

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

In the Matter of:

PROFESSIONAL MANAGEMENT ASSOCIATION,
Labor Organization-Respondent,

-and-

DEBRA G. PELTON,
An Individual-Charging Party.

Case No. CU13 I-040
Docket No. 13-013010-MERC

APPEARANCES:

Debra G. Pelton, appearing on her own behalf

DECISION AND ORDER

On December 12, 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

_____/s/_____
Edward D. Callaghan, Commission Chair

_____/s/_____
Robert S. LaBrant, Commission Member

_____/s/_____
Natalie P. Yaw, Commission Member

Dated: January 23, 2014

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

In the Matter of:

PROFESSIONAL MANAGEMENT ASSOCIATION,
Respondent-Labor Organization,

-and-

Case No. CU13 I-040
Docket No. 13-013010-MERC

DEBRA G. PELTON,
An Individual Charging Party.

APPEARANCES:

Debra G. Pelton, appearing on her own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on October 21, 2013, by Debra G. Pelton against the Professional Management Association (“PMA” or “the Union”). 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 charge was 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).

Background:

On January 15, 2013, the Commission issued a Decision and Order clarifying a bargaining unit of employees of the District Health Department No. 2 to exclude, as a confidential employee, either the position of finance director or the position of administrative secretary, as designated by the employer. *District Department of Health No. 2*, 26 MPER 37 (2013). At the time the Decision was issued, Pelton was employed by the Health Department as finance director. According to the charge, the Health Department decided to designate Pelton’s position as confidential in January of 2013. The charge asserts that the Union breached its duty of fair representation by failing or refusing to recommend to the employer that the finance director position remain in the bargaining unit.

In an order issued on November 14, 2013, I directed Pelton to show cause why the charge should not be dismissed as untimely and for failure to state a claim under PERA. The response to the Order to Show Cause was due by the close of business on December 5, 2013. 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 charge as true, dismissal of the charge on summary disposition is warranted.

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 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). In the instant case, the charge indicates that the District Health Department No. 2 made the decision to exclude Charging Party's position from the bargaining unit on or around January of 2013, more than six months prior to the filing of the charge. Accordingly, any allegation premised upon acts or omissions by the Union before that decision was made must be dismissed as untimely under the Act.

Even if the allegation set forth by Pelton was timely, dismissal of the charge in its entirety is nonetheless appropriate on the ground that Charging Party has failed to state a claim against the Union 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 make decisions on behalf of its members. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *Int'l Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. 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.

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*. Because the union's ultimate duty is toward the membership as a whole, a union is not required to follow the dictates of any individual member. 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. The Commission has steadfastly refused to interject itself in judgment over agreements made by employers and collective bargaining representatives, despite frequent challenge by dissatisfied individual employees. *City of Flint*, 1996 MERC Lab Op 1, 11.

In the instant case, the charge fails to identify any act or omission on the part of the PMA which would support a finding that the Union's conduct was so far outside a wide range of reasonableness as to be irrational. The decision whether to exclude either the finance director or the administrative secretary from the bargaining unit was solely within the discretion of management. Accordingly, there was nothing that the Union could have done to ensure that Pelton's position remained a part of the unit. Charging Party asserts that the Union should have actively campaigned to the employer on her behalf. However, there is no factually supported allegation which, if proven, would establish that the Union acted arbitrarily, discriminatorily or in bad faith in failing to do so. The charge does not allege that Respondent or any of its agents held personal animosity against Pelton or that the Union gave favor to another member for any unlawful reason. 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.

For the foregoing reasons, I recommend that the Commission issue the following order dismissing the charge in its entirety.

RECOMMENDED ORDER

The unfair labor practice charge filed by Debra G. Pelton against the Professional Management Association in Case No. CU13 I-040; Docket No. 13-013010-MERC is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: December 12, 2013