STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT FEDERATION OF TEACHERS,
Labor Organization-Respondent,

-and-

Case No. CU13 C-009
Docket No. 13-000382-MERC

CAROL I. MANCIEL,
An Individual-Charging Party.
_____/

APPEARANCES:

Sachs Waldman, P.C., by James A. Britton, for Respondent

Carol I. Manciel, appearing on her own behalf

DECISION AND ORDER

On July 5, 2013, 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

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Edward D. Callaghan, Commission Chair

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Robert S. LaBrant, Commission Member

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Natalie P. Yaw, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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Respondent-Labor Organization,

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Carol I. Manciel, appearing on her own behalf

DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on March 15, 2013 by Carol I. Manciel against the Detroit Federation of Teachers ("DFT" or "the Union"). 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 charge was 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 asserts that the Union violated PERA by failing or refusing to conduct a timely grievance hearing. In an order issued on March 20, 2013, I directed the DFT to file a substantive and fact specific answer to the charge or a position statement which fairly meets each of the substantive allegations set forth in the charge. The DFT filed its position statement on April 24, 2013. After reviewing the Union's position statement, I issued an order on May 16, 2013 directing Manciel to show cause why the charge should not be dismissed for failure to state a claim under PERA. The response to the Order to Show Cause was due by the close of business on June 6, 2013. To date, no response has been received, nor has Charging Party requested an extension of time in which to file such a response.

Findings of Fact:

Because Charging Party did not file a response to the Union's position statement, I accept the factual assertions set forth by the DFT as true for purposes of this decision. Manciel is employed by the Detroit Public Schools. The school district suspended Manciel for two days on

or about June 7, 2012. On June 11, 2012, the DFT filed a grievance challenging the suspension. A Step 2 hearing was scheduled for September 27, 2012, but was cancelled due to the fact that an unrelated grievance hearing ran late. The next scheduled hearing dates, February 13, 2012 and March 15, 2013, were also cancelled at the last minute by the school district. A Step 2 hearing was finally held on April 22, 2013 with Manciel in attendance.

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 charge as true, dismissal of the charge on summary disposition is warranted.

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 judgment over agreements made by employers and collective bargaining representatives, despite frequent challenges by dissatisfied individual 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. *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218. To this end, a union is not required to follow the dictates of the individual grievant, but rather it may investigate and address the case in the manner it determines to be best. A union does not breach its duty of fair representation merely by a delay in the processing of a grievance as long as the delay does not cause the grievance to be denied. *Service Employees International Union, Local 502*, 2002 MERC Lab Op 185.

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).

In the instant case, the charge, as written, does 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 Manciel. It is undisputed that the DFT filed a timely grievance challenging Manciel's two-day suspension and that a Step 2 hearing on the grievance was held, with Manciel in attendance. Despite having been given ample opportunity to do so, Charging Party has not identified any act

or omission on the part of the Union which would support a finding that the DFT violated its duty of fair representation with respect to Manciel, nor has Charging Party established how her two-day suspension constituted a violation of the collective bargaining agreement. Accordingly, I recommend that the Commission issue the following order dismissing the charge in its entirety.

RECOMMENDED ORDER

The unfair labor practice charge filed by Carol I. Manciel against the Detroit Federation of Teachers in Case No. CU13 C-009; Docket No. 13-000382-MERC is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: July 5, 2013