STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT ASSOCIATION OF EDUCATIONAL OFFICE EMPLOYEES (DAEOE), LOCAL 4168,
Labor Organization-Respondent,

-and-

PATRICIA ANN COLLINS,
An Individual Charging Party in MERC Case No. CU16 D-016/Hearing Docket No. 16-010459,

-and-

SHARON EDWARDS,
An Individual Charging Party in MERC Case No. CU16 D-017/ Hearing Docket No. 16-010460,

-and-

DEBORAH HICKS,
An Individual Charging Party in MERC Case No. CU16 D-018/ Hearing Docket No. 16-010461,

-and-

MICHAELLE A. MAY,
An Individual Charging Party in MERC Case No. CU16 D-019/ Hearing Docket No. 16-010462,

-and-

JOANNE PARKS,
An Individual Charging Party in MERC Case No. CU16 D-020/ Hearing Docket No. 16-010463,

-and-

QUINITA ROSS,
An Individual Charging Party in MERC Case No. CU16 D-021/ Hearing Docket No. 16-010464,

-and-

LAJUANA TURNER,
An Individual Charging Party in MERC Case No. CU16 D-022/ Hearing Docket No. 16-010465,

-and-

GLENN WASHINGTON,
An Individual Charging Party in MERC Case No. CU16 D-023/ Hearing Docket No. 16-010466,

-and-

TINNIA WILLARD,
An Individual Charging Party in Case No. CU16 D-024/ Hearing Docket No. 16-010467,
/

APPEARANCES:

Patricia Ann Collins, Sharon Edwards, Deborah Hicks, Michaelle A. May, Joanne Parks, Quinita Ross, LaJuana Turner, Glenn Washington, and Tinnia Willard, appearing on their own behalf

DECISION AND ORDER

On August 8, 2016, Administrative Law Judge Julia C. Stern issued her 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: September 16, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Patricia Ann Collins, Sharon Edwards, Deborah Hicks, Michaelle A. May, Joanne Parks, Quinita Ross, LaJuana Turner, Glenn Washington, and Tinnia Willard, appearing for themselves

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On April 8, 2016, Patricia Ann Collins, Sharon Edwards, Deborah Hicks, Michaelle A. May, Joanne Parks, Quinita Ross, LaJuana Turner, Glenn Washington, and Tinnia Willard, employees of the Detroit Public Schools (the Employer), filed the above unfair labor practice charges with the Michigan Employment Relations Commission (the Commission) against their collective bargaining representative, the Detroit Association of Educational Office Employees (DAEOE), Local 4168, pursuant to Section 10 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charges were consolidated and assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

The Charging Parties are all employed by the Employer as technicians in the Employer's Office of School Nutrition (OSN). The charges, which were identical, alleged that the Respondent Union violated its duty of fair representation toward them by failing or refusing allow the Employer to pay them an "efficiency bonus" which the Employer allegedly paid to other employees in the OSN.

The charges also alleged that Respondent President Ruby Newbold made untrue statements about the bonus in a meeting with the Charging Parties, although the charges did not explain what the untrue statements were. On April 20, 2016, pursuant to Rule 165 of the Commission's General Rules, 2002 AACS, R 423.165, I issued an order finding that the Charging Parties had not alleged facts which, if true, would state a claim upon which relief could be granted under PERA. I directed the Charging Parties to show cause why their charges should not be dismissed for failure to state a claim. Charging Parties filed timely responses on May 24, 2016.

Based on these responses, I scheduled a hearing and also, on May 25, 2016, directed Respondent to file a position statement responding to the allegations as set out in the charges and in the responses. Respondent filed its position statement on June 15, 2016. Attached to the position statement were a number of documents, including an email from Phyllis Hurks-Hill, the Employer's acting general counsel. After reviewing the position statement, I directed the Charging Parties, on June 16, 2016, to respond to the position statement and, in particular, to indicate whether they had any evidence contradicting the factual assertions made in that statement. Charging Parties did not respond to my June 16, 2016 directive.

Based on the facts as alleged in the charge and pleadings, as interpreted in the light most favorable to the Charging Parties, I make the following conclusions of law and recommend that the Commission issue the following order:

The Unfair Labor Practice Charges and Pertinent Facts:

The nine Charging Parties are employed by the Employer as technicians in its Office of School Nutrition (OSN). They are members of a bargaining unit represented by Respondent that includes more than 300 employees in various Employer departments.

