STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

THIRD JUDICIAL CIRCUIT COURT,
Public Employer-Respondent in Case No. C14 B-022/Docket No. 14-003602-MERC

-and-

MICHIGAN AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 1659,
Labor Organization-Respondent in Case No. CU14 B-006/Docket No. 14-003603-MERC

-and-

REVOYDIA MILLER,
An Individual Charging Party.
_____/

APPEARANCES:

Revoydia Miller, appearing on her own behalf

DECISION AND ORDER

On June 30, 2014, Administrative Law Judge Julia C. Stern issued her 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: July 31, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

THIRD JUDICAL CIRCUIT COURT,
Respondent-Public Employer in Case No. C14 B-022/Docket No. 14-003602-MERC

-and-

MICHIGAN AFSCME COUNCIL 25 AND ITS AFFILIATED LOCAL 1659,
Respondent-Labor Organization in Case No. CU14 B-006/Docket No.14-003603- MERC

-and-

REVOYDIA MILLER,
An Individual-Charging Party.
_____/

APPEARANCES:

Revoydia Miller, appearing for herself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On February 27, 2014, Revoydia Miller filed the above unfair labor practice charges with the Michigan Employment Relations Commission (the Commission) against her employer, the Third Judicial Circuit Court (the Employer) and her collective bargaining representatives, AFSCME Council 25 and its affiliated Local 1659 (the Union) pursuant to §§10 and 16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210 and MCL 423.216. Pursuant to Section 16 of PERA, the charges were assigned for hearing to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On March 14, 2014, pursuant to Rule 165 of the Commission's General Rules, 2002 AACS, R 423.165, I issued an order directing Miller to show cause in writing why her charges against both Respondents should not be dismissed for failure to state a claim upon which relief could be granted under PERA. Although Miller requested and was granted an extension to May 30, 2014 to respond to the order, she did not do so. Based upon the facts as asserted by Miller in her charges, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charges:

According to her charges, Miller is employed by the Employer as a clerk. Miller asserts that

on January 17, 2014, she suffered a panic attack at work after being informed by her supervisor that she was going to be cross-trained for work performed in the lower level of her building, a portion of the building she claims is infested with rats and mice. Miller has experienced periodic panic attacks for thirty years. After a disagreement with her supervisor over whether she was ill enough to leave work that day, Miller was allowed to leave and visit her doctor for treatment. The doctor cleared her to return to work the following Wednesday, January 22, with restrictions. When Miller attempted to return to work on January 22, she was told that she was being placed on a medical disability leave and told to leave the building. Miller's charge against the Employer alleges that it is guilty of discriminating against her on the basis of a disability by refusing to allow her to return to work with the restrictions ordered by her doctor.

Miller asserts that after she was informed by the Employer that she was on a medical disability leave, she contacted Union representative Richard Johnson for assistance. Johnson told her to call Local 1659 president Joyce Ivory. Ivory told Miller that she would not be allowed to return to work with any restrictions. According to Miller, the Employer has allowed other unit employees to work with medical restrictions. Miller alleges that the Union did not provide her with proper representation, and discriminated against her when it refused to provide her with assistance in returning to work.

Discussion and Conclusions of Law:

The Commission does not investigate charges filed with it. Rule 151(2)(c) of the Commission's General Rules, 2002 AACS, R 423.151(2)(c), requires that an unfair labor practice charge filed with the Commission include:

> 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.

Section 9 of PERA protects the rights of public employees to form, join, or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. "Lawful concerted activities for mutual aid and protection" includes complaining with other employees about working conditions and taking other actions in concert with other employees to protest or change working conditions. Sections 10(1)(a) and (c) of PERA prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against its employees because they have engaged in, or refused to engage in, union activities or other concerted protected activities. However, PERA does not prohibit all types of discrimination or unfair treatment of a public employee by his or her employer. The Commission also has no jurisdiction to find an employer guilty of violating rights created by state or federal statutes other than PERA, e.g., the Commission has no jurisdiction to find a public employer guilty of violating the Americans with Disabilities Act. Moreover, an individual does not state a cause of action or claim under PERA merely by asserting that his or her rights under a union contract were violated. *Utica Cmty Schs*, 2000 MERC Lab Op 268; *Detroit Bed of Ed*, 1995 MERC Lab Op 75. Absent an allegation that the employer interfered with, restrained, coerced, or

discriminated against the employee for engaging in, or refusing to engage in, union or other activities of the type protected by PERA, the Commission has no jurisdiction to make a judgment on the fairness of the employer's actions or remedy its allegedly unfair treatment of an employee. See, e.g., *City of Detroit (Fire Dep't*), 1988 MERC Lab Op 561, 563-564; *Detroit Bed of Ed*, 1987 MERC Lab Op 523, 524.

A union representing public employees owes these employees a duty of fair representation under §10(2) of PER. The union's legal duty under this section 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," while "discrimination" under this standard is limited to "intentional and severe discrimination unrelated to legitimate union objectives." *Merritt v International Assn of Machinists and Aerospace Workers*, 613 F3d 609, (CA 6, 2010), citing *Spellacy v Airline Pilots Assn*, 156 F3d 120, 126 (CA 2, 1998).

Because a union's ultimate duty is toward its membership as a whole, a union does not have the duty to file a grievance in all circumstances when an individual member asks it to do so. Rather, a union has considerable discretion to decide how or whether to proceed with a grievance and is permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. A union's good faith, nondiscriminatory, decision not to proceed with a grievance is not arbitrary unless it falls so far outside a broad range of reasonableness as to be considered irrational. *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35, *citing Air Line Pilots Assn v O'Neill*, 499 US 65, 67 (1991). The fact that an individual member is dissatisfied with the union's decision, or its efforts on his behalf, does not establish that the union has breached its duty of fair representation. *Eaton Rapids EA*, supra.

Miller's charge alleges that the Employer unfairly refused to permit her to return to work with the restrictions issued by her doctor, and that this refusal constituted discrimination against her because of her medical condition/disability. However, she does not allege that the Employer's refusal to allow her to return to work was in retaliation for her engaging in conduct protected by PERA, or that the Employer otherwise interfered with her exercise of the rights given her by §9 of PERA. I conclude, therefore, that Miller's charge against the Employer does not allege a violation of PERA.

Miller alleges that the Union violated its duty of fair representation toward her by failing to help her return to work with her medical restrictions. In her charge, Miller asserts that the Union told her that she would not be allowed to return to work with any medical restriction, and that she knew this to be wrong because she was aware of other employees who had been allowed to work with medical restrictions. Miller failed to allege any other facts which might support a claim that the Union acted in bad faith or was guilty of arbitrary or discriminatory conduct. In my order to show cause, I directed Miller to provide additional facts which were not included in her charge, including (1) details of the conversations she had with Union representatives about filing a grievance or the Employer's refusal to allow her to return to work; (2) provisions in the collective bargaining

agreement that Miller believed that the Employer violated; and (3) the restrictions issued by Miller's doctor and similarities between these restrictions and the medical restrictions of other employees Miller knew had been allowed to work.

Miller did not respond to my order. The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). I conclude that Miller's charge against the Union does not state a factually supported claim upon which relief could be granted under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charges filed by Revoydia Miller in Case No. C14 B-022 and CU14 B-06 are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 30, 2014