STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GRAND RAPIDS EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Respondent,

MERC Case No. CU15 D-012
-and- Hearing Docket No. 15-030221

ANDRES SANTIAGO,
An Individual Charging Party.
_____/

APPEARANCES:

Kalniz, Iorio & Feldstein Co., L.P.A., by Fil Iorio, for Respondent

Andres Santiago, appearing on his own behalf

DECISION AND ORDER

On August 24, 2016, Administrative Law Judge Travis Calderwood (ALJ) issued his Decision and Recommended Order of Administrative Law Judge on Order to Show Cause in the above matter finding that Respondent did not violate § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ found that Charging Party failed to state a claim for which relief can be granted under PERA. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with § 16 of PERA.

Charging Party filed exceptions to the ALJ's Decision and Recommended Order on September 22, 2016. After receiving an extension of time, Respondent filed its cross exceptions and brief in support of the ALJ's Decision and Recommended Order on November 3, 2016. After requesting and receiving an extension of time, Charging Party filed his response to Respondent's cross exceptions on December 13, 2016.

In his exceptions, Charging Party provides 112 "counts" against Respondent. As we understand Charging Party's exceptions, he essentially contends that the ALJ erred by deciding this case on summary disposition and that the Union breached its duty of fair representation by representing him in a negligent manner.

In its cross exceptions, the Respondent argues that Charging Party's exceptions fail to comply with Rule 176 of the Commission's General Rules and that Charging Party fails to state a claim under PERA.

In his response to Respondent's cross exceptions, Charging Party continues to contend that the ALJ erred by deciding this case on summary disposition and, also, argues that he was deprived of his employment without being afforded the "due process" required by the U. S. Constitution.

We have reviewed the exceptions filed by Charging Party and find them to be without merit but agree with Respondent that Charging Party failed to state a claim under PERA.

Factual Summary:

We adopt the factual findings of the ALJ and recite them only as necessary here.

Charging Party was hired by Grand Rapids Public Schools (Employer) on August 27, 2014, and assigned as a Kindergarten teacher to Respondent's Southwest Community Campus (SCC). At all times material to this dispute, Charging Party was a probationary employee who was not paying dues to Respondent Grand Rapids Education Association (GREA or Union).

On December 2, 2014, SCC Principal Carmen Fernandez hand-delivered Charging Party a letter from the Employer's Director of Human Resources, Micky Savage. The letter notified Charging Party that Respondent's Human Resource Office was conducting an investigation into allegations that he had engaged in certain unprofessional conduct while employed as a teacher at the SCC. Charging Party was also notified that an investigatory meeting would be scheduled regarding this matter at which he had the right to union representation and that he would be placed on paid administrative leave, effective the next day.

Charging Party then provided a copy of the December 2 letter to GREA Uniserv Director Chad Williams, and the latter informed Charging Party that he would be represented by the Union at the investigatory meeting.

On December 18, 2014, Charging Party was notified, in writing, that the investigatory meeting to which the December 2, 2015 letter referred was scheduled for Monday, January 5, 2015. The December 18 letter provided:

> This meeting is considered an investigatory interview which could lead to discipline up to and including discharge. You have the right to request and arrange for association representation to be present during the meeting. Pursuant to the Master Agreement, we are obligated to tell you that anything you may say may be used against you in relation to your employment. However, you are expected to answer all of our questions fully and honestly.

Charging Party attended the January 5 investigatory meeting and was accompanied by Uniserv Director Williams. According to Charging Party, during the January 5, 2015 meeting, the Employer provided him with a document titled "Summary of Allegations of Inappropriate conduct" that set forth the following four incidents:

> September 25, 2014 - the Principal indicated that she witness [sic] you yelling at Kindergartners on two separate occasions. Two (2) older students also reported

that they heard you yell to the point that kids are crying and you are picking them up by their arms and forcing them in the directions that you want them to go.

December 1, 2014 – we have a witness statement that you grabbed a student C aggressively and made him cry.

December 2, 2014 – we have a witness statement reporting that you lost student D. You did not even know that the child was in art class.

