

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

In the Matter of:

MICHIGAN ASSOCIATION OF POLICE,
Labor Organization-Respondent,

Case No. CU11 D-011

-and-

BRYAN DRINKWINE,
An Individual-Charging Party.

APPEARANCES:

Bryan Drinkwine, *In Propria Persona*

DECISION AND ORDER

On June 27, 2011, Administrative Law Judge Julia Stern issued her Decision and Recommended Order in the above matter finding that Respondent 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

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 ASSOCIATION OF POLICE,
Respondent-Labor Organization,

Case No. CU11 D-011

-and-

BRYAN DRINKWINE,
An Individual-Charging Party.

Appearances:

Bryan Drinkwine, appearing for himself

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

On April 15, 2011, Bryan Drinkwine filed the above charge with the Michigan Employment Relations Commission (the Commission) against his collective bargaining representative, the Michigan Association of Police (the Union) pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Drinkwine also filed a charge against his employer, the Genesee Township Police Department (the Employer), Case No. C11 D-076. Pursuant to Section 16 of PERA, both charges were assigned to Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System.

On May 2, 2011, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, and Rule 151(2)(c) of these rules, R 423.151(2)(c) I issued an order directing Drinkwine to amend his charge against the Union or show cause why it should not be dismissed for failure to state a claim under PERA. Drinkwine was directed to file an amended charge or response to my order on or before May 23, 2011. Drinkwine was explicitly directed to identify the specific acts committed by the Union which constituted the unfair labor practice, to explain why these acts violated PERA, and to set forth facts sufficient to support his claim. Drinkwine was cautioned that if he did not respond to the order, I would recommend that his charge be dismissed. Drinkwine did not respond to my order in this case.¹ Based upon the facts alleged by Drinkwine in his charge and set forth

¹ In a separate order issued also issued on May 2, 2011, I directed Drinkwine to file an amended charge in his charge against the Employer or show cause why his charge in that case should not be dismissed. Drinkwine amended that charge on May 20, 2011, and an evidentiary hearing has been scheduled on that charge.

below, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Facts:

Drinkwine's charge against the Union alleges that it "failed to represent him" based on the following facts. Drinkwine and two other full-time police officers were laid off from their positions by the Employer sometime prior to November 2010. The Employer agreed to hire the three laid off officers as part-time police officers. The Union argued that the Employer should honor the laid off officers' years of service when it hired them as part-time employees. Respondent's police chief agreed with the Union's position, but the township supervisor did not and insisted that they be paid the wage rate of a newly-hired part-time officer. The Union attempted to enlist the chief in persuading the township supervisor to change his position. On November 12, 2010, the Employer's board met to approve the rehiring of one of the other two laid off officers as a part-time police officer. At the meeting, the Union asked the board why the other two officers were not being rehired. Drinkwine also spoke at the meeting. The second laid off officer was eventually rehired, but Drinkwine was not.

On December 6, 2010, an arbitrator issued a decision denying a grievance that the Union had filed. On December 9, Drinkwine sent an email to his fellow union members regarding this decision. The charge does not indicate what this email said. On December 14, Drinkwine asked a sergeant, Chuck Allen, why he had not heard anything about being rehired. Allen told him that the Employer was not going to rehire him because of a "personal issue" between Drinkwine and the police chief and because of comments Drinkwine had made at the board meeting.

On December 16, Drinkwine asked Union representative Jim Steffes to file a grievance over the Employer's refusal to rehire him, while bringing the other two laid off officers back to work as part-time officers. Steffes told Drinkwine that he did not have the basis for a grievance and that Steffes would not file one. Drinkwine asked that the refusal be put in writing. On December 23, Drinkwine received a letter from the Union regarding its refusal to pursue a grievance. The charge did not explain what the letter said or whether the Union explained why it was refusing to file a grievance on his behalf. On December 28, Drinkwine filed his own grievance. The grievance was denied by the police chief on December 29. On January 12, 2011, the Union indicated that it considered Drinkwine's grievance with the chief's response, and refused to move it to the next step of the grievance procedure. In March 2011, Drinkwine submitted a second grievance. Meanwhile, on January 5, 2011, the Employer began an investigation of Drinkwine's December 9, 2010 email. The investigation was concluded with a report issued on January 17, 2011.

Discussion and Conclusions of Law:

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).

“Bad faith” indicates an intentional act or omission undertaken by the union dishonestly or fraudulently. *Goolsby* at 679. A union acts in bad faith when it “acts with an improper intent, purpose, or motive . . . encompass[ing] fraud, dishonesty, and other intentionally misleading conduct.” *Merritt v International Ass'n of Machinists and Aerospace Workers*, 613 F3d 609, 619 (CA 6, 2010), citing *Spellacy v Airline Pilots Ass'n-Int'l*, 156 F3d 120, 126 (CA 2, 1998). “Arbitrary” conduct includes (a) impulsive, irrational or unreasoned conduct, (b) inept conduct undertaken with little care or with indifference to the interests of those affected, (c) the failure to exercise discretion, and (d) extreme recklessness or gross negligence. *Goolsby* at 682. A union may violate its duty of fair representation if it acts with reckless disregard for the interests of its members. For example, a union’s unexplained failure to meet a time deadline for processing a grievance was held to constitute a breach of its duty when this failure resulted in the dismissal of the grievance. *Goolsby*. *supra*. However, 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. Because the union's ultimate duty is toward the membership as a whole, a union is not required to follow the wishes of an individual member. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. That is, a union is not required to file a grievance merely because a member asks it to, and is not required to take every grievance to arbitration. In making a decision about whether to proceed with a grievance, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe*, *supra*. Unless a union’s decision not to proceed with a grievance is made in bad faith, e.g., because of personal hostility toward its member, or is discriminatory, a union satisfies its legal duty of fair representation if 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 on his or her behalf or its ultimate decision is insufficient to demonstrate a breach of the duty of fair representation. *Eaton Rapids EA*, *supra*.

Drinkwine’s charge does not identify by what specific act(s) the Union breached its duty of fair representation. In December 2010, Drinkwine had been laid off from his position as a full-time police officer. His charge asserts that on December 16, 2010, Union representative Jim Steffes refused Drinkwine’s request to file a grievance over the Employer failure to hire him for a part-time position while rehiring the two other officers laid off at the same time. According to Drinkwine, the Union later sent him a letter regarding his request. Drinkwine does not assert or provide factual support for a claim that the Union had an improper motive for refusing to file the grievance or that its decision not to do so was arbitrary. I find that Drinkwine’s charge against the Union

fails to state a claim upon which relief can be granted under PERA, and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Date: _____