STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent,

Case No. CU10 J-042

- and -

JOHN PARKINSON,
An Individual Charging Party.
_____/

APPEARANCES:

Michigan Education Association, by Jeffrey C. Murphy, for Respondent

John Parkinson, *In Propria Persona*

DECISION AND ORDER

On February 8, 2011, Administrative Law Judge David M. Peltz issued a Decision and Recommended Order in the above matter finding that Respondent 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

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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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JOHN PARKINSON,
An Individual Charging Party.
_____/

APPEARANCES:

John Parkinson, appearing on his own behalf

Jeff Murphy, Staff Attorney, for Respondent

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 David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge and Order to Show Cause:

On October 22, 2010, John Parkinson filed an unfair labor practice charge against his Union, the Michigan Education Association. In the charge, Parkinson, a former teacher with a school district in the metropolitan Detroit area, complains that the Union breached its duty of fair representation by refusing to challenge "arbitrary conduct" by the district, refusing to file grievances and failing to administer the collective bargaining agreement between the Union and the employer. The charge refers to various incidents which allegedly occurred over a ten year period beginning in 1999. The latest event described in the charge purportedly occurred sometime during the 2009 to 2010 school year.

In an order issued on October 29, 2010, I directed Parkinson to show cause why the charge should not be dismissed as untimely under Section 16(a) of PERA and for failure to state a claim upon which relief can be granted under the Act. Charging Party was specifically directed to describe who did what and when they did it, and explain why such actions constitute a violation of PERA, with consideration given to the legal principles set forth in the order. Parkinson was further directed

to set forth the specific remedy he is seeking in connection with this matter. Parkinson was instructed that the charge would be dismissed without a hearing if the response to the order did not state a valid and timely claim upon which relief could be granted under the Act. Charging Party filed a response to the order to show cause on November 19, 2010.

The following facts are derived from the allegations contained within the unfair labor practice charge, Parkinson's response to the order to show cause and the documentation attached thereto, and are accepted as true for purposes of determining whether dismissal of the charge on summary disposition is appropriate.

Charging Party was demoted from his position as a full-time music teacher in June of 2009 following his disclosure of wrongdoing by the school district. The Union took no action with respect to his demotion. On or about February 2, 2010, Charging Party wrote to the Union seeking advice on various issues relating to his employment, including matters involving discipline and scheduling. The Union responded to each of Parkinson's concerns by e-mail the following day. With respect to several of the issues, the Union suggested that Parkinson contact a building representative for the purpose of filing a grievance.

On March 30, 2010, Charging Party went on an extended sick leave due to job-related stress. Prior to the start of the following school year, Charging Party contacted the Union requesting information pertaining to the grievance procedure. In an e-mail to Parkinson dated August 27, 2010, the Union indicated that it could no longer hope to achieve a resolution of contract disputes by filing grievances because the school district had terminated Respondent's right to binding arbitration following the expiration of the collective bargaining agreement on or about August 11, 2010.

On September 2, 2010, the psychologist treating Charging Party wrote a letter to the school district in which she opined that Parkinson "is not yet able to return to work, and that to do so at this time would jeopardize his mental/emotional health and quite possibly compromise his physical condition in the process. [C]ontinuation on medical leave with the support available through Sick Bank Days is warranted." The psychologist concluded the letter by recommending that Parkinson remain on leave through November 21, 2010, at which time his situation could once again be reviewed.

Despite the psychologist's recommendation, Charging Party informed the Union by e-mail that he wished to return to work "as soon as possible" provided that several employment-related concerns could be addressed. The Union responded by advising Parkinson to remain on sick leave. After his sick leave ran out, Parkinson entered into a separation agreement with the school district pursuant to which he resigned his employment effective October 21, 2010.

In his response to the order to show cause, Charging Party contends that his resignation was a direct result of the Union's failure to take action on his behalf following his June 2009 demotion. Specifically, Charging Party writes "None of this would have happened if [the] MEA would have enforced the Teachers Contract and PERA Laws, when I was forced from my full time position to a part time position on June 4, 2009." As a remedy, Parkinson requests that the Commission order the Union to pay him the equivalent of a full-time teacher salary for each of the additional fourteen years

he would have worked from the date of his resignation through his anticipated retirement at age sixty-five.

Discussion and Conclusions of Law:

Accepting all of Charging Party's well-pleaded allegations as true, I find that dismissal of the charge on summary disposition is warranted. Pursuant to Section 16(a), 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. 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, Parkinson did not file his charge with the Commission until October 22, 2010. Given Parkinson's assertion that his resignation the previous day was a direct and proximate result of the Union's earlier failure to enforce the contract at the time of his demotion, it appears the charge should be dismissed in its entirety on the basis that it is time-barred. At a minimum, however, I find that any allegations pertaining to the June 2009 demotion or issues involving the Union's response to Parkinson's February 2010 e-mail inquiry were untimely filed pursuant to Section 16(a) of the Act.1

With respect to the remaining allegations set forth by Parkinson in this matter, I find that the charge and response to the order to show cause fail to state any claim upon which relief can be granted 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. The union's ultimate duty is toward the membership as a whole, rather than solely to any individual. The union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729.

The Commission has "steadfastly refused to interject itself in judgments" over grievances and other decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab Op 1, 11. The Union's decision on how to proceed 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

1 In his response to the order to show cause, Parkinson alleges that he was advised by "MERC offices" to wait for the conclusion of other litigation before filing an unfair labor practice charge with the Commission. Parkinson does not identify the individual(s) who purportedly made this recommendation and, regardless, such erroneous information would not serve to toll the limitations period under Section 16(a) of the Act. As noted, the limitations period is jurisdictional and cannot be waived. *Huntington Woods, supra*.

MERC Lab Op 31, 34-35. The mere fact that a member is dissatisfied with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. To prevail on a claim of unfair representation, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public School District*, 201 Mich App 480, 488 (1993).

In the instant case, Charging Party has failed to set forth any factually supported allegation which would establish that the Union breached its duty to fairly represent him. Despite Charging Party's assertions to the contrary, the Union accurately summarized the law with respect to the grievance arbitration process in its August 27, 2010, e-mail. Arbitration is a recognized exception to the general rule that an employer has a statutory duty to maintain existing terms and conditions of employment after the expiration of a collective bargaining agreement. *Gibraltar Sch Dist v Gibraltar MESPA-Transp*, 443 Mich 326, 335-346 (1993). Where a grievance has been filed after a contract's expiration and in the absence of contract language providing that the arbitration provisions extend beyond the life of the contract, an employer may lawfully refuse to arbitrate a grievance over issues such as whether a discharge was in compliance with contractual just cause requirements. *Ottawa Co v Jaklinski*, 423 Mich 1 (1985). See also *Lake County and Lake County Sheriff*, 22 MPER 59 (2009). Charging Party further contends that the Union acted unlawfully in recommending that he remain on sick leave at the start of the 2010-2011 school year. Given that the psychologist treating Parkinson recommended that he remain off work through November 21, 2010, I find no basis upon which to conclude that the Union's advice was so far outside a wide range of reasonableness as to be irrational.

Although Charging Party takes exception to the representation he received from the Union, there is no factually supported allegation which, if true, would establish that Respondent was hostile to Parkinson, that it treated him differently than other bargaining unit members or that it acted arbitrarily, discriminatorily or in bad faith in any respect in its dealings with Parkinson during the six months preceding the filing of the charge. Thus, I conclude that the charge must be dismissed for failure to state a claim upon which relief can be granted under PERA and recommend that the Commission issue the following order.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: February 8, 2011