

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

In the Matter of:

WAYNE STATE UNIVERSITY,
Public Employer-Respondent in Case No. C08 H-167,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 517M,
Labor Organization-Respondent in Case No. CU08 H-043,

-and-

CAROLYN DENISE JAMES,
Individual-Charging Party.

_____ /

APPEARANCES:

Carolyn Denise James, *In Propria Persona*

DECISION AND ORDER

On October 16, 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

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

WAYNE STATE UNIVERSITY,
Respondent-Public Employer in Case No. C08 H-167,

-and-

SEIU LOCAL 517M,
Respondent-Labor Organization in Case No. CU08 H-043,

-and-

CAROLYN DENISE JAMES,
An Individual Charging Party.

APPEARANCES:

Carolyn Denise James, appearing on behalf of herself

DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION

On August 12, 2008, Carolyn Denise James filed unfair labor practice charges against Wayne State University and SEIU Local 517M. 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 unfair labor practice charges allege that James was wrongfully terminated by Respondent Wayne State University in March of 2006 and that Respondent SEIU Local 517M failed to represent her in connection with her discharge. In an order issued on September 11, 2008, Charging Party was directed to show cause why the charges should not be dismissed. Charging Party did not file a response to that order. Rather, on or about October 6, 2008, she submitted a folder containing what appear to be hundreds documents relating to her employment history and termination.

I find that Charging Party has not raised any timely issue cognizable under PERA. 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 charges, James alleges that she was discharged in March of 2006 and that a grievance pertaining to her termination has been pending since that time. Clearly, Charging Party knew or should have known of the alleged PERA violations more than six months prior to her filing of the charges with the Commission on August 12, 2008. Accordingly, I find that both of the charges are time barred under Section 16(a).

The charge against Respondent Wayne State University in Case No. C08 H-167 must also be dismissed for failure to state a claim upon which relief can be granted under PERA. 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 Wayne State University 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 H-167 is warranted.

Similarly, the charge against Respondent SEIU Local 517M must also be dismissed for failure 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. 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.

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 allegation that the Union's actions in connection with this matter were arbitrary or the result of gross negligence. Thus, pursuant to Rule 165, R 423.165, of the General

Rules and Regulations of the Employment Relations Commission, dismissal of the charge in Case No. CU08 H-043 is also appropriate.

RECOMMENDED ORDER

The unfair labor practice charges are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____