December 2, 2014 – we have a witness statement reporting that upon the entering the building from recess you were yelling at a child. You took the child by the coat sleeve/arm and pulled the child toward you while flinging the child's body. When the child attempted to move back toward his locker you grabbed the child again and swung his body toward you again.

Charging Party was provided with time to review the charges with Williams prior to the beginning of the meeting.

After he was provided this list, Charging Party left the meeting without responding. Charging Party contends that he did so because he needed to follow up on medical care he had received on January 3, 2015, and because he wanted to review the written allegations with his attorney.

On March 11, 2015, Charging Party was notified that the District's Board of Education would be presented with charges seeking his dismissal from employment. Charging Party was further advised of his right to submit a written response to the charges and request a closed session consideration of the charges. Charging Party has not alleged that he submitted a written response to the charges or requested a closed session.

On March 16, 2015, the Board of Education met and passed a resolution terminating Charging Party's contract effective that same day due to his violation of "Board Policy and Rules #8300--Student Discipline (Corporal Punishment) and unprofessional conduct."

On March 17, 2015, Charging Party sent an email to Uniserv Director Paul Helder[1] asserting that the Employer violated Article 13(G) and Article 13(I) of the collective bargaining agreement (CBA) and requesting that a grievance be filed on his behalf.

Article 13(G), "Complaint about an Employee," of the CBA provides:

1. Any complaint directed toward an employee which is to become a part of that employee's permanent personnel record or any other legitimate complaint shall promptly be called to that employee's attention.

Article 13(I), "Staff Reprimand," provides:

[1] According to Charging Party's pleadings, his former Uniserv Director, Chad Williams, had been transferred.

1. No ancillary staff employee shall be disciplined, reprimanded, reduced in rank or compensation or deprived of professional benefits provided in this Agreement without just cause. Information forming the basis for the reduction of benefits provided in this Agreement will be available to the employee and the Association. Employees with temporary contracts are not subject to just cause standards or due process and may be terminated at any time for any reason.

2. Before placing a written reprimand in an ancillary staff or teacher's personnel file, the administrator making the reprimand shall:

    a. present the ancillary staff being reprimanded a copy of the reprimand.
    b. give the ancillary staff an opportunity to have an Association representative hear the reasons for the reprimand.
    c. require the ancillary staff to sign the original which indicates only that the employee has had the opportunity to read the reprimand. The signature is in no way to be construed as acceptance or approval of the reprimand but is a verification that the employee is aware the reprimand is in his/her permanent file. The employee shall receive a copy at the time of signing.

On March 25, 2015, Helder responded by email and addressed Charging Party's claims that his contractual rights had been violated. In addressing the claim brought by Charging Party under Article 13(G), Helder stated:

> [T]he issue of promptness as it applies to this article has never, to my knowledge, been clearly defined. There are no grievances in our archive over violation of this specific article. As far as past practice goes, the district generally waits until such time as the allegation has been made to some degree substantiated before notifying the employee. This is done to meet the contractual standard. The actual language of the contract requires prompt notification in the event that the district believes that the complaint is "legitimate" and therefore will "become a part of that employee's permanent personnel record." In order to meet the standard I believe that you are setting, the language would have to state that the district is obligated to notify the employee about "any and all allegations" against him/her... Neither the past practice or the actual language of the article appear to have been violated, and I can find no record of a prior grievance resolution that would support our claim.

With respect to Article 13(I), Helder stated:

> While the section continues to refer to both "ancillary staff" and "teacher," the specific subsections of each article refer only to "ancillary" staff. This article was a "just cause" protection article that was changed in the last negotiation to comply with changes removing "just cause" protections from all Michigan teachers. In short, the specific processes mentioned do not apply to you as you are not an

> ancillary staff member (School Social Worker, Psychologist, Counsellor, Nurse, etc.) Even if we could manufacture a process violation, the fact would remain that the process in question does not apply to teachers.

