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

In the Matter of:

CITY OF LANSING,
Public Employer-Respondent in Case Nos. C07 G-163, C07 G-165 & C07 H-173,

-and-

UAW REGION 1C,
Labor Organization-Respondent in Case No. CU07 G-034,

-and-

UAW LOCAL 2256,
Labor Organization-Respondent in Case Nos. CU07 G-036, CU07 G-037, CU07 G-038 & CU07 H-042

-and-

DALE ABRONOWITZ,
An Individual-Charging Party.
_______________________________________________/

APPEARANCES:

George V. Warren, Esq., for the Charging Party

## DECISION AND ORDER

On September 6, 2007, Administrative Law Judge David M. Peltz (ALJ) issued his Decision and Recommended Order on Summary Disposition in the above matter finding that none of the several charges filed by Charging Party Dale Abronowitz state a valid claim under Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210.

In Case Nos. C07 G-163 and CU07 G-037 respectively, Charging Party alleges that his Employer, the City of Lansing (Employer) and UAW Local 2256 (Local) changed job classifications in a manner contrary to the UAW constitution and without a ratification vote. In his claims against the Employer in Case No. C07 G-165 and against UAW Region 1C (Region) in Case No. CU07 G-034, Charging Party complains that he has not been provided with a copy of the previously-negotiated collective bargaining agreement. He alleges in Case Nos. CU07 G-036 and CU07 G-038 that the Local failed to appear at Union meetings. His Charges in Case Nos. C07 H-173 and CU07 H-042

allege breach of contract, breach of the duty of fair representation, negotiation without participation of the membership, breach of a duty to pursue safety issues via established procedures, and breach of a duty to allow a union steward to participate in meetings with the Employer. He also complains that his Local Union president is a subordinate employee in the Employer's human resources department and that this presents a conflict of interest.

The ALJ issued an Order to Show Cause to provide Charging Party with the opportunity to assert additional facts in support of his claims. Upon review of the charges and the response to the Order to Show Cause, the ALJ determined that neither filing provided a factual basis to support a finding that Charging Party engaged in any protected activity for which he was subject to either discrimination or retaliation protected by PERA. The ALJ concluded that most of the charges against Respondents involved internal union matters outside the scope of PERA. As to the remaining charge that the Unions had not provided bargaining unit members with copies of the current contract, the ALJ held that it was barred by the statute of limitations. Finding that none of the charges state a PERA claim, the ALJ recommended dismissal.

The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On September 17, 2007, Charging Party filed exceptions to ALJ's Decision and Recommended Order. Neither Respondent filed a response to the exceptions.

In his exceptions, Charging Party asserts that the ALJ erred by finding that the charges fail to state claims under PERA and argues that the ALJ failed to properly apply the established precedent. He asserts that his claims against the Unions do not pertain solely to internal union matters. Further, Charging Party contends that the charges are timely and that the allegations establish a prima facie case that each Union Respondent breached its duty of fair representation and that he is entitled to a hearing on the merits. He states that he has grievances against the Employer that he has been unable to assert because the current collective bargaining agreement has not been printed and distributed.

We have reviewed Charging Party's exceptions and find them to be without merit.

<u>Discussion and Conclusions of Law:</u>

In Cases C07 G-163 and CU07 G-037, Charging Party has failed to show how changing job classifications in a manner contrary to the UAW constitution and without membership ratification violate PERA. We agree with the ALJ that the duty of fair representation does not require that a union obtain membership approval prior to entering into an agreement with the employer to modify the language of an existing collective bargaining agreement. See e.g. *City of Lansing*, 1987 MERC Lab Op 701, 708; *United Steelworkers Ass'n*, 2002 MERC Lab Op 163, 166 (no exceptions).

In Case No. CU07 G-038, Charging Party fails to show how the cancellation of Local Union meetings violated his PERA rights. In his Response to the ALJ's Order to

Show Cause, he claims that this occurred without a vote of the membership. However, as correctly noted by the ALJ, internal union matters such as these are outside the scope of PERA and are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Sch Unit),* 1981 MERC Lab Op 149, 154.