In March 2013, the Employer and Respondent began negotiations for a new collective bargaining agreement. The Employer gave Respondent a proposal that would have provided Respondent's members in the OSN with a ten percent wage increase retroactive to January 1, 2013, and allowed for the payment of annual "efficiency bonuses" in the fiscal years 2012-2013 through 2015-2016. The bonuses were to be based on a percentage of the increase, if any, in the OSN's fund balance for that fiscal year. Only the employees in the OSN would be eligible for the wage increase and bonus. Respondent's bargaining team rejected the proposal. On March 6, 2013, the Employer and Respondent reached a tentative contract agreement that did not include the wage increase/efficiency bonus proposal. That agreement was later ratified by the membership.

The Employer provided the same or similar proposals to the unions representing the four other bargaining units of OSN employees. That is, the Employer offered to give the unions' members in the OSN a one-time wage increase and allow them to receive efficiency bonuses in that and subsequent years. The Employer's offer was accepted by the representatives of these units.

After Respondent's membership ratified the contract in March 2013, Respondent's members in the OSN asked to meet with Respondent President Ruby Newbold to ask her why Respondent had not agreed to the wage increase/efficiency bonus proposal. The discussion became very heated. According to Charging Parties, Newbold told them that Respondent "could not bargain for one small group of members while it was representative for an entire union of hundreds of members." According to Newbold, she said that Respondent could not in good conscience agree to a 10% wage increase for ten members in the OSN when the rest of Respondent's 300-plus members had received a 10% pay cut. The members tried to convince Newbold that they should be allowed to receive the bonus, pointing out that Respondent had agreed to a reclassification of its members in the Payroll Department that resulted in these members, and only these members, receiving pay increases. They also asked Newbold if it would be possible for them to get the efficiency bonus without the 10%

wage increase. Newbold said that "anything is possible and might be considered." However, Newbold then talked about disagreements she had had with OSN Executive Director Betti Wiggins on other issues, including promotions for bargaining unit members; Newbold said that Wiggins had told her that OSN had no money for promotions. Newbold told the members that she would not allow Wiggins to "prostitute" the contract or the bargaining unit. Charging Parties concluded from the discussion that Newbold was not going to approach Wiggins about a separate efficiency bonus agreement. After the meeting concluded, Charging Parties did not hear anything more from Newbold about the efficiency bonuses.

In the 2012-2013 and 2013-2014 fiscal years, OSN paid efficiency bonuses to its unrepresented employees and to employees in the four bargaining units represented by unions that had agreed to allow their members to receive these bonuses. No one in the OSN received a bonus in fiscal year 2014-2015.

In the fall of 2014, Respondent and the Employer signed an agreement promoting all Respondent members in the OSN who were not previously classified as technicians to that category. All ten members were then placed in the same salary category – Technical Series III.

In early 2016, Wiggins informed Charging Parties that if Respondent agreed before June 30, 2016, to allow them to receive the efficiency bonus, there would be funds available to pay them the bonus. On March 3, 2016, a group of Respondent's members in the OSN approached Newbold and asked for a meeting to discuss the efficiency bonus.

Sometime between March 8 and March 15, 2016, (Charging Parties disagree among themselves on the date), Newbold met with Respondent's members in the OSN to discuss the efficiency bonus. Newbold said at the meeting that she supported OSN employees getting the efficiency bonus that year, but that she would have to discuss this with the Employer's Acting General Counsel, Phyllis Hurks-Hill, and Wiggins. Newbold told the employees that she would get back to them. After this meeting, Charging Party Turner relayed what Newbold had said to Wiggins, who told her that she [Wiggins] had already met with Hurks-Hill. Turner passed this information along to Newbold, who said that she [Newbold] still had to meet with the acting general counsel.

Around this same time, Charging Party Turner twice overheard Wiggins talking on the phone to Hurks-Hill about the efficiency bonus. In both conversations, Wiggins asked Hurks-Hill what she [Wiggins] needed to do to get Respondent's members included in the efficiency bonus.

