STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 17,
Respondent-Labor Organization,

Case No. CU03 I-037

-and-

GARRICK GARDNER,
An Individual Charging Party.
_____/

APPEARANCES:

Sachs Waldman, P.C., by George H. Kruszewski, Esq., for Respondent

Garrick Gardner, *In Propria Persona*

DECISION AND ORDER

On April 14, 2005, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above matter, finding that the charge filed by individual Charging Party Garrick Gardner against Respondent, International Brotherhood of Electrical Workers, Local 17, was untimely. The ALJ further found that even if the charge was timely, Charging Party did not demonstrate that Respondent violated its duty of fair representation under Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210, and recommended that the charge be dismissed. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On May 6, 2005, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order.

In his exceptions, Charging Party asserts that he believes that his charge was filed within the proper scope of time and further contends that the Respondent was neglectful in failing to represent him and the membership. The exceptions did not comply with Commission Rule 423.176 with respect to form and could have been rejected on that basis. However, because Charging Party was not represented by counsel, we have nevertheless reviewed the record to determine if any violation of PERA has been demonstrated.

After a careful and thorough review of the record, we 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 unfair labor practice charge was not timely within the meaning of Section 16(a) of PERA, MCL 423.216(a). However, even assuming arguendo that the charge was timely filed, we agree with the ALJ that nothing in the record establishes that Respondent acted unlawfully with respect to Charging Party's grievance. Accordingly, we find that Respondent did not violate Section 10 of PERA.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

George H. Kruszewski, Esq., for Respondent

Michelle R. Loggins, Esq., for Charging Party

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 May 4, 2004, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits and brief filed by Respondent International Brotherhood of Electrical Workers (IBEW), Local 17, on or before July 1, 2004, I make the following findings of fact, conclusions of law and recommended order.[1]

The Unfair Labor Practice Charge:

Garrick Gardner is employed by the City of Detroit as a line helper in the Department of Public Lighting (PLD) and is a member of a bargaining unit represented by Respondent. On September 25, 2003, Gardner filed an unfair labor practice charge against IBEW, Local 17. The charge, as clarified at the hearing, asserts that the Union violated its duty of fair representation by failing to process a grievance concerning the City's refusal to afford Gardner and other line helpers entry into its apprenticeship program. Gardner argues that the City is prohibited by contract and past practice from conferring positions within the apprenticeship program to individuals who are not employed within the PLD.

[1] Although counsel for Charging Party indicated at the conclusion of the hearing that she intended to file a post-hearing brief in this matter, no brief was ever filed on Charging Party's behalf.

Findings of Facts:

Background

The City of Detroit operates a program for apprentices who are employed and sponsored by the City in bargaining units represented by the Greater Detroit Building and Construction Trades Council, AFL-CIO (Building Trades Council). Individuals who are selected for the apprenticeship program learn the skills and techniques of various trades while working for the City. The program is administered by the Detroit Apprenticeship Council (DAC), which is comprised of members selected by both the City and the Building Trades Council.

The most recent contract governing employees in Respondent's bargaining unit is a master agreement between the City of Detroit and the Detroit Building and Construction Trades Council which covers the period 1998 to 2001. Matters pertaining to the apprenticeship program are set forth in a memorandum of understanding dated March 23, 2000 and incorporated into the agreement. With respect to the selection of apprentices, the memorandum of understanding provides, "Applicants applying for apprenticeships represented by the Building Trades Council shall be selected as outlined in the Apprenticeship Standards . . . ."

In 1997, the City's human resources department promulgated new apprenticeship standards governing the recruitment, employment and training of apprentices under the program. Article V of the 1997 standards provides that applicants are to be selected for the program based upon (1) a written examination, (2) education, and (3) employment, experience and training history. The standards further provide that open-competitive examinations are announced by the City via the posting of information on department bulletin boards and in newspaper advertisements, and by providing notice to the Detroit Board of Education and the State of Michigan.

