STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT METRO WAYNE COUNTY AIRPORT,
Public Employer-Respondent in MERC Case No. C16 J-108; Hearing Docket No. 16-030910,

-and-

AFSCME COUNCIL 25, LOCAL 953,
Labor Organization-Respondent in MERC Case No. CU16 J-056; Hearing Docket No. 16-030912,

-and-

MICHAEL TIERNEY,
An Individual Charging Party.
_____/

Appearances:

Michael Bommarito, Nemeth Law, for the Public Employer

Shawntane Williams, for the Labor Organization

Michael Tierney, appearing on his own behalf

DECISION AND ORDER

On April 27, 2017, Administrative Law Judge Travis Calderwood issued his 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: June 9, 2017

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DETROIT METRO WAYNE COUNTY AIRPORT,
Public Employer-Respondent in Case No. C16 J-108; Docket No. 16-030910-MERC,

-and-

AFSCME COUNCIL 25, LOCAL 953,
Labor Organization-Respondent in Case No. CU16 J-056; Docket No. 16-030912-MERC,

-and-

MICHAEL TIERNEY,
An Individual-Charging Party.
_____/

DECISION AND RECOMMENDED ORDER OF
ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE

On October 31, 2016, Michael Tierney (Tierney or Charging Party), filed unfair labor practice charges against his employer, the Detroit Metro Wayne County Airport (Employer or Airport) and his bargaining representative, AFSCME Council 25, Local 953 (Union). 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 Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission).

The charges as filed both contain identical factual allegations. On December 6, 2016, I consolidated the charges and issued an Order to Show Cause directing Charging Party to respond in writing why his charges should not be dismissed without a hearing because he had failed to state a claim under PERA for which relief could be granted and because the charges, as filed, were outside the Act's six-month statute of limitations. On December 27, 2016, Charging Party filed his response to my order.[1]

Background:

According to Charging Party, on June 5, 2014, the Employer posted a Job Announcement for a painter. That position was filled on July 14, 2014, by an existing Airport employee, not Charging Party, who had worked in the maintenance department.

The individual who filled this position received a salary that was significantly less than the other employees who were already working in this classification because of a wage reduction clause for "new

1 On January 10, 2017, the Employer filed a Motion for Summary Disposition. No action has been taken with respect to that motion.

hires" contained within the collective bargaining agreement between the Airport and the Union.[2] Charging Party claims that sometime soon after assuming the painter position, this individual filed a grievance requesting that he be paid the same as the other painters on the basis that he was not a "new hire" because he had been an existing Airport Employee.

On August 1, 2014, another Job Announcement for a painter was posted by the Employer. This announcement listed the same salary as the earlier announcement but, according to Charging Party, had "softened" requirements. Five existing Airport employees, including Charging Party, were selected to become painters and began working in the classification on September 22, 2014. All five, like the one hired in July, were paid less than employees who already held that position. Charging Party claims that sometime soon after assuming the painter positions, all five individuals requested that the Union file a grievance to have them be paid the same as the other painters as they too were existing Airport employees.

It is not clear whether any actual grievance was filed in 2014 on behalf of the one painter hired in July or the five painters, including Charging Party, which were hired on September. It appears from Charging Party's assertions that at some point in 2014 the Union local experienced a change in president. Charging Party alleges in his initial filing that he made several requests to the each of the Union local presidents, both past and present, seeking a copy of the grievance involving the five painters hired in September which included Charging Party.

Charging Party claims that on October 5, 2015, a "new grievance" was filed on behalf of the five painters, including Charging Party, hired in September. Charging Party also claims that another grievance had been filed on behalf of the one painter hired in July as well.

On October 19, 2015, a grievance hearing was held between the Union and the Employer, which Charging Party attended. It is not clear from the pleadings whether this hearing only involved Charging Party's grievance, all five painters hired in September 2014, or the five painters and the one painter fired in July 2014.

On November 2, 2015, the Employer denied the grievance although, as stated above, the extent of the individuals this grievance included is unknown. On November 8, 2015, Charging Party claims he spoke with the Union's local president who confirmed the Union would be filing for arbitration. On November 11, 2015, it is alleged that the Union sent the Employer a letter indicating that it intended on filing for arbitration. Charging Party claims that on December 30, 2015, he was informed by the Union's local president that the Union had filed for arbitration.

On April 5, 2016, Charging Party was approached by another Airport employee who worked in the maintenance department who claimed that Charging Party's grievance was causing the Airport to no longer hire existing employees into skilled trade positions and that the Airport would continue to hire from the outside unless Charging Party dropped his grievance.

On April 6, 2016, Charging Party entered the maintenance breakroom and saw a handwritten notice on a white board indicating that a Union meeting would be taking place later that day. The notice clearly stated that included within the topics discussed at the meeting would be "people moving from maint [sic]

2 It is not entirely clear how much less the new painter was being paid then those already in the classification. Charging Party's initial allegations as set forth in both unfair labor practice charges were that the difference was 20%, however; his response to the Order to Show Cause indicated that the difference was only 10%.

to skill trades" and "the five painter agreement." Appearing immediately beneath the topics, underlined twice and in all capital letters, was notice that a vote may be taken. Aside from seeing the notice, Charging Party does not indicate that he had been made aware of the meeting by anyone in the Union.

