STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C08 F-131,

-and-

DETROIT FEDERATION OF TEACHERS,
Labor Organization-Respondent in Case No. CU08 F-033,

-and-

TAMPLYN DAVIS,
Individual-Charging Party.
_____/

APPEARANCES:

Zaddick Law P.L.L.C., by Christina Heikkinen, Esq., for Charging Party

Sachs Waldman P.C., by Marshall J. Widick, Esq., for the Respondent Labor Organization

DECISION AND ORDER

On November 7, 2008, 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: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

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TAMPLYN DAVIS,
An Individual Charging Party.
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APPEARANCES:

Zaddick Law PLLC, by Christina Heikkinen, for Charging Party

Sachs Waldman, PC, by Marshall J. Widick, for the Labor Organization

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On June 27, 2008, Tamplyn Davis filed unfair labor practice charges against her former Employer, Detroit Public Schools, and her Union, the Detroit Federation of Teachers. 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 (ALJ) of the State Office of Administrative Hearings and Rules, on behalf of the Michigan Employment Relations Commission.

The charge in Case No. C08 F-131 alleges that the Detroit Public Schools violated PERA by failing to "respond to Step 2 Grievance Appeal Hearing." In Case No. CU08 F-033, Charging Party alleges that the Detroit Federation of Teachers acted unlawfully in failing to "pursue Step 2 grievance and did so arbitrarily and capriciously." In an order issued on July 8, 2008, Charging Party was directed to show cause why the charges should not be dismissed. Charging Party filed a response to that order on July 21, 2008.

In an order issued on August 22, 2008, I indicated that I would be recommending dismissal of the charge against the Employer in Case No. C08 F-131 based upon the fact that Davis had alleged no facts from which it could be concluded that the Detroit Public Schools violated PERA. With respect to the charge against the Union in Case No. CU08 F-033, I ordered the Detroit Federation of Teachers to file a position statement addressing in detail the allegations set forth by Davis in the charge and in her response to the order to show cause. The Union properly filed its position statement, along with supporting documentation, on September 23, 2008. Charging Party filed a reply to that position statement on October 22, 2008. Accepting as true the factual allegations in Charging Party's reply, as well as the charges and other pleadings filed by Davis in this matter, I find that Charging Party has not raised any timely issue cognizable under PERA.

Charging Party alleges that she was wrongly discharged by the Detroit Public Schools and that the school district failed to respond to the grievance pertaining to her termination in a timely manner. 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 an employee for engaging in conduct protected by Section 9 of PERA, the Commission is prohibited 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, Charging Party has not alleged that Detroit Public Schools discriminated or retaliated against her because of union or other protected concerted activity. Accordingly, I find that dismissal of the charge against the Employer in Case No. C08 F-131 is warranted.

The charge against Respondent Detroit Public Schools must also be dismissed as untimely. Pursuant to Section 16(a) of the Act, 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). In her charge against the Employer, Davis alleges that she was discharged in March of 2006. Clearly, Charging Party knew or should have known of the alleged PERA violation by the school district more than six months prior to her filing of the charges with the Commission on August 12, 2008. Accordingly, I find that the charge in Case No. C08 H-167 is time-barred under Section 16(a) of the Act.

Similarly, the charge against Respondent Detroit Federation of Teachers must also be dismissed on summary disposition. Charging Party alleges that the Union violated PERA by failing to properly represent or protect her interests at an investigatory hearing in January of 2006, a meeting with a Union representative in August of 2006 and a Step 2 grievance hearing in October of 2007. These allegations are untimely, as they all occurred more than six months before Davis filed her charges in this matter.

The charge against the Union also fails to state a claim upon which relief can be granted. 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. *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). 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*. To this end, a union is not required to follow the dictates of the individual grievant, but rather it may investigate and present the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. The fact that an individual member is dissatisfied with the union's efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131.

Charging Party contends that the Union acted unlawfully in failing to provide her with documentation that she had requested, and by allowing an "excessive time to pass" between the first and second steps of the contractual grievance procedure. While it is true that public employers and labor organizations have a duty under the Act to supply relevant information to each other in a timely manner, see e.g. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387, there is no corresponding duty on the part of a union to provide individual members with specific information pertaining to their employment. Rather, the union's sole obligation is to carry out its bargaining responsibilities in good faith and without hostility or discrimination toward any individual member and to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Moreover, it is well-established that a union does not breach its duty of fair representation merely by a delay in the processing of grievances as long as the delay does not cause the grievance to be denied. *Service Employees International Union, Local 502*, 2002 MERC Lab Op 185. In the instant case, Charging Party's grievance was not rejected due to any action or nonfeasance of the Union. In fact, the grievance remains at Step 2 and a decision by the Employer is still pending.

Despite having been given an opportunity to do so, Charging Party has alleged no facts from which it could be concluded that the Union acted arbitrarily, discriminatorily or in bad faith with respect to its representation of her. The charge does not allege that the Union acted out of improper motive, nor is there any factually supported allegation that the Union treated Davis differently than other bargaining unit members or that its actions were the result of gross negligence. Under such circumstances, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C08 F-131 and CU08 F-033 be dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: November 7, 2008