STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C02 E-105,

-and-

DETROIT FEDERATION OF TEACHERS,
Respondent-Labor Organization in Case No. CU02 E-026,

-and-

IDA STEVENSON,
An Individual Charging Party.
_____/

APPEARANCES:

Gordon J. Anderson, Esq., for the Public Employer

Sachs Waldman P.C., by John R. Runyan, Jr., Esq., for the Labor Organization

Ida Stevenson, *in pro per*

DECISION AND ORDER

On August 29, 2003, Administrative Law Judge David M. Peltz issued his decision and Recommended Order in the above-entitled matter, finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Nora Lynch, Commission Chair

_____
Maris Stella Swift, Commission Member

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Harry W. Bishop, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, oral argument was held at Detroit, Michigan on October 15, 2002, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, I make the following conclusions of law and recommended order.

The Unfair Labor Practice Charges:

On May 3, 2002, Ida Stevenson filed unfair labor practice charges against her employer, Detroit Public Schools (DPS), and her bargaining representative, Detroit Federation of Teachers (DFT). Both charges contain allegations of discrimination based upon age and/or retiree status. In her charge against the Employer, Stevenson alleges that she was unlawfully denied the right to receive fringe benefits such as sick leave and holiday pay. The charge also asserts that the

Employer broke various promises which its representatives made to her, including a representation that she would be teaching a class with a reduced number of students. With respect to the labor organization, the charge asserts that Respondent DFT denied her the right to participate in local union elections.

Respondent DFT filed an answer on July 10, 2002 and a motion for summary disposition on October 7, 2002. In its motion, the Union asserted that dismissal was warranted due to the fact that the charge was not timely filed, and because the Commission lacked subject matter jurisdiction over the allegations contained therein.

A hearing on the charges was scheduled for October 15, 2002. On that date, I indicated to the parties that none of the allegations set forth by Stevenson appeared to state a valid claim under PERA. Therefore, I concluded that dismissal of the charges was warranted under Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission. However, Charging Party was given the opportunity for oral argument in accordance with *Smith v Lansing School District*, 428 Mich 248 (1987).

Facts:

Charging Party has been a dues paying member of Respondent DFT for approximately 35 years. She was employed by Respondent DPS as a teacher until her retirement in July of 1998. In February of 2000, she was rehired by the school district pursuant to a 1999 amendment to the Public School Employees Retirement Act of 1979, which permits retired teachers to be reemployed by school districts under specified circumstances for up to three years without a reduction in their retirement allowance. See MCL 38.1361(4) and (6).

Stevenson contends that at the time she was rehired, the Employer told her that she would receive all of the fringe benefits regularly available to DPS teachers, with the exception of hospitalization and assault pay. In addition, she was allegedly promised a reduced class size of no more than 17 students.

Pursuant to a letter of understanding executed by the DFT and DPS in 1999 and subsequently ratified by Union membership, reemployed teachers such as Charging Party are placed at the top of the salary schedule, but receive no fringe benefits.

In May of 2001, the Union's executive board voted to classify teachers reemployed by the school district as temporary employees who may vote in the DFT's general elections, but are excluded from participating in local school building elections. Charging Party learned of this restriction on or about June of 2001, when she complained to the Union about the manner in which a DFT chairperson was elected.

At some point prior the hearing in this matter, Charging Party stopped paying dues to the DFT. As a result, she was notified by the school district that her employment would be terminated pursuant to the terms of the collective bargaining agreement. At that time, Charging Party had approximately 30 to 33 students in her class.

Discussion and Conclusions of Law:

Charging Party contends that the Union acted unlawfully in denying her the right to vote in a union election. However, the charge against the DFT was not filed until May 3, 2002, approximately 11 months after Stevenson learned that her voting rights as a reemployed teacher had been restricted. Section 16(a) of PERA provides that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the time a charge is filed. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 5 82; *Washtenaw County*, 1992 MERC Lab Op 471.

Even if the charge against the Union were timely filed, I find that Stevenson's allegations concerning a denial of voting rights do not state a claim upon which can be granted under PERA. The Commission has held that a union's duty of fair representation is limited to actions having an effect on employment. *Private Industry Council*, 1993 MERC Lab Op 907; *Service Employees International Union, Local 586*, 1986 MERC Lab Op 149, 151. No such impact has been demonstrated here. The fact that Stevenson was restricted from voting in an election for a local school chairperson does not interfere in any way with her rights under the contract. The selection of representatives is an internal union matter and, therefore, outside the scope of Section 10(3)(i) of PERA. See e.g. *Detroit Federation of Teachers*, 2002 MERC Lab Op ___, slip op p 2 (no exceptions), involving this same issue.

I also find that no PERA issue is raised with respect to Stevenson's contention that Respondents discriminated against her on the basis of age/retiree status. The Commission lacks jurisdiction to consider age discrimination complaints. Rather, such complaints are adjudicated by the U.S. Equal Opportunity Commission and the Michigan Department of Civil Rights. See *Detroit Federation of Teachers*, *supra*. Nor has Charging Party stated a viable PERA claim with respect to her assertion that the Employer reneged on various promises made to her at the time she was rehired regarding class size and fringe benefits. Absent any evidence or allegation that Respondent was motivated by union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's actions in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524.

Finally, I find no merit to Charging Party's contention that Respondents violated PERA by requiring her to pay dues to the DFT as a condition of employment. Under Section 10(1) of PERA, a public employer and union may agree to require as a condition of employment that all employees in the bargaining unit either become union members or pay to the union a service fee equivalent to the amount of dues uniformly required of such members. At oral argument in this matter, counsel for the DFT stated that Charging Party was terminated because she did not pay to the Union either dues or a service fee, and Stevenson did not deny that assertion. Rather, she argued that she should not have been required to pay dues to the Union in light of the fact that her voting rights had been denied. Under such circumstances, I find that Charging Party has not set forth any allegation cognizable under PERA.

Based upon the above discussion, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____