**STATE OF MICHIGAN**
**EMPLOYMENT RELATIONS COMMISSION**
**LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,
Public Employer-Respondent in Case No. C08 C-055,

-and-

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 17,
Labor Organization-Respondent in Case No. CU08 C-014,

-and-

JONATHAN STEINAKER
An Individual-Charging Party.
_____/

APPEARANCES:

Sachs Waldman, P.C., by George H. Kruszewski, Esq., for the Labor Organization

Jonathan Steinaker, *In Propria Persona*

## DECISION AND ORDER

On October 10, 2008, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matters recommending dismissal of the charges filed by Charging Party, Jonathan Steinaker, against the Respondents, the City of Detroit (Employer), and the International Brotherhood of Electrical Workers, Local 17 (Union). The ALJ found that the charges did not state claims upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.201- 423.217. The ALJ also concluded that the charges, including a claim of harassment and retaliation by the Employer's agent, were barred by the six-month statute of limitations pursuant to Section 16(a) of PERA, MCL 423.216(a). The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On October 30, 2008, Charging Party filed exceptions to the ALJ's decision, to which neither Respondent filed a response.

In his exceptions, Charging Party contends that the action against the Employer should continue to hearing since the Employer did not request dismissal of the charge against it. He also argues that the discrimination and retaliation claim against the Employer is timely because his amended charge and show cause responses seek to expand on allegations contained in the original charge. Finally, Charging Party contends that the claim against the Union is timely since he filed the charge shortly after the labor organization concluded its handling of his internal grievance. We have thoroughly reviewed Charging Party's exceptions as to each charge and find them to be without merit.

Factual Summary:

The facts were set forth fully in the ALJ's Decision and Recommended Order and will not be repeated here, except where necessary. For the purpose of reviewing the ALJ's conclusions on the motion for summary disposition, we accept as true Charging Party's allegations as contained in the record.

Charging Party has been employed by Respondent Employer since 1986. Early in 2007, he learned of recent instances in which a few employees had received promotions or temporary assignments ahead of more senior qualified staff because time worked by these promoted employees during their apprenticeship period had been improperly added into their seniority calculations.[1] On March 27, 2007, Charging Party filed a grievance on behalf of himself and other eligible bargaining unit members challenging the Employer's failure to provide updated seniority lists as required by the master labor agreement. On February 21, 2008, Charging Party learned that the Union had concluded its processing of this grievance.

On March 21, 2008, Charging Party filed unfair labor practice charges against the Respondents asserting that the Employer violated the collective bargaining agreement, and that the Union breached its duty of fair representation. He also alleged that both Respondents acted discriminatorily by allowing some workers with apprenticeship hours to receive promotions in a manner contrary to the seniority rights rules under the collective bargaining agreement. On July 13, 2008, the Union filed for summary dismissal of the charge against it contending that the allegations failed to state a claim under PERA, and that no material issues were in dispute since the "posting issue" had resolved favorably by April 16, 2008 with the posting of an updated seniority list from the Employer. On August 11, 2008, the ALJ issued an order to show cause requiring Charging Party to explain why the charges should not be dismissed for untimeliness and failure to state a claim under PERA.

On August 25, 2008, Charging Party filed a combined amended charge and show cause response, again claiming that both Respondents acted discriminatorily by denying seniority based promotions to eligible bargaining unit members. He also alleged instances of harassment and retaliation from his supervisor that culminated in his removal as temporary cable crew

[1] Charging Party states that the practice of adding apprentice time to seniority accruals was challenged as far back as 1977. However, he notes that a letter dated November 26, 1997 indicates the issue was resolved and employees having apprentice hours were informed that the practice would stop as it violated the collective bargaining agreement.

foreman on or about September 24, 2007. Other details of retaliatory mistreatment included excessive criticism, micromanaging of job assignments, as well as, receiving negative performance evaluations based on false accusations of equipment breakdowns.

Discussion and Conclusions of Law:

We concur with the ALJ's conclusion that the complaint against the Employer for not posting the seniority lists is time barred from relief under PERA. A claim filed more than six months after the alleged unfair labor practice falls outside of jurisdiction of this Commission, making summary dismissal appropriate. *Shiawassee Co Road Comm*, 1978 MERC Lab Op 1182**.** Also, the processing of an internal grievance will not toll the limitations period for claims of unfair labor practices by a public employer. *Troy Sch Dist*, 16 MPER 34 (2003). Charging Party's own pleadings establish that he knew of the alleged posting violations at least at the time he filed his internal grievance with the Union on March 27, 2007. However, he did not file his charge against the Employer until March 21, 2008, well past the six month limitations period under Section 16(a) of PERA. Further, allegations by an individual party that an employer has violated terms of a collective bargaining agreement, without more, do not state a claim under PERA. *Detroit Bd of Ed*, 1995 MERC Lab Op 75, 78; *Wayne Co Cmty College*, 1985 MERC Lab Op 930.

