STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UNITED STEELWORKERS, LOCAL 15157,
Labor Organization-Respondent,

-and-

Case No. CU14 E-027
Docket No. 14-009456-MERC

MELANIE SZELOGOWSKI,
An Individual-Charging Party.
_____/

APPEARANCES:

Martin-Foldie, PLLC, by J. Martin Foldie, for Respondent

Melanie Szelogowski, appearing on her own behalf

DECISION AND ORDER

On September 23, 2014, Administrative Law Judge Travis Calderwood 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: October 24, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Martin-Foldie, PLLC, by J. Martin Foldie, for the Labor Organization-Respondent

Melanie Szelogowski, Charging Party, appearing for herself.

DECISION AND RECOMMENDED ORDER

On May 14, 2014, Melanie Szelogowski (Charging Party), filed an unfair labor practice charge against her union, the United Steelworkers, Local 15157 (Respondent), alleging that the union violated its duty of fair representation. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Administrative Law Judge, Travis Calderwood, of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission).

The Unfair Labor Practice Charge and Procedural History:

The Charge alleges that the Union violated its duty of fair representation under PERA when the Union President, Wanda Behmlander, provided Szelogowski with a letter concerning violations or alleged violations of certain Bay County Policies and requested a meeting with her Supervisor, Kurt C. Asbury, Bay County Prosecutor to discuss the same. A meeting did not take place. Charging Party stated that she provided the letter to Asbury as well as to Tim Quinn, the Bay County Personnel Director.

On May 16, 2014, I issued a Complaint and Notice of Hearing which set this matter for hearing on June 16, 2014. The Complaint and Notice of Hearing contained a copy of the May 14, 2014, Charge and was served on both parties by Certified Mail with Return Receipt. On May 22, 2014, the Complaint and Notice of Hearing sent to Respondent were returned as undeliverable. On June 4, 2014, Counsel for Respondent contacted my office in order to accept

service of the Complaint and Notice of Hearing. The Complaint and Notice of Hearing together with a copy of the May 14, 2014, Charge were sent to Respondent's Counsel by Certified Mail with Return Receipt. Records indicate that Respondent's Counsel received the Complaint and Notice of Hearing on June 9, 2014. That same day, Respondent requested that the June 16, 2014 hearing be adjourned and filed both an Answer to the Charge and a Motion for Summary Disposition. Respondent attached a copy of the Notice of Hearing and the May 14, 2014, Charge to its Answer. On June 13, 2014, I granted Respondent's request for an adjournment and directed Charging Party to respond, in writing, to the motion.

On July 1, 2014, I notified Respondent by letter that it appeared both its Answer and Motion made reference to a charge not presently before the Commission. I directed Respondent to either amend the pleadings or withdraw them by July 21, 2014. On July 11, 2014, Charging Party filed her response to my June 13, 2014, directive.

Respondent's Counsel did not file a timely or relevant response to my previous directive nor did he make any written request for an extension. Respondent's Counsel sent an email, on July 28, 2014, stating that the Answer and Motion filed on June 9, 2014, were the correct pleadings. Respondent's Counsel attached copies of those earlier pleadings to the email.

Respondent's Answer:

Respondent's Answer makes assertions and claims that misrepresent and/or are unresponsive to the May 14, 2014, Charge. Identified below are the portions of the Answer at issue, together with an explanation of the deficiency:

> *Paragraph 6 – On April 17, 2014, Charging Party filed a Complaint for an Unfair Labor Practice Charge pursuant to the Labor Mediation Act (LMA) [See Charging Party's Complaint]*.
>
> *Paragraph 7 – The filing of this action to the LMA is grounds for dismissal of the charge because the LMA lacks jurisdiction over public sector labor unions [See Motion to Dismiss]*.

The Charge clearly indicates a May 14, 2014, filing date as evidenced by the time stamp it received upon its receipt by the Commission. Furthermore, the Charge clearly indicates that Charging Party is proceeding under PERA and not the LMA.[1]

> *Paragraph 8 – Charging Party alleges that a letter sent to her by Respondent Behmlander was done to harass her "as retribution for… not being a member of the union." [See Complaint]*.

