STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

COUNTY OF WAYNE (JAIL HEALTH SERVICES),
Public Employer- Respondent in Case No. C09 K-216,

-and-

AFSCME COUNCIL 25,
Labor Organization- Respondent in Case No. CU09 K-046,

-and-

RUSSELL JACKSON,
An Individual- Charging Party.
_____/

APPEARANCES:

Joseph P. Martinico, Director of Labor Relations, for the Public Employer

Cassandra D. Harmon Higgins, Esq., Staff Attorney, AFSCME Council 25, for the Labor Organization

Russell Jackson, *In Propria Persona*

DECISION AND ORDER

On February 26, 2010, Administrative Law Judge David M. Peltz 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

_____
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:

COUNTY OF WAYNE (JAIL HEALTH SERVICES),
Respondent-Public Employer in Case No. C09 K-216,

-and-

AFSCME COUNCIL 25,
Respondent-Labor Organization in Case No. CU09 K-046,

-and-

RUSSELL JACKSON,
An Individual Charging Party.
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APPEARANCES:

Joseph P. Martinico, for the Public Employer

Cassandra D. Harmon Higgins, for the Labor Organization

Russell Jackson, appearing on his own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On November 5, 2009, Russell Jackson filed unfair labor practice charges against his Employer, Wayne County Jail Health Services, and his Union, AFSCME Council 25. 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.

In Case No. C09 K-216, Jackson alleges that the Employer violated PERA by confronting him in front of his co-workers. The charge in Case No. CU09 K-037 asserts that the Union acted unlawfully by failing to provide him with information concerning the status of a complaint which was filed against the Employer alleging harassment and discrimination.

On December 23, 2009, I issued an order directing Jackson to show cause why the charges should not be dismissed for failure to state claims upon which relief can be granted

under PERA. Charging Party was specifically directed to provide factual support for his allegations and cautioned that a decision recommending dismissal of the charges would be issued without a hearing if his response to the order did not state valid and timely claims under the Act.

Charging Party filed a response to the order to show cause on January 11, 2010, along with supporting documentation. The following facts are derived from the pleadings filed by Jackson in this matter, including the attachments thereto, which are accepted as true for purposes of the motion for summary disposition.

Findings of Fact:

Russell Jackson is employed as a medical records clerk at Wayne County Jail Health Services (JHS). A mandatory general staff meeting for all JHS employees was held on May 20, 2009. Jackson addressed the attendees during a question and answer session toward the end of the meeting. As part of his remarks, Jackson commented on what he perceived to be low employee morale within the department and stated that it was fortunate that no employees had "gone postal." He also criticized management for allowing supervisors to bully employees in an attempt to improve performance.

On May 21, 2009, JHS director Keith Dlugokinski met with Jackson to discuss his behavior during the meeting and to determine whether he posed a risk to other staff members. Jackson was calm and composed during the meeting and he apologized for using the word "postal," which he conceded was an emotionally loaded term. Dlugoskinski concluded that Jackson was not a danger to any JHS staff member or the County and the meeting ended amicably.

On May 27, 2009, Jackson's supervisor, Alice Smith, wrote a memo to Dlugokinski concerning Jackson's conduct at the staff meeting, which she had not attended. In the memo, Smith falsely asserted that management had suggested to Jackson that he seek assistance from the Employee Assistance Program (EAP). Smith also erroneously accused Jackson of acting in a hostile manner toward her during an incident which occurred on May 21, 2009. Smith wrote that she was not comfortable with Jackson working under her and suggested that he be transferred to a different department within the County.

