STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS (UAW) AND UAW REGION 1,
Labor Organization-Respondent,

Case No. CU14 K-049
-and- Docket No. 14-031099-MERC

LARRY W. HERRICK,
An Individual Charging Party.
_____/

APPEARANCES:

UAW Legal Department, by William J. Karges, III and Stuart Shoup, for Respondent

Larry W. Herrick, appearing on his own behalf

DECISION AND ORDER

On June 17, 2015, Administrative Law Judge Travis Calderwood 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 either 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: July 16, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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Case No. CU14 K-049

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Respondent-Labor Organization,

Docket No. 14-031099-MERC

-and-

LARRY W. HERRICK,
An Individual Charging Party.
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APPEARANCES:

UAW Legal Department, by William J. Karges and Stuart Shoup, for the Respondent-Labor Organization

Larry W. Herrick on his own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

On November 7, 2014, Larry W. Herrick filed the present unfair labor practice charge against the International Union, United Automobile Workers (UAW) and UAW Region 1 (Respondent or Union) in which he alleges that the Union breached its duty of fair representation in connection with a grievance filed in November of 2011 against his former employer, Wayne State University, and also an internal union appeal he filed in response to his local union declining to pursue arbitration over his termination. 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 Travis Calderwood, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System (MAHS), on behalf of the Michigan Employment Relations Commission (Commission).

An evidentiary hearing in this matter was scheduled to occur on January 21, 2015. On January 9, 2015, Respondent filed a motion seeking dismissal of the charge in which it argued that Charging Party's claim is time barred by PERA's strict six month statute of limitations and, timeliness issues aside, the Commission lacks jurisdiction over the present dispute because it is an internal union matter. Given the date of Respondent's motion and the upcoming hearing, the January 21, 2015, hearing was adjourned and oral argument on Respondent's motion was held in its place. After considering the extensive arguments made by counsel for both parties on the record, I concluded that there were no legitimate issues of material fact and that a decision on summary

disposition was appropriate pursuant to Commission Rule R 423.165 (1). See also *Detroit Public Schools*, 22 MPER 19 (2009) and *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a bench decision, finding that Charging Party's claim was barred by PERA's statute of limitations and such bar notwithstanding, the claim dealt with purely internal union matters. The substantive portion of my findings of fact and conclusions of law are set forth below:

Findings of Fact:

The relevant facts for purposes of deciding Respondent's motion are undisputed. In October of 2011, Charging Party, while a member of the UAW, Local 2071, a local affiliate of Respondent, was placed on an unpaid indefinite suspension from his job with the Wayne State University (WSU), for what he states was "violence in the work place." On October 17, 2011, Local 2071 filed a Step 3 grievance challenging the suspension. On November 4, 2011, WSU notified Charging Party, by letter, that the University was terminating his employment for "Violation of WSU Workplace Violence Policy/Verbal Harassment/Disrespect to Authority."

On June 12, 2012, the Executive Board for Local 2071 met and discussed whether it would proceed to arbitration over Charging Party's grievance and termination. At that meeting, the Executive Board voted not to proceed to arbitration and Charging Party was informed such by letter dated that same day. That letter, in addition to providing notice to Charging Party of the Executive Board's decision, also stated, "[i]f you would like to appeal [the Executive Board's decision] you may do so per the UAW International Constitution." On June 18, 2012, Charging Party appealed the Executive Board's decision to the UAW International Board.

On February 15, 2013, Charging Party filed an unfair labor practice charge, Case No. CU13 B-003, against the International Union, UAW, claiming that the UAW had breached its duty to fairly represent him, and that the Union acted arbitrarily, capriciously or in bad faith by failing to process his June 18, 2012, appeal in a timely fashion.1 That charge was withdrawn by Charging Party on March 28, 2013. Neither Region 1 nor Local 2071 were named parties in that proceeding.

Sometime in October or December of 2014, the International Executive Board issued its determination regarding Charging Party's internal union appeal. There was disagreement amongst the parties regarding the substance and effect of the decision; however both sides conceded that a decision had been rendered by December 19, 2014. Charging Party stated both in his initial filing in this matter and again at oral argument that he was dissatisfied with the ultimate resolution of his internal appeal.

Discussion and Conclusions of Law:

On the record, following oral argument, I made the determination that with respect to

1 It was not until the January 21, 2015, hearing that the existence of the prior case filing was made known to the undersigned. At that time, I took judicial notice, pursuant to Rule 172 of the Commission's General Rule, R 423.172(2)(h), of the filing and content of Case No. CU13 B-003, along with notice that Charging Party withdrew the charge on March 28, 2013.

Charging Party's claim that was predicated on Local 2071's decision not to pursue arbitration of his termination was barred by PERA's statute of limitations. Further, with respect to Charging Party's dissatisfaction with the result of his internal union appeal, I determined that allegation involved a purely internal union mater and as such did not state a valid claim upon which relief could be granted under PERA. I informed the parties that I would be issuing a Decision and Recommended Order to that effect.

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). PERA's strict timeliness requirement is not tolled by the "attempts of an employee or a union to seek a remedy elsewhere, including the filing of grievance, or while another proceeding involving the dispute is pending." *AFSCME, Council 25, Local 2394*, 28 MPER 25 (2014). Internal efforts to remedy unfair labor practices will not toll the limitations period for filing complaints. *Troy Sch Dist*, 16 MPER 34 (2003).

Internal union matters are outside the scope of PERA, and are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11. This principle is derived from Section 10(2)(a) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. Moreover, the duty of fair representation does not apply to strictly internal union matters that do not impact the relationship of bargaining unit members to their employer. *West Branch-Rose City Ed Ass' n*, 17 MPER 25 (2004).

It is clear to the undersigned that Charging Party is attempting to rectify two separate wrongs he believes he suffered; the first of which is Local 2071's decision not to pursue arbitration and the second being his dissatisfaction with the International Union's decision regarding his internal appeal. Ignoring the fact that Charging Party did not proceed against Local 2071 for failing to pursue arbitration, there is no question that such a claim is barred as untimely under PERA. Any claim predicated on Local 2701's decision not to pursue arbitration began to toll on June 12, 2012, the date that Charging Party learned of the decision, and became time barred on December 13, 2012. As noted above, the internal efforts undertaken by Charging Party do not serve as a tolling of PERA's timeliness requirement. With respect to Charging Party's dissatisfaction with the International Union's attempts to resolve the matter, such a claim implicates no right under PERA because the actions complained of are a purely internal matter, i.e., they do not implicate any term or condition of employment or impact the relationship of bargaining unit member to their employer.

I have carefully considered all other arguments asserted by the parties in this matter, both in writing and at oral argument, and have determined that they do not warrant a change in the result. For the reasons set forth above, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: June 17, 2015