

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,  
Public Employer-Respondent,

Case Nos. C09 D-053 &  
CU09 D-013

-and-

ASSOCIATION OF EDUCATIONAL OFFICE EMPLOYEES,  
Labor Organization-Respondent,

-and-

GERALDINE ELLINGTON,  
An Individual Charging Party.

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**APPEARANCES:**

Geraldine Ellington, *In Propria Persona*

**DECISION AND ORDER**

On May 22, 2009, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition 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**

In the Matter of:

DETROIT PUBLIC SCHOOLS,  
Public Employer-Respondent,

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ASSOCIATION OF EDUCATIONAL OFFICE EMPLOYEES,  
Labor Organization-Respondent,

-and-

GERALDINE ELLINGTON,  
An Individual Charging Party.

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APPEARANCES:

Geraldine Ellington, Charging Party, appearing on her own behalf

**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION**

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 for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), on behalf of the Michigan Employment Relations Commission.

On April 7, 2009, two related, and identical, charges were filed by Geraldine Ellington (the Charging Party) in this matter against the Detroit Public Schools (the Employer) and the Association of Educational Office Employees (the Union). The Charges allege a breach of a collective bargaining agreement related to the payout of vacation days upon retirement and that Ms. Ellington is dissatisfied with delays that have arisen in the arbitration of the dispute. Pursuant to R 423.165(2)(d), the Charging Party was ordered to explain in writing why the two charges should not be dismissed for failure to state claims upon which relief can be granted. Ellington did not file a response to the order.

### The Charge and Findings of Fact Regarding the Employer:

The charge alleges that the Employer failed to properly calculate vacation pay owed to Ellington, at a point sometime prior to October of 2007. The charge was filed in April of 2009.

### Discussion and Conclusions of Law Regarding the Charge Against the Employer:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, the Public Employment Relations Act (PERA) does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation suggesting that the Employer was motivated by union or other activity protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted.

Additionally, under PERA, there is a strict six-month statute of limitations for the filing and service of charges, and a charge alleging an unfair labor practice occurring more than six months prior to the filing and service of the charge is untimely. The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Dismissal is required when a charge is not timely or properly served. See *City of Dearborn*, 1994 MERC Lab Op 413, 415. The events that led to the filing of the charge against the Employer occurred in 2007, and the charge is, therefore, untimely.

Taking each factual allegation in the charge and in the response to the order in the light most favorable to Charging Party, the allegations in C09 D-053 do not state a claim against the Employer under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge is therefore subject to summary dismissal. Further, the charge is barred by the statute of limitations.

### The Charge and Findings of Fact Regarding the Union:

The charge asserts that the Union is presently pursuing a grievance to arbitration regarding Ms. Ellington's claims, that there have been multiple adjournments of the arbitration hearing, and that the grievance is scheduled for hearing in May of 2009. Because Unions generally have very broad discretionary authority to decide how a case should be pursued in arbitration, the allegation did not appear to state a claim under PERA and Charging Party was granted an opportunity to file a written statement

explaining why the charge against the Union should not be dismissed prior to a hearing. Ellington did not file any response to the order.

Discussion and Conclusions of Law Regarding the Charge Against the Union:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. As with the charge against the Employer, the failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless Ellington alleges no facts indicating malice or improper motive on the part of the Union officials. A union does not breach its legal duty of fair representation merely by a delay in processing grievances, if the delay does not cause the grievance to be denied. *Service Employees International Union, Local 502*, 2002 MERC Lab Op 185. The fact that Ellington is dissatisfied with her union's efforts is insufficient to constitute a proper charge of a breach of the Union's duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Because a union's ultimate duty is to the membership as a whole, the Respondent Union has considerable discretion to decide how to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973). The Union's decision on how to proceed in a grievance case is not unlawful as long as it is not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. Likewise, a good faith tactical choice made by a Union, even if unsuccessful or, in retrospect unwise, does not support a claim that the union breached its duty. *Detroit Federation of Teachers*, 21 MPER 15 (2008).

Taking each factual allegation in the charge in the light most favorable to Charging Party, the allegations in CU09 D-013 do not state a claim against the Union under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

**RECOMMENDED ORDER**

The unfair labor practice charges are both dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

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