

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF BATTLE CREEK,
Respondent-Public Employer in Case No. C13 A-001 (Docket No. 13-000006),

-and-

POLICE OFFICERS LABOR COUNCIL,
Respondent-Labor Organization in Case No. CU13 A-001 (Docket No. 13-000008),

-and-

ANGEL T. RIVERA,
An Individual Charging Party.

APPEARANCES:

Angel T. Rivera, *In Propria Persona*

DECISION AND ORDER

On March 5, 2013, Administrative Law Judge David M. Peltz issued a Decision and Recommended Order in the above matter finding that Respondents 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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Robert S. LaBrant, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF BATTLE CREEK (POLICE DEPARTMENT),
Respondent-Public Employer in Case No. C13 A-001; Docket No. 13-000006-MERC,

-and-

POLICE OFFICERS LABOR COUNCIL,
Respondent-Labor Organization in Case No. CU13 A-001; Docket No. 13-000008-MERC,

-and-

ANGEL T. RIVERA,
An Individual Charging Party.

APPEARANCES:

Angel T. Rivera, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from unfair labor practice charges filed on January 2, 2013, by Angel T. Rivera against his employer, the City of Battle Creek (Police Department), and his Union, the Police Officers Labor Council (POLC). 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 charge in Case No. C13 A-001; Docket No. 13-000006-MERC alleges that the City of Battle Creek (Police Department) took action against Rivera in violation of the collective bargaining agreement and in retaliation for filing a claim against the City alleging racial discrimination under Michigan's Elliot-Larsen Civil Rights Act, MCL 37.2101, *et seq.* The charge in Case No. CU13 A-001; Docket No. 13-000008-MERC asserts that the Union breached its duty of fair representation by failing to properly represent Rivera in connection with the above incidents.

In an order issued on January 24, 2013, I directed Charging Party to show cause why the charges should not be dismissed as untimely under Section 16(a) of PERA and for failure to state

a claim upon which relief can be granted under the Act as to either Respondent. Charging Party filed a timely response to the Order to Show Cause on February 14, 2013. Although the response provides additional information concerning the allegations set forth in the charges, it fails to address the specific issues identified by the undersigned in the Order to Show Cause. Accordingly, dismissal of the charges is warranted for the reasons set forth below.

Discussion and Conclusions of Law:

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, the events complained of by Rivera in the charges and in the response to the Order to Show Cause all occurred no later than June 29, 2012. Because such events occurred more than six months prior to the filing of the charges on January 2, 2013, the charges must be dismissed as untimely under Section 16(a) of the Act.

Even if the charges had been timely filed, dismissal would nonetheless be warranted on the ground that Rivera 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 in Case No. C13 A-001; Docket No. 13-000006-MERC alleges that the Employer violated the Act by breaching the collective bargaining agreement between the City and the POLC and by retaliating against Rivera for his pursuit of a civil rights lawsuit. Neither allegation provides a factual basis which would support a finding that Rivera engaged in union activities for which he was subjected to discrimination or retaliation in violation of PERA. Therefore, dismissal of the charge against the City of Battle Creek (Police Department) is warranted.

Similarly, there is no factually supported allegation against the POLC in Case No. CU13 A-001; Docket No. 13-000008-MERC which, if proven, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Rivera. 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.

The Commission has steadfastly refused to interject itself in judgments over agreements made by employers and collective bargaining representatives, despite frequent challenge by employees. *City of Flint*, 1996 MERC Lab Op 1, 11. 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, the charge in Case No. CU13 A-001; Docket No. 13-000008-MERC does not adequately explain how the actions of the Union in connection with this matter would constitute a violation of PERA. There is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Charging Party. In fact, Rivera concedes that the Union filed two grievances on his behalf in connection with the allegedly improper conduct by the Employer. With respect to one of the grievances, the Employer agreed to change Rivera's performance evaluation to a perfect score and remove a negative comment from that document. The Union apparently advanced the other grievance to the final step of the grievance procedure before deciding not to pursue the matter to arbitration based upon its conclusion that no contract violation had occurred. There is no factual allegation that the Union's decision-making with respect to either grievance was motivated by racial or other individual prejudice or by personal dislike. As noted above, a union 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. To this end, the Michigan Supreme Court has held, "When the general good conflicts with the needs or desires of an individual member, the discretion of the union to choose the former is paramount." *Lowe, supra* at 146. Under such circumstances, I recommend dismissal of the charge against the POLC 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. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charges filed by Angel T. Rivera against the City of Battle Creek (Police Department) and the POLC are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: March 5, 2013