

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

In the Matter of:

AFSCME LOCAL 1583,
Labor Organization-Respondent,

-and-

SHARON BUSHONG,
An Individual-Charging Party.

Case No. CU13 D-014
Docket No. 13-001508-MERC

APPEARANCES:

Sharon Bushong, appearing on her own behalf

DECISION AND ORDER

On June 17, 2013, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter recommending the dismissal of Charging Party's unfair labor practice charges. The ALJ held that Respondent AFSCME Local 1583 (the Union) did not violate § 10(3)(a)(i) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(3)(a)(i). Charging Party Sharon Bushong alleged that Respondent committed unfair labor practices by accepting money from her employer, the University of Michigan, while acting as her bargaining representative, specifically accusing the Union of having a conflict of interest. On April 29, 2013, the ALJ issued an Order to Show Cause (Order) to give Charging Party the opportunity to assert additional facts in support of her claim, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165 and R 423.151(2)(c). The ALJ directed Charging Party to file a written response to the Order which describes how the Union is being paid by the employer, identifies the Union representatives who receive payments and explains why accepting the payments violated PERA. Charging Party did not respond to the Order to Show Cause. The ALJ found that the Union had not engaged in unfair labor practices, as Charging Party failed to allege arbitrary or discriminatory conduct by the Union and did not assert facts that were sufficient to establish a claim on which relief can be granted.

The ALJ's Decision and Recommended Order was served on the parties in accordance with § 16 of PERA. Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order on July 8, 2013, and July 9, 2013. The Union did not file a response to Charging Party's exceptions.

In her exceptions, Charging Party does not indicate why she failed to respond to the Order to Show Cause. The failure to respond to an order to show cause may, in itself, warrant dismissal of

an unfair labor practice charge. *Detroit Fed'n of Teachers*, 21 MPER 3 (2008). Charging Party's exceptions essentially reargue the assertions made in the charge that the Union committed unfair labor practice charges by accepting money from the employer. The exceptions also raise issues unrelated to the original charge: conduct related to a grievance Charging Party filed, a settlement letter she alleges the employer asked her to sign giving up her rights to hold the employer accountable, an effort to get the union decertified, and occasions on which she asked for a union steward and did not get one in a timely manner. However, claims not alleged in the charge but raised for the first time in exceptions are waived by Charging Party. *American Fed'n of Teachers, Local 2000*, 22 MPER 21 (2009); *Detroit Pub Sch*, 22 MPER 19 (2009).

After carefully reviewing the record, including Charging Party's exceptions, we hereby adopt the ALJ's Decision and Recommended Order and affirm the ALJ's recommended dismissal of Charging Party's unfair labor practice charges. Accordingly, we issue the following Order:

ORDER

The unfair labor practice charges are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Dated: _____

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

In the Matter of:

AFSCME LOCAL 1583,
Respondent-Labor Organization,

Case No. CU13 D-014
Docket No. 13-001508-MERC

-and-

SHARON BUSHONG,
An Individual-Charging Party.

APPEARANCES:

Sharon Bushong, appearing for herself

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

On April 16, 2013, Sharon Bushong filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her collective bargaining representative, AFSCME Local 1583, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System (MAHS).

On April 29, 2013, pursuant to Rule 165 of the Commission's General Rules, 2002 AACs, R 423.165, and Rule 151(2)(c) of these rules, R 423.165(2)(c), I issued an order directing Bushong to amend her charge against the Respondent or show cause why it should not be dismissed under Rule 165 for failure to state a claim on which relief could be granted under PERA. In this order, I noted that Commission Rule 151(2)(c) requires a charging party to include in his or her charge a clear and complete statement of facts alleging a violation of PERA. The order directed Bushong to include certain specific facts in her amended charge or response, as discussed below, and to explain in her response why she believed Respondent's conduct violated PERA. Bushong was cautioned that if she did not respond to my order, I would recommend that her charge be dismissed. Bushong did not respond to my order. For the reasons set forth below, I conclude that Bushong's charge should be dismissed, and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

According to her charge, Bushong is employed by the University of Michigan as a nurse

aide III and is a member of a bargaining unit represented by Respondent. Bushong's charge reads, in its entirety, as follows:

I'm filing a charge against my union on the basis of conflict of interest. AFSCME should not be representing us when they are being paid by U of M.

Discussion and Conclusions of Law:

The Commission does not investigate charges filed with it. Charges that allege a violation of PERA and conform to the Commission's rules are set for hearing before a MAHS administrative law judge. Rule 151(2)(c) of the Commission's General Rules, 2002 AACRS, R 423.151(2)(c), requires that an unfair labor practice charge filed with the Commission include, insofar as these are known:

A clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged therein, and the sections of LMA or PERA alleged to have been violated.

A union representing public employees in Michigan owes these employees a duty of fair representation under §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). A union is guilty of bad faith when it "acts [or fails to act] 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*, 156 F3d 120, 126 (CA 2, 1998). A union might violate its duty of fair representation, for example, by accepting a bribe to settle a grievance since in that case the union's motive for settling the grievance would be improper.

Section §302 of the federal Labor Management Relations Act (LMRA), 29 USC §186 prohibits certain types of payments by employers to unions and their representatives, and makes it unlawful for the union to accept such payments. This statute, however, exempts payments by an employer to any of its employees in compensation for their services as employees. Moreover, the LMRA does not apply to public employers in Michigan or unions that represent public employees, and there are no provisions parallel to §302 in PERA or any other Michigan statute. In sum, while a union's actions or failure to act on matters related to its representation of members due to its receipt of payments from an employer might violate its duty of fair representation in a particular case, PERA does not make it an unfair labor practice for a public employer to pay money to a union or for a union representing public employees or their representatives to receive money from an employer.

In my April 29, 2013, order to show cause, I directed Bushong to file a written response to this order or amended charge which: (1) describes how or under what circumstances the Respondent

is “being paid” by the University of Michigan; (2) identifies the Respondent representatives who receive the payments and when they received them; (3) explains why accepting these payments violated PERA. As noted above, Bushong did not respond to my order.

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 this case, Bushong’s charge alleges only that Respondent violated PERA by continuing to represent employees while receiving unspecified “payments” from Bushong’s employees. I conclude that Bushong’s charge does not state a claim upon which relief can be granted under PERA. Moreover, Bushong was given an opportunity to amend her charge to set forth facts that, if proven, would establish that Respondent violated PERA, but did not do so. I recommend, therefore, 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: _____