Helder concluded his email by stating, "I can find no enforceable violation of the GREA Master Agreement in either of the articles you cited." Although Charging Party continued to insist that his contractual rights were violated, the Union refused to file a grievance on his behalf.

On April 9, 2015, Charging Party filed an unfair labor practice charge against Grand Rapids Community Schools alleging that he was terminated in violation of his collective bargaining agreement.[2]

On April 14, 2015, Charging Party filed the instant unfair labor practice charge against the Grand Rapids Education Association, MEA/NEA alleging that the Union breached its duty of fair representation in connection with his inappropriate termination. On October 29, 2015, the ALJ issued an Order to Show Cause in the present case. Charging Party filed his response to this order on November 19, 2015. Charging Party's response consisted of an 18 page written pleading along with 119 pages of various attachments and exhibits.

The ALJ concluded that Charging Party failed to state a claim for which relief can be granted under PERA and, on August 24, 2016, recommended that the Commission dismiss the charge.

Discussion and Conclusions of Law:

Although Charging Party's "exceptions" do not appear to comply with Rule 176(4) of the Commission's General Rules, 2002 AACS R 423.176(4), Charging Party is an individual not represented by counsel and, in this particular case, the Commission will address Charging Party's "exceptions" to the extent possible. See *AFSCME Council 25, Local 2394*, 28 MPER 25 (2014) and cases cited therein.

In his exceptions, Charging Party contends that the ALJ erred by failing to conduct an evidentiary hearing before rendering his decision. Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165, however, authorized the ALJ to summarily dispose of the case. Additionally, *Smith v Lansing Sch Dist*, 428 Mich 248, 250-251, 255-259 (1987) provides guidance on the issue of whether the Administrative Procedures Act, MCL 24.201 - 24.328, requires an evidentiary hearing to be held. In *Smith*, at 257, the Supreme Court said:

> We agree with appellants that § 72(3) [of the APA] does not require a full evidentiary hearing when, for purposes of the proceeding in question, all alleged facts are taken as true. That is, we construe that portion of § 72(3) to require affording the opportunity to present evidence on issues of fact only when such issues exist.

[2] On April 16, 2016, the Commission affirmed the ALJ's Decision and Recommended Order dismissing this charge against his employer on summary disposition in Case No. C15 D-052.

In the present case, there are no material issues of fact and Charging Party has not alleged any material facts that were not considered by the ALJ. The decision in this matter depends purely on the resolution of issues of law. Therefore, an evidentiary hearing is neither necessary nor appropriate. See also, *Teamsters Local 214*, 29 MPER 47 (2016) and *Michigan State University Administrative-Professional Association, MEA/NEA*, 25 MPER 30 (2011).

In his exceptions, Charging Party also contends the Union breached its duty of fair representation by representing him in a negligent manner. With respect to the Charging Party's contention that the Union breached its duty of fair representation, the Commission agrees with the ALJ that there is no factually supported allegation against the Union which, if proven, would establish that it violated 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); *Int'l Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. Mere negligence alone is not sufficient to establish a breach of the duty of fair representation and a Union's decision on how to proceed with a grievance 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.

Moreover, the Commission has held that to prevail on a claim of unfair representation in a case involving the handling of a grievance, 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. *Macomb Cnty*, 30 MPER 12 (2016); *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public Sch Dist*, 201 Mich App 480, 488 (1993).

In the instant case, Charging Party alleges that the Grand Rapids Public Schools violated Article 13(G) and Article 13(I) of the collective bargaining agreement and that the Union breached its duty of fair representation when it refused to file grievances over these alleged violations. Charging Party, however, does not allege that any failure to act by the Union was based on an unlawful motive or was otherwise arbitrary, discriminatory or outside the bounds of reasonableness. Additionally, as correctly noted by the ALJ, Charging Party's pleadings and attachments are devoid of any alleged facts that, if proven true, could establish that the Union failed to or refused to represent him because of his lack of union membership. This notwithstanding, Article 13(I) does not apply to Charging Party because he was a probationary teacher, thereby foreclosing any possibility that Charging Party could satisfy the requirements of *Goolsby, Knoke,* or *Macomb Cnty.* Consequently, Charging Party has failed to state a claim for which relief can be granted under PERA.

