

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

In the Matter of:

AFSCME COUNCIL 25, LOCAL 226.8,
Labor Organization - Respondent,

-and-

JON GRIEGER,
An Individual - Charging Party.

Case No. CU12 L-051
Docket No. 12-001903-MERC

APPEARANCES:

Jon Grieger, *In Propria Persona*

DECISION AND ORDER

On February 5, 2013, 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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Robert S. LaBrant, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

AFSCME COUNCIL 25, LOCAL 226.8,
Respondent-Labor Organization,

Case No. CU12 L-051
Docket No. 12-001903-MERC

-and-

JON GRIEGER,
An Individual Charging Party.

APPEARANCES:

Jon Grieger, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from a series of unfair labor practice charges filed on December 12 and 13, 2012 by Jon Grieger against AFSCME Council 25, Local 226.8. 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).

Although the wording of each of the charges varies slightly, the thrust of the dispute is Grieger's allegation that Respondent has failed or refused to fairly represent "non-members." Charging Party complains that Respondent prohibits "non-members" from attending meetings, voting on "labor agreements" and filing internal appeals. Charging Party further complains that the collective bargaining agreement between the Union and the Houghton County Medical Care Facility fails to adequately explain the rights of "non-members."

In an order issued on January 10, 2013, I directed Grieger to show cause why the charges should not be dismissed for failure to state a claim upon which relief can be granted under PERA. Charging Party was cautioned that a timely response to the Order must be filed to avoid dismissal of the charges without a hearing. Pursuant to the Order, Grieger's response was due by the close of business on January 31, 2013. To date, Charging Party has not filed a response to the Order or sought to obtain an extension of time in which to file such a response.

Discussion and Conclusions of Law:

The failure to respond to an order to show cause may, in itself, warrant dismissal of an unfair labor practice charge. *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.

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 duty extends to union conduct in representing employees in their relationship with their employer, such as negotiating a collective bargaining agreement or resolving a grievance, and in related decision-making procedures, but does not embrace matters involving the internal structure and affairs of labor organizations which do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Education Ass'n*, 17 MPER 25 (2004); *SEIU, Local 586*, 1986 MERC Lab Op 149. Internal union matters are outside the scope of PERA, but are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. This principle is derived from Section 10(3)(a)(i) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. With respect to otherwise internal decision-making procedures, including contract ratification elections, the Commission has held that the duty of fair representation applies only to those policies and procedures having a direct effect on terms and conditions of employment. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *SEIU, Local 586*, supra.

It is well established that a labor organization may lawfully suspend or expel members from the union, restrict attendance at union meetings to members, prohibit nonmembers from voting in internal union elections and enforce other restrictions against nonmembers, as long as those requirements do not have a direct effect on terms and conditions of employment. See e.g. *AFSCME Local 118*, 1991 MERC Lab Op 617 (no exceptions); *Lansing Sch Dist*, 1989 MERC Lab Op 210; *City of Lansing*, 1987 MERC Lab Op 701.

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).

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation which, if true, would establish that the Union acted arbitrarily, discriminatorily or in bad faith in connection with this matter. Although the charges set forth many allegations concerning the Union's treatment of "non-members" generally, there is no factually supported allegation which, if proven, would establish that Respondent took any

action within the six-month period preceding the filing of the charges which had a direct effect on Grieger's terms and conditions of employment. Accordingly, I conclude that the charges must be dismissed for failure to state a claim upon which relief can be granted under PERA.

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

RECOMMENDED ORDER

The unfair labor practice charges are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: February 5, 2013