According to Newbold, she asked for a meeting with Hurks-Hill, who is also the Employer's chief labor negotiator, and Wiggins, and a meeting was scheduled for March 15, 2016. Respondent attached to its position statement emails showing that Wiggins was included in the scheduling arrangements for the meeting. According to Newbold, she was on her way to the meeting when she received a telephone call from Hurks-Hill canceling the meeting because Wiggins had not confirmed. According to Newbold, Hurks-Hill asked Newbold if she was available for a meeting later in the day if Wiggins could be reached, and Newbold said that she was. According to Newbold, she received another call from Hurks-Hill later that day in which Hurks-Hill told her that the meeting was unnecessary because Respondent's members were not entitled to the bonus. Respondent attached to

its position statement an email from Hurks-Hill to Newbold sent on June 1, 2016. In the email, Hurks-Hill confirmed that she had canceled the meeting because, after review, she had concluded that the Respondent's members were not eligible for the efficiency bonus. Neither Hurks-Hill's email nor Respondent's position statement indicate why Hurks-Hill concluded that they were not eligible.

On March 17, 2016, Charging Party Hicks emailed Newbold a document for her signature approving the payment of the bonuses. On March 18, Charging Party Edwards called Newbold about the bonuses and was told, "We'll have to wait until next year." On the same date, March 18, Charging Party Hicks called Hurks-Hill. Hurks-Hill told Hicks that she could not give Hicks advice, that she was sorry that she could not help, and that "the OSN staff should do something as soon as possible."

On or about March 22, 2016, Charging Party Edwards called Newbold to ask about the efficiency bonus. Newbold agreed to come to the OSN to meet with employees later that day. According to several of the Charging Parties, Newbold told them that they could not get the efficiency bonus because Wiggins did not show up for their meeting with Hurks-Hill. According to Newbold, she told the members that both the union and the Employer had to agree to the bonus and that the Employer would not agree.

When Charging Parties approached Wiggins after the March 22, 2016, meeting Wiggins told them that she had already met with Hurks-Hill and that Wiggins agreed that the employees should receive the efficiency bonus. Wiggins also told Charging Parties that if Newbold would sign the document approving the bonus, Wiggins would personally deliver it to Hurks-Hill.

Charging Parties assert that Newbold breached Respondent's duty of fair representation under Section 10(2)(a) of PERA by refusing to agree to allow them to receive the efficiency bonus. They also allege that Newbold breached her duty of fair representation by lying to them at the March 22, 2016, meeting about the reason they did not receive the bonus.

Discussion and Conclusions of Law:

Rule 165 of the General Rules of the Michigan Employment Relations Commission, R 423.165, states that an administrative law judge assigned to hear a case for the Michigan Employment Relations Commission may, on his or her own initiative or on a motion by any party, order dismissal of a charge or issue a ruling in favor of a party without a hearing based on grounds set out in this rule, which include failure to allege a claim on which relief may be granted by the Commission or that, except with respect to the remedy, there are no material facts in dispute and a party is entitled to judgment as a matter of law.

A union representing public employees in Michigan owes its members a duty of fair representation under Section 10(2)(a) of PERA. It is well established that a union's duty to fairly represent its members extends to both collective bargaining with their employer and enforcement of the collective bargaining contract. *Ford Motor Co v Huffman*, 345 US 330 (1953); *Vaca v Sipes*, 386 US 171, 177 (1967). The union's legal 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. *Goolsby v Detroit*, 419 Mich 651, 679 (1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131,134. See also *Vaca v Sipes*, at 177. A union is guilty of bad faith when it "acts [or fails to act] with an improper intent, purpose, or motive . . . encompass[ing] fraud, dishonesty, and other intentionally misleading conduct." *Merritt v International Ass ' n of Machinists and Aerospace Workers*, 613 F3d 609, 619 (CA 6, 2010), citing *Spellacy v Airline Pilots Ass ' n*, 156 F3d 120, 126 (CA 2, 1998). The Court in *Goolsby*, at 218, explained that a union's duty to avoid "arbitrary" conduct" prohibits both "inept conduct undertaken with little care or with indifference to the interests of those affected," and impulsive, irrational, or unreasoned conduct. In general, a 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 union's ultimate responsibility is toward the unit as a whole. Because the interests of the unit as a whole may sometimes conflict with the needs or desires of individual union members, a union does not breach its duty of fair representation by choosing the former over the latter. *Lowe v Hotel Employees Local 706*, 389 Mich 123, 146 (1973). As long as it acts in good faith and its decision is not arbitrary, a union has the discretion to determine what serves the interests of the membership as a whole. *Lansing Sch Dist*, 1989 MERC Lab Op 210.

