

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

In the Matter of:

AMALGAMATED TRANSIT UNION, LOCAL 1564,
Labor Organization-Respondent

MERC Case No. 20-D-0788-CU

-and-

JOSH CAMPBELL,
An Individual Charging Party.

APPEARANCES:

Steed Coates, appearing on behalf of Charging Party

Mark Cousens, for Respondent

DECISION AND ORDER

On June 23, 2020, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order¹ 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 either 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.

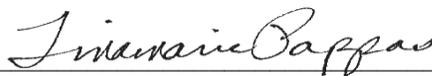
MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Samuel R. Bagenstos, Commission Chair



Robert S. LaBrant, Commission Member



Tinamarie Pappas, Commission Member

Issued: September 23, 2020

¹ MOAHR Hearing Docket No. 20-007846

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

AMALGAMATED TRANSIT UNION, LOCAL 1564,
Respondent-Labor Organization,

Case No. 20-D-0788-CU
Docket No. 20-007846-MERC

-and-

JOSH CAMPBELL,
An Individual Charging Party.

APPEARANCES:

Steed Coates, appearing on behalf of Charging Party

Mark Cousens for Respondent

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on April 22, 2020, by Josh Campbell against Amalgamated Transit Union (ATU), Local 1564. 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 charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (Commission).

The charge alleges that ATU, Local 1564 president Kevin Colon, financial secretary Antionette Brown, and members of the executive board violated the Union constitution and by-laws by disregarding a vote by members of the bargaining unit to advance four grievances to arbitration. In addition, the charge asserts that Respondent acted unlawfully by blocking various motions pertaining to the activities of the local president and financial secretary, including a motion to appoint an independent auditor to address alleged financial irregularities. Finally, the charge asserts that Colon, Brown, and members of the executive board paid themselves using Union funds for time spent picketing General Motors.

An evidentiary hearing was scheduled for May 21, 2020. At the start of the hearing, Respondent moved for summary disposition, asserting that the allegations set forth in the charge involved internal union matters and, therefore, were outside of the jurisdiction of the

Commission. In addition, Respondent argued that Charging Party has no standing to challenge the Union's decision not to advance the four grievances to arbitration because none of those grievances were filed on Campbell's behalf. Lastly, Respondent asserted that the charge was untimely because it was filed more than six months after the Union made the decision not to advance the grievances to arbitration. After giving Charging Party a full and fair opportunity to respond to the Union's arguments, I agreed that dismissal of the charge on summary disposition was warranted and indicated that a written decision to that effect would be issued.

Discussion and Conclusions of Law:

Pursuant to Rule 165(1), R 423.165(1), of the General Rules and Regulations of the Employment Relations Commission, which govern practice and procedure in administrative hearings conducted under PERA by MOAHR, the ALJ may "on [his] own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party." Accepting all of the allegations set forth by Campbell as true, dismissal of the charge against ATU, Local 1564 is warranted for the reasons set forth below.

Charging Party asserts that Respondent violated its duty of fair representation by ignoring a vote of the Union membership to advance four grievances to arbitration. According to Charging Party, such action was contrary to the requirements of the Union constitution and by-laws. However, Charging Party was not directly involved in those grievances and the instant case was not brought on behalf of any of the named grievants. For that reason, Campbell lacks standing to challenge the Union's decision not to process the grievances to arbitration. See e.g. *Novi Community Sch*, 28 MPER 54 (2014) (no exceptions).

Even if Campbell had standing to assert such a claim, the record establishes that allegations pertaining to the grievances were not timely filed. 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 membership voted to advance the grievances to arbitration at various Union meetings, the last of which occurred on February 26, 2019. However, the charge was not filed until April 22, 2020, more than a year later. For that reason, I find that any allegations pertaining to processing of the grievances are untimely under Section 16(a) of the Act.

Charging Party's allegations concerning alleged financial improprieties committed by Union leadership, as well as its handling of various motions related to those alleged improprieties, are also subject to dismissal without an evidentiary hearing. A union's duty of fair representation is comprised of three distinct responsibilities: (1) to serve the interests of all

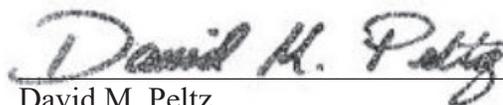
members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). It is well-established, however, that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations which do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004); *SEIU, Local 586*, 1986 MERC Lab Op 149. Internal union matters are outside the scope of PERA, but are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. This principle is derived from Section 10(2)(a) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *SEIU, Local 586, supra*. The Commission has held that the duty of fair representation applies only to those policies and procedures having a direct effect on terms and conditions of employment. See e.g. *Organization of Classified Custodians, supra*; *SEIU, Local 586, supra*.

In the instant case, Charging Party asserts that Respondent acted unlawfully by blocking various motions pertaining to the activities of the local president and financial secretary, including a motion to appoint an independent auditor to address alleged financial irregularities. In addition, Campbell claims that Colon, Brown and members of the ATU, Local 1564 executive board paid themselves using Union funds for time spent picketing General Motors. These allegations all pertain to purely internal matters and, therefore, are outside the jurisdiction of the Commission. Accordingly, I conclude that the charge must be dismissed without a hearing and recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Josh Campbell against Amalgamated Transit Union, Local 1564 in Case No. 20-D-0788-CU; Docket No. 20-007846-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



David M. Peltz
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: June 23, 2020