STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

PONTIAC, CITY OF,
Public Employer- Respondent in Case No. C10 K-287,

-and-

TEAMSTERS LOCAL 214
Respondent- Labor Organization in Case No. CU10 K-046,

-and-

ROSE M WILSON,
An Individual Charging Party.
_____/

APPEARANCES:

Law Office of Wayne A. Rudell, PLC, by Wayne A. Rudell, for Respondent-Labor Organization

Rose M. Wilson, *In Propria Persona*

DECISION AND ORDER

On March 16, 2011, Administrative Law Judge David M. Peltz issued a 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

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Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

CITY OF PONTIAC,
Respondent-Public Employer in Case No. C10 K-287,

-and-

TEAMSTERS LOCAL 214 in Case No. CU10 K-046,
Respondent-Labor Organization,

-and-

ROSE M. WILSON,
An Individual Charging Party.
_____/

APPEARANCES:

Rose M. Wilson, appearing on her own behalf

Law Office of Wayne A. Rudell, PLC, by Wayne A. Rudell, for the Labor Organization

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On November 29, 2010, Rose M. Wilson filed unfair labor practice charges against her employer, the City of Pontiac, and her labor organization, 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.

The Unfair Labor Practice Charges and Procedural History:

In the identically worded charges, Wilson makes the following allegations with respect to the City of Pontiac and Teamsters Local 214:

> The Employer has used its administrative power to force a furlough day as punishment in retaliation of an unfavorable vote by Teamster employees.
>
> The Employer has claimed that the Teamster employees are working under an impasse agreement, but choses what part of the agreement to enforce. The agreements [sic] states that we should have the Friday after Thanksgiving as a paid holiday, which we have never had until this year.

> The Employer continues to show favoritism toward some union employees and the union have stood idly by and allowed blatant unfair labor practices by the employer and has failed to represent the Teamster Employees as a whole in [equitable] fashion with no disruption in the payment of union dues.

Such allegations fail to comply with Rule 151(2), R 423.151(2) of the General Rules and Regulations of the Employment Relations Commission, which require that an unfair labor practice charge include a clear and complete statement of the facts which allege a violation of PERA, including the date of occurrence of each particular act and the names of the agents of the charged party who engaged therein and the particular sections of PERA alleged to have been violated. In an order issued on December 17, 2010, Wilson was directed to file a more definite statement of the charges by no later than the close of business on January 7, 2011. Charging Party was cautioned that a timely response to the Order must be filed to avoid dismissal of the charges without a hearing. Charging Party did not file a response to the order. On January 18, 2011, the Union moved to have the charge in Case No. UC10 K-046 dismissed based upon Wilson's failure to respond to the order.

Discussion and Conclusions of Law:

Where a charge does not provide the minimum detail required by R 423.151, it fails to state a claim under the Act and is subject to dismissal pursuant to an order for more definite statement issued under R 423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, I conclude that the charges, as written, fail to raise any issue cognizable under PERA.

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). Although Charging Party makes a number of allegations with respect to both the City of Pontiac and Teamsters Local 214, she does not identify when any of the alleged PERA violations occurred. Charging Party was specifically directed to set forth the date(s) of the alleged occurrences in the Order issued by the undersigned and, as noted, she failed or refused to do so. Under such circumstances, I find that Charging Party has not set forth any allegations which, if true, would establish that either the Employer or the Union violated PERA within the six-month period preceding the filing of the charges.

Even assuming arguendo that the charges were timely filed, Wilson has not plead facts which if proven establish that either Respondent violated its obligations under PERA. With respect to a public employer, the Act does not prohibit all types of discrimination or unfair treatment, 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. Beyond the conclusory assertion that the City of Pontiac implemented furlough days in retaliation for a vote by Union members, the charge against the Employer does not provide a factual basis which would support a finding that

Wilson engaged in union activities for which she 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 K-287 is warranted.

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.

An unfair labor practice charge alleging a breach by the Union of its duty of fair representation must contain a factual explanation of what the Union did, or failed to do, and not just 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. Moreover, to pursue such a claim, Charging Party must allege and be prepared to prove not only a breach of the duty of fair representation by the Union, but also a breach of the collective bargaining agreement by the Employer. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch. Dist*, 193 Mich App 166, 181 (1992). In the instant case, Wilson has not alleged that the Union acted arbitrarily, discriminatorily or in bad faith, nor do the charges, as written, adequately explain how the actions of the Union constitute a violation of PERA. I, therefore, recommend dismissal of the charge against the Union in Case No. CU10 K-046.

Due to the fact that the charges fail to meet the minimum pleading requirements under R 423.151, and because Charging Party failed to respond to the order for more definite statement, I hereby recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charges in Case Nos. C10 K-287 & CU10 K-046 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: March 16, 2011