

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

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent in Case No. C09 B-001,

-and-

AMALGAMATED TRANSIT UNION, LOCAL 26,
Labor Organization-Respondent in Case No. CU09 B-001,

-and-

KEITH D. ADAMS,
An Individual Charging Party.

APPEARANCES:

Law Office of Mark Cousens, P.C., by John E. Eaton, Esq., for the Labor Organization

Keith D. Adams, *In Propria Persona*

DECISION AND ORDER

On March 25, 2009, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Respondent-Public Employer in Case No. C09 B-001,

-and-

AMALGAMATED TRANSIT UNION, LOCAL 26,
Respondent-Labor Organization in Case No. CU09 B-001

-and-

KEITH D. ADAMS,
An Individual Charging Party.

APPEARANCES:

Keith D. Adams, appearing on his own behalf

Law Office of Mark Cousens, P.C., by John E. Eaton, for the Labor Organization

DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION

On February 2, 2009, Keith D. Adams filed unfair labor practice charges against the City of Detroit (Department of Transportation) and Amalgamated Transit Union, Local 26. 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) of the State Office of Administrative Hearings and Rules, acting on behalf of the Michigan Employment Relations Commission (MERC).

The charge alleges that Adams was suspended for three days by the City of Detroit, Department of Transportation, for using a “convenience facility at Gilbert Bus Terminal on January 5, 2009 before pulling out” and that he “got little or no help” from his Union. In an order issued on February 27, 2009, I directed Charging Party to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted 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, I conclude that the charges must be dismissed on the basis that they fail to raise any issues cognizable under PERA.

With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide an independent cause of action for an employer's breach of contract or violation of other statutes, including civil rights claims. 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 activities. Absent a factually supported allegation that the Employer took action against an employee for engaging in conduct protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the Employer's action. 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. The charge against the City of Detroit does not provide a factual basis which would support a finding that Charging Party engaged in any protected concerted activity for which he was subject to discrimination or retaliation. Absent such an allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the employer's action. Accordingly, the charge against the City of Detroit in Case No. C09 B-001 must be dismissed on summary disposition.

Similarly, the charge against Amalgamated Transit Union, Local 26 in Case No. CU09 B-001 must also be dismissed. 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. *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). 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. In the instant case, there is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to its representation of Adams.

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

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C09 B-001 and CU09 B-001 be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: March 25, 2009