STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF KENTWOOD (POLICE DEPARTMENT),
Respondent-Public Employer in Case No. C12 G-132/Docket No. 12-001193-MERC,

-and-

KENTWOOD GENERAL EMPLOYEES ASSOCIATION
Respondent-Labor Organization in Case No. CU12 G-032/Docket No. 12-001296-MERC,

-and-

BRADLEY J. BOLT,
An Individual Charging Party.
_____/

APPEARANCES:

Law Weathers, by Emily Bruski, for Respondent Employer

Pinsky, Smith, Fayette & Kennedy, LLP, by Edward M. Smith, for Respondent Labor Organization

Bradley J. Bolt, *In Propria Persona*

DECISION AND ORDER

On January 9, 2013, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matters 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

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Edward D. Callaghan, Commission Chair

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Nino E. Green, Commission Member

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Robert S. LaBrant, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

KENTWOOD GENERAL EMPLOYEES ASSOCIATION,
Respondent-Labor Organization
in Case No. CU12 G-032 Docket 12-001296-MERC

-and-

KENTWOOD, CITY (POLICE),
Respondent-Public Employer
in Case No. C12 G-132 Docket 12-001193-MERC

-and-

BRADLEY J. BOLT,
An Individual Charging Party.
_____/

APPEARANCES:

Bradley J. Bolt, for the Charging Party

Edward M. Smith, for the Respondent Union

Emily Bruski, for the Respondent Public Employer

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Administrative Law Judge Doyle O'Connor, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charges:

The Charge in this matter was filed on July 23, 2012, by Bradley J. Bolt (Charging Party) against the Kentwood General Employees Association (Respondent or Union). The Charge consists of three separate counts, essentially asserting that the Union had breached its duty to fairly represent Bolt regarding certain disputes with the Employer. A related Charge was simultaneously filed against the Employer, City of Kentwood, asserting that it had unlawfully discriminated against Bolt, had refused to accept grievances for filing, dominated the Union, and retaliated against Bolt for Union activity.

Bolt had been an evidence technician with the Kentwood Police Department and had been employed by Kentwood for over 20 years. On February 6, 2012, he broke a boot lace and felt that the departmental response to his request that it be immediately replaced was inadequate. While Bolt asked the Union to pursue a grievance over his several disputes with the Employer, as more fully described below, he also promptly resigned from employment on February 7, 2012, to be effective March 2, 2012.

Both Respondents filed motions for summary disposition supported by facially competent affidavits. Bolt was cautioned that if the Charge and his response to the motions did not state valid claims, or if he did not timely respond to the motions, a decision recommending that the Charges be dismissed without an evidentiary hearing would be issued. Bolt timely responded to both motions. No party requested oral argument.

The Charge against the Employer and the Employer's Motion to Dismiss:

The Charge against the Employer consisted of four separately numbered counts. The Employer filed an Amended Brief in support of its earlier separate Motion for Summary Disposition. The Brief raised substantial grounds which warrant dismissal of the claims against the Employer and was supported by sworn affidavits which directly and unequivocally contradicted the factual assertions in Bolt's Charge.

Count 1 of the Charge asserted a violation of Section 10(1)(a) of PERA in claiming that the Employer "refused to recognize" a grievance Bolt sought to file. Such an allegation stated a claim, as it can be a violation for an Employer to refuse to accept the filing of a grievance; however, the Employer provided very fact-specific affidavits which asserted that the grievance was accepted for filing, but was denied on the merits. The Employer attached related correspondence which supported the claims made in the affidavit that it actually heard and addressed the grievance on the merits.

Count 2 asserted a violation of Section 10(1)(b) of PERA of domination of the Union by the Employer, seemingly regarding what grievances were accepted for filing. Again, the Employer provided very fact-specific affidavits which assert that the grievance in question was accepted for filing, but was denied on the merits. The Employer attached related contemporaneous correspondence which supported the claims made in the affidavit.

Count 3 asserted a violation of Section 10(1)(a) of PERA in factually asserting that two supervisory employees made threatening statements to intimidate Bolt regarding the filing of grievances. Such a factual assertion properly stated a claim under PERA; however, the Employer has provided very fact-specific affidavits denying that any such threats were made.

Count 4 asserted a violation of Section 10(1)(a) of PERA and alleged that the Employer disciplined Bolt for distributing a Union related petition while he was on break time. The Employer's fact-specific affidavits denied that any such discipline occurred, and rather that Bolt was merely cautioned in writing regarding his conduct, and the affidavits note that the employees being solicited were on work time, even if Bolt was not. Count 4 further alleges a denial of an opportunity to meet with Union representatives, which, again, the Employer denies ever happened.

Bolt was advised by letter that he was entitled to respond to the Employer's motion and that to avoid dismissal of the Charge, the written response must assert facts that establish a violation of PERA. Bolt was cautioned that because the Employer's motion was supported by fact-specific affidavits, his response must similarly address those factual issues to establish that there was a genuine dispute of material fact warranting the scheduling of an evidentiary hearing.

Bolt filed a timely response, which in essence did not contest the relevant facts as asserted in the affidavits supplied by the Employer. Bolt did not contest that the Employer actually, after a one day hesitation, accepted and responded to the grievance he had filed. Bolt's responsive description of the supposedly threatening or disparaging comments he asserts were made by the supervisor supports no more than a finding that a supervisor expressed frustration with Bolt's grieving a dispute over a broken bootlace, with no overtly threatening comments having been made. Bolt does not contest the Employer's contention that Bolt was not in fact disciplined over his claimed Union activity which occurred on work time, but that Bolt was merely cautioned against interfering in other employees' work.

