STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent in Case No. C09 C-047,

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 547,
Labor Organization-Respondent in Case No. CU09 C-011,

-and-

DARRYL L. HARRIS,
An Individual Charging Party.
_____/

APPEARANCES:

Darryl L. Harris, *In Propria Persona*

DECISION AND ORDER

On June 2, 2009, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order on Summary Disposition 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:

CITY OF DETROIT,
Respondent-Public Employer in Case No. C09 C-047,

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 547,
Respondent-Labor Organization in Case No. CU09 C-011,

-and-

DARRYL L. HARRIS,
An Individual Charging Party.
_____/

APPEARANCES:

Darryl L. Harris, appearing on his own behalf

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On March 31, 2009, Darryl L. Harris filed unfair labor practice charges against his employer, the City of Detroit (hereinafter "the City"), and against his Union, the International Union of Operating Engineers, Local 547 (hereinafter "IUOE" or "the Union"). 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.

In Case No. C09 C-047, Harris alleges that the City has been acting in violation of its collective bargaining agreement with the Union since May of 2007 by scheduling its engineers to work out of class. In Case No. CU09 C-011, Harris asserts that the Union failed to represent him fairly in connection with a grievance pertaining to this issue.

In an order issued on April 30, 2009, I directed Charging Party to show cause why the charges should not be dismissed as untimely and for failure to state a claim under PERA. Charging Party did not file a response to that order.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, accepting all of the allegations in the charges as true, dismissal of the charges on summary disposition is warranted.

Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any alleged unfair labor practice occurring more than six months prior to the filing of the charge with the Commission and the service of the charge upon each of the named respondents. The Commission has consistently held that 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 instant case, Harris contends that the breach of contract by the City has been ongoing since May of 2007 and that the Union notified him on or before November of 2007 that the grievance had been denied. Accordingly, the charges against both the City and the Union must be dismissed as untimely under Section 16(a) of the Act.

The charge against the City in Case No. C09 C-047 also fails to state a claim 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 City does not provide a factual basis which would support a finding that Harris 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 City in Case No. C09 C-047 is warranted.

Similarly, the charge against the IUOE in Case No. CU09 C-011 must also be dismissed for failure to state a claim under PERA. 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. In the instant case, there is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Harris.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C09 C-047 and CU09 C-001 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

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

Dated: June 2, 2009