STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ANN ARBOR PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C14 G-077; Docket No. 14-015328-MERC,

-and-

ANN ARBOR EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU14 G-035; Docket No. 14-015329-MERC,

-and-

KAREN SANDERSON,
An Individual Charging Party.
_____/

APPEARANCES:

Karen Sanderson, appearing on her own behalf

Law Offices of Lee & Correll, by Michael K. Lee and Erika P. Thorn, for the Labor Organization

DECISION AND ORDER

On September 2, 2014, Administrative Law Judge David M. Peltz issued his 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: October 2, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

This case arises from unfair labor practice charges filed on July 9, 2014, by Karen Sanderson against her former employer, Ann Arbor Public Schools, and her Union, Ann Arbor 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 charges stem from the school district's decision in 2012 to transfer Sanderson to a teaching position at Wines Elementary School, a position for which Charging Party contends she was not "highly qualified." Sanderson asserts that the principal at Wines harassed, humiliated and degraded her regarding her performance as an elementary school teacher and that management attempted to pressure her into resigning her position, which she ultimately did on June 2, 2014. Sanderson asserts that the school district unlawfully discriminated against her based upon her age and gender and that the Union violated PERA by failing or refusing to take

action on her behalf to protest the teacher placement decision and protect her from discrimination by the Employer. As a remedy, Charging Party seeks reinstatement into a high school or middle school position for which she is certified and highly qualified or, in the alternative, compensatory damages for three years of wages. With respect to the Union, Sanderson seeks the return of dues paid over the past sixteen years or, in the alternative, three years of wages. Charging Party also requests punitive damages against the principal at Wines "for his egregiously insidious behaviors."

In an order issued on July 15, 2014, I directed Charging Party to show cause why the charges should not be dismissed for failure to state a claim upon which relief can be granted under the Act as to either Respondent. On July 21, 2014, the Union filed a motion for summary disposition with respect to the charge against it in Case No. CU14 G-035; Docket No. 14-015329-MERC. On August 21, 2014, Charging Party filed a response addressing the issues raised in both the order to show cause and in the Union's motion to dismiss.

Discussion and Conclusions of Law:

Accepting all of the allegations set forth by Charging Party as true, dismissal of both of the charges on summary disposition is warranted. First, any allegations relating to the school district's decision to transfer Sanderson to Wines Elementary School and/or the Union's response thereto are clearly untimely under Section 16(a) of PERA. 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, it is undisputed that Sanderson began teaching at the elementary school in September of 2012, more than six months prior to the filing of the charges on July 9, 2014. Accordingly, any allegation concerning the propriety of the transfer of Charging Party to Wines Elementary School must be dismissed as untimely under Section 16(a) of the Act.

Regardless of whether the charges were timely filed, dismissal is nonetheless warranted on the ground that Sanderson 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 Ann Arbor Public Schools does not provide a factual basis which would support a finding that Sanderson engaged in union activities

for which she was subjected to discrimination or retaliation in violation of the Act. Therefore, the charge against the Employer in Case No. Case No. C14 G-077; Docket No. 14-015238-MERC must be dismissed for failure to state a claim under PERA.

Similarly, there is no factually supported allegation against the Ann Arbor Education Association in Case No CU14 G-035; Docket No. 14-015329-MERC which, if proven, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Sanderson. 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. 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).

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.

In the instant case, Charging Party has failed to adequately explain how the actions of the Union constitute a violation of PERA. There is no allegation which, if true, would establish that the Union acted arbitrarily, discriminatorily or in bad faith, nor is there any factually supported assertion that the Union's decision-making was motivated by individual prejudice or personal dislike or that the Union treated Sanderson differently than other bargaining unit members. Although Charging Party disagrees with the manner in which Union representatives responded to her concerns, it does not appear that the Ann Arbor Education Association could have taken any action on her behalf to resolve her complaints given the recent amendments to PERA which substantially limited the subjects about which teacher unions can demand to bargain or, by extension, grieve.

Effective December 14, 2011, the Legislature amended Section 15(3) of PERA to add the following to the list of matters made "prohibited subjects of bargaining" under the Act:

> (j) Any decision made by the public school employer *regarding teacher placement, or the impact of that decision on an individual employee* or the bargaining unit.

* * *

> (l) Decisions about the development, content, standards, procedures, adoption, and implementation of a public school employer's performance evaluation system adopted under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, or under 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, *decisions concerning the content of a performance evaluation of an employee under those provisions of law, or the impact of those decisions on an individual employee* or the bargaining unit.
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> (m) For public employees whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, *decisions about the development, content, standards, procedures, adoption, and implementation of a policy regarding discharge or discipline of an employee, decisions concerning the discharge or discipline of an individual employee, or the impact of those decisions on an individual employee* or the bargaining unit. . . .
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> (n) *Decisions about the format, timing, or number of classroom observations* conducted for the purposes of section 3a of article II of 1937 (Ex Sess) PA 4, MCL 38.83a, *decisions concerning the classroom observation of an individual employee, or the impact of those decisions on an individual employee* or the bargaining unit. [Emphasis supplied.]

In *Michigan State AFL-CIO v MERC*, 212 Mich App 472 (1995), aff' d 453 Mich 262 (1996), the Court of Appeals concluded that by delineating certain topics prohibited subjects of bargaining, the Legislature intended to "foreclose the possibility that these areas could ever be the subject of bargaining such that a school district could be found to have committed an unfair labor practice by refusing to bargain over them or that they could ever become part of a collective bargaining agreement." In addressing the 2011 amendments to Section 15(3) of PERA, the Commission has held that by adding teacher placement, classroom observations, teacher evaluations and teacher discipline and discharge to the list of prohibited subjects of bargaining, the Legislature made public school employers solely responsible for these matters by prohibiting them from being the subjects of contract provisions enforceable through the grievance procedure and eliminating any right of a labor organization to bargain over them. *Ionia Pub Sch*, 27 MPER 55 (2014); *Pontiac Sch Dist*, 27 MPER 52 (2014); *Pontiac Sch Dist*, 28 MPER 1 (2014). Accordingly, I conclude that the Ann Arbor Education Association had no ability to file a grievance over Charging Party's assignment to Wines Elementary School or to effectively protest either the performance evaluations Sanderson received while teaching at that location or the school's district's decision to terminate her employment. For these reasons, I recommend dismissal of the charge against the Union in Case No CU14 G-035; Docket No. 14-015329-MERC 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. Therefore, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charges filed by Karen Sanderson against Ann Arbor Public Schools in Case No. Case No. C14 G-077; Docket No. 14-015238-MERC and the Ann Arbor Education Association in Case No CU14 G-035; Docket No. 14-015329-MERC 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: September 2, 2014