STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MASON COUNTY ROAD COMMISSION,
Public Employer- Respondent in Case No. C10 C-083,

-and-

TEAMSTERS, LOCAL 214,
Labor Organization- Respondent in Case No. CU10 C-011,

-and-

GREGORY COLLINS,
An Individual Charging Party.
_____/

APPEARANCES:

Michael R. Kluck & Associates, by Thomas H. Derderian, for the Public Employer

Pinsky, Smith, Fayette & Kennedy, L.L.P., by Michael L. Fayette, for the Labor Organization

Gregory Collins, *In Propria Persona*

DECISION AND ORDER

On May 28, 2010, Administrative Law Judge David M. Peltz 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

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

Dated: _____

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Eugene Lumberg, Commission Member

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

MASON COUNTY ROAD COMMISSION,
Respondent-Public Employer in Case No. C10 C-083,

-and-

TEAMSTERS LOCAL 214,
Respondent-Labor Organization in Case No. CU10 C-011,

-and-

GREG COLLINS,
An Individual Charging Party.
_____/

APPEARANCES:

Greg Collins, appearing on his own behalf

Michael R. Kluck & Associates, by Thomas H. Derderian, for the Public Employer

Pinsky, Smith, Fayette & Kennedy, LLP, by Michael L. Fayette, for the Labor Organization

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On March 27, 2010, Greg Collins filed unfair labor practice charges against his employer, Mason County Road Commission, and his Union, 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) for the State Office of Administrative Hearings & Rules, acting on behalf of the Michigan Employment Relations Commission.

Background:

Collins has previously filed multiple charges against the Mason County Road Commission and Teamsters Local 214, all of which were dismissed. See Case No. C06 B-033, in which the Commission adopted the ALJ's decision dismissing a charge alleging that the Employer discriminated against Collins for engaging in protected concerted activity. In that

matter, Collins was expressly cautioned by ALJ Julia C. Stern regarding the minimum pleading requirements set forth in Rule 151(2)(b), 2002 AACS 423.151(2)(b), of the General Rules and Regulations of the Employment Relations Commission. See also C07 L-280 (charge dismissed on the ground that Collins had failed to establish anti-union discrimination on the part of the road commission).

In separate orders issued on May 14, 2010, the Commission affirmed ALJ Doyle O'Connor's decision recommending summary dismissal of unfair labor practice charges filed by Collins on March 10, 2009 against the road commission, Case No. C09 C-033, and the Union, Case No. CU09 C-009. The charge against the Employer alleged, in its entirety, "American Disability Act, not following my Doctor's orders." With respect to the Union, the charge stated, "Not representing me fairly. Violating the oath of office by my business agent and withholding evidence." The ALJ concluded that neither charge satisfied the Commission's minimum pleading requirements, and that Collins had failed to assert any claim upon which relief could be granted under PERA.

The Instant Charge:

Collins filed the instant charges while his exceptions were pending in the cases before ALJ O'Connor. The "new" allegations are essentially identical to those set forth in the prior proceedings. The charge against the Employer in Case No. C10 C-083 states, "American Disability Act, not following all doctors orders. When the company doctors have me on 35 lbs restrictions. Can do my classification which is truck driving and sign tech." With respect to the Union, the charge in Case No. CU10 C-011 asserts, "Not representing me fairly. Violating these [sic] oath of office by the business agent withholding evidence [a]nd not making the Mason County Road Commission follow the seniority and pay scale."

In an order issued on April 23, 2010, I directed Charging Party to show cause why the charges should not be dismissed for failure to state claims under PERA. Charging Party was ordered to provide factual support for his allegations and cautioned that a decision recommending dismissal of the charges would be issued without a hearing if his response to the order did not state valid and timely claims under the Act. The order specifically directed Charging Party to respond to a series of questions, including identification of the date of the alleged unlawful occurrences, an explanation of the remedy requested for each claimed violation of the Act and a statement as to why the instant charges should not be dismissed pursuant to the doctrines of res judicata and collateral estoppel.

Charging Party filed a response to the order to show cause on May 6, 2010 in which he provided some additional details concerning his discharge, but essentially repeated the same substantive allegations set forth in the original charges. In the response, Collins asserts that the Employer discriminated against him on the basis of his age and disability and retaliated against him for "winning [his] unemployment benefits." Collins alleges that representatives of the Union are "helping the Road Commission, instead of a union member that has been paying dues for fourteen years. According to Collins' response, the allegedly unlawful conduct occurred on June 28, 2009. Oral argument on the order to show cause was not requested by any of the parties to this proceeding.

Discussion and Conclusions of Law:

Accepting all of Collins' allegations as true, dismissal of the charges on summary disposition is warranted. First, I find that the charges are bared by the doctrine of res judicata based on the prior decisions issued by the Commission in Case Nos. C09 C-033 and CU09 C-009 in which Charging Party asserted identical claims.[1] Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. *Eaton Co Ed of Co Rd Comm'rs v Schultz*, 205 Mich 371, 375 (1994). A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Id.* at 375-376. The doctrine bars all matters that with due diligence should have been raised in the earlier action. *Estes v Titus*, 481 Mich 573, 585 (2008). The granting of a motion for summary disposition generally constitutes an adjudication of the merits. See e.g. *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 510 (2004) ("[A] summary disposition ruling is the procedural equivalent of a trial on the merits that bars relitigation on principles of res judicata.").

The charges must also be dismissed as untimely under Section 16(a) of the Act. Pursuant to Section 16(a), no complaint may issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. 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 order to show cause, Collins was directed to set forth the date(s) of the alleged occurrences. Collins responded by asserting that the unlawful conduct occurred on June 28, 2009, approximately nine months before the filing of the charges in this matter. Accordingly, the charges must be dismissed as untimely.

Even assuming arguendo that the charges were timely filed, dismissal of the charge against the Employer in Case No. C10 C-083 is nonetheless warranted on the basis that Collins has failed to state claims upon which relief can be granted under PERA. The Act does not prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. Rather, the Commission's jurisdiction with respect to public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in union or other protected concerted activities. The charge against the road commission does not provide a factual basis which would support a finding that Collins engaged in union activities for which he was subjected to discrimination or retaliation in violation of the Act. Absent such an allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the employer's action. Thus, dismissal of the charge against the Employer in Case No. C10 C-083 is warranted.

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[1] Although Collins contends that the instant charges are based on conduct which occurred on June 28, 2009, more than three months after the charges in the prior proceedings were filed, the substantive allegations appear to be identical in all material respects.

Similarly, the charge against the Union in Case No. CU10 C-011 must also be dismissed for failure to state a claim under the Act. 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. *Vaca v Sipes*, 386 US 171 (1967); *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); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1.

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. Beyond the conclusory assertion that the Union withheld evidence and did not enforce "seniority and pay scale", there is no factually supported allegation which, if true, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Charging Party.

For all of the above reasons, I hereby recommend that the Commission issue an order dismissing the charges.

RECOMMENDED ORDER

The unfair labor practice charges in Case Nos. C10 C-083 and CU10 C-011 are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____