STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1023,
Labor Organization-Respondent,

Case No. CU09 L-043

-and-

TAJAUANA BELL,
An Individual- Charging Party.
_____/

APPEARANCES:

Tajauana Bell, *In Propria Persona*

DECISION AND ORDER

On January 21, 2010, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent 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:

AFSCME COUNCIL 25, LOCAL 1023,
Respondent-Labor Organization, Case No. CU09 L-043

-and-

TAJAUANA BELL,
An Individual Charging Party.
_____/

APPEARANCES:

Tajauana Bell, Charging Party, appearing personally

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, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), on behalf of the Michigan Employment Relations Commission. 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.

The Unfair Labor Practice Charge and Findings of Fact:

On December 10, 2009, Tajauana Bell (Charging Party) filed a Charge against the AFSCME Council 25, Local 1023 (Union or Respondent). The Charge expressed dissatisfaction with the Union's response to a request by Bell that it pursue a grievance. It appeared that the allegations filed in the above matter did not properly state a claim under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge is therefore subject to dismissal without a hearing. For that reason, and pursuant to R423.165, Bell was ordered to show cause why the Charge should not be dismissed without further proceedings. Bell filed a timely response. The factual assertions in Bell's Charge and in her response to the order to show cause are presumed true for the purpose of determining if she has stated a claim under the Act.

Bell had been working for the City of Detroit as an apparently part-time life guard in the recreation department and sought and received an upgrade to a full-time emergency services phone operator position in March of 2008. By November of 2008, after several

disciplinary write-ups and an extension of her probationary period, Bell was demoted, or "reverted", to her former position and department based on the Employer's assertion that she had failed her extended probationary period in the new job. Bell sought assistance from the Union which represents emergency services operators, met with a Union representative on November 16, 2008, and was told unequivocally that there was nothing the Union could do for her regarding her failure to succeed as a probationary employee. Bell sought review by the Local Union President of that initial denial of assistance by the Union representative. Bell received a letter of May 7, 2009 by the Local Union president, again advising her that there was nothing the Union could, or would, do for her as there were no contractual grounds for a grievance.

The Charge in this matter was not filed until December 14, 2009, more than six months after both the initial November 2008 denial of assistance by the Union and the later reiteration of that denial by the Local Union president in May of 2009.

Discussion and Conclusions of Law:

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.

Section 16(a) of PERA states that "no complaint shall issue upon any unfair labor practice occurring more than 6 months prior to the filing of the Charge…". The statute of limitations is jurisdictional in nature and conclusively bars the finding of a violation where the action complained of occurred more than six months prior to filing a charge. *City of Detroit (Department of Public Works),* 2000 MERC Lab Op 149. The limitation period under PERA commences when the person knows of the act that caused his injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). In *City of Adrian*, 1970 MERC Lab Op 579, the Commission adopted the holding of the U.S. Supreme Court in *Local Lodge 142 v NLRB (Bryan Mfg Co)*, 362 US 411 (1960), which rejected the doctrine of a continuing violation if the inception of the violation occurred more than six months prior to the filing of the charge. Here, Bell did not file her Charge within six months of either the initial denial of assistance from the Union's workplace representative or the later reiteration of that denial by the Local Union president. All of the claims are barred by the statute of limitations, such that this agency has no authority to act further upon the claims by Bell.

Regardless, even if the matter had been pursued within the statute of limitations, Bell's claims would be subject to summary dismissal. 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. A union has considerable discretion to decide how, and even whether or not, to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (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.* 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. To pursue a charge against the union, charging party must allege and be prepared to prove that the union's conduct toward them was arbitrary, discriminatory or done in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). No facts have been alleged which, if proved, would even suggest that the Union had acted in anything other than the complete good faith belief that Bell's reversion to her former position did not result from a contractual violation.

The claims made by Bell are barred by the statute of limitations and must therefore be dismissed. Regardless, the allegations in the charge in this matter, even if proved, do not state a claim of a breach of the Union's duty of fair representation, and are, therefore, subject to dismissal, under R 423.165 (2)(d), for failure to state a claim upon which relief could be granted.

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: January 21, 2010