While it is not explicitly clear that Charging Party attended the meeting on April 6, 2016, he provides a very detailed narrative of what occurred and includes the claim that the first hour and fifteen minutes was spent discussing the grievance(s) filed on behalf of himself and the four other painters hired in September 2014. According to the pleadings and exhibits submitted by Charging Party, a vote was held during the meeting to decide whether the Union should withdraw Charging Party's grievance along with the grievances for the other four painters hired with him, in exchange for the Employer agreeing to increase the July 2014 painter hire to the full wage scale and to resume hiring other existing Airport employees into skilled trade positions. The Union membership in attendance at the meeting voted to abandon the grievances. On April 7, 2016, Charging Party approached the Union local president and asked him when he would meet with the Employer and "sign off" on the grievances. A heated discussion followed between the two.

Charging Party's response to my Order to Show Cause included a Settlement Agreement, executed May 4, 2016, between the Union and the Employer whereby the Union agreed to withdraw four grievances with prejudice in exchange for the Airport's agreement to, among other things, utilize the requirements from the August 1, 2014, Job Announcement going forward when selecting painters and the placement of two individuals at the full wage rate. The Settlement Agreement does not identify the grievances by individual nor does it identify the two individuals whose wages were increased. Presumably, according to Charging Party's allegations in his initial charge and response to my order, the four grievances being withdrawn were his and three of the four painters he was hired with in August, while the two receiving wage increases were the painter hired in July of 2014 and one of the four painters hired alongside Charging Party in August of that year.

Discussion and Conclusions of Law:

Charges filed with the Commission must comply with the Commission's General Rules. More specifically, Rule 151(2)(c), of the Commission's General Rules, 2002 AACS; 2014 MR 24, R 423.151(2)(c), requires that an unfair labor practice charge filed with the Commission include:

> A clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged therein, and the sections of LMA or PERA alleged to have been violated.

Charges which comply with the Commission's rules, are timely filed, and allege a violation of PERA are set for hearing before an administrative law judge. To be timely filed, the charge must be filed within six months of the alleged unfair labor practice. MCL 423.216(a). The Commission has consistently held that the statute of limitations, contained within Section 16(a) of PERA, 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).

Charge Against the Employer

As stated above, the factual allegations set forth by Charging Party are identical with respect to the charges against both the Airport and the Union. To the extent that there is any discernible claim against the Airport gleaned from the Charging Party's pleading, such can be described only that Charging Party is complaining that the Employer is treating him unfairly by paying him at the reduced pay rate as set forth in the agreement between the Airport and the Union. However, this action clearly occurred and became known to the claimant in 2014. As such, I conclude that the charge against the Employer must be dismissed as untimely under Section 16(a) of the Act.

Ignoring the timeliness issue, dismissal of the charge against the Employer is still nonetheless warranted as Charging Party has failed to state a claim against the Airport upon which relief can be granted under PERA. Section 9 of the Act protects the rights of public employees to form, join or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. Sections 10(1)(a) and (c) of the PERA prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities described above.

With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment. The Commission's jurisdiction with respect to claims brought by individual employees against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in union or other protected concerted activities. In the instant action however, Charging Party has not alleged in any fashion that the Employer acted unlawfully or in any way violated his rights as guaranteed under PERA.

Charge Against the Union

In contrast with the charge against the Employer, Charging Party's allegation against the Union is clearly apparent; Charging Party claims that the Union's decision to withdraw his grievance, along with those of three other unit members, in exchange for the Employer's agreement to increase the pay rate of two other unit members violated its duty of fair representation.

Even if Charging Party was not present at the April 6, 2016, meeting in which members of the Union voted to take action with respect to his grievance, he was certainly aware of the action taken when he spoke with the Union local president the following day. Charging Party claims in his response to my Order to Show Cause that his charge against the Union is timely with respect to the May 4, 2016, Settlement Agreement. This claim ignores the fact that Charging Party knew by April 7, 2016, that the Union's membership had voted to abandon the grievances. As such, I conclude that the charge against the Union must also be dismissed as untimely under Section 16(a) of the Act.

Similar to the claim against the Employer, even ignoring the timeliness issue, dismissal of the Charge against the Union is appropriate because Charging Party has failed to state a claim under the Act for which relief can be granted. It is well established law that a union's obligation to its members is comprised of three responsibilities: (1) to serve the interest 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 City of Detroit*, 419 Michigan 651 (1984). Furthermore, a

union's actions are lawful if they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Ass'n v O'Neill,* 499 US 65, 67 (1991). Commission case law is clear that a member's dissatisfaction with their union's effort, with the union's ultimate decision or with the outcome of those decisions, is insufficient to constitute a proper charge of a breach of the duty of fair representation. See, *Eaton Rapids Education Association,* 2001 MERC Lab Op 131.

Moreover, it is well established that a union must be granted broad discretion in discriminating between various categories of members and weighing the interest of various categories of members in collective bargaining negotiations. See *Ford Motor Co v Huffman,* 345 US 330 (1953); See also *Port Huron Area Sch Dist,* 1998 MERC Lab Op 43. In the instant case Charging Party has not plead with any modicum of specificity that the Union membership's vote to settle his grievance was unlawfully motivated or that its actions were otherwise arbitrary, discriminatory or outside the bounds of reasonableness such that it would violate PERA.

I have considered all other arguments as put forth by Charging Party and conclude such does not warrant any change in the result. I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charges filed by Michael Tierney against Detroit Metro Wayne County Airport and AFSCME Council 25, Local 953 are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: April 27, 2017