

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

In the Matter of:

CITY OF PONTIAC,
Respondent-Public Employer in Case No. C04 E-126,

-and-

PONTIAC POLICE OFFICERS ASSOCIATION,
Respondent-Labor Organization in Case No. CU04 F-030,

-and-

GENE J. MAXSAM,
An Individual Charging Party.

_____ /

APPEARANCES:

Bloomfield Law Center, P.C., by Joan Davidson-Harger, Esq., for the Charging Party

DECISION AND ORDER

On August 31, 2004, Administrative Law Judge David M. Peltz issued his 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

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

On May 17, 2004, Gene J. Maxsam filed identical unfair labor practice charges against Respondents City of Pontiac and Pontiac Police Officers Association alleging “wrongful discharge due to unfair labor practices.” A five-page statement was attached to each charge.

In an order entered on June 15, 2004, Charging Party was granted fourteen days in which to show cause why his charges should not be dismissed for failure to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), MCL 423.201 *et seq.* Charging Party did not file a response to the order.

I find that Charging Party has failed to state a claim under PERA as to either Respondent. With respect to the Employer, neither the charge nor the attached statement allege that the City of Pontiac discriminated against Maxsam because of his union or other activity protected by Section 9 of PERA. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against Charging Party because he engaged in conduct protected by Section 9, the Commission is prohibited from making a judgment on the merits or fairness of the Employer’s action. See e.g. *City of Detroit (Fire Dept)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524.

Similarly, the charge against the Pontiac Police Officers Association does not state a claim under PERA. 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, 177; 87 S Ct 903; (1967); *Goolsby v Detroit*, 419 Mich 651(1984). A union has considerable discretion to decide which grievances to pursue and which to settle and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973). In the instant case, neither the charge nor the attached statement allege that the Union acted arbitrarily, discriminatorily or in bad faith with respect to its representation of Charging Party. I, therefore, recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____