STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (DEP'T OF WATER AND SEWERAGE),
Public Employer-Respondent in Case Nos. C08 E-093 and C08 I-195,

-and-

AFSCME COUNCIL 25, LOCAL 207,
Labor Organization-Respondent in Case No. CU08 E-024,

-and-

DONALD LE PAUL HOOKS,
An Individual-Charging Party.
____/

APPEARANCES:

Miller Cohen, P.L.C., by Bruce A. Miller, Esq., for the Labor Organization

Donald Le Paul Hooks, *In Propria Persona*

DECISION AND ORDER

On October 20, 2008, Administrative Law Judge David M. Peltz (ALJ) issued his Decision and Recommended Order on Summary Disposition in the above matters recommending dismissal of the unfair labor practice charges filed by Charging Party, Donald Le Paul Hooks, against Respondents, City of Detroit, Department of Water and Sewerage (Employer) and American Federation of State, County and Municipal Employees, Council 25, Local 207 (Union). The ALJ found that the charges failed to state claims upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201- 423.217. Specifically, the charges failed to allege sufficient facts to support the claims against both Respondents. The ALJ further concluded that the Union owed no duty of representation to Charging Party because he was not a member of the bargaining unit. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On November 10, 2008, Charging Party filed exceptions to the ALJ's Decision and Recommended Order, to which neither Respondent filed a response.

Charging Party contends in his exceptions that the ALJ erred by recommending summary dismissal of his charges because material factual issues remained in dispute concerning his status as a city employee and union member during the time of the alleged unfair labor practices. He also argues that the ALJ overlooked or excluded details contained in his various pleadings that provided sufficient bases for each charge. We have thoroughly reviewed the exceptions as to each charge and find them to be without merit.

Factual Summary

For purposes of reviewing the appropriateness of summary disposition in these matters, we accept as true Charging Party's allegations as contained in the record. Charging Party worked for Respondent Employer as a public utility service guard from April 10, 2000 until his resignation on July 11, 2005. Two years later, he applied for reinstatement and was selected to begin work on November 19, 2007 at 7:00 a.m. Before his scheduled start date, Charging Party made several unsuccessful requests to switch to the midnight shift and to obtain work uniforms. These requests were based on collective bargaining agreement provisions that purportedly (1) gave a shift preference option to re-hired employees, and (2) established a clothing allowance and dress code requirement. Although cautioned that the early shift had the only available position, and that refusing to report for work as directed would constitute a voluntary quit, Charging Party never reported for the new assignment.

On December 10, 2007, Charging Party filed a grievance with Respondent Union claiming that Respondent Employer violated the collective bargaining agreement by not honoring his shift change and uniform requests. However, the Union declined to represent him, explaining that he was not eligible for union representation since he was not yet a *bona fide* city employee. Charging Party subsequently filed unfair labor practice charges against both Respondents. [1]

In Case C08 E-093, Charging Party alleged that he was subjected to "unlawful threats, coercion and intimidation" from the Employer for engaging in protected activity by objecting to the alleged contract violations caused by the denial of his shift and uniform requests. In Case C08 I-195, Charging Party asserted that the Employer retaliated further by issuing threats of job loss because he continued to object to the denied requests. The charge against Respondent Union, in Case No. CU08 E-024, alleges a breach of the duty of fair representation for engaging in "unlawful, irrational, arbitrary and . . . discriminatory" conduct by refusing to represent Charging Party in his grievance seeking re-employment to the midnight shift, and challenging the alleged contract violations. On September 3, 2008, Respondent Union filed a motion for summary dismissal claiming that it owed no duty of fair representation to Charging Party because he was not an employee of the City.

On September 10, 2008, the ALJ issued a show cause order requiring Charging Party to explain why the charges against both Respondents should not be dismissed for

[1] C08 E-093 and CU08 E-024 were filed on May 30, 2008. C08 I-195 was filed on September 24, 2008.

failure to state valid claims under PERA. In replying to the order, Charging Party filed several combined responses and objections to the motion for summary disposition. He again claimed to have active status as a city employee and union member based on forms that he signed on October 29, 2007 regarding his preferred reinstatement certification, insurance coverage, and union dues deductions.

