STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

OAKLAND SCHOOLS INTERMEDIATE SCHOOL DISTRICT,
Public Employer- Respondent in Case No. C11 K-203,

-and-

OAKLAND TECHNICAL CENTER EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU11 K-034,

-and-

DENISE MASER,
An Individual- Charging Party.
_____/

APPEARANCES:

Denise Maser, *In Propria Persona*

DECISION AND ORDER

On February 16, 2012, 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 complaints.

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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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Christine A. Derdarian, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

OAKLAND SCHOOLS INTERMEDIATE SCHOOL DISTRICT,
Respondent-Public Employer in Case No. C11 K-203; MERC 11-000556,

-and-

OAKLAND TECHNICAL CENTER EDUCATION ASSOCIATION,
Respondent-Labor Organization in Case No. CU11 K-034; MERC 11-000557

-and-

DENISE MASER,
An Individual Charging Party.
_____/

APPEARANCES:

Denise Maser, appearing on her own behalf

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

This case arises from unfair labor practice charges filed on November 23, 2011 by Denise Maser against her employer, Oakland Schools Intermediate School District, and her Union, Oakland Technical Center Education Association. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charges were assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charges and Background Facts:

Charging Party was employed by Oakland Schools Intermediate School District as an instructor and is a member of a bargaining unit represented by the Oakland Technical Center Education Association. The charges allege that the school district and the Union violated PERA by agreeing to the accretion of three employees to the bargaining unit and granting those employees their "full seniority and the ability to keep a higher pay raise than the rest of the bargaining unit." According to the charges, the accretion agreement was entered into in the spring of 2009. On March 29, 2011, the Employer informed Maser that she would be laid off at the end of the 2010-2011 school year because she had less seniority than one of the employees who earlier had accreted to the bargaining unit. Maser's lay-off was effective June 30, 2011.

In an order issued on January 6, 2012, I directed Charging Party to show cause why the charges 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. The response to the Order to Show Cause was due by the close of business on January 27, 2012. To date, no response has been received, nor has Charging Party requested an extension of time in which to file such a response.

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 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 Comm Sch*, 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). The statute of limitations is not tolled by the attempts of an employee or a union to seek a remedy elsewhere, including the filing of a grievance, or while another proceeding involving the dispute is pending. See e.g. *Univ Of Michigan*, 23 MPER 6 (2010); *Wayne County*, 1998 MERC Lab Op 560. In the instant case, the accretion agreement about which Charging Party complains was entered into in 2009 and Maser learned that she was being laid off from her instructor position on March 29, 2011, although her actual last day of work was later. Both events occurred more than six months prior to the filing of the charges in the instant case on November 23, 2011. Accordingly, the charges must be dismissed as untimely under Section 16(a) of the Act.

Dismissal of the charges is also warranted on the ground that Maser has failed to state a claim upon which relief can be granted as to either Respondent. With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide an independent cause of action for an employer's breach of the collective bargaining agreement. Rather, the Commission's jurisdiction with respect to claims brought by individual charging parties against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced an employee with respect to his or her right to engage in union or other protected concerted activities. In the instant case, the charge against Oakland Schools Intermediate School District does not provide a factual basis which would support a finding that Maser 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. Accordingly, dismissal of the charge against Oakland Schools Intermediate School District in Case No. C11 K-203; MERC 11-000556 is warranted.

Similarly, there is no factually supported allegation against Oakland Technical Center Education Association in Case No. CU11 K-034; MERC 11-000557 which, if proven, would establish that the Union breached its duty of fair representation with respect Maser. 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). The union's actions will be held to be lawful as long as they are 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 MERC Lab Op 31, 34-35. The Commission has steadfastly refused to interject itself in judgments over agreements made by employers and collective bargaining representatives, despite frequent challenge by employees. *City of Flint*, 1996 MERC Lab Op 1, 11. 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. Because the union's ultimate duty is toward the membership as a whole, the union is not required to follow the dictates of the individual employee, but rather it may investigate and take the action it determines to be best. A labor organization has the legal discretion to make judgments about the general good of the membership and to proceed on such judgments, despite the fact that they may conflict with the desires or interests of certain employees. *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218, citing *Lowe, supra*.

In the instant case, the charges, as written, do not adequately explain how the actions of the Union constitute a violation of PERA. There is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Maser. In fact, Maser concedes that the Union has filed a grievance on her behalf asserting that there are four instructors with less seniority than Maser still employed within the school district's Engineering and Emerging Technology cluster. That grievance remained pending at the time the instant charges were filed. Moreover, the gravamen of the charge is Maser's contention that the Union and the Employer reached an agreement regarding the seniority-related treatment of newly accreted positions. By their very nature, all seniority systems discriminate amongst or between groups of employees and the adoption of a particular system for determining seniority is well-within a union's ordinary discretion. There is no factual allegation that the Union's decision-making was motivated by racial or other individual prejudice or by personal dislike. As noted above, a union has the legal discretion to make judgments about the general good of the membership and to proceed on such judgments, despite the fact that they may conflict with the desires or interests of certain employees. To this end, the Michigan Supreme Court has held, "When the general good conflicts with the needs or desires of an individual member, the discretion of the union to choose the former is paramount." *Lowe, supra* at 146. Under such circumstances, I recommend dismissal of the charge against the Union in Case No. CU11 K-034; MERC 11-000557 for failure to state a claim under PERA.

Despite having been given ample opportunity to do so, Charging Party has failed to set forth any facts which, if proven, would establish that either Respondent violated PERA. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charges filed by Denise Maser against Oakland Schools Intermediate School District and Oakland Technical Center Education Association are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 16, 2012