Although Charging Party also argues, in his response to Respondent's cross exceptions, that he was deprived of his employment without being afforded the "due process" required by the U. S. Constitution, the Commission's jurisdiction is limited to issues involving the Public

Employment Relations Act. See, *Michigan State University*, 16 MPER 52 (2003); *Muskegon Heights Pub Sch Dist*, 1993 MERC Lab Op 654; *Garden City/Dearborn Pub Sch Adult Ed*, 1994 MERC Lab Op 1. Furthermore, Charging Party's pleadings establish that this allegation of misconduct is one Charging Party is making against his former employer not the Respondent Union involved in this case.

We have also considered all other arguments submitted by Charging Party and conclude that they would not change the result in this case. Accordingly, we affirm the ALJ's decision.

ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: April 13, 2017

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of: Case No. CU15 D-012
Docket No. 15-030221-MERC

GRAND RAPIDS EDUCATION ASSOCIATION, MEA/NEA,
Respondent-Labor Organization,

-and-

ANDRES SANTIAGO,
An Individual-Charging Party.
_____/

APPEARANCES:

Kalniz, Iorio & Feldstein Co., L.P.A., by Fil Iorio, for the Respondent-Labor Organization

Andres Santiago, Charging Party appearing for himself

DECISION AND RECOMMEND ORDER OF
ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE

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).

Procedural History:

On April 9, 2015, Charging Party, Andres Santiago, filed an unfair labor practice charge, Case No. C15 D-052, against the Grand Rapids Community Schools (Employer), alleging that he was terminated in violation of the contract. Then, on April 14, 2015, Charging Party filed the present unfair labor practice charge against his former bargaining representative, the Grand Rapids Education Association, MEA/NEA (Association) alleging that the Association breached its duty of fair representation. The two cases were consolidated.

Charging Party claimed in his charge against the Employer that he was terminated from his employment in violation of two separate contractual provisions.

The first provision allegedly violated by the Employer is identified by Charging Party as Article 13.G., entitled "Complaint About an Employee." The second contractual provision Charging Party alleges the Employer violated is Article 13.I., entitled "Staff Reprimand."

In the charge filed against the Association, Santiago alleges that the Association breached its duty of fair representation with respect to its response and handling of the Employer's actions leading up to his termination.

On May 4, 2015, the Employer filed a Motion for Summary Disposition, in which it argued that Santiago failed to state a claim upon which relief could be granted under PERA. Charging Party responded to the Employer's motion on June 23, 2015.

On June 25, 2015, both the Employer and the Association joined together to request an adjournment of the proceedings until sometime after school resumed in the fall. Charging Party agreed to the request and the matters were adjourned.

On October 29, 2015, I issued a Decision and Recommended Order in Case No. C15 D-052, whereby I found that Charging Party had failed to state a claim upon which relief could be granted under PERA and that summary disposition in favor of the Employer was appropriate. That same day I also issued an Order to Show Cause in the present case. Charging Party filed his response to my order on November 19, 2015. Charging Party's response consisted of an 18 page written pleading along with 119 pages of various attachments and exhibits.

Shortly after filing his response to my Order to Show Cause, Charging Party filed exceptions with the Commission in Case No. C15 D-052. In light of the preceding, both Charging Party and the Union agreed to hold the present matter in abeyance pending a decision by the Commission in Case No. C15 D-052.

On April 14, 2016, the Commission issued its decision in Case No. C15 D-052 affirming my Decision and Recommended Order and thereby dismissing the charge against the Employer. Both my Decision and Recommended Order and the Commission's Decision and Order are incorporated herein by reference.

Facts:

The following facts are derived from the unfair labor practice charge, along with all attachments thereto, as well as Charging Party's response to my Order to Show Cause, with all factual allegations set forth by Charging Party accepted as true for purposes of determining whether summary disposition is appropriate.

