STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT TRANSPORTATION CORPORATION,
Public Employer-Respondent in Case No. C14 I-098

-and-

MICHIGAN ASSOCIATION OF POLICE,
Labor Organization-Respondent in Case No. CU14 I-039

-and-

VERNON WHITE,
An Individual-Charging Party.
_____/

APPEARANCES:

Vernon White, appearing on his own behalf

ORDER OF DISMISSAL

On October 28, 2014, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that Charging Party failed to state claims upon which relief can be granted under § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ concluded that Respondent Employer's offer to settle Charging Party's grievances was within the range of reasonableness and that Charging Party failed to allege facts to support its claim that Respondent Union acted arbitrarily, discriminatorily, or in bad faith. The ALJ recommended that we dismiss the charges in their entireties. The Decision and Recommended Order on Summary Disposition was served on the interested parties in accordance with § 16 of PERA.

On November 20, 2014, in lieu of filing exceptions as our Rules permit, see 2002 AACS, R 423.176(4), Charging Party filed a response to the ALJ's Decision and Recommended Order, consisting of several handwritten pages and documents. Respondents did not reply to Charging Party's filing. Charging Party's response does not state which of the ALJ's findings of fact and conclusions of law he believes were made in error; does not specify the portion of the ALJ's decision with which he disagrees; and fails to state any grounds for objecting to the ALJ's decision. Charging Party appears to indicate a desire to appeal without specifying any grounds for such appeal. Moreover, the "exceptions" do not minimally comply with the requirements of R 423.176. *Detroit Police Officers Ass'n*, 1999 MERC Lab Op 387; *City of Detroit Building and Safety Engineering*, 1998 MERC Lab Op 359.

Rule 176 states in pertinent part:

> (3) Exceptions shall be in compliance with all of the following provisions:
>
> (a) Set forth specifically the question of procedure, fact, law, or policy to which exceptions are taken.
> (b) Identify that part of the administrative law judge's decision and recommended order to which objection is made.
> (c) Designate, by precise citation of page, the portions of the record relied on.
> (d) State the grounds for the exceptions and include the citation of authorities, if any, unless set forth in a supporting brief.
>
> (5) An exception to a ruling, finding, conclusion, or recommendation that is not specifically urged is waived. An exception that fails to comply with this rule may be disregarded.

We have held that where a charging party's exceptions fail to comply with the requirements of R 176, we will nevertheless consider them to the extent that we are able to discern the issues on which Charging Party has requested our review. *City of Detroit,* 21 MPER 39 (2008). Here, we are unable to discern any issues for which Charging Party seeks our review. Accordingly, we dismiss Charging Party's filing and adopt the Decision and Recommended Order of the Administrative Law Judge as our final order.

ORDER

The unfair labor practice charges are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: February 12, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DETROIT TRANSPORTATION CORPORATION,
Public Employer-Respondent in Case No. C14 I-098/Docket No.14-022496-MERC,

-and-

MICHIGAN ASSOCIATION OF POLICE,
Labor Organization-Respondent in Case No. CU14 I-039/Docket No. 14-022635-MERC,

-and-

VERNON WHITE,
An Individual-Charging Party
_____/

APPEARANCES:

Vernon White, appearing for himself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On September 9, 2014, Vernon White filed the above unfair labor practice charges with the Michigan Employment Relations Commission (the Commission) against the Detroit Transportation Corporation (the Employer) and the Michigan Association of Police (the Union) alleging that the Respondents violated §§9 and 10 of the of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.209 and MCL 423.210. Pursuant to Section 16 of PERA, the charges were assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

On September 16, 2014, pursuant to Rule 165 of the Commission's General Rules, 2002 AACS, R 423.165, I issued an order directing White to show cause in writing why his charges against both Respondents should not be dismissed for failure to state a claim upon which relief could be granted under PERA. White filed a timely response to my order on October 1, 2014. Based upon the facts as alleged by White in his charge and in his response to my order, and documents attached by White to his response, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charges:

White was employed by the Employer as a transit police officer and was a member of a bargaining unit represented by the Union when he was terminated on April 9, 2014. White had previously been issued a seven-day suspension in August 2013 and a three-day suspension in November 2013. The Union had grieved these suspensions, and the grievances were awaiting arbitration, when the Employer told White that it had decided to terminate him under its progressive disciplinary policy based on his previous disciplinary record and on an incident that allegedly occurred on October 31, 2013.

White alleges, in his charge against the Employer, that it violated §§9, 10(1)(a) and 10(1)(c) of PERA by disciplining and then terminating him. However, White does not assert in his charge that he engaged in any activity protected by §9 of PERA, that his termination interfered with the exercise of his rights under §9, or that his discharge constituted discrimination against him because he engaged in, or refused to engage in, union activity or other protected activity. Rather, White asserts that his termination was unfair and that it violated the collective bargaining agreement. He argues that by terminating him for the October 31, 2013, incident, the Employer violated a provision in the collective bargaining agreement requiring it to provide notice within fifteen days of the occurrence that discipline is being contemplated. He also alleges that the Employer lacked just cause to discipline and/or terminate him.