We also find that the amended charge of August 25, 2008 raises a new allegation of retaliation not contained in the original charge that complained of contract violations by the Employer. As such, this new assertion does not relate back to the initial filing date of March 21, 2008. Charging Party alleges various instances of "harassment" and retaliation by his supervisor that eventually led to his removal as temporary foreman in late September 2007. However, the complaint of this adverse treatment was first filed eleven months later in his amended charge and show cause response. As such, this new claim is barred from relief under Section 16(a). Accordingly, we agree with the ALJ's conclusion that all claims against the Employer must be dismissed.

As to the matter against the Union, we also agree with the ALJ that the charge is time barred and fails to state a valid claim under PERA. A union has considerable discretion in deciding whether or not to pursue a grievance (*Michigan State Univ Admin-Prof'l Ass'n, MEA/NEA*, 20 MPER 45 (2007)), so long as its decision is not arbitrary, discriminatory or in bad faith. *Silbert v Lakeview Ed Ass'n*, 187 Mich App 21, 466 NW2d 333 (1991). In fact, a member's disagreement with the withdrawal of a grievance, alone, does not give rise to a charge of breach of the duty of fair representation. *American Federation of Teacher*s, *Local 2000*, 22 MPER 21 (2009). Charging Party alleges that the Union failed to aggressively process his grievance regarding the posting of the seniority lists. However, without objection from Charging Party, the Union asserts that the internal grievance was resolved in its favor a short time after the filing of the charge in this matter. While Charging Party may believe that faster results would have been possible had the Union utilized different methods, we can not make that determination. Furthermore, a union does not breach its statutory duty of fair representation merely by a delay in the processing of a grievance, if that delay does not cause the grievance to be denied. *Teamsters Local 214*, 1995 MERC Lab Op 185, 189.

This Commission also rejects Charging Party's contention that summary disposition is only proper when specifically requested by a party. Under Rule 165(1) of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165(1), "[an] administrative law judge designated by the Commission may, on its own motion . . . order dismissal of a charge or issue a ruling in favor of the charging party." (Emphasis added). As such, an ALJ may recommend summary disposition, either *sua sponte* or at the request of a party.

Finally, all other arguments presented by Charging Party have been considered and would not change the results in this case. Therefore, we adopt the ALJ's Decision and Recommended Order dismissing all charges on summary disposition.

## ORDER

The charges in both cases are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
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**

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JONATHAN STEINAKER,
An Individual Charging Party.
_____/

APPEARANCES:

Jonathan Steinaker, appearing on his own behalf

Miller Cohen PLC, by Bruce A. Miller, for the Labor Organization

## DECISION AND RECOMMENDED ORDER 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 David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission.

This matter comes before the Commission on unfair labor practice charges initially filed by Jonathan Steinaker on March 21, 2008, against the City of Detroit and the International Brotherhood of Electrical Workers (IBEW), Local 17. In his original charges, Steinaker asserted that the City and the Union acted unlawfully by conspiring to deny him and other employees their contractual rights. Specifically, Steinaker alleged that the City, with the acquiescence of the IBEW, improperly added apprentice time to journeyman time for seniority purposes. In addition, Charging Party asserted that the City failed to post an accurate copy of the seniority list for the journeyman cable splicer position and that the Union acted negligently in failing to demand production of the list.

On July 31, 2008, Respondent IBEW filed a motion seeking dismissal of the Charge against it in Case No. CU08 C-014. In an order issued on August 11, 2008, I directed Steinaker to show cause why both of the charges should not be dismissed for failure to state claims under PERA. Charging Party filed a response on August 25, 2008, along with an amended unfair labor practice charge. In his Amended Charge, Steinaker alleged, for the first time, that he was subjected to retaliation and harassment at the hands of another City employee, Gary Reich.

On September 10, 2008, I issued an order directing Steinaker to file a supplemental brief addressing the issue of whether Reich was acting as an agent the City or the Union at the time of the alleged harassment. Charging Party filed his supplemental response on September 23, 2008. In his response, Charging Party alleged that his relationship with Reich has been "less than cordial" since 1988, and that Reich became "angry and afraid" and began harassing Steinaker in March of 2007. Charging Party contends that this harassment culminated on or about September 24, 2007, when Reich prevented him from working as acting cable crew foreman. According to Charging Party, Reich was functioning as an agent of the City of Detroit when the harassment occurred.

