STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

LANSING SCHOOLS EDUCATION ASSOCIATION,
Labor Organization - Respondent

Case No. CU10 C-007

-and-

MARY COBB,
An Individual - Charging Party.
_____/

APPEARANCES:

Daniel J. Zarimba, Esq., Staff Attorney, Michigan Education Association, for Respondent

Mary Cobb, *In Propria Persona*

DECISION AND ORDER

On April 30, 2010, Administrative Law Judge Julia C. Stern (ALJ) issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges. The Decision and Recommended Order was served on the interested parties in accord with Section 16 of the Act.

Pursuant to Rule 176, R423.176 of the General Rules of the Employment Relations Commission, exceptions must be filed no later than twenty days of service of the ALJ's Decision and Recommended Order, and "[a]t the same time, copies of the exceptions . . . shall be served on each party . . . . An exception that fails to comply with this rule may be disregarded." (*emphasis added*).

In this case, exceptions to the ALJ's Decision and Recommended Order were due by the close of business on March 24, 2010. Charging Party filed exceptions on May 14, 2010, but failed to submit a statement attesting that the exceptions were timely served upon Respondent.

On May 18, 2010, we notified Charging Party that unless a statement of service was filed within 20 days, her exceptions would be disregarded. To date, Charging Party has not provided the required statement of service. Accordingly, the exceptions will not be considered.

ORDER

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
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

LANSING SCHOOLS EDUCATION ASSOCIATION,
Labor Organization-Respondent,

Case No. CU10 C-007

-and-

MARY COBB,
An Individual-Charging Party.
_____/

APPEARANCES:

Daniel J. Zarimba, Esq., Staff Attorney, Michigan Education Association, for the Respondent

Mary Cobb, appearing for herself

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On March 8, 2010, Mary Cobb filed the above charge with the Michigan Employment Relations Commission (the Commission) against her collective bargaining agent, the Lansing Schools Education Association, 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.

On March 16, 2010, I issued an order directing Cobb to show cause why her charge should not be dismissed without a hearing because her charge failed to allege facts stating a claim under PERA. In my order, I noted that Cobb's charge alleged in general terms that Respondent had violated its duty under Section 10(3)(a)(i) of PERA to exercise its discretion in grievance situations in complete good faith and honesty and to avoid discriminating against individual members. However, Cobb's charge, as filed, did not include facts sufficient to support her allegation that Respondent had breached its duty of fair representation. Cobb was ordered in her response to provide certain facts missing from the charge as filed. Cobb was cautioned that if she did not respond to my order, her charge would be dismissed. She did not file a response or request an extension of time to do so. Based upon the facts set forth in Cobb's charge, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Facts:

Cobb is employed by the Lansing School District (the Employer) as a special education teacher and is a member of a bargaining unit represented by Respondent. Cobb complains that Respondent failed to assist her with three separate matters, as discussed below.

Sometime prior to October 8, 2009, Cobb applied for a vacant position with the Employer, but was not granted an interview. On October 8, 2009, Cobb contacted Respondent representative Jerry Swartz and asked him for some information about "the procedure." According to Cobb, she needed this information so that she could file a grievance over her failure to be given an interview. Cobb did not state in her charge what information she sought from Swartz or why she needed it to file a grievance. Cobb also failed to state how, or if, Swartz responded to her request. At a meeting later in October, Cobb told another Respondent representative, Cheryl Conklin, that "Respondent was not addressing some of her concerns." The charge does not explain what this statement meant or how, or whether, Conklin responded to this comment. Cobb does not allege that she asked Swartz or Conklin to file a grievance on her behalf. On March 5, 2010, a third Respondent representative, Joe Washington, told Cobb that Respondent could not file a grievance over her failure to be granted an interview since the time limits for filing a grievance had expired.

Sometime during the 2008-2009 school year, Cobb returned from an extended leave of absence. In a meeting with his mother and an assistant principal held on October 13, 2009, one of Cobb's students made statements about the reasons for her leave of absence. The student said that a "guest" teacher had told him these things the year before. Cobb asserts that she asked Respondent to ask the Employer to conduct an investigation of how the teacher learned this information. The charge does not state how, or whether, Respondent responded to her request. She also asserts that Respondent failed to assist her in filing a grievance or complaint over this issue, but does not allege that she asked it to do so.

In November 2009, Cobb was told by a paraprofessional employee that the assistant principal and Respondent's president had instructed the paraprofessional to report what Cobb said to students in her classroom and what they said to her. Cobb asserts that she requested assistance from Respondent, but that it "failed to investigate an internal complaint in a fair and objective manner." Cobb also alleges that Respondent "compromised my rights of fair representation by collaborating with my employer in [an] attempt to gain knowledge that could have lead to disciplin [ary] action," The charge does not explain what type of internal complaint was filed, what Respondent's role was in investigating this complaint, or whether Respondent's president admitted that he had given the paraprofessional employee instructions to report on Cobb's actions.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). I find in this case that the facts as alleged by Cobb do not state a claim under PERA.

A union representing public employees in Michigan owes these employees a duty of fair representation under Section 10(3) (a) (i) of PERA. The union's legal 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). "Bad faith" means an intentional act or omission undertaken dishonestly or fraudulently, while "arbitrary" conduct is that which is impulsive, irrational, or unreasoned, or inept conduct undertaken with little care or with indifference to the interests of those affected. *Goolsby* at 679. Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and is permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. 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*. To this end, a union is not required to follow the wishes of the individual grievant, but may investigate and proceed with the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. A union satisfies the duty of fair representation as long as its decision is within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67 (1991). The fact that an individual member is dissatisfied with the union's efforts or its ultimate decision is insufficient to demonstrate a breach of the duty of fair representation. *Eaton Rapids EA*, *supra*.

In this case, Cobb complains that she did not get assistance from Respondent with three different employment problems between the beginning of October 2009 and March 2010. However, I find that Cobb has not alleged facts which indicate that Respondent was hostile toward her or treated her in a discriminatory fashion. I also find that she failed to allege facts to support a finding that Respondent acted arbitrarily, i.e., irrationally or ineptly with indifference to her interests, with respect to any of these three matters. I conclude that Cobb's charge fails 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

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

Date: _____