White's charge against the Union alleges that it violated its duty of fair representation and §§9, 10(3)(a) and 10(3)(b) of PERA. As noted above, the Union filed grievances over White's seven-day and three-day suspensions. It also filed a grievance over White's termination. On May 2, 2014, while these grievances were pending, another labor organization filed a petition for representation election with the Commission seeking to represent the transit police officers. In late May, the Union disclaimed interest in continuing to represent the Employer's employees. On June 2, 2014, the Union accepted the Employer's offer to drop all of White's pending grievances in exchange for White's reinstatement without back pay and with a one-year last chance agreement. White refused to sign the agreement and was not allowed to return to work.

Although the charge alleges that the Union violated §§10(3)(a) and 10(3)(b) of PERA, White does not assert that the Union required or attempted to require him to become or remain a union member. He does appear to argue that the Union violated its duty of fair representation under §10(2)(a) of PERA by agreeing to settle his grievances, although he does not explicitly assert that the Union acted arbitrarily, discriminatorily or in bad faith.

Facts:

In August 2013, White was assigned to the afternoon shift and was under the supervision of Field Operations Administrator Portland Works. According to White, Works "had an attitude" and was often overtly rude to him. On August 25, 2013, Works assigned White to monitor two train stations. August 25, 2013, was a very hot day, and White had been off work sick the previous day. When Works called White on the radio and asked him his location, White told her that he was in the backroom of one of the stations performing an infrastructure check. Works ordered him to stay on the station platform until further notice. White told her, "Ma'am, are you aware that it is 90 degrees outside, and if I have to stay out in this heat I will go home sick?"

Works then ordered White to report to another station to meet with his union representative. Works was not there when White arrived, but the union representative told him that Works had said that White was to go home. Works later submitted a statement stating that White had left his assigned post without permission. According to Works' statement, when she ordered White to return, he said "he would not stand in 90 degree weather and get sick and that he would go home."

On August 26, White went to talk to Human Resources Manager Parnell Williams about the incident of the previous day. In a written complaint to Employer General Manager Barbara Hansen, White complained that no matter what White said, Williams took Works' side. According to White's complaint to Hansen, Williams told him "If you keep arguing with Ms. Works we will be looking to get rid of you." On August 27, 2013, White was issued a seven-day suspension for leaving his assigned post without permission, refusing a directive, and deliberately using disrespectful language to a supervisor. The Union filed a grievance over the suspension asserting that the Employer lacked just cause to discipline him.

On July 18, 2013, White filled out a request for twenty-four hours of paid vacation for October 23, October 24, and October 25, 2013, with a return to work date of October 26. His request was approved by his shift supervisor on July 18, 2013, and by Works on September 9, 2013. At the end of September, Works issued a new work schedule for October which listed two of the October dates for which White had approved vacation leave as his regular off days. White was scheduled to work on October 26 and October 27. White was angry at Works because he felt that she had deliberately changed his work schedule to interfere with his vacation. He did not submit a request to change the dates of his vacation leave. White did not work on October 23, October 24 and October 25. He did not report to work or call in at the beginning of the shift on October 26. According to the suspension White received on November 7, when White's union representative reached him later in the day on October 26, White told the union representative that "he wasn't coming in and the union knew what was going on." White did not report or call in on October 27. On November 7, 2014, White received a three day suspension for violation of Respondent's no call/no show policy. The Union filed a grievance asserting that the October 2013 work schedule had deprived White of the off days he was entitled to under the collective bargaining agreement and asked that the suspension be rescinded.

On October 31, 2013, White was picking up his paycheck at the Employer's facility when he was approached by a woman who asked him where Works was. White said he did not know. Sometime in December, White was called to a meeting with Williams and White's union steward. White was told that the woman, a vendor, had complained to the day shift supervisor that White had been rude or disrespectful. White was not shown the woman's statement or a statement from the supervisor to whom she had allegedly complained.

In January 2014, the Employer and Union selected an arbitrator to hear White's three-day and seven-day suspension grievances, and a hearing date was scheduled for March 25, 2014. On March 5, 2014, Union Labor Relations Specialist Donnell Reed sent Williams a request for all information that led to White's suspensions and his complete personnel and disciplinary files.

The arbitration hearing did not take place. On either March 24 (according to White), or April 7 (according to the documents White attached to his response), White received a memo telling him to report to a meeting with Williams. The memo stated that the Employer had been reviewing his personnel file and "noticed that there is an issue that has not had closure." Both Reed and White's union steward attended the meeting with White. At the meeting, Williams gave White a letter stating that on October 31, 2013, the Employer had received a complaint from a visiting vendor that when the vendor asked White about the whereabouts of Works, White had spoken about Works in a disrespectful and derogatory manner. The letter stated that after an investigation, White had been found to have committed the following Level V offenses – using threatening or abusive language in a demeaning or derogatory manner, and using racial slurs or offensive language to an employee or visitor on Respondent's property. The letter also stated that in view of these offenses and White's previous disciplinary history, the Employer had decided to terminate his employment.

