, R 423.153, of the General Rules and Regulations of the Employment Relations Commission provides that the administrative law judge may permit a charging party to amend the charge before, during, or after the conclusion of the hearing "upon such terms as may be deemed just and consistent with due process." After reviewing the arguments in favor of amendment, I can find no justification for allowing Moore to amend the factual allegations of her charges at this late date. Most of these allegations refer to events which took place well outside of the statute of limitations period. As noted, the Commission is conclusively barred by Section 16(a) of PERA from considering an unfair labor practice which occurred more than six months prior to the filing of a charge. Other allegations in the proposed amended charges pertain to Moore's correspondence with private attorneys following her termination. Charging Party attempted to introduce evidence concerning those same communications at the hearing; however, I excluded that evidence on hearsay grounds.

For the forgoing reasons, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated: _____