STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer- Respondent in Case No. C10 C-088,

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 324,
Labor Organization- Respondent in Case No. CU10 C-013,

-and-

ALICE GIBSON, DAVIDA GREEN, ROKOLA BOND, DANIELLE ALFARO, GEORGE BASS, RONALD MARSHALL, WALTER WARE, JOHN HALL and JOHN WATKINS, JR.
Individual Charging Parties.
_____/

APPEARANCES:

Alice Gibson, Individual Charging Party, appearing on behalf of all Charging Parties

DECISION AND ORDER

On May 3, 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:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer,

Case Nos. C10 C-088 &
-and- CU10 C-013

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 324,
Respondent-Labor Organization,

-and-

ALICE GIBSON, DAVIDA GREEN, ROKOLA BOND, DANIELLE ALFARO, GEORGE BASS, RONALD MARSHALL, WALTER WARE, JOHN HALL and JOHN WATKINS, JR.
Individual Charging Parties.

_____/

APPEARANCES:

Alice Gibson, Individual Charging Party, appearing on behalf of all Charging Parties

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 as barred by the statute of limitations.

On March 31, 2010, two related charges were filed in this matter. The charge in case CU10 C-013 asserted that Respondent International Union of Operating Engineers Local 324 (the Union) violated its duty to fairly represent the nine individual Charging Parties by advising them that there was nothing further the Union could do to resolve disputes relating to an earlier contested layoff and grievance settlement. The second charge, filed against Respondent Detroit Public Schools (the Employer) in case C10 C-088, alleged that the Employer treated the nine individual Charging Parties unfairly regarding a layoff or termination of all nine which is alleged to have been effective November 3, 2008. There appeared to be an additional dispute over a

failure to pay employees properly after they achieved a particular level of training. There were documents attached to the Charge which appear to reflect a grievance settlement of some or all of the issues occurring in August of 2009. Pursuant to R 423.165(2)(d), the Charging Parties were ordered to explain in writing why the two Charges should not be dismissed without a hearing for failure to state claims upon which relief can be granted and as barred by the statute of limitations. The order expressly cautioned the Charging Parties that if the Charges and their response to the Order did not state valid claims, a decision recommending that the Charges be dismissed without a hearing would be issued, and that pursuant to MERC Rule R 423.176, Charging Parties would have the right to file exceptions to that recommended dismissal. A timely response to the order was filed. Charging Parties did not request oral argument. The allegations of fact in the original charge and in the response to the order to show cause are accepted as true for purposes of this Decision and Recommended Order.

The Charge and Findings of Fact Regarding the Employer:

The March 2010, Charge against the Employer challenged as improper a 2008 layoff of certain employees and a failure to pay certain employees at the proper rate of pay. There were additional allegations related to an August 2009 grievance settlement which resulted in a substantial backpay award paid on September 11, 2009, to many, but apparently not all, employees who claimed to have been adversely affected. The order to show cause advised Charging Parties that to avoid dismissal of the Charge, any response must provide a factual basis establishing the existence of alleged discrimination in violation of PERA which occurred within six-months of filing the charge. The response to the order acknowledged that the disputed events all occurred beyond the statute of limitations. The response to the order raised only breach of contract type claims against the Employer, and did not assert any basis for a claimed violation of PERA as to the Employer.

Discussion and Conclusions of Law Regarding the Charge Against the 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 and it is there for subject to summary disposition.

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 all occurred more than six months prior to the filing of the charge. Therefore the charge is untimely.

Taking each factual allegation in the charge and in the response to the order in the light most favorable to the Charging Parties, the allegations in C10 C-088 are outside the statute of limitations and do not state claims 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.

The Charge and Findings of Fact Regarding the Union:

The March 31, 2010, charge alleged that the Union failed to secure all of the relief sought by the Charging Parties, although the documents submitted with the Charge, as well as the response to the order, establish that a grievance settlement was secured which included backpay of over $140,000 for some employees. A second grievance apparently resulted in the payment of an additional $34,000 to some employees. The grievances were settled in August of 2009, with the checks reflecting those payments distributed at a Union general membership meeting held on September 11, 2009. The charge was filed more than six months later, as is acknowledged in the response to the order to show cause.

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

As with the charge against the Employer, 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 complained of events all occurred more than six months prior to the filing of the charge and the charge is therefore untimely.

Moreover, even were the charge timely filed, a union's ultimate duty is toward the membership as a whole, rather than solely to any individual, or sub-group of individuals, and therefore a union has the legal discretion to decide to pursue, not pursue, or to settle, 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). 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. 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 the Charging Parties are dissatisfied with their Union's efforts or ultimate decision on these particular grievance disputes 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. Allegations in a complaint for a breach of a union's duty of fair

representation must contain more than conclusory statements alleging improper representation. *Martin v Shiawassee County Bd of Commrs*, 109 Mich App 32 (1981); *Wayne County Dept Public Health*, 1998 MERC Lab Op 590, 600 (no exceptions); *Lansing School District*, 1998 MERC Lab Op 403.

The charge and the response to the order do not allege any facts indicating malice or improper motive on the part of the Union officials. The facts alleged show only that the Union settled the grievance on terms favorable to many, but apparently not all, employees who believed they were entitled to relief. The elected officials of a union have the right, and the obligation, to reach a good faith conclusion as to the proper interpretation of the 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 disadvantage of certain employees. *City of Flint*, 1996 MERC Lab Op 1. See, also, *IUOE Local 324*, 23 MPER 17 (2010). The facts alleged in the Charge, as further detailed in the response to the Order, do not provide any factual basis, if proven, on which a violation of the Act by the Union could be found. Therefore, the Charge is deficient and subject to summary disposition.

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 CU10 C-013 do not state claims against the Union under PERA, the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

RECOMMENDED ORDER

The unfair labor practice charges against the Employer and the Union are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

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

Dated: May 3, 2010