

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

In the Matter of:

CITY OF ROMULUS (POLICE DEPARTMENT),  
Public Employer-Respondent in Case No. C10 F-156,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,  
Labor Organization-Respondent in Case No. CU10 F-028,

-and-

DEREK J. TURNER  
An Individual-Charging Party.

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**APPEARANCES:**

Derek J. Turner, *In Propria Persona*

**DECISION AND ORDER**

On August 24, 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**

In the Matter of:

CITY OF ROMULUS (POLICE DEPARTMENT),  
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Derek J. Turner, appearing for himself

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

On June 23, 2010, Derek J. Turner filed the above charges with the Michigan Employment Relations Commission (the Commission) against his employer, the City of Romulus (the Employer), and his collective bargaining representative, the Police Officers Association of Michigan (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 July 9, 2010, I issued orders directing Turner to show cause why both charges should not be dismissed without a hearing because they failed to state claims upon which relief could be granted under PERA. Turner was cautioned that if he did not respond to my orders, his charges would be dismissed. Turner did not file a response or request an extension of time to do so. Based upon the facts as set forth in Turner's charges, I make the following conclusions of law and recommend that the Commission take the following action.

**The Unfair Labor Practice Charges:**

Turner's charge against the Employer alleges that it has and is continuing to discriminate and retaliate against him because he filed a complaint against it with the

Equal Employment Opportunity Commission (EEOC) based on racial discrimination and harassment. Turner's charge against the Union alleges that it has become a "willing participant" in the Employer's discriminatory actions.

Facts:

The pertinent facts, as alleged in the charges, are as follows. Turner is employed by the Employer as a police officer in its police department. Until March 2010, Turner was an officer in the department's traffic bureau. Turner is African-American. All or the majority of his superiors are white. In August 2009, Turner filed a complaint of racial discrimination against Respondent with the EEOC. The complaint alleged that he had been the subject of racist remarks by co-workers and supervisors and the victim of racially disparate treatment by his supervisors over the course of several years. Among the examples of disparate treatment cited in Turner's EEOC complaint was the Employer's decision to remove Turner from his traffic assignment around the end of June 2009 and reassign him to road patrol on the midnight shift. Turner's union representative refused to file a grievance over the reassignment, telling him "management can do what they want." However, Turner was returned to the traffic bureau after he complained to the Employer's human resources department about the reassignment.

In December 2009, after Turner had rejoined the traffic bureau, a citizen filed a complaint against him. The complaint asserted that the citizen's vehicle became stuck in mud after Turner pulled him over for a traffic stop, and that Turner had acted unprofessionally by leaving the scene without assisting him. Turner was directed to respond to the complaint. Turner stated that the citizen became angry when Turner gave him a ticket and went into a ditch after he tried to accelerate too quickly when returning to the roadway. Turner admitted that the citizen was standing by his vehicle staring at his back tires when Turner drove away, but stated that the citizen made no attempt to ask him for assistance. The incident in question was captured by the video camera in Turner's patrol car. Turner was charged by the Employer with making a false statement during an internal investigation. The Employer held a hearing on this charge on or about February 16, 2010. After the hearing and review of the videotape, the charge of making a false statement was dropped. However, Turner was issued a reprimand and one-day suspension for "failure to use common sense." When Turner asked the Union to file a grievance over the suspension, the Union refused, stating that it agreed with the discipline. Union representative Grabowski told Turner that he had known the police chief for over twenty years and that Turner should accept the discipline.

Article 34 of the collective bargaining agreement between the Union and the Employer governs job assignments. This article includes a list of factors, including seniority, to be used by the Employer in making job assignments, but states that other relevant criteria may also be considered. Article 34.3, however, states that if a senior officer is passed over for an assignment the Employer, upon request, will provide the officer with written statement of the reasons.

On March 8 or 9, 2010, Turner was called to the police chief's office and told that he was again being removed from the traffic bureau and reassigned to patrol, this time on the afternoon shift. Turner had more seniority than most of the officers on the day shift, and there were at that time vacancies on this shift. Turner asked to be placed on the day shift. The chief said, "No, you are going where I want you to go." When Turner asked for an explanation, the chief said, "management's rights." Turner then asked the Union president for assistance, but was told that nothing could be done.

#### Discussion and Conclusions of Law:

##### The Charge Against the Employer

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. Union activity, including the filing of grievances pursuant to a union contract, is protected by Section 9 of PERA. An employee also engages in activity protected by Section 9 of PERA when he or she complains with other employees about working conditions or attempts to induce other employees to join in his her complaints. However, complaints must be "concerted" in order to be protected. An employee's individual complaints, even if they may benefit other employees, are not protected by PERA unless they are based on the collective bargaining agreement. *City of Detroit (Water and Sewerage Dept)*, 17 MPER 79 (2004) (no exceptions). A public employer violates PERA if it discharges or otherwise discriminates against its employees because they have engaged in union activity or other concerted activities protected by Section 9 of PERA. PERA, however, does not provide a cause of action for all types of discrimination or harassment or unfair treatment of public employees by their employers. Absent an allegation that the employer interfered with, restrained, coerced, or retaliated against the employee for engaging in union or other concerted 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 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) (2010); *Detroit Federation of Teachers*, 21 MPER 3 (2008). In this case, Turner alleges that the Employer retaliated against him because he filed a complaint with the EEOC. PERA does not provide a cause of action for the racial discrimination which was the subject of that complaint, and there is no indication in the charge that Turner filed this complaint with, or on the authority of, other employees. I find that the filing of the EEOC complaint did not constitute activity protected by Section 9 of PERA. I conclude, therefore, Turner's allegation that the Employer retaliated against him for that complaint does not

state a claim upon which relief can be granted under PERA and that his charge should be dismissed.

### The Charge Against the Union

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). 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 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 his charges against the Employer and the Union, Turner describes a series of actions by the Employer and its supervisors, taking place over a period of years, which Turner alleges constituted either disparate treatment of him because of his race or retaliation against him because of his filing of the EEOC complaint. Turner's charge against the Union, however, merely alleges that it "has become a willing participant" in the Employer's discriminatory actions. Although Turner describes two occasions where he asked the Union to assist him and/or file a grievance, his charge does not identify the specific actions by the Union that constitute the violation of PERA or explain why he alleges that these acts were unlawful. In my July 9, 2010 order to show cause, I directed Turner to explain what actions the Union took or failed to take that violated its duty of fair representation under PERA. I also directed him to clarify whether he was alleging that the Union acted in bad faith or out of discriminatory motives, and, if so, to provide facts to support these claims. As noted above, Turner did not file a response to my order. Based on the facts alleged in his charge, I conclude that Turner's charge against the Union does not state a claim upon which relief can be granted under PERA and should be dismissed. Based on the conclusions of law set forth above, I recommend that the Commission issue the following order.

**RECOMMENDED ORDER**

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

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