STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C11 I-160,

-and-

DETROIT FEDERATION OF TEACHERS, LOCAL 231
Labor Organization-Respondent in Case No. CU11 I-028,

-and-

JOHN ISAAC HARRIS,
An Individual-Charging Party.
_____/

APPEARANCES:

Daryl Adams, Assistant Director of Labor Relations, for Respondent Employer

John Isaac Harris, *In Propria Persona*

DECISION AND ORDER

On November 30, 2011, Administrative Law Judge Doyle O'Connor (ALJ) issued his Decision and Recommended Order on Summary Disposition in the above matters recommending dismissal of the unfair labor practice charges filed by Charging Party, John Isaac Harris, against Respondents, Detroit Public Schools (Employer) and the Detroit Federation of Teachers, Local 231 (Union). The charges alleged that the Employer violated the parties' labor contract and created a hostile workplace, while the Union breached it duty of fair representation in the handling of his grievance. Because the charges appeared to state no more than a breach of contract claim based on a workplace disciplinary reprimand, the ALJ issued a combined show cause order requiring that Charging Party address several questions to avoid dismissal of his charges. After reviewing Charging Party's lengthy response, the ALJ found that the response did not support the existence of any actionable claims upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201- 423.217. As such, he recommended summary dismissal of both matters. The Decision and Recommended Order on Summary Dismissal was served on the interested parties in accordance with Section 16 of PERA. On December 21, 2011 Charging Party

filed exceptions[1] to the ALJ's Decision and Recommended Order, to which neither Respondent filed a response.

In his exceptions, Charging Party contends that the ALJ erred by recommending summary dismissal of his charges. He also refutes several dates and other factual findings referenced in the ALJ's decision. After thoroughly reviewing Charging Party's exceptions, we find them to be without merit.

Discussion and Conclusions of Law:

The crux of Charging Party's claims stem from a disciplinary suspension issued by the Employer and the Union's handling of a grievance pertaining to that suspension. The ALJ recommends summary dismissal of each charge finding that Charging Party's pleadings, collectively, fail to state a valid PERA claim against either party. We agree.

As to the charge against the Employer, Harris alleges that the Employer violated the parties' collective bargaining agreement and created a "hostile work environment". However, as the ALJ correctly denotes, PERA does not prohibit all types of discrimination or misconduct by public employers. *Detroit Pub Sch*, 22 MPER 16 (2009). Instead, the Act restricts public employers from engaging in "unfair" actions that seek to interfere with an employee's free exercise of specific rights contained in Section 9. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). Even where an alleged violation is true, this Commission lacks authority to judge the fairness of an employer's actions that fall outside of those areas governed by PERA. *Wayne Co*, 20 MPER 109 (2007). Moreover, an employee's allegation that an employer violated a provision of the collective bargaining agreement, without more, does not state a valid claim within our jurisdiction. *Ann Arbor Pub Sch*, 16 MPER 15 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75.

Based on the record here, we agree with the ALJ that the allegations do not suggest that the Employer's actions were targeted against Charging Party for having engaged in any concerted activity protected under PERA. Further, Charging Party's allegations of mistreatment by the Employer contain various "catch phrases" often associated with Section 9 protections. However, he fails to provide any factually based allegations to support these conclusory statements of misconduct. As such, we reject Charging Party's contention of employer misconduct due to protected activity, as his claim against the Employer is unsubstantiated and contains only general statements and conclusory allegations. *Lansing Sch Dist*, 1998 MERC Lab Op 403; *Wayne Co Dep't of Pub Health*, 1998 MERC Lab Op 590, 600.

As to the charge against the Union, we also concur with the ALJ's recommendation for summary dismissal. Charging Party contends that the Union acted

[1] The document was entitled "Motion to Amendment (sic), Exceptions and Brief in Support of the Charging Party Claim of Unfair Labor Practices by the Two Respondents, the Detroit Public Schools and the Federation of Teachers, Local 231".

improperly in handling his grievance that challenged his suspension for workplace violations. However, it is well settled that a union may exercise considerable discretion in deciding whether or not to pursue a grievance (*Michigan State Univ Admin-Prof'l Ass'n*, MEA/NEA, 20 MPER 45 (2007)), so long as its decision is not arbitrary, biased, discriminatory or in bad faith. *Silbert v Lakeview Ed Ass'n*, 187 Mich App 21; 466 NW2d 333 (1991). Charging Party acknowledges in his pleadings that the Union filed and processed his grievance through several steps. Those efforts were unsuccessful in obtaining his desired outcome. While expressing his displeasure with the Union's efforts, Charging Party does not suggest or allege facts that indicate the existence of any discriminatory, biased or bad faith conduct by the Union. At best, he shares his discontent with the Union's efforts, which alone does not support grounds for an unfair practice charge against a union. *AFSCME Council 25, Local 207*, 23 MPER 99 (2010). As with the claim against the Employer, this charge against the Union is supported only with familiar "catch phrases" that offer conclusory allegations of union misconduct without the requisite detail to overcome summary dismissal. *Zeeland Pub Sch*, 1999 MERC Lab Op 505; *AFSCME Council 25*, 1992 MERC Lab Op 166.

