STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF BENTON HARBOR,
Public Employer-Respondent in Case No. C09 H-140,

-and-

POLICE OFFICERS LABOR COUNCIL,
Labor Organization- Respondent in Case No. CU09 H-027,

-and-

BENNY MEEKINS, SR.,
An Individual Charging Party.
_____/

APPEARANCES:

Benny Meekins, Sr., *In Propria Persona*

DECISION AND ORDER

On September 30, 2009, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the unfair labor practice charges filed by Charging Party, Benny Meekins, Sr. against Respondents City of Benton Harbor (Employer) and Police Officers Labor Council (Union) failed to state claims upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. After determining that the initial charges did not include any valid claims against Respondents, the ALJ ordered Charging Party to show cause why the charges should not be dismissed. Charging Party failed to timely respond to the show cause order. The ALJ concluded that the allegations were deficient and recommended summary dismissal of both charges. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On October 2, 2009, Charging Party filed an untimely show cause response, which we accepted as his exceptions to the ALJ's decision. Neither Respondent filed a response to Charging Party's filings.

In his exceptions, Charging Party objects to the dismissal of the charge against Respondent Employer only. He reiterates his claim of discrimination and retaliation by his Employer. He also alleges that he was disciplined more severely than other staff who had also been cited for acts of "insubordination". After careful review of Charging Party's exceptions, we find them to be without merit.

Discussion and Conclusions of Law:

We note that Charging Party failed to timely respond to the ALJ's show cause order, which in itself, warrants dismissal of these charges. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Additionally we need not review the matter against the Union (CU09 H-027) as Charging Party's objections to the ALJ's recommended order are limited to his charge against the Employer only (C09 H-140).

As the ALJ correctly notes, PERA does not prohibit all types of discrimination or unfair treatment by public employers. *Detroit Pub Sch*, 22 MPER 16 (2009). Instead, it seeks to prohibit an employer's "unfair" actions that interfere with or restrain an employee's right to engage in lawful concerted activities set forth in Section 9 of the Act. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). Charging Party alleges in his pleadings and exceptions that his discharge resulted from the Employer's retaliatory and discriminatory actions against him. However, he does not suggest or provide any factually based allegations to support a charge that this adverse conduct was motivated by Charging Party's protected activity. Without a valid PERA claim, we are precluded from examining the fairness of this Employer's actions. *Detroit Pub Sch*, supra.

Since his charge against Respondent Employer, as well as the charge involving Respondent Union fail to state cognizable claims under the Act, they are subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165. Accordingly, we adopt the ALJ's findings of fact and conclusions of law and dismiss all charges on summary disposition for failure to state claims upon which relief can be granted under PERA.

ORDER

The unfair labor practice charges are dismissed in their entirety.

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:

CITY OF BENTON HARBOR,
Respondent-Public Employer in Case No. C09 H-140,

-and-

POLICE OFFICERS LABOR COUNCIL,
Respondent-Labor Organization in Case No. CU09 H-027,

-and-

BENNY MEEKINS, SR,
An Individual Charging Party.
_____/

APPEARANCES:

Benny Meekins, Sr., appearing on his own behalf

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On August 20, 2009, Benny Meekins, Sr. filed unfair labor practice charges against his employer, the City of Benton Harbor (hereinafter "the City"), and against his Union, the Police Officers Labor Council (hereinafter "POLC" or "the Union"). 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) for the State Office of Administrative Hearings & Rules, acting on behalf of the Michigan Employment Relations Commission.

The identically worded charges assert that the Employer and the Union violated the Act by convincing Meekins to accept a settlement of his grievance. The charges further allege that Meekins was laid off by the City immediately after agreeing to the settlement. In an order issued on August 28, 2009, I directed Charging Party to show cause why the charges should not be dismissed for failure to state a claim under PERA. Charging Party did not file a response to that order.

Discussion and Conclusions of Law:

The failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. *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.

The charge against the City in Case No. C09 H-140 fails to state a claim under PERA. The Act does not prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. Rather, the Commission's jurisdiction with respect to public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in union or other protected concerted activities. The charge against the City does not provide a factual basis which would support a finding that Meekins engaged in union activities for which he 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 the City in Case No. C09 H-140 is warranted.

Similarly, the charge against the POLC in Case No. CU09 H-027 must also be dismissed for failure to state a claim under the Act. 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). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be 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 dictates of the individual grievant, but rather it may investigate and present the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. 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. Beyond the conclusory assertion that the Union conspired with the Employer to convince Meekins to accept the grievance settlement, there is no factually supported allegation which, if true, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Charging Party.

For all of the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charges in Case Nos. C09 H-140 and CU09 H-027 are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: September 30, 2009