During the meeting, the Employer and Union discussed White's previous disciplinary history. According to notes from this meeting, his disciplinary history included a 14-day suspension for an incident in April 2013 as well as the 7-day and 3-day suspensions. There was also extensive discussion of the October 31, 2013, incident at the meeting. Reed and White asked for copies of the vendor's statement and the statement of the supervisor to which she had allegedly complained, but these statements were not available. White asked Williams what proof he had that the incident occurred, and Williams said that he would take the vendor's word over White's. Williams then produced a last chance agreement that he wanted White to sign as a condition of reinstatement. Reed and Williams went into another room to discuss the last chance agreement, but the meeting concluded without the involved parties agreeing to a settlement.

The Union filed a grievance over White's termination on April 24, 2014. The Union and the Employer continued to discuss a last chance agreement in the context of the grievance. As noted above, on May 2, 2014, another labor organization filed a petition for representation election seeking to represent the bargaining unit of transit police officers. According to White, Reed was very displeased when he heard about the petition. Around the end of May, the Union notified the Employer that it no longer had any interest in representing the bargaining unit and did not desire to appear on the ballot in the representation election. An election was conducted by the Commission on June 20, 2014, and the petitioning union was certified as the new bargaining representative.

On June 3, 2014, the Michigan Association of Police notified the Employer that it would agree to the last chance agreement proposed by the Employer to settle White's grievances. On June 5, Williams sent White a letter stating that the Union had accepted the last chance agreement on his behalf. Williams directed White to report to work on June 16. When White reported to work, he was given a copy of the last chance agreement that had been signed by Employer and Union representatives on June 13. White refused to sign, and was not permitted to return to work.

Discussion and Conclusions of Law:

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. Sections 10 (1)(a) and (c) of PERA prohibit a public employer from interfering with the §9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities protected by PERA.

However, PERA does not prohibit all types of discrimination or unfair treatment by a public employer. An employer does not violate PERA by taking actions that violate an individual's rights under a collective bargaining agreement unless the employer acts for reasons prohibited by the Act. *Detroit Bd of Ed,* 1995 MERC Lab Op 75, 78. Therefore, an individual does not state a cause or claim under PERA merely by asserting that his employer breached the collective bargaining agreement. *Utica Cmty Schs,* 2000 MERC Lab Op 268. Absent an allegation that the employer interfered with, restrained, coerced, or retaliated 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 an employer's actions. See, e.g., *City of Detroit (Fire Dep't*), 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524.

White does not assert that he engaged in union or other activity protected by §9 of PERA, or allege facts indicating that there was any connection between activities protected by PERA and his termination. I conclude that White has failed to state a claim against the Employer upon which relief can be granted under PERA, and that his charge against the Employer should be dismissed on this basis.

White's only claim against the Union appears to be that it violated its duty of fair representation by accepting the Employer's offer to return White to work without back pay under a last chance agreement instead of proceeding to arbitration with his three pending grievances. Under §10(2)(a) of PERA (formerly §10(3)(a)(i)) a union representing public employees owes these employees a duty of fair representation. 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 that has filed a grievance after an employee has been terminated owes that employee a duty of fair representation with respect to that grievance, even if that union is replaced by another union as the certified bargaining representative while the grievance is pending. *Quinn v Police Officers Labor Council*, 456 Mich 478, 485-86, (1998). However, as long as it acts in good faith, 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 and the likelihood of the grievance's success. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1.

A union's decision is not arbitrary as long as its decision is within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill,* 499 US 65, 67 (1991).

White has not alleged any facts, other than the timing of the Union's decision to settle his grievances, to support a finding that the Union made this decision because it would shortly cease to be his certified bargaining representative. When White was terminated on April 9, 2014, his disciplinary record included 14-day, 7-day, and 3-day suspensions in addition to the alleged incident on October 31, 2013. At least two of these disciplines involved incidents in which White denied making statements attributed to him, but to which there were no witnesses other than White and his accuser. White argues that, under the collective bargaining agreement, he could not be disciplined in April 2014 for statements he allegedly made on October 31, 2013, because under Article XVI of the contract, the Employer was required to give notice to the employee and the bargaining unit that discipline was being considered within fifteen calendar days from the date the infraction became known to management. The contract also stated, "In no case shall disciplinary action be administered or considered after (6) months have lapsed from the date of the occurrence." However, whether this article precluded the Employer from terminating White on April 9, 2014, was subject to interpretation. I find that the Union's decision to accept the Employer's offer to settle White's grievances was within the range of reasonableness and was not irrational or arbitrary. I also find that White has not alleged facts to support a claim that this decision was made in bad faith. I conclude, therefore, that White has not stated a claim against the Union for breach of its duty of fair representation under §10(2)(a), and I recommend that his charge against the Union be dismissed on this basis. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: October 28, 2014