Finally, we have carefully examined the remaining issues raised in Charging Party's exceptions and find that they would not change the results in these matters. Since the allegations contained in both charges and the other pleadings do not state valid claims under PERA, summary dismissal is appropriate under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165. Accordingly, we affirm the ALJ's Decision and Recommended Order and dismiss both charges on summary disposition.

ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Christine A. Derdarian, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer,

-and- Case Nos. C11 I-160 & CU11 I-028

DETROIT FEDERATION OF TEACHERS, LOCAL 231,
Respondent-Labor Organization,

-and-

JOHN ISAAC HARRIS,
An Individual Charging Party.
_____/

APPEARANCES:

John Isaac Harris, 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, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, on behalf of the Michigan Employment Relations Commission. This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim.

The Unfair Labor Practice Charge:

On September 23, 2011, John Isaac Harris (Charging Party or Harris) filed separate, but identical Charges against the Detroit Public Schools (the

Employer or District) and against the Detroit Federation of Teachers Local 231 (the Union). The Charges asserted that Harris filed a grievance in February of 2011, apparently related to work rule violations and alleged the existence of a hostile work environment. The Charges further alleged that a grievance hearing occurred on May 12, 2011. Finally the Charges alleged that Harris received some sort of disciplinary suspension and that the Union pursued a grievance regarding that discipline. It was not apparent what conduct by the Employer or the Union was claimed to have violated PERA. The allegations, read in the light most favorable to Charging Party, appeared to state no more than a breach of contract claim, and for that reason, and pursuant to Commission Rule 423.165(2)(d), the Charging Party was ordered to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted.

A timely response to the Order, in excess of one hundred pages, was filed by Harris; however, it did not cure the defects in the Charges. Rather, as to the Employer, the pleadings, taken as a whole, reflect that Harris received a series of ordinary workplace criticisms and discipline, beginning in November of 2010, related to perceived deficiencies in his work performance and alleged workplace misconduct. The response to the Order did express concern with the Employer allegedly failing to meet contractual time limits in responding to Harris' grievances. There is no factual basis asserted which, if proved, would support a conclusion that Harris engaged in protected activity that preceded the beginning of the chain of discipline, nor was any factual basis asserted which, if proved, would support a conclusion that any protected activity was a motivation for any of the discipline imposed. Rather, the response to the Order seemingly confirmed many of the Employer's concerns with Harris' work performance. Harris admitted to a seemingly insubordinate refusal to readmit a student to his classroom despite a direct order personally delivered by the school principal. Harris additionally seemingly acknowledged the factual underpinning of a complaint that he had been sitting in his classroom reading the newspaper when he was supposed to be instructing students. [2]

The intended basis of the charge brought against the Union remains unclear. The only factual allegations asserted related to the Union are that a Union representative accompanied Harris to a scheduled disciplinary

[2] Taken as a whole, Harris' troublingly inarticulate response to the Order supports a conclusion that he is shockingly ill-prepared to teach and further suggests a disordered thought process.

meeting and that a grievance was filed and pursued through some stage of the grievance procedure.

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 to show cause issued under R423.165. PERA does not regulate all aspects of the employment relationship.

The allegations in the charge regarding the Employer, as supplemented by Harris' response to the Order, read in the light most favorable to Charging Party, state no more than a breach of contract claim arising from ordinary workplace discipline, which Harris believes was unfairly levied. The Commission has the authority to interpret the terms of a collective bargaining agreement only where necessary to determine whether a party has breached its statutory obligations. *University of Michigan*, 1971 MERC Lab Op 994, 996. However, in the ordinary course, where the terms and conditions of employment are covered by a collective bargaining agreement, the parties are left to pursue contract remedies. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich. 309, 317-321 (1996); *St Clair Co Road Comm*, 1992 MERC Lab Op 533.

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. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. In the instant case, the charge against the District does not provide a factual basis which would support a finding that Harris engaged in protected activities for which he was subjected to discrimination or retaliation in violation of the Act. Absent such a factually supported allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's action. Thus, dismissal of the charge against Detroit Public Schools in Case No. C11 I-160 is warranted.

Similarly, the charge against the Union must 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). A 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. To prevail on a claim of unfair representation, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Sch Dist*, 201 Mich App 480, 488 (1993). 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 Harris; rather, the only factual allegations regarding the Union are that a Union representative accompanied Harris to a disciplinary conference and a that a grievance was filed. Thus, dismissal of the charge against Detroit Federation of Teachers in Case No. CU11 I-028 is warranted.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges in Case Nos. C11 I-160 and CU11 I-028 be dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 30, 2011