

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

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Respondent-Public Employer in Case No. C11 C-052,

-and-

CLERICAL TECHNICAL UNION OF MSU,
Respondent-Labor Organization in Case No. CU11 C-010,

-and-

JANICE SHEFFEY,
An Individual-Charging Party.

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APPEARANCES:

Janice Sheffey, *In Propria Persona*

DECISION AND ORDER

On June 2, 2011, Administrative Law Judge David M. Peltz issued his 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 complaints.

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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Derdarian, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Respondent-Public Employer in Case No. C11 C-052,

-and-

CLERICAL TECHNICAL UNION OF MSU,
Respondent-Labor Organization in Case No. CU11 C-010,

-and-

JANICE SHEFFEY,
An Individual Charging Party.

APPEARANCES:

Janice Sheffey, appearing on her own behalf

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

On March 21, 2011, Janice Sheffey filed unfair labor practice charges against her employer, Michigan State University (MSU), and her labor organization, Clerical Technical Union of MSU. 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 Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission.

The Unfair Labor Practice Charges and Procedural History:

In Case No. C11 C-052, Sheffey alleges that Michigan State University violated PERA on or about February 25, 2011, by laying her off without affording her a fair opportunity to learn a new job and by cancelling her health insurance. In Case No. CU11 C-010, Charging Party asserts that the Clerical Technical Union of MSU treated Sheffey unfairly by failing to support her in her new position, "disqualifying" her from serving as a Union representative and by failing or refusing to assist her in connection with the layoff. In an order issued on March 31, 2011, I directed Charging Party to show cause why the charges should not be dismissed for failure to state a claim upon which relief could be granted. Charging Party was cautioned that a timely response to the Order must be filed to avoid dismissal of the charges without a hearing. Charging Party did not file a response to the 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.

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 the collective bargaining agreement. Rather, the Commission's jurisdiction with respect to claims brought by individual charging parties against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced an employee with respect to his or her right to engage in union or other protected concerted activities. In the instant case, the charge against Michigan State University does not provide a factual basis which would support a finding that Sheffey engaged in union activities for which she 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. Accordingly, dismissal of the charge against Michigan State University in Case No. C11 C-052 is warranted.

Similarly, the charge against the Clerical, Technical Union of MSU in Case No. CU11 C-010 must also be dismissed for failure to state a claim under PERA. 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). The union's actions will be held to be lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit, Fire Dep't*, 1997 MERC Lab Op 31, 34-35. With respect to otherwise internal decision-making procedures, including decisions regarding the election or appointment of union representatives, the Commission has held that the duty of fair representation applies only to those policies and procedures having a direct effect on terms and conditions of employment. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *SEIU, Local 586*, 1986 MERC Lab Op 149.

The Commission has steadfastly refused to interject itself in judgments over agreements made by employers and collective bargaining representatives, despite frequent challenge by employees. *City of Flint*, 1996 MERC Lab Op 1, 11. 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. 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 v Hotel and Restaurant Employees Union, Local 705*, 389 Mich 123 (1973). To this end, a union is not required to follow the dictates of the individual employee, but rather it may investigate and present the case in the manner it determines to be best. A labor organization has the legal discretion to make judgments about the general good of the membership and to proceed on such judgments, despite the fact that they may conflict with the desires or interests of certain employees. *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218, citing *Lowe, supra*.

An unfair labor practice charge alleging a breach by the Union of its 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. Moreover, 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 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). In the instant case, the charges, as written, do not adequately explain how the actions of the Union constitute a violation of PERA. There is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Sheffey, nor does the charge assert a breach of the collective bargaining agreement by the Employer. I, therefore, recommend dismissal of the charge against the Union in Case No. CU11 C-010.

Despite having been given ample opportunity to do so, Charging Party has failed to set forth any facts which, if proven, would establish that either Respondent violated PERA. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charges in Case Nos. C11 C-052 and CU11 C-010 are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 2, 2011