STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization-Respondent,

Case No. CU09 A-002

-and-

RONALD COOK,
Individual Charging Party.
_____/

APPEARANCES:

Ronald Cook, *In Propria Persona*

DECISION AND ORDER

On March 24, 2009, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was 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

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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:

Case No. CU09 A-002

TEAMSTERS LOCAL 214,
Respondent-Labor Organization,

-and-

CORRECTED

RONALD COOK,
An Individual Charging Party.
_____/

APPEARANCES:

Ronald Cook, appearing on his own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On January 28, 2009, Ronald Cook filed an unfair labor practice charge against his labor organization, Teamsters Local 214. 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.

In the charge, Cook complains that Union officers, including the president, chief stewards and business agents of Teamsters Local 214, are nonresponsive to the concerns of the membership because they are appointed to life-time positions. Cook seeks an order from the Commission requiring that Union officials be subject to term limitations. Cook further alleges that the Union violated PERA by failing to properly represent him in connection with a grievance which he filed against the City of Detroit on or about January 11, 2008. Cook contends that the City made a misstatement of fact in denying the grievance and that the Union failed to take action to discredit this erroneous information.

In an order dated February 27, 2009, I directed Charging Party to show cause why the charge should not be dismissed for failure to state a claim under PERA. Cook filed a timely response to the order to show cause on March 11, 2009. With respect to the Union's handling of the January 11, 2008 grievance, Cook essentially repeats the allegations set forth in the original charge. Cook also asserts, for the first time, that he was unfairly denied a promotion in October of 2007 and that the Union failed to take action on his behalf in connection with that decision.

According to the response, the Union refused to file a grievance on the basis that the position to which Cook sought promotion was not part of Respondent's bargaining unit.

Findings of Fact:

The following facts are derived from the unfair labor practice charge, the response to the order to show cause and attachments thereto. Charging Party is a construction equipment operator for the City of Detroit, Department of Water and Sewerage. He is assigned to the City's North Yard. On January 18, 2008, the Union filed a grievance asserting that Cook was improperly denied the opportunity to work overtime at the North Yard on January 11, 2008, despite the fact that he was qualified and available to work on that date. On May 28, 2008, the City denied the grievance on the ground that a more experienced, more senior employee assigned to the same yard was available to perform the work. Thereafter, the Union's grievance arbitration panel notified Charging Party that it would not process the grievance further.

On September 5, 2008, Cook appealed the decision of Respondent's grievance arbitration panel. Cook complained that the City had changed their justification for denying the grievance and that management had lied when it stated that a more senior employee assigned to the same yard was allowed to do the work. According to Charging Party, the employee who received the overtime, George Wadley, was assigned to the Central Yard rather than the North Yard. Charging Party further asserted that he was entitled to the overtime based upon a prior grievance decision.

In a letter dated December 11, 2008, Respondent notified Cook that his appeal had been denied. The letter stated, in pertinent part:

> Your appeal is based mainly on a January 2, 2006 Step Three Grievance answer concerning a different case, written by a former Superintendent of Maintenance and Repair, that said in part that maintenance and repair of the air valves and other structures on the water main from Lake Huron was assigned to the North Yard. However, the answer also says that this does not mandate the Employer to assign extra work to any particular water district or area of responsibility. The Panel did check with the Employer on where the employee who got the overtime assignment in question was assigned, and was told that while he was temporarily working out of class at the Central Yard, his permanent assignment was the North Yard. He is also the more senior employee.
>
> The panel also notes that neither the language in the contract nor the supplemental [agreement] supports your position.

Discussion and Conclusions of Law:

Having carefully reviewed the various pleadings filed in this matter, including the charge and attachments thereto, I conclude that Charging Party has not raised any timely issue cognizable 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. *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.

Charging Party contends that the Union breached its duty of fair representation by failing to discredit the City's assertion that the employee who received the overtime worked in the North Yard. I disagree. The Union filed a grievance on Charging Party's behalf and advanced that grievance to the third step of the contractual grievance procedure. Although Respondent ultimately decided not to process the grievance to arbitration, the record indicates that its decision was based on more than just the issue of work location. Rather, the Union concluded that the grievance had been properly denied because the other employee had more seniority, a fact which Cook does not dispute, and that Charging Party's position was not supported by either the language of the contract, the supplemental agreement or the 2006 grievance answer. Where a union and an employer concur as to the interpretation of the contract or other agreement, their construction governs. *Saginaw Valley State Univ*, 19 MPER 36 (2006); *City of Detroit*, 17 MPER 47 (2004); *City of Detroit, Wastewater Treatment Plant*, 1993 MERC Lab Op 716, 719. Although Charging Party apparently disagrees with the Union's reasoning and is dissatisfied with Respondent's decision not to process the grievance further, he has not plead any facts which suggest that its decision was arbitrary, discriminatory or made in bad faith.

In his response to the order to show cause, Cook asserts that he was unfairly denied a promotion in October of 2007 and that the Union acted unlawfully in failing to file a grievance in connection with that decision. Even if true, this allegation must also be dismissed on the basis that it was not timely filed with the Commission. Pursuant to Section 16(a) of PERA, 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 the instant case, Cook contends that he "immediately" contacted the Union after he was denied the promotion on October 27, 2007, and that Respondent refused to provide assistance. Clearly, Cook knew or should have known of the alleged unfair labor practice more than six months prior to the filing of the charge in this matter. Accordingly, I find any allegations pertaining to the Union's conduct in connection with the denial of the promotion to be time-barred under Section 16(a) of the Act.

Finally, the issue of whether Union officials should be subject to term limitations is an internal union matter outside the scope of PERA. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. This principle is derived from Section 10(3)(a)(i) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge in Case No. CU09 A-002 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 24, 2009