Sometime in late August of 2014, Charging Party accepted a Kindergarten teaching position with the Grand Rapids Public Schools at the Southwest Community Campus.

The collective bargaining agreement between the Employer and the Union provides at Article 13.G., entitled "Complaint about an Employee":

> 2. Any complaint directed toward an employee which is to become a part of that employee's permanent personnel record or any other legitimate complaint shall promptly be called to that employee's attention.

The agreement also provides at Article 13.I., entitled "Staff Reprimand":

> 3. No ancillary staff employee shall be disciplined, reprimanded, reduced in rank or compensation or deprived of professional benefits provided in this Agreement without just cause. Information forming the basis for the reduction of benefits provided in this Agreement will be available to the employee and the Association. Employees with temporary contracts are not subject to just cause standards or due process and may be terminated at any time for any reason.
>
> 4. Before placing a written reprimand in an ancillary staff or teacher's personnel file, the administrator making the reprimand shall:
>
> a. present the ancillary staff being reprimanded a copy of the reprimand.
> b. give the ancillary staff an opportunity to have an Association representative hear the reasons for the reprimand.
> c. require the ancillary staff to sign the original which indicates only that the employee has had the opportunity to read the reprimand. The signature is in no way to be construed as acceptance or approval of the reprimand but is a verification that the employee is aware the reprimand is in his/her permanent file. The employee shall receive a copy at the time of signing.

Between October 9, 2014, and October 28, 2014, Charging Party was on leave. On October 29, 2014, Charging Party contacted MEA Uniserv Director Chad Williams by email in which he addressed several issues, some of which included: whether as a teacher he could be considered for an administrator position; whether he was being asked to perform certain work in excess of what was contractually required of him; and, whether he could be disciplined if he chose to disobey a directive because he believed that to follow it would not be in the best interest of his students.

Charging Party once again was on leave from November 6, 2014, through November 19, 2014, following the death of his father.

On December 2, 2014, the Southwest Community Campus Principal, Carmen Fernandez, provided Charging Party a letter from Micky Savage, the Employer's Director of Human Resources. That letter provided notice to Charging Party that the District had become aware of alleged unprofessional conduct and would be conducting an investigation into those allegations: the exact nature of the alleged misconduct was not provided in that letter. The letter went on to state that the Employer would schedule an investigatory meeting with Charging Party that could lead to discipline, up to and including discharge. The letter also indicated that Charging Party had the right to have union representation present at that meeting. Lastly, the letter indicated that, effective December 3, 2014, Charging Party would be placed on paid administrative leave pending completion of the investigation. Charging Party requested a union representative but states that Fernandez "did not grant one."

Charging Party, in an email sent December 3, 2014, to both Williams and Mary Bouwense, Association President, provided a copy of the letter he, Santiago, had received. That email also stated that Charging Party had requested representation but had not received it. Later that day, Williams replied by email wherein he explained that while Charging Party was not entitled to representation when he was provided the notice of leave because the District did not question him but merely provided information, he was entitled to representation at any subsequent investigative hearings and that he, Williams, would be there. Williams further stated that he had contacted the Employer and was awaiting information regarding the date and time for the next meeting. Williams then asked Charging Party to contact his office so that they could meet and discuss the issue.

Several more emails went back and forth between Charging Party and Williams over the next two days. On December 4, Charging Party wrote the following to Williams:

> I have not been told what exactly is the matter about [sic]. Isn't the district supposed to let us know what [I] am going to be questioned about? Again, I am in the dark as to what is going on, and aren't I entitled to know?
>
> P.S. There have been many questions that I've asked the Union, but no responses have been received. Why is this happening?

Williams replied by email the next morning, December 5, 2014, and wrote:

> You just recently filled out a membership application and have paid $0 in dues. As such, you are not now and have never been a member in good standing – this means the service you are entitled to is very limited. That notwithstanding, you have received service from this office on several occasions already this year. I am available to meet with you in person to discuss your case.
>
> I have an appointment time at 12 noon on Monday December 8 if you are able to come to the office. Please call the office and confirm if you are able to make this appointment.