Following receipt of the memo, Dlugokinski met with Jackson, Smith and a Union representative. Dlugokinksi summarized what transpired during the meeting in a memo dated June 2, 2009, which provides, in part:

> The purpose of the [May 28] meeting was to further assess Mr. Jackson's risk behavior and mediate the conflict between Ms. Smith and Mr. Jackson. Mr. Jackson again reiterated to all present that he is no risk for losing control and that his behavior in the cited exchange was exaggerated and overblown. Mr. Jackson advised that he has never in the past shown any aggressive behavior in the workplace and that he has absolutely no intention of doing so in the future. His demeanor was calm and composed and he addressed Ms. Smith in a respectful and reasonable manner. Ms. Smith repeatedly attempted to discuss work

> performance problems. Mr. Jackson managed questions regarding his work performance by noting that he has never been disciplined and was surprised to hear of his lack of productivity. I, on several occasions, redirected work performance issues advising that they were a topic for another meeting. In conclusion, Ms. Smith expressed that she felt better regarding the situation and did not feel at risk or unable to work with Mr. Jackson. Mr. Jackson again noted that he would never effect aggressive behavior in the workplace but now felt harassed by Ms. Smith noting her repeated comments about his poor work performance. In conclusion, Ms. Smith and Mr. Jackson indicated that they could continue to work together without incident in order to complete required medical records services.

On or about June 24, 2009, the Union filed a "complaint" on Charging Party's behalf alleging that Smith was harassing Jackson and/or discriminating against him. As of January 11, 2009, Jackson had not heard any thing from the Union regarding the status or disposition of that matter.

Discussion And Conclusions Of Law:

In his response to the Order to Show Cause, Charging Party contends that the Smith memo, along with other unspecified acts of "harassment/discrimination" constituted a violation of PERA by the County, and that the Union has acted unlawfully in failing to process his "complaint" in a timely manner. In addition, Jackson contends that the Employer and the Union violated several provisions of the collective bargaining agreement, including language prohibiting discrimination on the basis of political or religious beliefs. Having carefully reviewed the various pleadings filed by Charging Party in this matter, including the attachments thereto, I conclude that Jackson has not raised any cognizable issue as to either Respondent.

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 the collective bargaining agreement. Rather, the Commission's jurisdiction with respect to claims brought by individual charging parties against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced an employee with respect to his or her right to engage in union or other protected concerted activities. One of the elements necessary to establish a prima facie case of unlawful discrimination under PERA is an adverse employment action or actions by the employer. *Wayne State Univ*, 22 MPER 104; *Southfield Pub Schs*., 22 MPER 26 (2009); *Grandvue Medical Care Facility*, 1993 MERC Lab Op 686. See also *Waterford Sch Dist*, 19 MPER 60 (2006).

In the instant case, there is no factually supported allegation which, if proven, would establish that Wayne County took any adverse employment action against Jackson. Charging Party does not allege that he was disciplined or punished in any way as a result of the Smith memo. To the contrary, the pleadings and supporting documentation establish that the director of the department met with Jackson and Smith immediately upon receipt of the memo and

resolved the dispute.[1] Because the Employer did not subject Jackson to any adverse employment action, there was nothing for the Union to remedy and there can be no breach of the duty of fair representation resulting from the Union's handling of this matter. Nevertheless, it is well-established that a union does not breach its duty of fair representation by a delay in communicating its decision to withdraw a grievance, or by a delay in processing the grievance, unless the delay causes harm to the employee's rights. See e.g *Service Employees International Union, Local 502*, 2002 MERC Lab Op 185; *Detroit Ass'n of Educational Office Employees, AFT Local 4168*, 1997 MERC Lab Op 475; *Technical, Professional and Officeworkers Ass'n of Michigan*, 1993 MERC Lap Op 117; *Southfield Schools Employees Ass'n*, 1981 MERC Lab Op 710. The fact that Jackson may be dissatisfied with the Union's efforts or its ultimate decision is insufficient to constitute a breach of the duty of fair representation. See e.g. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131.

Despite having been given ample opportunity to do so, Charging Party has failed to set forth any facts which, if proven, would establish that either Respondent violated PERA. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C09 K-216 and CU09 K-046 be dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

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

Dated: February 26, 2010

[1] Although Jackson asserts in his Response to the Order to Show Cause that there were other incidents of "harassment/discrimination" before and after the issuance of the memo, he failed to provide any facts to substantiate this allegation. The Order to Show Cause specifically cautioned Jackson that his charges would be dismissed without a hearing if his response failed to "describe, separately as to both the Employer and the Union, who did what and when they did it, and explain why such actions constitute a violation of PERA."