

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,  
Respondent-Public Employer in Case No. C02 L-271,

-and-

TEAMSTERS LOCAL 214,  
Respondent-Labor Organization in Case No. CU02 L-067,

-and-

GREGORY K. ALLEN,  
An Individual Charging Party.

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APPEARANCES:

City of Detroit Law Department, by Kimberly D. Hall, Esq., for the Public Employer

Rudell & O'Neil, P.C., by Wayne A. Rudell, Esq., for the Labor Organization

Gregory K. Allen, In Propria Persona

**DECISION AND ORDER**

On October 22, 2003, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter dismissing Charging Party Gregory K. Allen's unfair labor practice charges against the City of Detroit and Teamsters Local 214. At the hearing held on August 21, 2003, both Respondents made motions for summary judgment based on timeliness and failure to state a claim. The ALJ permitted oral argument on the motions.

In his Decision and Recommended Order, the ALJ found that Charging Party failed to timely file his charge that Respondent City of Detroit did not process his grievances and, additionally, that the charge failed to state a claim upon which relief can be granted. The ALJ also held that Charging Party failed to file his claim that Respondent Teamsters Local 214 violated its duty of fair representation within the requisite six-month statute of limitations

under Section 16(a) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.216(a). According to the ALJ, Charging Party knew or should have known that the Union would not advance his grievance on May 22, 2002, but Charging Party did not file his claim until December 11, 2002. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On November 19, 2003, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions.

In his exceptions, Charging Party argues that the ALJ incorrectly identified his charge against Respondent City of Detroit as failing to process his grievances. Alternatively, he states that Respondent City of Detroit colluded with the Union to deny his grievance in which he contends that overtime assignments should be based on seniority. Charging Party also argues that his charge against Respondent Teamsters Local 214 falls within the statute of limitations. He disagrees with the ALJ's finding that his claim accrued on May 22, 2002. He states that he misspoke during the hearing when he stated that he knew or should have known of the Union's decision not to arbitrate his claim on May 11, 2002. In his exceptions, Charging Party claims that he did not discover that the Union would not advance his grievance until June 17, 2002, and, therefore, his charge was timely filed.

#### Discussion and Conclusions:

To support his collusion claim, in his exceptions, Charging Party identifies correspondence between the Employer and the Union that occurred on May 22 and May 30, 2002, in which Respondents agreed that the contract mandated that overtime opportunities should be rotated as opposed to being distributed by seniority. Charging Party has not established when he first became aware of these letters. However, even if the charge based on this activity was timely, we agree with the ALJ that it fails to state a claim upon which relief can be granted. The Employer and Union simply agreed as to the construction of the collective bargaining agreement. We have long held that where an employer and a union concur as to the interpretation of the contract, their construction governs. *Michigan Council 25, AFSCME, Local 3308*, 1999 MERC Lab Op 132; *Detroit Ass'n of Ed Office Employees, AFT Local 4168, AFL-CIO*, 1997 MERC Lab Op 475; *Detroit, Wastewater Treatment Plant*, 1993 MERC Lab Op 716.

With regard to his charge against Respondent Teamsters Local 214, we find that Charging Party was given the opportunity at the hearing to establish that it was not until June 17, 2002, that he knew that the Union would not arbitrate his claim and failed to do so. Even if we accept Charging Party's contention that it was not until June 17, 2002, that he knew his grievance would not be advanced to arbitration, his charge must nonetheless be dismissed for failure to state a cause of action. It is well established that allegations in a complaint for a breach of a union's duty of fair representation must contain more than conclusionary statements and must factually allege misconduct. *Goolsby v Detroit*, 419 Mich 651, 679 (1984); *Martin v Shiawassee Co Bd of Comm'rs*, 109 Mich App 32 (1981); *Merdler v Detroit Bd of Ed*, 77 Mich App 740 (1977). The documents submitted by Charging Party simply demonstrate that the Union and Employer disagreed with Charging Party with respect

to the contract; after consulting with the Employer, the Union ultimately decided to withdraw the grievance. These actions do not state a claim under PERA. See *Detroit Federation of Teachers*, 2001 MERC Lab Op 322; *East Jackson Pub Sch Dist*, 201 Mich App 480 (2001); *Ass'n of Municipal Engineers*, 1995 MERC Lab Op 494.

**ORDER**

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Dated: \_\_\_\_\_

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**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE ON  
MOTIONS FOR SUMMARY DISPOSITION**

This case was heard in Detroit, Michigan on August 21, 2003, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations 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 proceeding was based upon unfair labor practice charges filed on December 11, 2002, by Charging Party Gregory K. Allen, an individual, against Respondents City of Detroit, a public employer, and Teamsters Local 214, a labor organization. At the onset of the hearing, both Respondents made motions for summary disposition. Based upon the record, I make the following findings, conclusions of law and recommended order pursuant to Section 16(b) of PERA.

Charging Party claims that Respondent City of Detroit violated PERA by not properly processing several grievances that he filed between October 12, 2001 and June 18, 2002, and that Respondent Union violated PERA by not fairly representing him. Charging Party alleged in all of his grievances that the Employer violated the 1998 - 2001 master agreement by denying his requests to work overtime. On May 22, 2001, after a

May 11, 2001 hearing before Respondent Teamsters Local 214's grievance panel, Charging Party was informed that his request to advance his October 26, 2000, grievance to arbitration was denied.

At the onset of the hearing in this matter, both Respondents made motions for summary disposition. Respondent Teamsters Local 214 claims that the charge against it should be dismissed because it was not filed within six months from the date Charging Party knew that his grievance would not be advanced to arbitration. Respondent City of Detroit asserts that the charge against it does not state a claim for which relief can be granted because it processed each grievance filed by Charging Party.

Section 16(a) of PERA, MCL 423.216(a), states that 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. The statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582. The record establishes that Charging Party knew on May 22, 2002, that the Union would not arbitrate his October 25, 2001 overtime grievances but his unfair labor practice charge was not filed until December 11, 2002, more than six months later. Moreover, his charge against the City of Detroit alleging that his grievances were not properly processed does not state a claim for which relief can be granted under PERA and was not filed within six months of the alleged violation. Based on the above findings, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac  
Administrative Law Judge

Dated: \_\_\_\_\_