STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MUSKEGON PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C15 B-017/Docket No. 15-005059-MERC,

-and-

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU15 B-004/Docket No. 15-005060-MERC,

-and-

JAN O. MARTIN,
An Individual Charging Party.
_____/

APPEARANCES:

Jan O. Martin, appearing on her own behalf

DECISION AND ORDER

On April 22, 2015, Administrative Law Judge David M. Peltz issued his 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: June 26, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

MUSKEGON PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C15 B-017; Docket No. 15-005059-MERC,

-and-

MICHIGAN EDUCATION ASSOCIATION,
Respondent-Labor Organization in Case No. CU15 B-004; Docket No. 15-005060-MERC,

-and-

JAN O. MARTIN,
An Individual Charging Party.
_____/

APPEARANCES:

Jan O. Martin, appearing on her own behalf

DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

This case arises from unfair labor practice charges filed on February 10, 2015, by Jan O. Martin against her Employer, Muskegon Public Schools, 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).

The charge in Case No. C15 B-017; Docket No. 15-005059-MERC alleges that the Employer violated PERA by not offering Martin a position at Marquette Elementary School and/or by failing to post the position and fill it with a member of the bargaining unit. In Case No CU15 B-004; Docket No. 15-005060-MERC, Charging Party asserts that the MEA failed to take action on her behalf with respect to the position at Marquette Elementary School.

In an order issued on February 27, 2015, I directed Martin 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 Martin was required to file a response and simultaneously serve copies on both the school district and the Union by no later than March 20, 2015.

On or about March 11, 2015, Charging Party requested an extension of time in which to file her response to the order to show cause. The extension was granted and the new due date for the filing of the response was April 3, 2015. To date, no response has been received, nor has Charging Party requested an additional extension.

Discussion and Conclusions of Law:

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 any event, accepting all of the allegations in the charge as true, dismissal of the charge on summary disposition is warranted.

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 Charging Party has failed to state a claim upon which relief can be granted. 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. 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. In the instant case, the charge against Muskegon Public Schools does not provide a factual basis which would support a finding that Martin 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. C15 B-017; Docket No. 15-005059-MERC, is warranted.

Similarly, there is no factually supported allegation against the MEA in Case No. CU15 B-004; Docket No. 15-005060-MERC, which, if proven, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Martin. 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 toward Martin. 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 Martin, that it treated her differently than other, 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 either Respondent violated PERA. Accordingly, I conclude that the charges must be dismissed for failure to state a claim upon which relief can be granted and recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charges filed by Jan O. Martin against Muskegon Public Schools and the Michigan Education Association in Case Nos. C15 B-017 & CU 15 B-004; Docket Nos. 15-005059-MERC & 15-005060-MERC, are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: April 22, 2015