STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TWIN CITIES TRANSPORTATION AUTHORITY,
Public Employer - Respondent,

Case Nos. C06 J-251 & CU06 J-047

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2757,
Labor Organization - Respondent,

-and-

ROBBIN LEE,
An Individual Charging Party.
_____/

APPEARANCES:

Robbin Lee, *In Propria Persona*

DECISION AND ORDER

On December 4, 2006, Administrative Law Judge Doyle O'Connor 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

_____
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TWIN CITIES TRANSPORTATION AUTHORITY,
Respondent-Public Employer,

-and-

Case Nos. C06 J-251 &
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AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2757,
Respondent-Labor Organization,

-and-

ROBBIN LEE,
An Individual Charging Party.
_____/

APPEARANCES:

Robbin Lee, in *pro per*, for the Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

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 assigned for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Findings of Fact:

These findings of fact are derived from the charge and supporting documentation submitted by Charging Party, with those allegations taken in the light most favorable to Charging Party.

Robbin Lee filed a charge on October 23, 2006 suggesting that his former Employer, Twin Cities Transportation Authority, had improperly terminated his employment, and suggesting that his Union, American Federation of State, County and Municipal Employees (AFSCME) Local 2757, had improperly failed to pursue a grievance regarding that issue. In support of the charge, Lee provided documents detailing his Employer's allegations against him, a letter from the Union

explaining its reasons for not pursuing the matter to arbitration, and a note by Lee which reviews the allegations but which does not dispute the factual accuracy of the allegations.

Lee variously expressly acknowledges, or fails to dispute, the factual accuracy of the Employer's allegations that led to his termination. He asserts only that his offenses should have resulted in discipline less than termination.

Lee submitted a letter by the Union explaining to him that it would not pursue the matter to arbitration as Lee was fired for using profanity while driving a bus and for failure to collect fares from riders. The Union's letter to Lee notes that written witness statements supported the Employer's version of events and that Lee had not disputed the Employer's claims. Finally, the Union's letter notes Lee's history of prior discipline. Lee has not contested the accuracy of any of the reasons relied upon by the Union for not pursuing the grievance further.

An order to show cause why the charges should not be dismissed was issued, pursuant to R 423.165, for failure to state a claim upon which relief could be granted. The order allowed fourteen days for a response to be filed. The Charging Party did not file a response to the order to show cause, which was due on November 6, 2006.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. Lee does not complain of any specific conduct by the Union. It appears that Lee disagrees with the Union's decision to not proceed to arbitration regarding his termination form employment. To establish a violation of the duty of fair representation, the Charging Party must demonstrate that the union's conduct toward the bargaining unit member was arbitrary, discriminatory or in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). Furthermore, to prevail on such a claim, a complainant must establish not only a breach of the duty of fair representation, but also a breach of the collective bargaining agreement. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992).

The fact that Lee is dissatisfied with his Union's efforts or ultimate decision is insufficient to establish a breach of duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. A union has considerable discretion to decide which grievances to pursue and which to settle. When evaluating whether to accept a grievance, a union also has discretion to consider the likelihood of success and the interest of the union membership as a whole. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146. A union's decision not to proceed to arbitration with a grievance is not arbitrary as long as it is 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. Lee's charge fails to state a claim that the Union breached its duty of fair representation.

Similarly, Lee fails to assert, or provide a factual basis for, any claimed violation of the Act by the Employer. Absent any evidence or allegation that the Employer was motivated by animus as a result of union or other activity protected by Section 9 of PERA, the Commission does not have

jurisdiction to make a judgment on the merits or fairness of the actions complained of by the Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation that the employer was motivated by union or other activity protected by PERA, the charge against the employer fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated:_____