

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

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN,  
Labor Organization-Respondent,

MERC Case No. CU18 H-026

-and-

KEVIN BURGER,  
An Individual Charging Party.

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**APPEARANCES:**

Christopher Tomasi, Assistant General Counsel, for Respondent

Kevin Burger, appearing on his own behalf

**DECISION AND ORDER**

On November 19, 2018, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order<sup>1</sup> 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 either 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

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: February 6, 2019

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<sup>1</sup> MAHS Hearing Docket No. 18-016102

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

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN,  
Labor Organization-Respondent,

Case No. CU18 H-026  
Docket No. 18-016102-MERC

-and-

KEVIN BURGER,  
An Individual Charging Party.

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APPEARANCES:

Christopher Tomasi, Assistant General Counsel, for the Labor Organization

Kevin Burger appearing on his own behalf

**DECISION AND RECOMMENDED ORDER OF  
ADMINISTRATIVE LAW JUDGE ON  
MOTION FOR SUMMARY DISPOSITION**

On August 8, 2018, Kevin Burger filed the above unfair labor practice charge against the Police Officers Association of Michigan (POAM or Union). 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 (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission).

Charging Party's initial unfair labor practice filing against the POAM includes the Commission approved charge form and a several page narrative which appears to chronicle Charging Party's struggles with securing leave under the Family and Medical Leave Act (FMLA) from his employer, the Detroit Transit Corporation (DTC or Employer). That narrative also describes alleged issues Charging Party had with communications between himself and the Detroit Transit Police Officers Association (DTPOA), the group certified by the Commission as the authorized bargaining representative for the bargaining unit to which Charging Party belongs, and the POAM.

By notice dated August 24, 2018, this matter was set for a September 21, 2018, evidentiary hearing. On September 4, 2018, POAM filed its answer to the charge. On September 12, 2018, POAM requested that the matter be adjourned due to a witness scheduling issue, indicated its intention on filing a motion seeking dismissal of the charge, and requested that I set a briefing schedule for said motion and response. Charging Party did not object to that request, and the matter

was adjourned without date. Furthermore, my office then set September 28, 2018, as the deadline for Respondent's motion and October 12, 2018, for Charging Party's response to said motion.

On September 23, 2018, Charging Party inundated my office with several emails that, without any discernible context, did not appear to be relevant to the present charge nor did they indicate in any way how or why such emails were in fact relevant. On September 24, 2018, Charging Party sent another email in which he stated, "My apologies your honor I see POAM has until the 28 of September for their motion."

On September 25, 2018, POAM filed its motion seeking dismissal of the charge on the grounds that POAM, as DTPOA's service representative, did not possess any statutory duty to Charging Party, and further, the preceding notwithstanding, Charging Party had failed to state a claim under PERA relating to a union's duty of fair representation against the DTPOA.

On September 27, 2018, Charging Party notified both my office and Respondent's representatives of his current medical situation. On September 28, 2018, Charging Party sent several more emails, again without any discernible context and which did not appear to be relevant to the present charge nor did they indicate in any way how or why such emails were in fact relevant. Following receipt of these additional emails, I sent Charging Party a response by email indicating that I would not be considering these emails as a response to Respondent's motion, and that his response to Respondent's motion was expected by October 12, 2018. I further indicated that Charging Party could contact my office to request more time if he needed. Charging Party then responded with "No problem."

On October 9, 2018, my office was copied on several emails sent by Charging Party to State Representative Jim Runestad in which Charging Party appeared to be soliciting assistance from Rep. Runestad or his office. The last email also questioned whether my secretary was related to the Director of the Michigan Fraternal Order of Police Labor Council, and whether she should recuse herself from these proceedings. Later that same day my office replied to the last of these emails and provided Charging Party with MAHS Rule 106, R. 792.10106, which governs the recusal of administrative law judges from administrative law proceedings. That email also reminded Charging Party that his response to Respondent's motion was due October 12, 2018. In a later email that same day, I again indicated to Charging Party that if he needed more time to file his response all he had to do was contact my office to request such. Charging Party then sent another email in which he indicated that he would like to "file a motion for a new judge." My office again provided him with MAHS Rule 106 and further indicated that he could request more time to file.

