STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

FLINT COMMUNITY SCHOOLS,
Public Employer-Respondent in Case No. C10 B-038,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 517M,
Labor Organization-Respondent in Case No. CU10 B-004,

-and-

MICHELLE BABBITT,
An Individual-Charging Party.
_____/

APPEARANCES:

Michelle Babbitt, *In Propria Persona*

DECISION AND ORDER

On March 24, 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

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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:

FLINT COMMUNITY SCHOOLS,
Respondent-Public Employer in Case No. C10 B-038,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION,
Respondent-Labor Organization in Case No. CU10 B-004,

-and-

MICHELLE BABBITT,
An Individual Charging Party.
_____/

APPEARANCES:

Michelle Babbitt, appearing on her own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On February 9, 2010, Michelle Babbitt filed unfair labor practice charges against her Employer, Flint Community Schools, and her Union, Service Employees International Union, Local 517M (SEIU). 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, acting on behalf of the Michigan Employment Relations Commission (MERC).

In the identically worded charges, Babbitt alleges that the school district violated PERA by taking away her sick days and putting her on probation, and that the Union acted unlawfully by failing to notify her that she needed to obtain a "doctor's excuse" while off work.

On February 16, 2010, I issued an order directing Babbitt 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 her allegations and cautioned that a decision recommending dismissal of the charges would be issued without a

hearing if her response to the order did not state valid and timely claims under the Act. Babbitt did not file a response to the order to show cause.

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 pursuant to Rule 165, R423.165, of the General Rules and Regulations of the Employment Relations Commission. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, accepting all of the allegations in the charges as true, dismissal of the charges on summary disposition is warranted.

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. In the instant case, the charge against the school district does not provide a factual basis which would support a finding that Babbitt engaged in union activities for which she was subjected to discrimination or retaliation in violation of the Act. Absent such an allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the employer's action. Thus, dismissal of the charge against Flint Community Schools in Case No. C10 B-038 is warranted.

Similarly, the charge against the Union in Case No. CU10 B-038 must also be dismissed for failure to 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 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). The union's actions will be held to be lawful as long as they are 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. To prevail on a claim of unfair representation, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Sch Dist*, 201 Mich App 480, 488 (1993). The fact that an individual member is dissatisfied with the union's efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131. In the instant case, there is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Babbitt, nor does the charge assert a breach of the collective bargaining agreement by the Employer.

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. C10 B-038 and CU10 B-004 be dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: March 24, 2010