STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1600,
Labor Organization-Respondent,

Case No. CU10 A-001

-and-

CHRIS HARRISON,
An Individual- Charging Party.
_____/

APPEARANCES:

Chris Harrison, *In Propria Persona*

DECISION AND ORDER

On February 24, 2010, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order 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 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

_____
Nino E. Green, Commission Member

_____
Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 1600,
Respondent-Labor Organization,

-and- Case No. CU10 A-001

CHRIS HARRISON,
An Individual Charging Party.
_____/

APPEARANCES:

Chris Harrison, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY JUDGMENT

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim.

The Unfair Labor Practice Charge:

On January 7, 2010, Chris Harrison (Charging Party) filed a Charge against AFSCME Local 1600 (Union or Respondent). The Charge expressed dissatisfaction with the Union's conduct and states in full: "*Wanton neglect of my grievances, conspiring with management to discipline; neglect of duty to fairly represent employee*". Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), the Charging Party was ordered to file an amended charge, a voluntary withdrawal, or a written statement explaining why the charge should not be dismissed. Charging Party was expressly cautioned that if he did not timely respond to the Order, a decision recommending that the Charge be dismissed without a hearing would be issued; that to avoid dismissal of the Charge, the written response to this Order must assert facts that establish a violation of PERA; and finally that **the response must describe who from the Union did what and when they did it, and explain why such**

actions constitute a violation of PERA (emphasis in original). Harrison did not file any response to the order.

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. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, the fact that a member expresses dissatisfaction with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc,* 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. To prevail on a duty of fair representation claim against a union, a charging party must allege and be prepared to prove that the union's conduct toward them was arbitrary, discriminatory or done in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). To pursue such a claim, charging party must factually allege and be prepared to prove not only a breach of the duty of fair representation by the Union, but also factually allege and be prepared to prove a breach of the collective bargaining agreement by the Employer. *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 allegations in the charge as filed did not contain a factual explanation of what the Union did, or failed to do, and there were instead mere conclusory statements alleging improper representation, which are insufficient to state a claim under Commission Rule R 423.151. *Martin v Shiawassee County Bd of Commrs,* 109 Mich App 32 (1981); *Wayne County Dept Public Health*, 1998 MERC Lab Op 590, 600 (no exceptions); *Lansing School District,* 1998 MERC Lab Op 403. Despite the express directive, upon threat of summary dismissal, that Charging Party explain in writing what it was that he believed the union had done wrong, or had failed to do, the Charging Party did not file a response to the order to show cause. Because there are no allegations in the Charge that would, if proved, support the claim that the Union violated its statutory duties, and because no response was filed to the order to show cause, the charge against the Union must be dismissed as it fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: February 24, 2010