

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

SUBURBAN MOBILITY AUTHORITY  
FOR REGIONAL TRANSPORTATION (SMART),  
Public Employer-Respondent in Case No. C10 E-120,

-and-

TEAMSTERS LOCAL 247  
Labor Organization-Respondent in Case No. CU10 E-020,

-and-

SHARON POINTER,  
An Individual-Charging Party.

APPEARANCES:

Linda S. Townsend, Recording Secretary/Business Representative, for the Respondent Labor Organization

Sharon Pointer, *In Propria Persona*

**DECISION AND ORDER**

On June 19, 2010, Administrative Law Judge Julia C. Stern issued her 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  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

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Linda S. Townsend, Recording Secretary/Business Representative, for the Respondent Labor Organization

Sharon Pointer, appearing for herself

**DECISION AND RECOMMENDED ORDER**  
**OF ADMINISTRATIVE LAW JUDGE**  
**ON SUMMARY DISPOSITION**

On May 21, Sharon D. Pointer filed the above charges with the Michigan Employment Relations Commission (the Commission) against her former employer, the Suburban Mobility Authority for Regional Transportation (SMART) (the Employer), and her collective bargaining representative, Teamsters Local 247 (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. Pursuant to Section 16, the charges were assigned to Julia C. Stern, Administrative Law Judge for the State Office of Administrative Hearings and Rules.

On June 2, 2010, I issued an order directing Pointer to show cause why her charges against both Respondents should not be dismissed without a hearing because they failed to state claims upon which relief could be granted under PERA.<sup>1</sup> Pointer was cautioned that if she did not respond, her

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<sup>1</sup> On June 9, 2010, the Union sent me a letter stating that the Employer and Union had met on Pointer's grievance at the fourth step of the grievance process on May 28. The Union said that upon receiving the Employer's fourth step answer, it would make a determination as to whether the grievance merited further action.

charge would be dismissed. She did not file a response or request an extension of time to do so. Based upon the facts as set forth in Pointer's charge, I make the following conclusions of law and recommend that the Commission take the following action.

#### The Unfair Labor Practice Charges:

Pointer was employed by the Employer as a driver for fourteen years, until she was terminated on March 24, 2010. Pointer's charge against the Employer alleges that it committed unfair labor practices by harassing her, wrongfully discharging her, and defaming her character. She also alleges that the Employer did not follow the collective bargaining agreement in processing the grievance she filed over her termination.

As a driver, Pointer was a member of a collective bargaining unit represented by the Union. In her charge against the Union, Pointer asserts that she reported the harassment to her Union representative, Walter Robinson, before she was terminated, but that nothing was done about it. After Pointer was terminated, the Union filed a grievance on her behalf. Pointer alleges that the Union has not acted promptly to process the grievance and/or provided her with information about its status.

#### Facts:

Pointer asserts that she was harassed and humiliated by three of the Employer's dispatchers. Pointer states that the dispatchers "wouldn't fill in my gap, wrote me up for going back to the terminal, and yelled at me twice while driving en route to the terminal." The charge does not state when this took place. Pointer reported the harassment by the dispatchers to Union representative Robinson. Robinson told her that the dispatchers treated him the same way. However, he promised to talk to Linda Townsend, the Union business representative, about it. The charge does not state when this conversation took place. Pointer never saw any results from her conversation with Robinson about the harassment.

On February 23, 2010, Pointer was involved in an auto accident while driving an Employer vehicle. Pointer was injured in the accident and was off work for a month. Dobbins scheduled a meeting with Pointer and her union representative Robinson on March 2, 2010, but the meeting was postponed because Pointer was still on sick leave. Pointer returned to work on March 22. However, Dobbins was angry when he learned she had attempted to return to work without a doctor's approval. At Dobbins' order, Pointer sat in the Employer's terminal for five hours waiting for a supervisor to take her to the Employer's clinic. The following day, she went to the clinic by herself.

On March 24, 2010, Dobbins scheduled another meeting with Pointer and Robinson. At this meeting, Pointer was informed that she was terminated. The charge does not state what reasons the Employer gave for terminating her. However, Pointer states in her charge that her son was in her vehicle at the time of the accident. She also states that other employees who were caught giving rides to their family members were merely suspended without pay.

After Pointer was terminated, the Union filed a grievance on her behalf. Before she filed the charge on May 21, 2010, Pointer spoke to Robinson, Thompson and alternate steward Arlene

Coleman in an attempt to find out what was happening with her grievance. All three told her only that the Union “had a meeting coming up” on the grievance.