According to Respondent, it did not believe it would serve the interests of the unit as a whole for Respondent to agree in 2013 to a 10% wage increase for ten members in the OSN while the rest of the bargaining unit was taking a 10% wage cut.

It seems from Charging Parties' account of Newbold's remarks at their 2013 meeting that she was also opposed to the idea of the efficiency bonus, and felt that if the OSN had extra funds it should compensate employees in some other way, e.g., by promoting them to a higher pay classification as it did the following year. These are conclusions about which reasonable people might differ, but they were clearly not so far outside a wide range of reasonableness as to be considered irrational. While some of the Charging Parties attribute Respondent's decision not to approve the payment of the efficiency bonus to bad feelings between Newbold and Wiggins and/or Newbold and one or more of her members in the OSN, they have not asserted any facts to support a finding that Respondent acted out of personal animosity or other improper motive. Based on the facts as alleged by the Charging Parties in their charges and responses, I find that Respondent's refusal to allow the Employer to give Respondent's members in the OSN a wage increase and/or bonus in 2013, while withholding these benefits from members in other departments, was neither arbitrary nor done out of an improper motive.

Any allegation that Respondent committed an unfair labor practice in 2013 is also untimely. Pursuant to Section 16(a) of PERA, an unfair labor practice charge that is filed more than six months after the commission of the alleged unfair labor practice is untimely. The limitation contained in Section 16(a) of PERA is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Police Officers Labor Council, Local 355*, 2002 MERC Lab Op 145; *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 582. Since Respondent's decision not to approve the efficiency bonus in 2013 occurred outside the PERA's statutory six-month limitations period, it is relevant only in its relationship to Respondent's actions in 2016.

Charging Parties allege that Newbold breached Respondent's duty of fair representation in 2016 by refusing to agree to allow them to receive the efficiency bonus for the 2015-2016 fiscal year. They also assert that on March 22, 2016, Newbold lied to them about her refusal to agree to the bonus, falsely telling them that they would not receive the bonus because Wiggins had failed to come to a meeting. Charging Parties' and Newbold's versions of her statements at that meeting are completely different. Charging Parties claim that Newbold blamed their inability to get the bonus on Wiggins. Newbold claims to have told the Charging Parties that Employer Acting General Counsel Hurks-Hill decided that the Charging Parties were not eligible for the bonus. There is clearly a dispute of fact between Respondent and Charging Parties about what Newbold said at the March 22, 2016, meeting. There also seems to be a dispute about whether Charging Parties were deemed not eligible to receive the bonus in 2016 because Newbold refused to agree or if there was some other reason the Employer deemed them ineligible.

A union may violate its duty of fair representation towards its members if it willfully and deliberately misrepresents a fact and this misrepresentation causes harm. This includes, but is not limited to, misrepresenting the status of a grievance. See *Union of Security Personnel of Hospitals*, 267 NLRB 974, 980 (1983). However, there is no violation of the duty unless a causal relationship can be established between the union's alleged untruthful statement(s) and some tangible injury suffered by the member or members. *Deboles v Trans World Airlines, Inc*, 552 F2d 1005, 1017 (CA 3, 1977); *Acri v Int'l Ass'n of Machinists & Aerospace Workers*, 781 F2d 1393, 1397 (CA 9, 1986).

In this case, the injury claimed by Charging Parties is their failure to receive the efficiency bonus. Newbold had, prior to the spring of 2016, expressed her opposition to allowing the Employer to pay efficiency bonuses to the Charging Parties. As discussed above, a decision by Newbold that allowing the Employer to give this small group of unit employees an efficiency bonus did not serve the interests of the membership as a whole, if made in good faith, would not constitute "arbitrary" or "discriminatory" conduct or violate Respondent's duty of fair representation toward the Charging Parties. I conclude that even if the Employer was willing to give Charging Parties the bonus in 2016 if Newbold agreed, and Newbold deliberately concealed that fact from the Charging Parties, Newbold's misstatements did not violate Respondent's duty of fair representation because the misstatements were not the cause of Charging Parties' injury.

I conclude that there are no material facts in dispute in this case and that the charges should be dismissed as a matter of law for the reasons set forth above. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 8, 2016