The claim that the Employer, the Local Union and the Region have not provided employees with a printed contract, as Charging Party alleges in Case Nos. C07 G-165, CU07 G-036 and CU07 G-034, states no violation of PERA, which permits, but does not compel, the reduction of collective bargaining agreements to writing. MCL 423.215(1). Charging Party does not allege that Respondent Unions rebuffed an attempt by him to file or pursue grievances against the Employer. He, therefore, has not stated a PERA claim.[1]

Charging Party's allegations in Case Nos. C07 H-173 and CU07 H-042 assert matters that are not covered by PERA. Breach of contract and breach of any existing duty to pursue safety issues through established procedures are not matters covered by PERA. Negotiation without union membership participation and not allowing a union steward to participate in meetings with an employer are matters involving the internal structure and affairs of labor organizations. E.g., *Service Employees Int'l Union*, *Local 517*, 2002 MERC Lab Op 104. Finally, that a union officer is also a subordinate of the employer representative with whom he must deal in labor-management matters, without more, is not a breach of the duty of fair representation and is not a basis for ordering relief.

We have considered all other arguments raised by Charging Party and conclude that they would not change the result in this case. For the above reasons, we agree with the ALJ that none of these charges state a valid claim under PERA.

**ORDER**

The unfair labor practice charges are dismissed in their entirety.

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:

[1] We, therefore, find it unnecessary to consider the timeliness of this allegation.

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-and-

DALE ABRONOWITZ,
An Individual Charging Party.
______________________________________________________/

APPEARANCES:

George V. Warren for the Individual Charging Party

## DECISION AND RECOMMENDED ORDER 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 July 25, 2007, July 26, 2007 and August 2, 2007 by Dale Abronowitz against Respondents City of Lansing (the Employer), UAW Region 1C and UAW Local 2256 (the Unions).

In an order issued on August 13, 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. Abronowitz filed a response to the order to show cause on August 22, 2007.

Discussion and Conclusions of Law:

With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. Rather, the Commission's jurisdiction with respect to public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in *union or other protected concerted activities*. Absent an allegation that the public employer interfered with, restrained, coerced or retaliated against the employee for engaging in such activities, 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 charges nor the response to the order to show cause provide a factual basis which would support a finding that Abronowitz engaged in any protected concerted activity for which he was subject to discrimination or retaliation. Accordingly, I conclude that the charges in Case Nos. C07 G-163, C07 G-165 and C07 H-173 must be dismissed for failure to state claims under PERA.

The charges against Respondents UAW Region 1C and UAW Local 2256 in Case Nos. CU07 G-034, CU07 G-036, CU07 G-037 & CU07 G-038 similarly fail to state claims under the Act. Those charges, as clarified in Abronowitz's response to the order to show cause, assert that the Unions violated their duty of fair representation by allowing the Employer to change job classifications without first seeking the approval of the bargaining unit, that the local president acted unlawfully by unilaterally canceling membership meetings, and that the Unions violated PERA by failing to provide members with a printed copy of the collective bargaining agreement.[2]

It is well-established that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations. *Service Employees Int'l Union, Local 517*, 2002 MERC Lab Op 104; *Service Employees International Union, Local 586*, 1986 MERC Lab Op 149. Internal union matters are outside the scope of PERA and are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit),* 1981 MERC Lab Op 149, 154. For example, the Commission has held that the duty of fair representation does not require that a union seek to obtain the approval of its membership in order to enter into an agreement with the employer modifying the language of an existing collective bargaining agreement. See e.g. *City of Lansing*, 1987 MERC Lab Op 701, 708; *United Steelworkers Ass'n*, 2002 MERC Lab Op 163, 166 (no exceptions). I

[2] This latter allegation appears to be untimely. 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. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. The limitations period 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). By Charging Party's own account, the contract in question was entered into "1 ½ years" ago. Thus, it would appear that Abronowitz knew or should have known that Respondents had not provided members with a copy of the contract more than six months prior to the filing of the charges in this matter.

conclude that the allegations against Respondents in Case Nos. CU07 G-034, CU07 G-036, CU07 G-037 & CU07 G-038, even if true, pertain to internal union matters outside the Commission's jurisdiction and must be dismissed on that basis.

In Case No. CU07 H-042, Charging Party asserts that a conflict of interest exists by virtue of the fact that the local president is an employee of the City's human resources department and a subordinate of a management representative with whom he must negotiate on behalf of the bargaining unit. Abronowitz asserts that the local president has allowed management to use this authority to influence which Union officials participate in negotiations with the City. Such an allegation does not state a claim under PERA. The mere fact that a union representative or official is supervised by a member of the Employer's bargaining team is not *per se* unlawful. To the contrary, such a situation is commonplace in public sector employment. If, as Charging Party contends, the City is attempting to pressure the local president with respect to the selection of representatives, that is a matter for the Union to raise by way of a grievance or unfair labor practice charge.

For the above reasons, I find that none of the instant charges state a valid claim under PERA. Accordingly, 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

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David M. Peltz
Administrative Law Judge

Dated: ____________