

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

In the Matter of:

DETROIT PUBLIC SCHOOLS
Public Employer-Respondent in Case No. C09 C-031,

-and-

DETROIT FEDERATION OF TEACHERS,
Labor Organization-Respondent in Case No. CU09 C-008,

-and-

KIMBERLY THOMPSON,
An Individual Charging Party.

APPEARANCES:

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

Sachs Waldman, P.C., by Eileen Nowikowski, Esq., for the Labor Organization

Kimberly Thompson, *In Propria Persona*

DECISION AND ORDER

On April 30, 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

Christine A. Derdarian, 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:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C09 C-031,

-and-

DETROIT FEDERATION OF TEACHERS,
Respondent-Labor Organization in Case No. CU09 C-008

-and-

KIMBERLY THOMPSON,
An Individual Charging Party.

APPEARANCES:

Kimberly Thompson, appearing on her own behalf

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

Sachs Waldman, P.C., by Eileen Nowikowski, for the Labor Organization

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

On March 6, 2009, Kimberly Thompson filed unfair labor practice charges against her former employer, Detroit Public Schools (the school district), and against the Detroit Federation of Teachers (DFT). 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.

The identically worded charges set forth numerous allegations of unlawful conduct by Respondent Detroit Public Schools dating back to December of 2005, when the school district allegedly eliminated the program to which Thompson, a limited license instructor, was assigned. The charge further contends that on some unspecified date(s), the school district failed to pay Thompson money to which she was entitled and that it reduced her status from “highly qualified“ to “not highly qualified“. According to the charge, Thompson was improperly placed

on medical leave from approximately March of 2006 to September 8, 2008, when her employment with the school district was terminated. The charges set forth no specific allegations against Respondent DFT.

In an order issued on March 13, 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). Moreover, the charges fail to meet the minimum pleading requirements set forth in R 423.151(2), which requires that an unfair labor practice charge include a clear and complete statement of the facts which allege a violation of PERA, including the date of occurrence of each particular act and the names of the agents of the charged party who engaged therein.

From the information that Thompson has provided, the charge against the school district in Case No. C09 C-031 fails to state a claim under PERA. The Act does not prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act 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, and/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 Charging Party 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 C-031 must be dismissed on summary disposition.

Similarly, the charge against Detroit Federation of Teachers in Case No. CU09 C-008 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. 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 Thompson.

Finally, most, if not all, of the allegations set forth in the charges are untimely. 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, most of the allegations set forth by Thompson pertain to incidents which occurred long before the filing of the charge. In fact, Charging Party concedes that she has not worked for the school district since on or about March of 2006. Accordingly, the charges against both Respondents must be dismissed as untimely under Section 16(a) of the Act.

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 C-031 and CU09 C-008 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____