

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

In the Matter of:

AMALGAMATED TRANSIT UNION, LOCAL 26, AFL-CIO,
Labor Organization-Respondent,

-and-

TOMEKA R. BARNES,
An Individual Charging Party.

MERC Case No. CU16 E-032
Hearing Docket No. 16-016298

APPEARANCES:

Tomeka R. Barnes, appearing on her own behalf

DECISION AND ORDER

On July 28, 2016, Administrative Law Judge C. Stern issued her 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 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: September 16, 2016

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

In the Matter of:

AMALGAMATED TRANSIT UNION, LOCAL 26, AFL-CIO,
Labor Organization-Respondent,

Case No. CU16 E-032
Docket No. 16-016298-MERC

-and-

TOMEKA R. BARNES,
An Individual-Charging Party.

APPEARANCES:

Tomeka R. Barnes, appearing for herself

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

On June 1, 2016, Tomeka R. Barnes, employed as a transit officer/bus driver by the City of Detroit (the Employer) until she was terminated in early 2016, filed an unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her collective bargaining representative, Amalgamated Transit Union, Local 26, AFL-CIO, under Section 10 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of the Act, the charge was assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System (MAHS).

On June 9, 2016, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, I issued an order finding that Barnes had not alleged facts in her charge which, if true, would state a claim upon which relief could be granted under PERA and directing her to show cause why her charge should not be dismissed for failure to state a claim. Barnes did not file a response to my order.

Based on the facts as alleged by Barnes in her charge, as set forth below, I make the following conclusions of law and recommend that the Commission issue the following order:

The Unfair Labor Practice Charge and Facts as Alleged:

Barnes was discharged sometime in early 2016. To describe the situation leading to her discharge, Barnes cited to a news story by a local television station which appears on the Internet. The facts leading to her termination do not appear to be in dispute. Barnes was driving

her bus when two passengers got into a fight. One, a woman, threatened to call someone to meet the bus to attack the other passenger, as well as Barnes herself. Barnes turned her bus around and left her route to drive to a police station. The woman demanded to be let off the bus, but Barnes did not stop. The woman grabbed the wheel and, as shown in footage from the bus's security camera, Barnes and the woman struggled for control of the vehicle. The bus left the road and hit a pole, resulting in some minor injuries to passengers. The woman who had grabbed the wheel was arrested and charged.

The Employer terminated Barnes for not following procedures. As an Employer representative explained in the television interview, the Employer maintained that Barnes should have stopped the bus and allowed the woman to exit, and that Barnes endangered others by her decision to drive to the police station instead. The news story also included footage of Respondent President Fred Westbrook pointing out, in Barnes' defense, that the passenger had said that she would call someone to do some harm at the bus stop. Westbrook said that Respondent believed that discharge was not the appropriate discipline under the circumstances.

Barnes' charge alleges that Respondent refused to take the grievance it filed over her termination to arbitration and that its refusal violated its duty of fair representation under Section 10(2)(a) of PERA because its decision was arbitrary and/or discriminatory. The events leading to this decision, according to Barnes' charge, were as follows. Under Respondent's bylaws, the decision as to whether Respondent will arbitrate a grievance is made by a vote of the union membership at a union meeting. Respondent's membership voted on whether to arbitrate Barnes' grievance on or about March 26, 2016. A written explanation of the incident leading to Barnes' discharge was distributed to the membership before the vote. Westbrook and union steward Glen Tolbert spoke in support of arbitrating the grievance. Others, including passengers from her bus, also spoke in support of Barnes' actions. However, during the discussion of her grievance, certain members called Barnes foul names, one shouted out, "Wendy's is hiring," and yet another called out, "Why would I arbitrate someone I don't even like [sic]?" Another Union member said to Barnes, "We can beat someone up in here and it won't have anything to do with the job." The vote was taken by paper ballot; some members tore their paper ballots in half and put both halves in the ballot box in an attempt to vote twice. The membership voted against arbitrating Barnes' grievance, and Respondent did not advance the grievance to arbitration.

Discussion and Conclusions of Law:

Rule 165 of the General Rules of the Michigan Employment Relations Commission, R 423.165, states that an administrative law judge assigned to hear a case for the Michigan Employment Relations Commission may, on his or her own initiative or on a motion by any party, order dismissal of a charge or issue a ruling in favor of a party without a hearing based on grounds set out in this rule, which include failure to allege a claim on which relief may be granted by the Commission or that, except with respect to the remedy, there are no material facts in dispute and a party is entitled to judgment as a matter of law.

When an ALJ issues an order to a charging party to show cause why a charge should not be dismissed for failure to state a claim upon which relief can be granted under PERA, the failure to respond to the order may, in itself, warrant dismissal of the charge. *Detroit Pub Schs*, 29 MPER 44 (2015); *Detroit Federation of Teachers*, 21 MPER 3 (2008).

A union representing public employees in Michigan owes these employees a duty of fair representation under Section 10(2)(a) of PERA. 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. See *Vaca v Sipes*, 386 US 171, 177 (1967). Because a union's ultimate duty is toward its membership as a whole, a union has considerable discretion to decide how or whether to proceed with a grievance and can consider such factors as the likelihood that the grievance will succeed and the burden on the union's membership of pursuing the grievance. *Lowe v Hotel Employees*, 389 Mich. 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. A union's good faith decision to proceed or not proceed with a grievance does not breach its duty of fair representation if it is within a broad range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67 (1991). If a union makes a good faith, reasoned decision that a grievance is not worth pursuing, it is not proper for the Commission to substitute its judgment for that of the union. The fact that an individual member is dissatisfied with the union's efforts does not indicate that the union has breached its duty of fair representation. *Eaton Rapids EA, supra*.

In this case, Respondent delegates to the membership the decision as to whether a particular grievance will be arbitrated. The delegation of this authority to the membership is not itself arbitrary, since it is reasonable for a union to assume decisions made by a majority of its members will, at least in most cases, be made in good faith and based on the relevant facts of the grievance rather than hostility toward the grievant for reasons unrelated to those facts. In this case, some of Respondent's members made comments during the discussion leading to the vote that were rude and even hostile toward Barnes. However, the decision not to arbitrate her grievance was made not by these members alone, but by a majority vote of the membership. I find that in the circumstances of this case these comments do not demonstrate that the decision of Respondent's membership not to arbitrate Barnes' grievance was based on personal hostility toward her for reasons unrelated to the grievance or was discriminatory.

I find that Barnes has not alleged a factually supported claim upon which relief could be granted under PERA and that her charge should be dismissed on this grounds. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: July 28, 2016