

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

In the Matter of:

AFSCME COUNCIL 25, LOCAL 1497,
Labor Organization-Respondent,

-and-

CHARLES RUDOLPH,
An Individual Charging Party.

MERC Case No. CU16 K-058
Hearing Docket No. 16-033041

APPEARANCES:

Shawntane Williams, Staff Attorney, for Respondent

Charles Rudolph, appearing on his own behalf

DECISION AND ORDER

On January 19, 2017, 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 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: March 16, 2017

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

In the Matter of:

AFSCME COUNCIL 25, LOCAL 1497,
Respondent-Labor Organization,

Case No. CU16 K-058
Docket No. 16-033041-MERC

-and-

CHARLES RUDOLPH,
An Individual Charging Party.

APPEARANCES:

Shawntane Williams, Staff Attorney, appearing on behalf of Respondent

Charles Rudolph, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on November 14, 2016, by Charles Rudolph against AFSCME Council 25, Local 1497. 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 charge was 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 appears to allege that the Union breached its duty of fair representation by failing or refusing to take his grievance to arbitration. In an order issued on December 12, 2016, I directed Rudolph to show cause why the charge 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 charge without a hearing. Pursuant to the order, Rudolph's response was due on January 3, 2017. Charging Party subsequently requested, and was granted, an extension of time in which to file his response through the close of business on January 13, 2017. To date, Charging Party has not filed a response to the order or sought to obtain an additional 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 charge, as written, fails 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). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. The union's ultimate duty is toward the membership as a whole, rather than solely to any individual. The union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729.

The Commission has "steadfastly refused to interject itself in judgment" over grievances and other decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab Op 1, 11. The Union's good faith decision on how to proceed 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. The mere fact that a bargaining unit member is dissatisfied with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Moreover, to prevail on a claim of unfair representation, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public Sch Dist*, 201 Mich App 480, 488 (1993).

As noted, the charge seems to assert that the Union breached its duty of fair representation by failing or refusing to take Rudolph's grievance to arbitration. However, there is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Rudolph. Despite having been given ample opportunity to do so, Charging Party has not identified any act or omission on the part of the Union which would support a finding that AFSCME Council 25, Local 1497 violated its duty of fair representation with respect to Rudolph, nor has Charging Party stated facts which would establish a violation of the collective bargaining agreement by his employer. Accordingly, I recommend that the Commission issue the following order dismissing the charge in its entirety.

RECOMMENDED ORDER

The unfair labor practice charge filed by Charles Rudolph against AFSCME Council 25, Local 1497 in Case No. CU16 K-058; Docket No. 16-033041-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: January 19, 2017