STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C07 A-020,

- and -

DETROIT FEDERATION OF TEACHERS,
Labor Organization-Respondent in Case No. CU07 A-005,

- and -

SARANNE BENSON,
Individual Charging Party.
_____/

APPEARANCES:

Saranne Benson, *In Propria Persona*

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

DECISION AND ORDER

On May 31, 2007, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents 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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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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-and-

SARANNE BENSON,
An Individual Charging Party.
_____/

APPEARANCES:

Saranne Benson *in pro per*

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

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

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 assigned to David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. This matter comes before the Commission on unfair labor practice charges filed on January 31, 2007 by Saranne Benson against Respondents Detroit Public Schools and Detroit Federation of Teachers (DFT). The charges read, in pertinent part:

> During the August 2006 negotiations for the Detroit Federation of Teacher's Contract, the Detroit Federation of Teachers did choose to discriminate against retired teachers, employed by the Board and under contract, by unfairly bargaining to reduce salaries to step 1 on the salary schedule. The DFT ignored the retired teachers' degrees and experience and allowed the Detroit Board of Education to discriminate against retirees by not protecting our salaries as described in the salary schedule, a schedule that is determined by years of experience and degrees earned. The DFT did not fairly represent me, a full paid union member. Further, the DFT has allowed the Board to continue to refuse to give retired teachers seniority, sick and personal business days as other teachers receive. I have always had a contract as

> a retiree. I have never been a temporary employee. I have been, since returning to work, receiving pay at step 10 and according to my educational degrees. At present, I am a Learning Resource Room teacher, working on a second Master's Degree in Learning Disabilities at Wayne State University. I believe the DFT has discriminated against me because I am retired. They do not represent me fairly as they do other teachers. This is a form of age discrimination under the disguise of my status as a retiree. I perform all work of a teacher and with my experience and degree status, I should receive the salary as advertised on the Board's web page for a teacher of my standing, especially when I have a contract and being represented by the approved bargaining agent, the Detroit Federation of Teachers. My salary was reduced by $30,000! There was no justification given for this drastic cut in my salary. No other teacher or group of teachers was identified to be discriminated against in this way.

In an order issued on April 5, 2007, Charging Party was granted fourteen days in which to show cause why the charges should not be dismissed for failure to state a claim upon which relief can be granted under PERA. Charging Party filed a response to the order to show cause on April 26, 2007. With respect to Respondent Detroit Public Schools, Benson conceded that the Employer had not discriminated or retaliated against her because of any union activities. However, she asserted that the Employer interfered with her right to engage in protected concerted activities by discriminating against retired employees. According to Charging Party, the school district has treated retirees in a disparate manner since 2001, when it began denying them business days, sick days and holiday pay. With respect to Respondent DFT, Charging Party argued that the union acted arbitrarily, discriminatorily and in bad faith in failing to "protect the rights of retirees." Benson asserted that she complained to Union representatives about the Employer's discrimination against retirees "in previous years, to no avail." Benson further argued that the DFT violated its duty of fair representation by failing to alert members that a reduction in retiree wages would be "part of the planned [contract] negotiations."

On April 26, 2007, Respondent DFT filed a motion to dismiss the charges. On May 7, 2007, Charging Party filed a response to the DFT's motion in which she essentially reiterated the arguments previously set forth in her charge and response to the order to show cause, including an assertion that the conduct of the Respondent constituted "age discrimination."

Discussion and Conclusions of Law:

I find that the Charging Party has not raised any cognizable issue under PERA as to either Respondent. With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide an independent cause of action for an employer's breach of contract. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against the Charging Party for engaging in conduct protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524. In the instant case, neither the charge nor the responses to the order to show cause and motion to dismiss contain any allegation that the school district restrained, coerced or retaliated against Benson for engaging in protected concerted activities. An allegation of

discrimination on the basis of age does not constitute a valid claim against a public employer under PERA.

Similarly, the charge against the DFT also fails to state a claim upon which relief can be granted 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 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Within those boundaries, a union has broad discretion in negotiating and administrating its collective bargaining agreements, and the union's judgment or strategy with respect to such matters is generally beyond the scope of judicial or administrative review. See e.g. *Airline Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991) (union did not act arbitrarily in negotiating an agreement detrimental to certain of its members). The gravamen of the instant dispute is Charging Party's dissatisfaction with the negotiated wages and benefits for retired teachers who have returned to work for the school district and, in particular, the terms of the most recent collective bargaining agreement reached between Respondents as it pertains to such employees. Accepting Charging Party's well-pleaded allegations as true, there is no basis upon which to conclude that the DFT's judgment in connection with this matter was wholly irrational or outside the wide range of reasonableness accorded to unions.

Lastly, with respect to the purported discrimination against retirees in the granting of sick days and other benefits, I find the charges to be untimely under Section 16(a) of PERA, which 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 limitations period under PERA commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). According to the pleadings, the school district allegedly began treating retired employees differently in 2001, and Charging Party admits that she complained to the Union about this conduct "in previous years." The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. See e.g. *Walkerville Rural Community Sch*, 1994 MERC Lab Op 582, 583. Thus, such allegations are time-barred pursuant to Section 16(a) of the Act.

RECOMMENDED ORDER

The unfair labor practice charges are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____