

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

In the Matter of:

CITY OF SOUTHFIELD (FIRE DEPARTMENT),  
Public Employer-Respondent,

-and-

SOUTHFIELD FIRE FIGHTERS ASSOCIATION, LOCAL 1029,  
Labor Organization-Respondent,

-and-

MICHAEL ALBO,  
An Individual-Charging Party.

Case Nos. C13 C-047 &  
CU13 C-008

Docket Nos. 13-000367-MERC &  
13-000368-MERC

APPEARANCES:

Helveston & Helveston, by Ronald R. Helveston, for Respondent Labor Organization

Michael Albo, appearing on his own behalf

**DECISION AND ORDER**

On June 5, 2013, 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 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

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Edward D. Callaghan, Commission Chair

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Robert S. LaBrant, Commission Member

Dated: \_\_\_\_\_

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Natalie Yaw, Commission Member

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

In the Matter of:

CITY OF SOUTHFIELD (FIRE DEPARTMENT),  
Respondent-Public Employer in Case No. C13 C-047; Docket No. 13-000367-MERC,

-and-

SOUTHFIELD FIRE FIGHTERS ASSOCIATION, LOCAL 1029,  
Respondent-Labor Organization in Case No. CU13 C-008; Docket No. 13-000368-MERC,

-and-

MICHAEL ALBO,  
An Individual Charging Party.

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APPEARANCES:

Michael Albo, appearing on his own behalf

Helveston & Helveston, by Ronald R. Helveston, for the Labor Organization

**AMENDED DECISION AND RECOMMENDED ORDER  
ON SUMMARY DISPOSITION**

This case arises from unfair labor practice charges filed on March 8, 2013, by Michael Albo against his employer, the City of Southfield (Fire Department), and his Union, the Southfield Fire Fighters Association, Local 1029. 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 charge in Case No. C13 C-047; Docket No. 13-000367-MERC alleges that the City of Southfield (Fire Department) retaliated against Albo for reporting to the Employer misconduct by his supervisor, Fire Marshall James Dundas. Although the charge in Case No. CU13 C-008; Docket No. 13-000368-MERC names the Southfield Fire Fighters Association, Local 1029 as Respondent, no specific allegations are made with respect to the Union.

In an order issued on March 21, 2013, 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 April 11, 2013. 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, the Act does not prohibit all types of discrimination or unfair treatment, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. Furthermore, it is not MERC's role to hear whistleblower claims, allegations of discrimination on the basis of race, gender, religion, disability, national origin, or other generalized claims of unfair treatment. 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 Southfield (Fire Department) does not provide a factual basis which would support a finding that Albo 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 Southfield (Fire Department) in Case No. C13 C-047; Docket No. 13-000367-MERC is warranted.

Similarly, there is no factually supported allegation against the Southfield Fire Fighters Association, Local 1029 in Case No. CU13 C-008; Docket No. 13-000368-MERC which, if proven, would establish that the Union violated 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.

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.

The charge in Case No. CU13 C-008; Docket No. 13-000368-MERC does not identify any act or omission on the part of the Union which would support a finding that the Southfield Fire Fighters Association, Local 1029 violated its duty of fair representation with respect to Albo. Although the charge refers to the fact that Dundas was a Union vice president, there is no factually supported allegation which would suggest that Dundas was acting in his official capacity as a Union official when he allegedly retaliated against Albo, nor is there any allegation that the Union sanctioned Dundas' conduct. Accordingly, I recommend dismissal of the charge against the Union in Case No. CU13 C-008; Docket No. 13-000368-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 Michael Albo against the City of Southfield (Fire Department) and the Southfield Fire Fighters Association, Local 1029 are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: June 5, 2013