STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Public Employer-Respondent in Case No. C06 E-101,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 101,
Labor Organization-Respondent in Case No. CU06 E-014,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2057,
Labor Organization-Respondent in Case No. CU06 E-015,

-and-

LARRY R. MOCNIK,
An Individual-Charging Party.
_____/

APPEARANCES:

Larry C. Mocnik, *in propria persona*

DECISION AND ORDER

On June 8, 2006, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above 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 Chairman

_____
Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Larry C. Mocnik, *in propria persona*

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On May 2, 2006, Larry R. Mocnik filed unfair labor practice charges against his employer, Wayne County, and two labor organizations, the American Federation of State, County, and Municipal Employees (AFSCME), Local 101, and the American Federation of State, County, and Municipal Employees (AFSCME), Local 2057, pursuant to Section 10 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210.

Mocnik's charges against the Respondent Employer and the two Respondent labor organizations are identical. Mocnik asserts that on September 5, 2005, the Respondent Employer improperly displaced him from his position as a carpenter and reassigned him to laborer position. On September 22, 2005, he was allowed to move into a vacant position as a public service maintenance worker. In his charge, Mocnik explains why he believes that under the collective bargaining

agreement he should have been allowed to keep his position as carpenter or, in the alternative, should have been permitted to bump into a position he formerly held as a road repair foreman. In support of the latter claim, Mocnik asserts that the three Respondents entered into an agreement in 1995 to allow Mocnik to return to that position. The charge makes no other reference to the Respondent Unions or their conduct.

Pursuant to my authority under AACS 2002 423.165(1), (2)(c), (2)(d) & (3), on May 4, 2006, I issued an order to Mocnik to show cause why his charge against the Respondent Employer should not be summarily dismissed because it was untimely filed under Section 16(a) of PERA, and because it failed to state a claim upon which relief could be granted under the Act. I also ordered Mocnik to show cause why his charges against the Respondent Labor Organizations should not be dismissed for failure to state a claim. Mocnik filed a response to my order on June 6, 2006.

Facts:

The facts as alleged in Mocnik's charge and his June 6, 2006 response are as follows. Mocnik was hired by the Employer in March 1985. He was a foreman in the roads division for four or five years in the early 1990s. Mocnik was demoted in the mid-1990s when his driving privileges were revoked for a period of five years. When Mocnik lost his road foreman job, the three Respondents entered into an agreement stating that Mocnik would be reinstated to the road foreman position when his driving privileges were reinstated. In the late 1990s, before Mocnik regained his license, Local 101's new president denied that any such agreement existed. In October 1999, Mocnik was accepted into an apprenticeship program to become a journeyman carpenter for the Employer. While he was an apprentice carpenter, he was prohibited from taking a promotional examination for any other position. He completed his apprenticeship in December 2004. On September 5, 2005, the Employer eliminated some carpenter positions and Mocnik was displaced. In selecting carpenters for layoff or displacement, the Employer did not take into account seniority they had accumulated with the Employer before joining the apprenticeship program. After his displacement, Mocnik was placed in a laborer's position until he could obtain a commercial driver's license (CDL). The wage rate for the laborer position was half what Mocnik had earned as a carpenter. On September 22, 2005, after he acquired his CDL, Mocnik was placed in a slightly better paid vacant position as a public service maintenance worker.

Mocnik asserts that he should not have been displaced from his carpenter position because the Employer should have considered his previous County seniority when deciding which carpenters to displace. In the alternative, he argues that he should have been allowed to bump into the position of road foreman because he should not have been removed from this position when he lost his driver's license, and because he has more County seniority than most of the current road foremen.

Mocnik does not assert that he asked either of the Respondent Unions to file a grievance over his displacement or the County's refusal to allow him to bump into the road foreman position. The only mention of the Unions in Mocnik's June 6, 2006 response to the order to show cause is the following paragraph:

> In the 22 years that I have been working for the County the Unions have not done a damn thing for me but they sure do gladly take money for Union dues every

> paycheck. This goes for 101 and 2057. As far as I am concerned, the Unions are not worth the paper that I am writing to you on.

Discussion and Conclusions of Law:

> The rights of employees under PERA are set out in Section 9 of that Act:
>
> It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid or protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

To establish that an employer violated PERA, employees must demonstrate that their employer interfered with, restrained, coerced or retaliated against them because they engaged in conduct protected by Section 9 of PERA. *City of Detroit (Fire Dept)*, 1988 MERC Lab Op 561, 563-564; *Detroit Pub Schs*, 1987 MERC Lab Op 523, 524. Mocnik has not alleged that in displacing him from his position the Respondent Employer restrained, coerced or retaliated against him because he engaged in union activity or other conduct protected by Section 9. Rather, he asserts that his displacement and reassignment to a lower paid position was unfair and/or breached the collective bargaining agreement. An employee does not state a claim upon which relief can be granted against his employer under PERA merely by alleging that the employer violated the terms of a collective bargaining agreement. *Wayne Co Cmty College*, 1985 MERC Lab Op 930, 936*; SEMTA*, 1983 MERC Lab Op 443. I conclude that Mocnik's charge against the Respondent Employer should be dismissed as it fails to allege any conduct that might violate PERA.

I also conclude that Mocnik's charge against the Respondent Employer is untimely filed. Section 16(a) of PERA states that the Commission may not issue a complaint based upon an unfair labor practice occurring more than six months before the filing of the charge and its service upon the respondent. The statute of limitations in Section 16(a) is jurisdictional and is not waived by the failure of a respondent to raise it as a defense. *Walkerville Rural Comty Schs*, 1994 MERC Lab Op 582, 583. Mocnik alleges that the Respondent Employer violated PERA by displacing him from his position as a carpenter on September 5, 2005, and refusing to allow him to bump into a road foreman position. However, Mocnik did not file his charge until May 6, 2006, more than six months after his displacement and reassignment. I conclude, therefore, that Mocnik's charge against the Employer should also be dismissed as untimely.

With respect to the charges against the Unions, a labor organization representing public employees violates Section 10(3)(a)(i) of PERA when it violates its duty of fair representation toward the employee it represents. To establish a violation of the duty of fair representation, employees must show that the union's conduct was arbitrary, discriminatory or in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). Mocnik asserts generally that the Respondent Unions failed to do anything. He does not allege that he asked them to file grievances or take any other action on his behalf, or that they engaged in any conduct that might have violated their duty of fair representation. I conclude that Mocnik's charges against the Respondent Unions should be dismissed for failure to state a claim upon which relief could be

granted under PERA.

For reasons set forth above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____