#### Discussion and Conclusions of Law:

The Public Employment Relations Act prohibits strikes by public employees and protects certain employee rights. The rights protected by PERA are set out in Section 9 of the Act. Under Section 9, public employees have the right to form, join, or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, and to engage in other lawful concerted activities for mutual aid or protection, e.g., to complain with other employees about working conditions. A public employer violates PERA if it discharges or otherwise discriminates against its employees because of their union activities or because they have exercised their Section 9 rights. PERA also makes it unlawful for a public employer to coerce, threaten or otherwise interfere with its employees’ exercise of the rights set out in Section 9. PERA, however, does not provide a cause of action for all types of discrimination, harassment or unfair treatment of public employees by their employers. An individual does not state a cause or claim under PERA merely by asserting that his employer has behaved wrongfully, or that the employer violated the union contract. *Utica Cmty Schs*, 2000 MERC Lab Op 268; *Detroit Bd of Ed*, 1995 MERC Lab Op 75. Absent an allegation that the employer interfered with, restrained, coerced, or retaliated against the employee for engaging in union or other activities protected by the Act, the Commission has no jurisdiction to make a judgment on the fairness of the employer's actions. See, e.g., *City of Detroit (Fire Dep’t)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524.

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). The *Goolsby* Court defined “bad faith” as intentional acts or omissions undertaken dishonestly or fraudulently, and “arbitrary” conduct as: (1) impulsive, irrational, or unreasoned conduct, (2) inept conduct undertaken with little care or with indifference to the interests of those affected; (3) the failure to exercise discretion, and (4) extreme recklessness or gross negligence. *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. 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 as long as it does so in good faith and in a nondiscriminatory manner. *Detroit Police Lts and Sgts Ass’n*, 1993 MERC Lab Op 729. A union’s failure to follow or require the employer to follow the time limits set out in the contract for processing a grievance does not constitute “arbitrary” conduct unless the union’s negligence results in the dismissal of the grievance. *Wayne Co*, 1988 MERC Lab Op 73; *Detroit Fed of Teachers*, 17 MPER 33 (2004). The Commission has also consistently held that a union's failure to communicate with a member about his or her grievance is not in itself a breach of its duty of fair representation. See, e.g., *Wayne Co (Sheriffs Dep’t)*, 1998

MERC Lab Op 101, 105 (no exceptions); *Southeastern Michigan Transportation Authority*, 1988 MERC Lab Op 191, 196 (no exceptions); *AFSCME Local 1600*, 1981 MERC Lab Op 522, 527 (no exceptions).

A charging party's failure to timely respond to an administrative law judge's order to show cause is, in itself, a sufficient basis for dismissing a charge. *City of Benton Harbor*, 23 MPER \_\_\_\_ (Case Nos. C09 H-140 and CU09 H-027) (2009); *Detroit Federation of Teachers*, 21 MPER 3 (2008). Here, Pointer alleges that the Employer's dispatchers harassed her. She alleges that Dobbins treated her rudely. She alleges that she was wrongfully discharged. She asserts that the Employer did not follow the contractual grievance procedure with respect to the grievance she filed over her termination. Pointer does not allege, however, that the Employer harassed or terminated her for reasons prohibited by PERA, or that the Employer engaged in any other conduct that interfered with her exercise of her rights under that statute. I conclude that Pointer's charge does not state a claim against the Employer upon which relief can be granted under that Act.

At some time before her termination, Pointer complained to the Union about the conduct of the Employer's dispatchers. The Union promised to talk to the Employer about the issue. Pointer saw no results, and does not know whether the Union kept its promise. However, Pointer does not allege that the Union acted maliciously or dishonestly. I find that even if the Union did not keep its promise to talk to the Employer, this failure would not constitute "arbitrary" conduct under the *Goolsby* standards. Pointer's also complains that the Union has told nothing about the status of her grievance except that it has a meeting scheduled to discuss it. As indicated above, the Commission has held that a union does not breach its duty of fair representation by a delay in the processing of a grievance, or by a failure to communicate with the grievant, unless the union's negligence results in the dismissal of the grievance. I conclude that Pointer's charge does not state a claim upon which relief could be granted under PERA against either Respondent. I recommend, therefore, that the Commission issue the following order.

### **RECOMMENDED ORDER**

The charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: \_\_\_\_\_