STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT FEDERATION OF TEACHERS,
Public Employer-Respondent,

Case No. CU07 E-027

-and-

IMOLYN DOBSON,
An Individual-Charging Party.
_____/

APPEARANCES:

Sachs Waldman, by Eileen Nowikowski, Esq., for Respondent

Imolyn Dobson, *In Propria Persona*

DECISION AND ORDER

On October 26, 2007, Administrative Law Judge Doyle O'Connor 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

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT FEDERATION OF TEACHERS,
Respondent-Labor Organization, Case No. CU07 E-027

-and-

IMOLYN DOBSON,
An Individual Charging Party.
_____/

APPEARANCES:

Imolyn Dobson, Charging Party, appearing personally

Sachs Waldman, by Eileen Nowikowski, for Respondent-Labor Organization

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION FOR SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission.

The Unfair Labor Practice Charge and Findings of Fact:

On May 29, 2007, a Charge form was filed in this matter asserting that unspecified representatives of the Detroit Federation of Teachers (the Union) had violated the Act, in some unspecified way, on unspecified date(s). No factual explanation of the basis for the charge was given. The charge failed to meet the minimum pleading requirements set forth in R 423.151(2); therefore, on June 19, 2007, Dobson was ordered, pursuant to R 423.165(2)(d), to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted.

The Commission received Charging Party's written response on July 24, 2005, which identified two separate instances of alleged failure on the part of her Union to fairly represent her. The first was the alleged failure in 2005 of the Union to represent Charging Party in a proceeding under the Teacher Tenure Act, in which she was represented by counsel. The second allegation relates to the Union's decision, following the Union's March 2007 receipt of the adverse decision in the State Tenure Commission proceedings which affirmed the termination of

Dobson on a charge of "unsatisfactory instructional performance", to not reopen grievance proceedings related to Charging Party's discharge from employment.

On September 12, 2007 the Union filed a motion for summary disposition, supported by an affidavit of the Union representative who had been assigned to handle the grievance related to Charging Party's termination from employment. The Union's motion asserted that all allegations related to the decisions made in 2005 were barred by the statute of limitations, and that the Union's decision in 2007 to not further pursue the matter, based on the adverse State Tenure Commission decision, was rational and therefore not improper. The Union asserted that it had concluded that the adverse decision would properly be given fact preclusion or collateral estoppel effect in any grievance proceeding, and that there was therefore no reasonable prospect of the Union prevailing in a grievance proceeding. Additionally, the Union's motion noted that Charging Party had not asserted any facts which would, if proven, establish that the Union acted in bad faith or for improper motive in making the decisions it made regarding the pursuit of claims related to Dobson's employment difficulties. The Union acknowledges that it failed to properly keep Dobson apprised of its decision making following its March of 2007 receipt of the State Tenure Commission decision from Dobson.

The Charging Party was directed to, and did on October 4, 2007, file a response to the Union's motion for summary disposition. Charging Party opposed dismissal, asserting that the employer's decision to terminate her was based on her age and nationality, rather than on her performance, despite the contrary finding by the State Tenure Commission, and that the Union had failed to take into account that allegation. Notably, Charging Party's response to the Union's motion is devoid of any allegation of fact which, if proven, would support a conclusion that the Union acted in anything other than good faith in its decision to not further pursue claims on her behalf. Dobson does not challenge the factual assertion by the Union, which was supported by affidavit, that the Union's decision to not further pursue claims regarding Dobson was based on the collateral impact of the adverse decision by the State Tenure Commission. Rather, Charging Party's response to the motion merely expresses regret that the Union did not do more for her, despite the State Tenure Commission decision. Dobson additionally criticizes the Union's failure to adequately communicate with her regarding its post-March 2007 decision making process.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to a motion for summary disposition under R423.165. Where there is no legitimate dispute of fact, a decision may be rendered without an evidentiary hearing.

Accepting the allegations in the charge, and facts derived from the supporting documentation, as true, the complained of conduct by the Union regarding representation of Dobson in the State Tenure Commission proceedings occurred in 2005. The Union asserts that Dobson was aware then that the Union and the employer had agreed to defer action on the pending grievance while awaiting the outcome of the State Tenure Commission proceedings. Dobson does not dispute that throughout the State Tenure Commission proceedings she was represented by retained counsel. The hearings in the Tenure Commission matter where held in April of 2006. The Charge in this matter was filed in May of 2007.

Unfair labor practice charges under PERA are subject to a six-month statute of limitations, which is jurisdictional and cannot be waived. *Walkerville Rural Community Schools,* 1994 MERC Lab Op 582, 583. A claim accrues when the charging party knows, or should know, of the alleged unfair labor practice. *Huntington Woods v Wines,* 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. Additionally, the law is clear that when a complaint against a union is based on the union's alleged inactivity, the statute of limitations begins to run when the charging party should have reasonably realized that the union would not act on her behalf. *Washtenaw Community Mental Health*, 17 MPER 45 (2004); *Huntington Woods*, supra; *Pantoja v Holland Motor Express, Inc*, 965 F2d 323 (CA7, 1992); *Shapiro v Cook United, Inc*, 762 F2d 49 (CA6, 1985); *Metz v Tootsie Roll Industries, Inc*, 715 F2d 299 (CA7, 1983). As in *Huntington Woods,* Dobson was aware for at least one year, if not two years, prior to filing this charge that the Respondent was not representing her in the tenure proceedings. The May 2007 charge is therefore untimely as to any of the allegations related to the Union's failure to represent her in the State Tenure Commission proceedings.

In March of 2007, Dobson provided the Union with a copy of the State Tenure Commission decision of December 2006. It is factually uncontested that the Union relied on the adverse impact of the State Tenure Commission decision in concluding that the related grievance was not viable. The Union's analysis of the merits of the grievance correctly relied on the preclusive effect of the State Tenure Commission decision and the decision in *Dearborn Heights Sch Dist v Wayne County MEA*, 233 Mich App 120 (1998), which affirms that the factual findings in such decisions are admissible in, and potentially binding on, a subsequent grievance arbitration proceeding. Dobson has not stated facts which, if proven, would support a conclusion that the Union's decision to not pursue the discharge case further was arbitrary, discriminatory or made in bad faith. See, *Vaca v Sipes*, 386 US 17 (1967).

The Union correctly acknowledges that it was negligent in failing to keep Dobson informed of its internal decision making regarding her status, but the Union also correctly notes that such negligence, or rudeness, does not violate any legal duty. *Whitten v Anchor Motor Freight*, 521 F2d 1335 (CA 6, 1975), *cert den* 425 US 981 (1976).

Moreover, the fact that Dobson is dissatisfied with her union's efforts is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW,* 1994 MERC Lab Op 855. A union has considerable discretion to decide how, and whether or not, to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705,* 389 Mich 123, 145-146. 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 and a Union may properly refuse to arbitrate the question of the discharge of a particular employee. *Lowe, supra.* A union's decision on how to proceed with an employee complaint 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. The charge fails to allege arbitrary or bad faith conduct on the part of the Union, and, therefore, fails state a claim upon which relief could be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Doyle O'Connor
Administrative Law Judge

Dated:_____