In August of 2000, Dean Bradley became Respondent's assistant business manager. In September of that year, Bradley was approached by a group of line helpers who complained that the City was selecting individuals from outside of the bargaining unit for positions within the apprenticeship program to which Respondent's members were entitled. Bradley learned that there were two grievances pending at the time concerning the issue, and he immediately commenced an investigation.[2]

Bradley began by researching the language of the master agreement. Thereafter, he met with John Wallace, the Building and Trades Council representative who negotiated the contract. Wallace told Bradley that the issue of admitting non-PLD employees into the apprenticeship program had been settled long ago, and that there was no viable argument to be made on behalf of Respondent's members. Bradley then contacted Russ Ballant, the City's apprenticeship coordinator, who confirmed that the 1997 apprenticeship standards gave the City right to go outside the department in selecting apprentices. Ballant provided Bradley with a copy of the 1997 apprenticeship standards for review.

Following his conversations with Wallace and Ballant, Bradley contacted Respondent's attorney, George H. Kruszewski, and requested that he provide the Union with an advisory opinion concerning the apprenticeship issue. In a letter to the IBEW, Local 17, dated October 13,

[2] Neither of these pending grievances were filed by Charging Party.

2000, Kruszewski opined that the City was not violating the contract in selecting non-PLD employees for entry into the apprenticeship program. Specifically, Kruszewski concluded that the master agreement between the City and the Building Trades Council incorporated the apprentice standards promulgated by the City, and that under the 1997 standards, no preference is given based upon prior employment within the PLD.

After receiving the October 13, 2000, advisory opinion, Bradley met with the line helpers and conveyed Kruszewski's findings and conclusions to them. Bradley specifically told the line helpers that they "didn't have a grievance." Although Charging Party cannot recall whether Bradley discussed the opinion letter with him at that time, he does admit to having received a copy of that letter at some point in October of 2000.

Following the October meeting, several of the line helpers contacted Bradley and questioned whether the City was obligated by past practice to select only PLD employees for entry into the apprenticeship program. In response, Bradley sought a second advisory opinion from Kruszewski. In a letter to the Union dated November 22, 2000, Kruszewski restated his conclusion that the City was within its rights to select individuals from outside the department as apprentices. With respect to the issue of past practice, Kruszewski wrote:

> I refer to the enclosed March 10, 1999 letter from one of your members Chris Chamblis, to Russ Ballant, in which Mr. Chamblis contends that eleven out of the last twelve apprentices at PLD have come from other departments or off the streets. If this is the case, where is the origin of the contention that, under past practice, selection of apprentices has come from within the Department? Moreover, even if in the past, the City chose to select applicants from within, this does not mean that the City could not change its policy and rely upon the specific provisions of the Apprenticeship Standards, once they were adopted.

Bradley once again conveyed Kruszewski's conclusions to the line helpers. In addition, he arranged for Ballant to come speak to the bargaining unit about the apprenticeship program and to provide advice on how to improve test scores.

Charging Party's Apprenticeship Application

Charging Party passed the apprenticeship examination in July of 1996. When the next class of apprentices was selected in 1997 and included individuals from outside the PLD, Charging Party filed a grievance challenging the City's failure to offer him a position in the program. According to Charging Party, Respondent lost the grievance and subsequently requested that he resubmit it. Gardner did not refile the grievance at that time, nor he did file a grievance in 2002 when he was excluded from the most recent class of apprentices selected by the City.

In June of 2003, Charging Party submitted a document entitled "Grievance Report" to his Union steward who, in turn, passed it on to Bradley. The document, which was purportedly signed by eight other bargaining unit members, alleges that the City of Detroit violated the terms

of the master agreement by promoting individuals from outside the PLD into the apprenticeship program.

After submitting the "Grievance Report" to the Union, Charging Party repeatedly questioned Bradley about the status of the case. Each time, Bradley replied by telling Gardner, "I'll get back to you" or "I'm real busy right now." While waiting for a response from Gardner, Charging Party wrote to the business manager of IBEW, Local 17, the Union's District Manager in Chicago, and Respondent's National Manger in Washington D.C. regarding the situation.

