

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

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer in Case No. C12 G-142,

-and-

AFSCME COUNCIL 25, LOCAL 229,
Respondent-Labor Organization in Case No. CU12 G-031,

-and-

REGINALD MAHONE,
An Individual Charging Party.

APPEARANCES:

Reginald Mahone, *In Propria Persona*

DECISION AND ORDER

On October 2, 2012, Administrative Law Judge David M. Peltz issued his 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

Robert S. LaBrant, Commission Member

Dated: _____

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

In the Matter of:

CITY OF DETROIT,

Respondent-Public Employer in Case No. C12 G-142; Docket No. 12-001266-MERC

-and-

AFSCME COUNCIL 25, LOCAL 229,

Respondent-Labor Organization in Case No. CU12 G-031; Docket No. 12-001265-MERC,

-and-

REGINALD MAHONE,

An Individual Charging Party.

APPEARANCES:

Reginald Mahone, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from unfair labor practice charges filed on July 20, 2012, by Reginald Mahone against his employer, the City of Detroit, and his Union, AFSCME Council 25, Local 229. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charges were assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The charges allege that Mahone was laid off from his position as an auto mechanic in the City's general services department while less senior mechanics employed within another department were retained. In an order issued on August 17, 2012, I directed Charging Party to show cause why the charges should not be dismissed for failure to state a claim upon which relief can be granted under the Act as to either Respondent. The response to the Order to Show Cause was due by the close of business on September 7, 2012. To date, no response has been received, nor has Charging Party requested an extension of time in which to file such a response.

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 the City of Detroit does not provide a factual basis which would support a finding that Mahone engaged in union activities for which he was subjected to discrimination or retaliation in violation of the Act. Therefore, dismissal of the charge against the City of Detroit in Case No. C12 G-142; Docket No. 12-001266-MERC is warranted.

Similarly, there is no factually supported allegation against AFSCME Council 25, Local 229 in Case No. CU12 G-031; Docket No. 12-001265-MERC which, if proven, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Mahone. 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.

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, the union is not required to follow the dictates of the individual employee, but rather it may investigate and take the action 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.

In the instant case, the charge in Case No. CU12 G-031; Docket No. 12-001265-MERC fails to set forth any factually supported allegation which, if true, would establish that AFSCME Council 25, Local 229 acted arbitrarily, discriminatorily or in bad faith with respect to Charging Party. In fact, the substance of the charge does not even reference the Union generally or any AFSCME representative specifically. Accordingly, I recommend dismissal of the charge against the Union in Case No. CU12 G-031; Docket No. 12-001265-MERC for failure to state a claim under PERA.

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. Therefore, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charges filed by Reginald Mahone against the City of Detroit and AFSCME Council 25, Local 229 are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: October 2, 2012