STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MT. PLEASANT SCHOOL DISTRICT,
Public Employer-Respondent in Case No. C09 A-007,

-and-

AFSCME COUNCIL 25,
Labor Organization-Respondent in Case No. CU09 A-001,

-and-

ROBERT BROWNE,
An Individual Charging Party.
_____/

APPEARANCES:

Robert Browne, *In Propria Persona*

DECISION AND ORDER

On March 25, 2009, Administrative Law Judge David M. Peltz 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

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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

In the Matter of:

MT. PLEASANT SCHOOL DISTRICT,
Respondent-Public Employer in Case No. C09 A-007,

-and-

AFSCME COUNCIL 25,
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-and-

ROBERT BROWNE,
An Individual Charging Party.
_____/

APPEARANCES:

Robert Browne appearing on his own behalf

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On January 15, 2009, Robert Browne filed unfair labor practice charges against his former Employer, the Mt. Pleasant School District, and his labor organization, AFSCME Council 25. 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) for the State Office of Administrative Hearings & Rules, acting on behalf of the Michigan Employment Relations Commission.

In an order issued on February 27, 2009, I directed Charging Party to show cause why the charges should not be dismissed as untimely and for failure to state a claim under PERA. Charging Party did not file a response to that order.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, I conclude that the charges must be dismissed on summary disposition.

In Case No. C09 A-007, Browne alleges that the Mt. Pleasant School District wrongfully terminated him in violation of PERA. 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. With respect to a claim brought by an individual employee against a public employer, 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 a factually supported 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, the charge against the Employer must be dismissed on the ground that it fails to provide a factual basis which would support a finding that Browne engaged in any protected concerted activity for which he was subject to discrimination or retaliation.

The charge against the Employer 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). Attached to the instant charges are documents which indicate that Browne's employment with the school district was terminated effective November 16, 2007. Thus, Browne knew or should have known of the alleged PERA violation by the Employer more than six months prior to the filing of the instant charges.

With respect to the charge against the Union in Case No. CU09 A-001, Browne has failed to state a claim under PERA for breach of the duty of fair representation. 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. In the instant case, there is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Browne.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C09 A-007 and CU09 A-001 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: March 25, 2009