

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

In the Matter of:

TROY POLICE OFFICERS ASSOCIATION,
Labor Organization-Respondent,

Case No. CU09 H-028

-and-

DAVID KOCENDA,
An Individual-Charging Party.

APPEARANCES:

David Kocenda, *In Propria Persona*

DECISION AND ORDER

On September 30, 2009, Administrative Law Judge Doyle O'Connor 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. Derdarian, 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:

TROY POLICE OFFICERS ASSOCIATION,
Respondent-Labor Organization,

Case No. CU09 H-028

-and-

DAVID KOCENDA,
An Individual Charging Party.

APPEARANCES:

David Kocenda, Charging Party appearing on his own behalf

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

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 Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). This matter is being decided pursuant to an order for more definite statement of the claim.

The Unfair Labor Practice Charge:

On July 20, 2009, a Charge was filed by David Kocenda asserting that the Troy Police Officers Association (the Union) had failed to properly represent the Charging Party. The charge asserted that unspecified representatives of the Union had violated the Act, by failing to properly represent and by retaliating against the Charging Party, on unspecified dates. Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, Charging Party was granted an opportunity to file a more definite statement of the claim or a written statement explaining why the charges should not be dismissed prior to a hearing. Charging Party was cautioned that to avoid dismissal of the Charge, any response to that Order must provide a factual basis to proceed that establishes the existence of the alleged violation of PERA which occurred within six months of the filing of the charge. Charging Party was further expressly cautioned that a failure to substantively respond by the deadline set in the order would result in dismissal of the Charge without a hearing or other proceedings. Charging Party did not file a response to the Order.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order for more definite statement issued under R 423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, the fact that a member is dissatisfied with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Further, a union has considerable discretion to decide how, and even whether or not, to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973).

Allegations in a complaint for a breach of the Union's duty of fair representation must contain a factual explanation of what the Union did, or failed to do, and not just conclusory statements alleging improper representation. *Martin v Shiawassee County Bd of Commrs*, 109 Mich App 32 (1981); *Wayne County Dept Public Health*, 1998 MERC Lab Op 590, 600 (no exceptions); *Lansing School District*, 1998 MERC Lab Op 403. To pursue such a claim, charging party must allege and be prepared to prove not only a breach of the duty of fair representation by the Union, but also allege and prove a breach of the collective bargaining agreement by the Employer. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992).

The Charging Party has failed to plead facts which, if proved, would establish a breach of the Union's duties. Moreover, Charging Party failed to respond to the Order to Show Cause. For these reasons the Charge is subject to summary disposition.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: September 30, 2009