

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

In the Matter of:

DETROIT PUBLIC SCHOOLS  
Public Employer-Respondent in Case No. C09 B-005,

-and-

DETROIT FEDERATION OF TEACHERS,  
Labor Organization-Respondent in Case No. CU09 B-003,

-and-

LAKENYA PHELPS-HAYES,  
An Individual Charging Party.

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**APPEARANCES:**

Office of Labor Relations, by Angela T. Sims, Esq., for the Public Employer

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

LaKenya Phelps-Hayes, *In Propria Persona*

**DECISION AND ORDER**

On May 1, 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:

DETROIT PUBLIC SCHOOLS,  
Respondent-Public Employer in Case No. C09 B-005,

-and-

DETROIT FEDERATION OF TEACHERS,  
Respondent-Labor Organization in Case No. CU09 B-003

-and-

LAKENYA PHELPS-HAYES,  
An Individual Charging Party.

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**APPEARANCES:**

LaKenya Phelps-Hayes, appearing on her own behalf

Angela T. Sims, Office of Labor Relations, for the Public Employer

Sachs Waldman, P.C., by Marshall J. Widdick, for the Labor Organization

**DECISION AND RECOMMENDED ORDER  
ON SUMMARY DISPOSITION**

On February 12, 2009, LaKenya Phelps-Hayes filed unfair labor practice charges against her former employer, Detroit Public Schools (hereinafter “the school district” or “the Employer”) and against her labor organization, the Detroit Federation of Teachers (hereinafter “the DFT” or “the Union”). 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 Case No. C09 B-005, Charging Party alleges that her employment with the school district was terminated on February 1, 2008 in violation of the collective bargaining agreement between the Employer and the Union. In Case No. C09 B-003, Phelps-Hayes asserts that the Union did not process her grievance “thoroughly or effectively.”

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 charges. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, accepting all of the allegations in the charges, along with the supporting documentation, as true, dismissal of the charges on summary disposition is warranted.

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any alleged 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 the instant case, Charging Party alleges that she was terminated on February 1, 2008. Yet, she did not file her charge against the school district until February 12, 2009, more than a year later. The fact that Phelps-Hayes may have been under the mistaken belief that she was required to exhaust her internal union remedies before filing a charge against the Employer does not render the charge timely or in any way toll the statute of limitations. Accordingly, the charge in Case No. C09 B-005 must be dismissed as untimely under Section 16(a) of the Act.

The charge against the school district in Case No. C09 B-005 also fails to state a valid claim under PERA. The Act does not prohibit all types of discrimination or unfair treatment by a public employer, nor does PERA provide a remedy for an employer's breach of a collective bargaining agreement. Rather, the Commission's jurisdiction with respect to public employers is limited to determining whether the employer interfered with, restrained, or coerced a public employee with respect to his or her right to engage in union or other protected concerted activities. The charge against the Detroit Public Schools does not provide a factual basis which would support a finding that Phelps-Hayes engaged in any protected activities for which she was subject to discrimination or retaliation in violation of the Act. Absent such an allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's action. Accordingly, the charge against the school district in Case No. C09 B-005 must be dismissed for failure to state a claim upon which relief can be granted.

Finally, the charge against Detroit Federation of Teachers in Case No. CU09 B-003 must also be dismissed for failure to state a claim under PERA. 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. *Vaca v Sipes*, 386 US 171 (1967); *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);

*International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. 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 Phelps-Hayes.

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 B-005 and CU09 B-003 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: \_\_\_\_\_