On July 25, 2003, Bradley notified Charging Party by letter that after investigating the grievance and processing it through the first step of the grievance-arbitration procedure, the Union had decided not proceed any further with the matter on the ground that "there is not sufficient merit in the grievance for us to prevail." At or around the same time, Bradley provided Charging Party with copies of the October 13 and November 22, 2000, opinion letters from Kruszewski referred to above.

Discussion and Conclusions of Law:

Respondent contends that the unfair labor practice charge is time barred under Section 16(a) of PERA, MCL 423.216(a). I agree. Pursuant to Section 16(a), the Commission has no authority to find an unfair labor practice occurring more than six months prior to the filing of the charge. The six months limitation period is jurisdictional and may not be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583; *Detroit Federation of Teachers, Local 231*, 1986 MERC Lab Op 477. In a fair representation case, the statutory period typically begins to run when the employee knows or should have known 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 Comm College*, 1988 MERC Lab Op 213. See also *Washtenaw County*, 1992 MERC Lab Op 471, and cases cited therein.

Charging Party testified that he filed a grievance regarding the apprenticeship selection process in 1997, but that the Union lost the document. Clearly, any issue with respect to the Union's handling of that grievance is not timely given that the instant charge was filed on September 25, 2003, approximately six years later.

Although the June 2003 grievance was rejected by the Union within the six-month statutory period, I nevertheless conclude that Gardner's allegations regarding that issue are similarly time-barred. The record establishes that the Union conducted an investigation concerning the selection of non-PLD employees for entry into the apprenticeship program in 2000 and decided that the City was acting within its rights under the master agreement. Bradley subsequently shared that conclusion with the line helpers. At or around that time, Charging Party received a copy of the October 13, 2000 letter from Kruszewski. Under such circumstances, I conclude that Charging Party knew or had reason to know that the Union would not take any action challenging the apprenticeship selection process by the fall of 2000, approximately three years prior to the filing of the charge in this matter.

Even assuming arguendo that the charge was timely filed, however, there is nothing in the record to suggest that Respondent acted unlawfully in responding to Gardner's 2003 grievance, or with respect to its handling of the apprenticeship issue in general. 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 (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 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 1001 MERC Lab Op 1. Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe, supra*. A union satisfies its duty of fair representation as long as its decision was within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35.

In the instant case, the record establishes that Bradley first became aware of the apprenticeship issue shortly after he began working as the Union's assistant business manager in August of 2000. He immediately commenced an investigation which included researching the applicable contract language and meeting with individuals knowledgeable about the situation, including the City's apprenticeship coordinator. Bradley also procured an advisory opinion from the Union's attorney and then held a meeting with the line helpers to discuss Kruszewski's findings. When additional questions were raised concerning the City's actions, Bradley again sought Kruszewski's advice and, after receiving the second opinion letter, communicated those findings to his members. After he was satisfied that the Union had no basis to challenge the City's selection of non-PLD employees, Bradley arranged for the apprenticeship coordinator to hold a meeting with the bargaining unit to discuss the apprenticeship program and offer advice concerning the testing process. On these facts, I conclude that the Union's decision not to challenge the arbitration selection process in 2000 was not irrational or arbitrary.

Similarly, there is no evidence to suggest that the Union acted unlawfully with respect to Charging Party's 2003 grievance. Gardner testified that he filed the grievance sometime in June of 2003. On or about July 21, 2003, Bradley sent Charging Party a letter indicating that the Union had decided not to pursue the matter based upon its conclusion that the grievance lacked merit. Bradley also provided Charging Party with copies of both of the 2000 opinion letters addressing the issue. As noted above, Bradley had already undertaken a complete and thorough investigation of the exact same issue raised by Gardner in June of 2003. I find no basis upon which to conclude that the Union breached its duty to fairly represent Charging Party by refusing to process his 2003 grievance.

In accord with the above discussion, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____