The Charge does not contain any such allegation and does not contain the quote as put forth by Respondent.

[1] Section 3, of the charge form provided by the Commission, and which Charging Party used, lists both the LMA and PERA and instructs a Charging Party to "cross out one." LMA is clearly crossed out on the May 14, 2014, Charge.

Paragraph 9 – Respondent DENIES these allegations of harassment in totality.

Paragraph 12 – There will be no evidence that Respondents have "harassed" Charging Party "as retribution for… not being a member of the union."

Respondent is denying something that has not been alleged. The Charge makes no claim of harassment by Respondent.

Respondent's Motion:

Respondent's Motion makes assertions and claims that misrepresent and/or are unrelated to the May 14, 2014, Charge. Identified below are the portions of the Motion at issue together with an explanation of the deficiency:

Paragraph 1 – Charging Party alleges that Respondents' are in violation because Respondent Behmlander sent her a letter, and the letter was sent "as retribution for… not being a member of the union."

Paragraph 7 – The fact that Behmlander was following her statutory duty and advising a member of the union that she needs to be careful that she does not get trapped within the text of the Employer work rules, does not amount to harassment.

As stated above, the Charge makes no such allegation and does not contain the quoted statement.

Simply put, significant portions of Respondent's Answer defend against allegations that had not been made. Likewise, Respondent's Motion attacked the sufficiency of charges and allegations that were not made. On August 4, 2014, I denied Respondent's Motion for Summary Disposition and ordered that Paragraphs 6, 7, 8, 9 and 12 of Respondent's Answer be stricken from the record as unresponsive pursuant to Rule 163 of the Commission's General Rules, R 423.163.

Order to Show Cause:

The above deficiencies in Respondent's pleadings notwithstanding, Charging Party's allegations and her response to Respondent's Motion raised certain issues regarding the sufficiency of her allegations as they relate to the union's duty of fair representation. Rule 165 of the Commission's General Rules, R 423.165, states that the Commission or an administrative law judge designated by the Commission may, on its own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the charge does not state a claim upon which relief can be granted under PERA. See, e.g., *Oakland County and Sheriff*, 20 MPER 63 (2007); *aff'd* 282 Mich App 266 (2009); *aff'd* 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986), *lv den* 428 Mich 856 (1987). On August 4, 2014, Charging Party was directed to show cause, in writing, why her charge against the Respondent should not be dismissed without hearing for failure to state a

claim upon which relief could be granted by the Commission. Charging Party was given until August 25, 2014, in which to file her response. On August 25, 2014, Charging Party requested an extension until September 2, 2014, to file her response. Charging Party has not filed a written response.

Discussion and Conclusions of Law:

Under well-established law, a union's duty of fair representation is comprised of three responsibilities: (1) to serve the interest of all members without hostility or discrimination toward any; (2) to exercise its discretion and complete good faith and honesty; and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967), also *Goolsby v City of Detroit*, 419 Mich 651 (1984). A union's actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Association v O'Neill*, 499 US 65, 67 (1991).

In order to survive a motion for summary disposition predicated on the premise that Charging Party has failed to state a claim of a breach of the duty of fair representation, Charging Party's allegations "must contain more than conclusory statements alleging improper representation." *AFSCME, Local 2074*, 22 MPER 83 (2009), *citing Martin v Shiawassee County Bd of Commrs*, 109 Mich App 166, 181 (1981).

In the present case, Charging Party has not plead sufficient facts to support her claim that the Respondent breached its duty of fair representation with regard to the letter or the request to meet with her supervisor. Notably, Szelogowski has not alleged that Respondent's actions were done to harass or discriminate against her, undertaken in bad faith or were arbitrary. Additionally, Szelogowski has not alleged any adverse action or result that has occurred because of Respondent's actions.

Furthermore, Charging Party's failure to respond to my June 12, 2014, order is further cause for dismissal. 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).

For the reasons set forth herein, I conclude that Szelogowski has failed to state a factually supported claim upon which relief could be granted under PERA. Therefore, I 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

_____

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 23, 2014