

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

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Labor Organization-Respondent,

-and-

MERC Case Nos. CU16 F-035 & CU16 F-036
Hearing Docket Nos. 16-017293 & 16-017294

JEFF GAGLIO,
An Individual Charging Party.

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APPEARANCES:

Jeff Gaglio, appearing on his own behalf

DECISION AND ORDER

On December 22, 2016, Administrative Law Judge David M. Peltz issued his 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 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: February 13, 2017

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

In the Matter of:

POLICE OFFICERS ASSOCIATION
OF MICHIGAN,
Respondent-Labor Organization,

Case Nos. CU16 F-035 & CU16 F-036
Docket Nos. 16-017293-MERC & 16-017294-MERC

-and-

JEFF GAGLIO,
An Individual Charging Party.

APPEARANCES:

Jeff Gaglio, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from unfair labor practice charges filed on June 10, 2016, by Jeff Gaglio against the Police Officers Association of Michigan. 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 assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The charge in Case No. CU16 F-035; Docket No. 16-017294-MERC alleges that the Union violated its duty of fair representation by denying Gaglio the opportunity to run for election as shift steward. In Case No. CU16 F-036; Docket No. 16-017293-MERC, Gaglio asserts that the Union violated PERA by terminating his status as chief steward.

In an order issued on June 28, 2016, I directed Gaglio to show cause why the charges should not be dismissed for failure to state a claim upon which relief can be granted under PERA. Charging Party was cautioned that a timely response to the Order must be filed to avoid dismissal of the charges without a hearing. Pursuant to the order, Gaglio's response was due by the close of business on July 19, 2016. To date, Charging Party has not filed a response to the order or sought to obtain an extension of time in which to file such a response.

Discussion and Conclusions of Law:

The failure to respond to an order to show cause may, in itself, warrant dismissal of an unfair labor practice charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, I conclude that the charges, as written, fail to raise any issue cognizable under PERA.

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 duty extends to union conduct in representing employees in their relationship with their employer, such as negotiating a collective bargaining agreement or resolving a grievance, and in related decision-making procedures, but does not embrace matters involving the internal structure and affairs of labor organizations which do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Education Ass'n*, 17 MPER 25 (2004); *SEIU, Local 586*, 1986 MERC Lab Op 149. Internal union matters are outside the scope of PERA, but are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. This principle is derived from Section 10(3)(a)(i) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. It is well established that a labor organization may lawfully suspend or expel members from the union, restrict attendance at union meetings to members, prohibit nonmembers from voting in internal union elections and enforce other restrictions against nonmembers, as long as those requirements do not have a direct effect on terms and conditions of employment. See e.g. *AFSCME Local 118*, 1991 MERC Lab Op 617 (no exceptions); *Lansing Sch Dist*, 1989 MERC Lab Op 210; *City of Lansing*, 1987 MERC Lab Op 701.

Pursuant to longstanding Commission precedent, the establishment of qualifications for holding union office, and the conduct of elections for union offices, are internal union matters not subject to the duty of fair representation. For example, in *Detroit Association of Educational Office Employees*, 1984 MERC Lab Op 947, the Commission held that a union's establishment of qualifications for holding union office was strictly an internal union matter and not subject to the union's duty of fair representation. See also *ATU, Local 1039*, 25 MPER 61 (2012) (no exceptions) (alleged irregularities in the conduct of an election for union officers was strictly an internal union matter); *International Union, UAW*, 19 MPER 9 (2006) (no exceptions) (a union's failure to follow its own bylaws in conducting an election for union officers was an internal union matter); *Detroit Fed of Teachers*, 16 MPER 54 (2003) (no exceptions) (union's establishment of qualifications for voting in elections for local building representatives was an internal union matter outside the scope of PERA). Even a union's failure to follow its internal rules does not, standing alone, constitute a breach of the duty of fair representation and is, therefore, outside the jurisdiction of the Commission. See e.g. *Registered Nurses and Registered Pharmacists of Hurley Hospital*, 2002 MERC Lab Op 394 (no exceptions).

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 the Union acted arbitrarily, discriminatorily or in bad faith in connection with this matter.

There is no factually supported allegation which, if proven, would establish that Respondent took any action within the six-month period preceding the filing of the charges which had a direct effect on Gaglio's terms and conditions of employment. Accordingly, I conclude that the charges must be dismissed for failure to state a claim upon which relief can be granted under PERA.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charges filed by Jeff Gaglio against the Police Officers Association of Michigan in Case Nos. CU16 F-035 & CU16 F-036; Docket Nos. 16-017293-MERC & 16-017294-MERC are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: December 22, 2016