The following day, October 10, 2018, Charging Party left a voicemail with my office in which he might have been requesting that the present matter be dismissed. I again emailed Charging Party and indicated that if he wished to withdraw his charge, he could do so. Charging Party did not withdraw his charge, did not file a response to Respondent's motion, nor did he, despite being given several opportunities, request for more time in which to file said response.

## Discussion and Conclusions of Law:

The Commission does not investigate charges filed with it. Charges filed with the Commission must comply with the Commission's General Rules. Charges which comply with the Commission's rules which are timely filed and allege a violation of PERA are set for hearing before an administrative law judge.

Charging Party's allegations against the POAM, as can best be gleaned from the initial filing, are based on Charging Party's personal dissatisfaction in how POAM representatives have communicated with him. While Charging Party does allude to issues between himself and his Employer regarding FMLA, he does not, with any specificity, indicate how those issues implicated POAM or otherwise establish a PERA violation. More simply put, Charging Party's complaints against the POAM seemingly amount to gripes that POAM representatives failed to call Charging Party back or otherwise failed to communicate with him.

A union representing public employees in Michigan owes those employees a duty of fair representation under Section 10(2)(a) of PERA. The duty of fair representation extends to all bargaining unit members regardless of their membership or affiliation status with the union. See *Lansing School District*, 1989 MERC Lab Op 210. The union's legal duty 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. Also see *Vaca v Sipes*, 386 US 171, 177 (1967). A union breaches its duty to avoid discriminatory conduct if it engages in discrimination that is "intentional, severe, and unrelated to legitimate union objectives." *Vaca*, at 177. "Arbitrary" conduct by a union was described by the Court in *Goolsby*, supra, as (a) impulsive, irrational or unreasoned conduct; (b) inept conduct undertaken with little care or with indifference to the interests of those affected; (c) the failure to exercise discretion; and/or (d) extreme recklessness or gross negligence.

Commission case law makes it clear that a member's dissatisfaction with their union's effort, with the union's ultimate decision or with the outcome of those decisions, is insufficient to constitute a proper charge of a breach of the duty of fair representation. See, *Eaton Rapids Education Association*, 2001 MERC Lab Op 131. Equally clear is the well established principle that a labor organization possesses the legal discretion to make judgments about the general good of its membership, and to proceed on such judgments despite the fact that they may be in conflict with the desires or interests of certain employees. *Lansing School District*, 1989 MERC Labor Op 210. Moreover, when faced with a motion for summary disposition predicated on a failure to state a claim of a breach of the duty of fair representation, a 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).

Ignoring POAM's claims that, as DTPOA's service provider, it did not owe any duty to Charging Party, it is clear that dismissal of this charge is appropriate as to the substance of Charging Party's allegations, as the actions complained of fail to establish that any union, the POAM or the DTPOA, somehow breached its duty of fair representation. Nowhere within Charging Party's narrative did he provide any allegation, that if proven true, would establish that either the POAM

and/or the DTPOA acted in a manner that was arbitrary under *Goolsby*, supra, or otherwise engaged in discriminatory and/or unlawful conduct as defined within *Vaca*, supra. Additionally, to the extent that any of Charging Party's complaints arise out of alleged failures in communication from POAM representatives, our Commission has held that a union's failure to adequately communicate with a member about a grievance is not in itself a breach of its duty of fair representation. See, e.g., *Suburban Mobility Authority for Regional Transportation (SMART)* 19 MPER 39 (2006).

Given that Charging Party has failed, in the opinion of the undersigned, to allege any allegations that, if proven true, could establish a violation of a union's duty of fair representation, it is not necessary to consider Respondent's claims that, as the service provider, it did not owe a duty of fair representation to Charging Party.

I have considered all other arguments as set forth by the parties and conclude that such does not justify a change in my conclusion. Accordingly, for the reasons set forth above, I recommend that the Commission issue the following Order:

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: November 19, 2018