STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF HIGHLAND PARK,
Respondent-Public Employer in Case No. C04 L-317,

-and-

POLICE OFFICERS LABOR COUNCIL,
Respondent-Labor Organization in Case No. CU04 L-066,

-and-

JIMMIE WRIGHT,
An Individual Charging Party.
_____/

DECISION AND ORDER

On February 9, 2005, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 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

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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 December 13, 2004, Jimmie Wright filed unfair labor practice charges against his former employer, City of Highland Park, and his labor organization, Police Officers Labor Council. With respect to the City, the charge in Case No. C04 L-317 states:

> Under the collective bargaining agreement between the City of Highland Park and the Union (Police Officer[s] Labor Council). [Sic.] My date of employment with the City April 1991 – thru 2002 Oct. The City failed to owe me all [accrued] benefit payoffs. ($28,000 total benefits) and set an exit interview (2002 Oct.). No information was given nor the City did not act in good faith regarding this matter.

The charge against the Union, Case No. CU04 L-066, alleges:

> Under the collective Union bargaining agreement, as a Union dues paying member, employed April, 1991 to October, 2002. [Sic.] The Union failed to act on my behalf against the City of Highland Park in paying me the entitled benefits ($28,000 total) under this agreement. No documents or grievances were filed on my request to exercise my action against the City of Highland Park.

In an order entered on December 16, 2004, Charging Party was granted fourteen days in which to show cause why his charges should not be dismissed as untimely under Section 16(a) of the Public Employment Regulations Act (PERA), MCL 423.216(a), as well as for failing to state a claim upon which relief can be granted under the Act. In his response, dated December 23, 2004, Charging Party alleges that: (1) the City forced police officers out of their jobs and

violated the contract; (2) the City breached a promise to pay Charging Party a severance package as required under the contract; and (3) that the Union failed to act on his behalf "during these trying times."

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. In the instant case, Charging Party alleges that he last worked for the City in October of 2002, more than two years prior to the filing of the charges. Charging Party was directed to show cause why his charges should not be dismissed as untimely pursuant to Section 16(a). Yet, in his response to that order, Wright failed to specifically allege any unlawful act by either Respondent occurring within the statutory period. Thus, I conclude that the charges are time-barred.

Even if the charges were timely, Wright has not stated a viable PERA claim as to either Respondent. With respect to the City, Wright has not alleged that he was subject to any discrimination or retaliation based upon union or other protected concerted activity. PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against Charging Party because he engaged in conduct protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the Employer's action. See e.g. *City of Detroit (Fire Dept)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524.

Similarly, the charge against the Union does not state a viable claim under PERA. A union's duty of fair representation is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Vaca v. Sipes*, 386 US 171, 177; 87 S Ct 903 (1967); *Goolsby v. Detroit*, 419 Mich 651 (1984.) Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123, 146 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. In the instant case, the charge does not allege that the Union acted arbitrarily, discriminatorily, or in bad faith with respect to its representation of Wright. I, therefore, recommend that the Commission issue the following order:

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____