STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 290
Labor Organization-Respondent,

Case No. CU09 B-005

-and-

JAMES EVANS,
An Individual-Charging Party.
_____/

APPEARANCES:

Cassandra D. Harmon Higgins, Esq., Staff Attorney, AFSCME Council 25, for Respondent

James Evans, *In Propria Persona*

DECISION AND ORDER

On March 31, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that the charge filed by Charging Party, James Evans, against Respondent, AFSCME Council 25 and its affiliate Local 290 (Union) failed to state a claim upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. The charge alleged unfair representation by the Union for providing "no help" to Charging Party with a grievance against his previous employer following his discharge on an alleged drug policy violation. The ALJ issued a show cause order for Charging Party to provide a more definite statement that included dates for the alleged occurrences and to explain why the charge should not be dismissed for lack of a valid claim. Charging Party failed to respond to the ALJ's order before the deadline passed; however, he amended his original charge but still did not indicate any specific dates. The amended complaint alleged that Respondent never discussed the case with Charging Party or offered any alternative solutions as it had done with other union members. Concluding that the allegations did not support a PERA violation, the ALJ recommended summary dismissal of the charge. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA.

On April 8, 2009, Charging Party resubmitted his original charge along with a new supporting attachment. Notwithstanding the improper format, we accepted this submission as his exceptions to the ALJ's decision. The Union did not respond to the exceptions. In his exceptions, Charging Party reiterates having received "no help" from the Union representatives. He further alleges that Respondent aided other union members facing substance abuse violations

to maintain employment by using last chance agreements. After careful review of the exceptions, we find them to be without merit.

Discussions and Conclusions of Law

We note that Charging Party failed to respond to the ALJ's show cause order, which may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Also this charge may be dismissed under Rule 151 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.151, as the pleadings lack specific dates for the alleged incidences of Union misconduct. Charging Party asserts that the Union breached its duty by not adequately assisting him in preventing discharge on an alleged drug policy violation. It is well settled that a union may exercise considerable discretion in deciding the appropriate action to take on 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). A member's dissatisfaction with the union's efforts, alone, does not constitute a breach of the duty of fair representation. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131. Even upon a showing that a union reached a "wrong" decision due to a factual misinterpretation, there is insufficient basis for an unfair labor practice charge. *City of Detroit*, 1997 MERC Lab Op 31.

In this matter, we agree with the ALJ that Charging Party's allegations do not support a claim that the Union acted contrary to his interests. At best, the record supports Charging Party's discontent with the Union's efforts. To prevail on a complaint of a breach of the duty of fair representation, the allegations must contain more than conclusory statements of improper representation by a union. *Martin v Shiawassee Co Bd of Comm'rs*, 109 Mich App 32, 35 (1981). Since the charge fails to state a valid PERA claim, it is subject to dismissal under R 423.165. Accordingly, we adopt the ALJ's findings of fact and conclusions of law that the charge must be dismissed for failure to state a claim under PERA.

ORDER

This unfair practice labor charge is dismissed in its entirety.

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

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APPEARANCES:

Cassandra D. Harmon-Higgins, Esq., Staff Attorney, AFSCME Council 25, for Respondent

James Evans, appearing for himself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On February 19, 2009, James Evans filed the above charge with the Michigan Employment Relations Commission against his collective bargaining agent, AFSCME Council 25 and its affiliated Local 290 pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules. Based upon the facts as set forth in Evans' charge, as amended on March 25, 2009, I make the following conclusions of law and recommend that the Commission take the following action.

The Unfair Labor Practice Charge:

On February 19, Evans filed a charge which read in its entirety as follows:

> No help with grievance from Staff Representative Jeannette Diflorio and Chapter Chair Mike Blackburn. Log Number #A-19060290-08.

On February 26, 2009, I issued an order to Evans to show cause why his charge should not be dismissed. I noted that the charge as filed could be rejected under Rule 151(2)(c) of the Commission's General Rules, 2002 AACS, R 423.151(2)(c) because it did not include a clear and complete statement of the facts which allege a violation of PERA, including the date of occurrence of each act. I also found that the charge, as filed, failed to state a claim upon which

relief could be granted under PERA. Evans was ordered to respond to this order on or before March 20, 2009.

Evans did not file a response to the order or request an extension of time. On March 25, 2009, Evans filed a new or amended charge which referred to the same grievance. In the amended charge, Evans asserts that he was chosen from his work crew to undergo a drug test. As a result of this test, Evans was suspended for thirty days and later terminated. Evans filed a grievance which Charging Party refused to take to arbitration. He appealed this decision through Charging Party's internal procedure, but his appeal was rejected. In the amended charge, Evans alleges that Charging Party representative Diflorio did not fully represent him because she did not sit down with him individually to discuss his case, did not negotiate a last chance agreement for him as an alternative to discharge, did not help him write his grievance, and did not help him with his appeal of Charging Party's decision not to proceed to arbitration on the grievance. According to Evans, Diflorio merely told him that "the Mayor no longer required my services" and suggested that he apply for work elsewhere. Like the original charge, Evans' amended charge does not include the dates on which any of these events occurred.

Discussion and Conclusions of Law:

Evans did not file a timely response to my February 26, 2009 order to show cause why his charge should not be dismissed for failure to state a claim under the Act. The failure to respond to an order to show cause may be grounds for dismissal. *Detroit Federation of Teachers,* 21 MPER 3 (2009). Moreover, Evans' amended charge, like the original charge, does not comply with Rule 151(2) (c) because it does not include the dates on which Charging Party's allegedly unlawful actions occurred. I also find that the amended charge does not allege a violation of PERA.

A union representing public employees in Michigan owes those employees a duty of fair representation under Section 10(3) (a) (i) of PERA. The union's duty 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 651,679 (1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131,134. See *Vaca v Sipes*, 386 US 171, 177 (1967). Because the union owes its primary duty to the membership as a whole, a union has considerable discretion in deciding how to handle a grievance and how far the grievance should be pressed as long as it acts in good faith and without discriminatory intent. *Lowe* v *Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-147 (1973). A union's decision not to proceed 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, Int'l v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. According to the charge, Respondent decided Evans' grievance lacked merit and therefore did not assist him in pursuing it. Evans disagrees with Respondent's decision. However, the charge does not allege facts indicating that Respondent's decision was made in bad faith or was discriminatory or arbitrary. I find that Evans' charge, as amended on March 25, 2009, should be dismissed for failure to state a claim upon which relief can be granted under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____