STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Public Employer- Respondent in Case No. C10 A-013,

-and-

AMERICAN FEDERATION OF TEACHERS, LOCAL 2000,
Labor Organization-Respondent in Case No. CU10 A-003,

-and-

DENNIS ELLIOTT SMITH,
An Individual-Charging Party.
_____/

APPEARANCES:

Bellanca, Beattie & DeLisle, P.C., by James C. Zeman, Esq., for the Public Employer

Law Offices of Mark H. Cousens, by Gillian H. Talwar, Esq., for the Labor Organization

Dennis Elliott Smith, *In Propria Persona*

DECISION AND ORDER

On March 25, 2010, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order 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

_____
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:

WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Respondent-Public Employer in C10 A-013,

-and-

CONSOLIDATED CASES
Case Nos. C10 A-013 & CU10 A-003

AMERICAN FEDERATION OF TEACHERS LOCAL 2000,
Respondent-Labor Organization in CU10 A-003,

-and-

DENNIS ELLIOTT SMITH,
An Individual Charging Party.
_____/

APPEARANCES:

Dennis Elliott Smith, Charging Party, appearing on his own behalf

Gillian H. Talwar, for the Respondent Union

James C. Zeman, for the Respondent Public Employer

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.

The Unfair Labor Practice Charges:

On January 19, 2010, Dennis Elliott Smith (Charging Party) filed separate but identical Charges against the Wayne County Community College District (WCCCD) (the Employer) and against the American Federation of Teachers (AFT) Local 2000 (the Union). The Charges assert that the Employer and the Union reached an agreement in

2003 to treat part-time faculty differently for seniority purposes, if they had previously retired through the Michigan Public Schools Employee Retirement System (MPSERS). It is also alleged that that agreement was not "rigidly enforced" until November 19, 2009. Rather than assert a violation of Public Employment Relations Act (PERA), the Charges expressly asked the question of whether an agreement between a Union and an Employer can designate a particular class of employees for different treatment.

It appeared that the allegations filed in the above matter did not properly state a claim under PERA, the statute that this agency enforces, and the charges were therefore subject to dismissal without a hearing. It additionally appeared that the allegations were barred by the six-month statute of limitations governing such claims. For those reasons, on January 26**,** 2010, pursuant to R 423.165(2)(d), the Charging Party was ordered to show cause within twenty-one days why the two charges should not be dismissed for failure to state claims upon which relief could be granted. In that Order, Charging Party was expressly cautioned that if the Charges and his response to the Order did not state valid claims, or if the Charges were not timely filed, or if he did not timely respond to the Order, a decision would be issued recommending that the Charges be dismissed without a hearing. Charging Party did not respond in any way to the Order, nor did he request an extension of time in which to reply.

The Charge and Findings of Fact Regarding the Employer:

On January 19, 2010, a Charge was filed in this matter asserting that the Employer had, in 2003, reached agreement with the Union on a particular method of treating part-time faculty who had retired under MPSERS. The order to show cause advised Charging Party that to avoid dismissal of the Charge, any response must provide a factual basis establishing the existence of alleged discrimination in violation of PERA and that it occurred within six-months of filing the charge. The Order also advised that a failure to timely respond would result in a recommended order of dismissal. No response was filed.

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, with respect to a public employer, PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting a 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 adoption of the policy about which Charging Party is complaining occurred in 2003 and the charge against the Employer is therefore untimely.

Taking each factual allegation in the charge in the light most favorable to Charging Party, the allegations in C10 A-013 do not state a claim against the Employer under PERA, the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

The Charge and Findings of Fact Regarding the Union:

On January 19, 2010, a Charge was filed in this matter asserting that the Union had, in 2003, reached agreement with the Employer on a particular method of treating part-time faculty who had retired under MPSERS.

The order to show cause advised Charging Party that to avoid dismissal of the Charge, the written response to the Order must assert facts that establish a violation of PERA, and that the response must describe who did what and when they did it, and explain why such actions constitute a violation of PERA. Charging Party was directed that he must, in his response, indicate when he first became aware of, or received a copy of, the agreement between the Employer and the Union that treated part-time faculty who were MPSERS retirees differently than other faculty. The order also advised that a failure to timely respond would result in a recommended order of dismissal. No response was filed.

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. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Similarly, Smith alleged no facts indicating malice or improper motive on the part of the Union officials. The facts alleged show only that Smith disagreed with the Union over the balancing of competing interests of different groups within the bargaining unit. The elected officials of a union have the right, and the obligation, to reach a good faith conclusion as to the proper goals to be secured in negotiating a collective bargaining agreement in a particular situation, and are expected, and entitled, to act on behalf of the greater good of the bargaining unit, even to the possible disadvantage 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); *City of Flint*, 1996 MERC Lab Op 1. See also, *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991).

Taking each factual allegation in the charge in the light most favorable to Charging Party, the allegations in CU10 A-003 do not state a claim against the Union under PERA, the statute that this agency enforces, and the charge against the Union is therefore subject to summary dismissal.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

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

Dated: March 25, 2010