Having carefully reviewed the pleadings and briefs filed by Steinaker in this matter, I conclude that dismissal of the charges in these consolidated cases is warranted. Charging Party contends that the City violated PERA by failing to post a copy of the seniority list for the journeyman cable splicer position. Such an allegation does not state a claim under the Act. PERA does not require that a public employer post copies of seniority lists or any other such documents. Even if the posting of a seniority list was mandated by the collective bargaining agreement between the City and the IBEW, as Charging Party contends, an individual employee has no standing under PERA to enforce a contractual right, as such a claim can only be brought by a labor organization acting in its capacity as the employees' exclusive bargaining representative. See e.g. *City of Detroit (Bld & Safety Engineering)*, 1998 MERC Lab Op 359, 366; *Oakland University*, 1996 MERC Lap Op 338, 342-343; *Detroit Fire Dep't*, 1995 MERC Lab Op 604, 613-615; *AFSCME Council 25*, 1994 MERC Lab Op 195; *Detroit Pub Sch*, 1985 MERC Lab Op 789, 791-793; *Oakland County (Sheriff's Dep't)*, 1983 MERC Lab Op 538 542, enf'd Mich App Docket No. 72277 (December 6, 1984).

I also find no merit to Charging Party's contention that IBEW, Local 17 violated PERA by failing to timely advance a grievance concerning the posting of the seniority list. It is well established that a union does not breach its duty of fair representation under the Act merely by a delay in processing grievances, as long as the delay does not cause the grievance to be denied. *Service Employees International Union, Local 502*, 2002 MERC Lab Op 185; UAW Local 2071, 1982 MERC Lab Op 1434, 1440. In the instant case, there is no suggestion that the alleged delay by the Union resulted in a denial of the grievance. In fact, Charging Party does not dispute the assertion of IBEW, Local 17 that the grievance pertaining to the posting of the seniority list has since been resolved and that the City posted the list on or about April 16, 2008.

Charging Party further contends that the City and the Union conspired to deny him and other employees their contractual rights by failing to post the seniority list and by improperly calculating seniority for purposes of promotions, shift preference, overtime and other working conditions. Even assuming arguendo that a conspiracy between an employer and a labor

organization of the sort alleged here constitutes a valid claim under PERA, such an allegation would nonetheless be untimely under Section 16(a) of the Act. Pursuant to Section 16(a), no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. 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).

According to the charges and other pleadings filed by Steinaker in this matter, the City has been violating the contract's seniority provisions since at least 1977. Charging Party admits that he was aware of this practice in 1997, when he and other employees requested that the City and the Union take action to correct "illegal apprentice seniority additions" and provide the membership with a proper seniority list. Furthermore, Steinaker concedes that he filed a grievance on March 20, 2007 regarding the City's alleged failure to post a seniority list. Yet, he did not file the instant charges until March 21, 2008. Clearly, Charging Party knew or should have known of the alleged PERA violations by the Employer and the Union more than six months prior to the filing of the instant charge. Although Steinaker contends that the charges should not be barred by the six-month statute of limitations because this matter involves an "ongoing dispute", the Commission has rejected this sort of continuing violation argument. *City of Adrian*, 1970 MERC Lab Op 579, 581, adopting the U.S. Supreme Court ruling in *Local Lodge 1424, Machinists v NLRB (Bryan Mfg Co)*, 362 US 411 (1960). See also *County of Lapeer*, 19 MPER 45 (2006); *Detroit Bd of Ed*, 16 MPER 29 (2003); *City of Flint*, 1996 MERC Lab Op 1, 9-11. Thus, Steinaker's charges relating to alleged violations of the contract's seniority provisions are untimely.

Similarly, Steinaker's claim that he was harassed by fellow employee, Gary Reich, is also untimely. The charges which Steinaker originally filed in this matter contained no allegations of harassment or retaliation. It was not until Steinaker filed his Amended Charge on August 25, 2008 that he first made reference to Reich's allegedly unlawful conduct on behalf of the City. The most recent act of harassment or retaliation cited by Charging Party in the amended charge occurred on September 24, 2007, when Reich allegedly prevented Steinaker from working as acting cable crew foreman. Since the Amended Charge was filed more than six months after that date, and because the allegations of harassment did not arise out of the same conduct, transaction or occurrence as those set forth in the original charges, the allegations involving Reich must also be dismissed as untimely under Section 16(a) of PERA.

Accepting as true all of the allegations set forth by Steinaker in the charges and other pleadings, I conclude that Charging Party has failed to state valid claims upon which relief can be granted under PERA and that the charges are untimely under Section 16(a) of the Act. Accordingly, I recommend that the Commission issue the order set forth below.

## RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C08 C-055 and CU08 C-014 be dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: October 10, 2008