

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

In the Matter of:

KALAMAZOO SCHOOL DISTRICT,

Public Employer-Respondent in Case No. C13 E-083; Docket No. 13-003462-MERC

-and-

MICHIGAN EDUCATION ASSOCIATION,

Labor Organization-Respondent in Case No. CU13 E-020; Docket No. 13-003464-MERC

-and-

SUSAN TURNER,

An Individual Charging Party.

APPEARANCES:

Clark Hill PLC, by Marshall W. Grate, for the Public Employer

Susan Turner, appearing on her own behalf

DECISION AND ORDER

On August 8, 2014, 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: September 19, 2014

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

In the Matter of:

KALAMAZOO SCHOOL DISTRICT,
Respondent-Public Employer in Case No. C13 E-083; Docket No. 13-003462-MERC,

-and-

MICHIGAN EDUCATION ASSOCIATION,
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-and-

SUSAN TURNER,
An Individual Charging Party.

APPEARANCES:

Susan Turner, appearing on her own behalf

Clark Hill PLC, by Marshall W. Grate, for the Public Employer

DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION

This case arises from unfair labor practice charges filed on May 15, 2013, by Susan Turner against her Employer, Kalamazoo School District and her Union, the Michigan Education Association (MEA). 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 consolidated and assigned to David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (MERC).

From the unfair labor practice charges, which consist of fifteen pages of allegations in narrative form, it appears that Turner is asserting disparate treatment by the Kalamazoo School District following an alleged physical altercation with a co-worker which led to her being terminated from her position as a bus driver with the school district. With respect to the MEA, Turner apparently contends that the Union failed or refused to represent her in the aftermath of the altercation.

In an order issued on May 31, 2013, I directed Turner to show cause why the charges should not be dismissed without a hearing for failure to state a claim under PERA. The order

specified that Turner was required to file a response and simultaneously serve copies on both the school district and the Union by no later than June 21, 2013.

Turner filed a response to the order on June 25, 2013. No statement of service was attached to the response as required by Rule 182(3), R 423.182, of the General Rules and Regulations of the Michigan Employment Relations Commission, nor was there any indication that the response was served on either of the Respondents. Moreover, Charging Party attached a letter to her response purportedly from the newly-elected Union president and requested that the letter not be disclosed to the Employer.

By letter dated July 2, 2013, I notified Charging Party, in writing, that the case file is a public record accessible to all parties to the case and any other entity or individual who makes a request to review the file. For that reason, I returned all copies of the response to Turner and instructed her to resubmit the document, with or without the attachment, or file an amended pleading. Charging Party was ordered to refile her response by no later than July 16, 2013. In addition, I once again directed Turner to serve copies of her response or amended charge on Respondents.

To date, Charging Party has not refiled her response, filed an amended charge or sought to obtain an extension of time in which to file such a response.

Discussion and Conclusions of Law:

The failure to respond to an order to show cause may, in itself, warrant dismissal of an unfair labor practice charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, I conclude that the charge, as written, fails to raise any issue cognizable under PERA.

Commission Rule 423.165 allows for a pre-hearing dismissal of a charge, or for a ruling in favor of the charging party. In the instant case, it appears that dismissal of the charges without a hearing is warranted on the ground that Turner has failed to state a claim upon which relief can be granted as to either Respondent. 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 whistle blower claims, allegations of discrimination on the basis of race, gender, religion, disability, national origin, or other generalized claims of unfair treatment. The Commission's jurisdiction with respect to claims brought by individual employees against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in union or other concerted activities protected by PERA. The charge against the Kalamazoo School District does not provide a factual basis which would support a finding that Turner engaged in union activities for which she was subjected to discrimination or retaliation in violation of the Act. Therefore, it appears that dismissal of the charge against the Employer in Case No. C13 E-083; Docket No. 13-003462-MERC is warranted.

Similarly, there is no factually supported allegation against the MEA in Case No. CU13 E-020; Docket No. 13-003464-MERC which, if proven, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Turner. 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. To pursue such a claim, Charging Party must allege and be prepared to prove not only a breach of the duty of fair representation by the Union, but also a breach of the collective bargaining agreement by the Employer. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992).

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, Charging Party has failed to 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. Although Charging Party takes exception to the representation she received from the Union, there is no factually supported allegation which, if true, would establish that the MEA was hostile to Turner, that it treated her differently than others, similarly situated bargaining unit members or that it in any manner acted arbitrarily, discriminatorily or in bad faith in connection with this matter. As noted above, a union 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. To this end, the Michigan Supreme Court has held, "When the general good conflicts with the needs or desires of an individual member, the discretion of the union to choose the former is paramount." *Lowe v Hotel Employees*, 389 Mich 123, 146 (1973).

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation which, if true, would establish that the Union acted arbitrarily, discriminatorily or in bad faith in connection with this matter. Accordingly, I conclude that the charges must be dismissed for failure to state a claim upon which relief can be granted under PERA and recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 8, 2014