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

In the Matter of:

DETROIT ASSOCIATION OF EDUCATIONAL
OFFICE EMPLOYEES, LOCAL 4168,
Labor Organization-Respondent,

Case No. CU09 H-025

-and-

ELNORA CARTER,
An Individual-Charging Party.
_____/

APPEARANCES:

Elnora Carter, *In Propria Persona*

## DECISION AND ORDER

On September 30, 2009, Administrative Law Judge Doyle O'Connor 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

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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**

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-and-

ELNORA CARTER,
Individual Charging Party.
_____/

APPEARANCES:

Elnora Carter, 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 to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim and order for more definite statement of the claim.

The Unfair Labor Practice Charge:

On August 5, 2009, a Charge was filed in this matter by Elnora Carter asserting that the Detroit Association of Educational Office Employees, Local 4168 (the Union) had violated the Act, by failing in some unspecified way to represent the Charging Party, on unspecified dates. The charge in its entirety asserts: "*Unfair Practices (Labor Practices), Discrimination (age, color, gender), Inequality, Hardship, Pain and Suffering.*" Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, Charging Party was granted an opportunity to file a written statement explaining why the charges should not be dismissed prior to a hearing. Charging Party was cautioned that to avoid dismissal of the Charge, any response to that Order to Show Cause must provide a factual basis to proceed that establishes the existence of alleged discrimination in violation of PERA which occurred within six months of the filing of the charge.

Carter was further instructed that the response to the Order must, as expressly required by R 423.151(2), provide a clear and complete statement of the facts which allege a violation of PERA, and that she must factually address the following deficits in the Charge:

1. The date(s) of the alleged occurrences.
2. The date when Carter first became aware of the action, or inaction, by the Union which she claims was improper.
3. The names of each agent of the Union who is alleged to have engaged in the claimed improper conduct.
4. A factual description of the conduct that is alleged to violate the Act, including an explanation of what it is that the Union did, or did not do, which is claimed to be a breach of the Union's obligations.

Charging Party filed a timely response to the Order to Show Cause, which added additional detail to her claims. In particular, the response made clear that the complaints arose from at least two separate events, one apparently occurring in, or before, 2004 and the other related to a lay-off in the summer of 2009.[1] The response additionally reiterated Carter's assertion that the Employer had discriminated against her based on her age and gender. It was further asserted that the Union advised Carter on how to proceed regarding her complaints related to the lay-off of summer 2009. No facts were asserted regarding any discrimination on a basis covered by PERA, nor were facts alleged which, if proved, would establish a breach of any duty by the Union. Rather, the response to the Order reflects that the Union provided advice to Carter in August of 2009, which she asserts she followed with some success.

Discussion and Conclusions of Law:

Under PERA, the union's ultimate duty is toward the membership as a whole, rather than solely to any individual and therefore a union has the legal discretion to decide to pursue, or not pursue, particular grievances based on the general good of the membership even though that decision may conflict with the desires and interests of certain employees. *Lowe v Hotel & Restaurant Employees Union, Local 705,* 389 Mich 123, 145-146 (1973); *Lansing Sch Dist,* 1989 MERC Lab OP 210, 218, *aff'd* Mich App No. 116345 (March 26, 1991), *lv app den* 439 Mich 955 (1992).

A 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. For that reason, the Commission has "steadfastly refused to interject itself in judgment" over grievance decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint,* 1996 MERC Lab Op 1, 11. The fact that a member is dissatisfied with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc,* 2001 MERC Lab Op 131; *Wayne County DPW,* 1994 MERC Lab Op 855. The facts alleged in the Charge, as

[1] Charging Party filed a related Charge against her Employer, Detroit Public Schools. A similar order to show cause was issued in that matter, to which Charging Party filed the identical response. In neither case was oral argument requested. A separate Decision is being issued as to that matter.

further detailed in the response to the Order, do not provide any factual basis, if proved, on which a violation of the Act by the Union could be found, and the Charge is therefore deficient and subject to summary disposition.

Further, the Commission is without authority to review allegations arising from those events referred to in the response to the Order which arose in, or before, 2004. 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.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: September 30, 2009