Discussion and Conclusions of Law:

Charging Party objects to the ALJ's recommendation for summary dismissal of both charges against the Employer arguing that his pleadings, collectively, provide a sufficient basis to sustain these claims. These two charges center on alleged contract violations resulting from the Employer's denial of his requests for work uniforms and re-employment to the midnight shift. However, PERA does not prohibit an employer from engaging in actions that are "unfair," unless the actions interfere with an employee's exercise of the specific rights set forth in Section 9 of PERA. *MERC v Reeths-Puffer Sch Dist,* 391 Mich 253, 259 (1974). Even if the contract violation claims are true, this Commission lacks authority to judge the fairness of an employer's actions that fall outside of those areas governed by PERA. *Wayne Co*, 20 MPER 109 (2007). Moreover, an employee's allegation that an employer violated the collective bargaining agreement, without more, does not state a valid claim under PERA. *Ann Arbor Pub Sch,* 16 MPER 15 (2003); *Detroit Bd of Ed,* 1995 MERC Lab Op 75.

We agree with the ALJ that the charges do not suggest that the Employer's actions were intended to discourage, interfere with, or retaliate against Charging Party for engaging in protected activity. In his pleading and exceptions, Charging Party merely inserts various "catch phrases" often associated with Section 9 protections, but does not allege facts in support of his conclusory allegations. Moreover, his random use of these "catch phrases" lacks any reasonable correlation with the instances of alleged misconduct asserted in his charges. Therefore, we reject Charging Party's contention of employer discrimination and retaliation due to protected activity, as his claims are unsubstantiated and supported only by general statements and conclusory allegations. *Lansing Sch Dist*, 1998 MERC Lab Op 403; *Wayne Co Dep't of Pub Health*, 1998 MERC Lab Op 590, 600. Additionally, it appears that Charging Party voluntarily declined the Employer's re-employment offer by refusing to report to the new job assignment. Since the allegations contained in both charges and the other pleadings do not state valid claims under PERA, summary dismissal is appropriate under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165.

Charging Party also excepts to summary dismissal of the charge against the Union. He claims that material factual issues are in dispute as to his status as a city employee and as a union member. We disagree. Based on Charging Party's own pleadings and exceptions, he never started the new position with the Employer, hoping instead to be re-employed on the midnight shift. Therefore, he never reached status as a "re-hired" employee. As the ALJ correctly noted, Charging Party was not entitled to representation by the Union because he was not a member of the bargaining unit. Therefore, the Union was justified in not processing the grievance. We also reject

Charging Party's contention that he became a city employee and union member once he signed forms authorizing insurance benefits and union deductions during his pre-employment orientation.

Charging Party further contends that the Union acted improperly by refusing to represent him in his grievance against the Employer for contract violations and denial of his re-employment to the midnight shift. It is well understood that a union may exercise considerable discretion in deciding whether or not to pursue a grievance (*Michigan State Univ Admin-Prof'l Ass'n*, MEA/NEA, 20 MPER 45 (2007)), so long as its decision is not arbitrary, biased, discriminatory or in bad faith. *Silbert v Lakeview Ed Ass'n*, 187 Mich App 21; 466 NW2d 333 (1991). Even if we were to assume that Charging Party was a member of the Union, his duty of fair representation complaint still fails. As noted with the above claims, this charge and other pleadings are also supported with familiar "catch phrases" that only offer conclusory allegations of union misconduct without the requisite detail to overcome summary dismissal. *Zeeland Pub Sch*, 1999 MERC Lab Op 505; *AFSCME Council 25*, 1992 MERC Lab Op 166. Lacking a proper claim under PERA, this charge must be dismissed under R 423.165.