Discussion and Conclusions of Law Regarding the Charge Against the Employer:

Taking each factual allegation in the charge and in the response to the motion in the light most favorable to Charging Party, the allegations in Case No. C12 G-132 do not state a claim against the Employer under PERA, the statute that this agency enforces, and the charge is therefore subject to summary dismissal. Contrary to the original assertions in his Charge, Bolt, in essence, acknowledges that the Employer accepted his grievance for filing. Similarly, in response to the motion, Bolt acknowledges that he was not in fact disciplined. Bolt was never prohibited by the Employer from filing or pursuing grievances or from engaging in Union activity as long as he was on his own time and did not disrupt the workplace.

The comments by an individual supervisor expressing mere annoyance at the filing of a grievance over a broken bootlace simply do not constitute either a threat or an adverse employment action. While an Employer and its agents may not lawfully threaten, either expressly or impliedly, to penalize employees for filing grievances or for the exercise of other protected activity, an Employer is not restricted by PERA from criticizing the viability or wisdom of the pursuit of particular grievances. *City of Lincoln Park*, 1983 MERC Lab Op 362.

PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting a collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer took adverse employment action which was motivated by union or other activity protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the Employer actions, or inactions, complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there are no factually supported allegations that the Employer actually took any adverse employment action, or threatened to take such action, the charge against the Employer fails to state a claim upon which relief can be granted.

The Charge and Findings of Fact Regarding the Union:

The charge against the Union initially consisted of three separate counts, with the first two counts addressing disputes regarding internal Union affairs and compliance with the Union constitution. In response to an order to show cause, Charging Party withdrew Counts 1 and 2 against the Union. The remaining Count 3 asserted that the Union failed to respond to a February 15, 2012 written request by Bolt for advice or assistance on grievance matters.

The Union filed a motion for summary disposition supported by affidavit. The Union acknowledged receiving a written inquiry from Bolt regarding grievance matters. The affidavit provided with the Union motion, which is supported by contemporaneous correspondence, asserts that the Union substantively responded to Bolt in writing on February 21, 2012. The Union concluded that his claims were not grievable issues. Bolt again wrote to the Union on February 22, 2012.

In both of Bolt's letters to the Union, the one on February 15 and the one on February 22, he noted that he had already submitted his resignation from employment. Bolt's resignation was effective March 2, 2012. The Union did not hear from Bolt again following his resignation from employment until the Charge was filed.

Bolt was advised by letter that he was entitled to respond to the Union's motion and that to avoid dismissal of the Charge, the written response must assert facts that establish a violation of PERA. Bolt was cautioned that because the Union's motion was supported by a fact-specific affidavit, and by contemporaneous correspondence, his response must similarly address those factual issues to establish that there was a genuine dispute of material fact warranting the scheduling of an evidentiary hearing.

Bolt filed a timely response, which in essence did not contest the relevant facts as asserted in the affidavit supplied by the Union.

Discussion and Conclusions of Law Regarding the Charge Against the Union:

The facts alleged show only that there was a dispute between Bolt and the Union over the viability of a grievance. It is apparent that the Union felt its hands were tied by Bolt's abrupt and unilateral decision to resign from his employment. The elected officials of a Union have the right, and the obligation, to reach a good faith conclusion as to the proper interpretation of the collective bargaining agreement in a particular situation, and are expected, and entitled, to act on behalf of the greater good of the bargaining unit, even to the disadvantage of certain employees. *City of Flint,* 1996 MERC Lab Op 1. A decision to not further pursue a grievance over a broken bootlace brought by an employee who had then resigned is certainly within the discretion of the Union officials.

The fact that Bolt is dissatisfied with his Union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the Union's duty. *Eaton Rapids Ed Assoc,* 2001 MERC Lab Op 131; *Wayne County DPW,* 1994 MERC Lab Op 855. Because a Union's ultimate duty is to the membership as a whole, the Respondent Union has considerable discretion to decide how, or as here, whether or not, to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705,* 389 Mich 123, 145-146 (1973). Moreover, even if in retrospect a Union's refusal to pursue a grievance appears to have been based on a

mistaken interpretation of the facts, a mere showing that the Union made the wrong choice is insufficient to establish the hostility, ill will, malice, indifference, or gross negligence that is required to support a claim. *DAEOE Local 4168*, 1997 MERC Lab Op 475; City *of Detroit*, 1997 MERC Lab Op 31. A reasonable good faith tactical choice by a union is not a breach of the duty of fair representation*. Detroit Federation of Teachers*, 21 MPER 15 (2008)(no exceptions). The Union's decision on how to proceed in a grievance case is not unlawful as long as it is 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. It is not apparent what relief could have been sought regarding Bolt's complaints, following his resignation. Bolt has not asserted any facts which if proved would place the Union's handling of this dispute outside the realm of rational decision making.

Taking each factual allegation in the charge and in the response to the Union's motion in the light most favorable to Charging Party, the allegations in CU12 G-032 do not state a claim against the Union under the PERA, the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated January 9, 2013