STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Public Employer - Respondent in Case No. C07 I-213,

-and-

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 101,
Labor Organization - Respondent in Case No. CU07 I-048,

-and-

RINARDIS UPSHAW,
An Individual - Charging Party.
_____/

APPEARANCES:

Mark D. Dukes, for the Respondent Public Employer

Aina N. Watkins, Esq., for the Respondent Labor Organization

Rinardis Upshaw, Charging Party, *In Propria Persona*

DECISION AND ORDER

On December 21, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
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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LOCAL 101,
Respondent Labor Organization in Case No. CU07 I-048

-and-

RINARDIS UPSHAW,
An Individual Charging Party.
_____/

APPEARANCES:

Rinardis Upshaw, Charging Party, appearing personally

Aina N. Watkins, for the Respondent Union

Mark D. Dukes, for the Respondent Public Employer

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 Doyle O'Connor, Administrative Law Judge (ALJ) on behalf of the Michigan Employment Relations Commission.

On September 20, 2007, two related charges were filed in this matter. The charge in case CU07 I-048 asserts that Respondent American Federation of State, County and Municipal Employees (AFSCME) Local 101 (the Union) violated its duty to fairly represent Rinardis Upshaw (Charging Party) regarding several grievances. The second charge, filed against Respondent Wayne County (the Employer) in Case C07 I-213, alleged that the Employer treated Charging Party unfairly regarding a layoff, which apparently occurred in November 2006. Pursuant to R 423.165(2)(d), the Charging Party was ordered to explain in writing why the two charges should not be dismissed for

failure to state claims upon which relief can be granted. A response was filed on November 2, 2007. The Employer and the Union filed timely replies.

The Charge and Findings of Fact Regarding the Employer:

The Charge filed in this matter asserts that the Employer treated Charging Party improperly or unfairly regarding a layoff in November of 2006. While Charging Party, in his response to the order to show cause, asserts that the layoff violated the collective bargaining agreement, there is no allegation suggesting that the Employer was motivated by union or other activity protected by PERA. Moreover, Charging Party's response makes clear that all of the complained of events that led to the filing of the charge against the Employer occurred in November, 2006.

Discussion and Conclusions of Law Regarding the Charge Against the Employer:

The Public Employment Relations Act (PERA) does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting a collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation suggesting that the Employer was motivated by union or other activity protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted and must be dismissed.

Additionally, under PERA, there is a strict six-month statute of limitations for the filing and service of charges, and a charge alleging an unfair labor practice occurring more than six months prior to the filing and service of the charge is untimely. The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415. The events that led to the filing of the charge all occurred in November of 2006, with the charge filed in September of 2007, and the charge is therefore untimely and must be dismissed for that separate reason.

The Charge and Findings of Fact Regarding the Union:

The charge against the Union asserted vaguely that Charging Party was being misrepresented by the Union regarding several grievances filed in November of 2006. Charging Party's response to the order to show cause more specifically asserted that as of November 2, 2007, Upshaw had not been told of the scheduling of a hearing on his grievances.

The Union's reply acknowledged that Upshaw was covered by two grievances pursued by the Union. The reply also established that the first grievance had been to arbitration with a decision by George Roumell issued November 8, 2007. That decision, appended to the Union's reply, was an interim decision with the matter referred back to the parties for further action. Additionally, the Union asserted, without contradiction by Upshaw, that a second grievance related to Upshaw's

claims was pending in the contractual grievance procedure with a hearing scheduled for November 28, 2007.

Charging Party has failed to establish that there is a genuine issue of fact requiring resolution on his charge asserting that the Union has failed to pursue his contractual claims, where it is uncontested that one matter was already heard and decided, at least in part, by a neutral arbitrator and the other matter remained pending and being pursued in the grievance procedure.

Discussion and Conclusions of Law Regarding the Charge Against the Union:

The facts alleged show only that there is a dispute between Upshaw and the Union over the speed of their pursuit of the grievances, or perhaps over the extent to which Upshaw has been kept informed of developments. The fact that Upshaw is dissatisfied with the pace of his union's efforts is insufficient to constitute a proper charge of a breach of the Union's duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Because a union's ultimate duty is to the membership as a whole, the Respondent Union has considerable discretion to decide how to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973). The Union's decision on how to proceed in a grievance case is not unlawful as long as it is not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. Moreover, a union does not breach its legal duty of fair representation merely by a delay in processing grievances, if the delay does not cause the grievance to be denied, such that Upshaw's assertion of a failure by the Union to more promptly pursue his grievance claims fails to state a claim under PERA. *Service Employees International Union, Local 502*, 2002 MERC Lab Op 185.

Taking each factual allegation in the charge and in the response to the order in the light most favorable to Charging Party, the allegations in CU07 I-048 do not state a claim against the Union under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Doyle O'Connor
Administrative Law Judge

Dated:_____