Finally, we have carefully examined the remaining issues raised by Charging Party and find that they would not change the results in these matters. Accordingly, we affirm the ALJ's Decision and Recommended Order dismissing all charges on summary disposition.

ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT (DEP'T OF WATER AND SEWERAGE),
Respondent-Public Employer in Case Nos. C08 E-093 and C08 I-195,

-and-

AFSCME COUNCIL 25, LOCAL 207,
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DONALD LE PAUL HOOKS,
An Individual Charging Party.
____/

APPEARANCES:

Donald Le Paul Hooks, appearing on his own behalf

Miller Cohen, P.L.C., by Bruce A. Miller, for the Labor Organization

DECISION AND RECOMMENDED ORDER
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 was assigned to David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules, on behalf of the Michigan Employment Relations Commission.

This matter comes before the Commission on Unfair Labor Practice Charges filed by Donald Le Paul Hooks on May 30, 2008 and September 24, 2008. In Case Nos. C08 E-093 and C08 I-195, Hooks alleges that his former Employer, the City of Detroit (Department of Water and Sewerage) violated PERA by denying him reinstatement to his former position as a service guard in December of 2007 and by subjecting him to threats in retaliation for his attempt to assert contractual rights in December of 2007. In Case No. CU08 E-093, Charging Party contends that his former labor organization, AFSCME Council 25, Local 207, breached its duty of fair representation by failing to enforce the terms of the collective bargaining agreement between the Employer and the Union with respect to his reinstatement. A hearing on the Charges was scheduled for October 6, 2008.

On September 3, 2008, the Union filed a Motion for Summary Disposition in Case No. CU08 E-024. The Union argues that it owed no legal duty to Charging Party because Hooks was neither an employee of the City of Detroit nor a member of the AFSCME Council 25, Local 207 bargaining unit at the time of the alleged unfair labor practice. For that reason, the Union contends that the charge against it in this matter should be dismissed without a hearing.

On September 10, 2008, I issued an order directing Hooks to show cause why the charges against both the Employer and the Union should not be dismissed for failure to state claims upon which relief can be granted under PERA. Charging Party filed a response to the Order to Show Cause on September 24, 2008, as well the charge in Case No. C08 I-195. In an order issued on September 28, 2008, I consolidated all of the charges and adjourned the hearing in this matter without date so that I could have the opportunity to carefully review Hooks' response to the Order to Show Cause.

Accepting all of Charging Party's factual allegations as true, I find that Hooks has not raised any cognizable claim as to either the Employer or the Union. 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 contract. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against an employee for engaging in conduct protected by Section 9 of PERA, 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 Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524. In the instant case, Charging Party has not alleged that the City of Detroit discriminated or retaliated against him because of union or other protected concerted activity while he was an employee of the City, nor has Hooks provided any facts which would support a finding that the Employer had a retaliatory motive for failing or refusing to reinstate him in December of 2007. Accordingly, I find that dismissal of the charge against the Employer in Case Nos. C08 E-093 and C08 I-195 is warranted.

The Charge against Respondent AFSCME Council 25, Local 207 must also be dismissed for failure to state a claim under the Act. 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. *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973). Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe*, *supra*.

Despite having been given an opportunity to do so, Charging Party has alleged no facts from which it could be concluded that the Union acted arbitrarily, discriminatorily

or in bad faith with respect to its representation of him. The record indicates that Charging Party resigned his employment with the City of Detroit in July of 2005. The adverse employment action about which Hooks complains occurred in December of 2007, more than two years after his resignation and five months after his eligibility for reinstatement expired under the terms of the collective bargaining agreement. Under such circumstances, the Union owed no further duty of representation to Charging Party, as he was no longer a member of the bargaining unit at the time of the alleged unfair labor practice. Accordingly, the charge against the Union in Case No. CU08 E-024 fails to state a claim under PERA and must be dismissed on that basis.

For the reasons stated above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The Unfair Labor Practice Charges in Case Nos. C08 E-093, C08 I-195 and CU08 E-024 are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: October 20, 2008