A short time later Charging Party responded to Williams and wrote:

> I filled out an application on November 3, and a Union representation [sic] in our building has not even been present. Although, there was a representative that did arrive less than two weeks ago, she did come to explain joining and "good standing". When I specifically asked about my scenario because I just became a GRPS teacher, she stated [that] my situation is understandable. Also, I was on leave for some time for my father's care and bereavement. Because of the leave of absences, my money matters have been compromised, greatly, and the Union has the nerve to state that I "have never been a member in good standing"! Well, that's ridiculous, because I need to be given a chance to pay.

> However, why am I being charged for representation since the beginning of the year, and I have been trying to seek the union since the beginning of the year? It was not until my own principal gave me the telephone number on October 29, 2014, and that was because I questioned some of the unfair labor practices and contract breaches, like "make up preps", "extra hours", "the principal telling that I am obligated to work 8 hours", "being obligated to attend anti contract meetings", among other matters. Where has the union been since these questions arose, excluding the few discussion, whereby, few answers were given? The Union has not been in good standing with me, and I can prove it. All we have to do is take a look at the documents. I only just got a bill recently. The matters that arose I addressed, were not at all diligently handle[d], and you have the audacity to try to justify the union's (no responses) as "received services", described in your last email.
>
> Nonetheless, I believe that a GRPS check has been deposited today, and I do plan to make a payment of an amount that I can afford. (I will inquire about being charge[d] since the beginning of the year, but that is another matter.) Regardless of the matter of payment, I respectfully ask that the union deal with this matter appropriately and try to get specifics about why I am being restricted to even go to the building. I am concern[ed] about why I am being left in the dark, and it's taking such a great amount of time to even me know. That is preposterous!
>
> In conclusion, I do plan to be there on Monday, December 8, 2014, at 12 pm.

By email the meeting was subsequently rescheduled from 12:00 p.m. to 3:00 p.m. that same day. Charging Party, in the same email confirming the change in the appointment time, inquired if Williams had found out why he had been put on leave. Williams responded by saying:

> Regarding the reason you have been put on leave. My preliminary inquiries are inconclusive at this point; however, I have a meeting with HR Monday prior to our meeting, so I'll have more detail then.

Charging Party's email response stated:

> What are you basing your preliminary conclusions on? Has GRPS stated anything to you? Aren't I entailed [sic] to due process, especially by being inform[ed] as to why have I been restricted from going on school? What is being alleged as unprofessional conduct?

Williams responded very quickly with:

> I have made informal inquiries, but nothing has been confirmed. I do have a formal meeting on Monday as I've stated and at that point I will have more detail. At this point all I know is that it may potentially involve an interaction between you and a student.

Charging Party then responded by writing:

> Who mentioned to you "an interaction between" me "and a student"? Shouldn't they have mentioned who, what, when and where? Due process of law is my federal right. Defamation of character has already taken place, and nothing has been given specificity. At least let me know what you know.

On December 8, 2014, Charging Party and Williams met to discuss the situation. Charging Party was accompanied by his fiancé's mother, a former teacher. Charging Party claims Williams could not provide information with respect to the alleged charges against him. Charging Party further claims Williams attempted to ask him for information regarding any incidents.[3] According to Charging Party the two disagreed as to what protections a probationary teacher had with respect to termination.

On December 18, 2014, the Employer notified Charging Party by letter, dated that same date and delivered by email, that an investigatory meeting was scheduled for Monday, January 5, 2015. That letter contained the following statement:

> This meeting is considered an investigatory interview which could lead to discipline up to and including discharge. You have the right to request and arrange for association representation to be present during the meeting. Pursuant to the Master Agreement, we are obligated to tell you that anything you may say may be used against you in relation to your employment. However, you are expected to answer all of our questions fully and honestly.

On December 19, 2014, Charging Party sent an email to Williams that stated:

> An attorney expressed the importance of getting information at least a week in advance before the inquiry. Could we try to do this?

Charging Party claims that he never received any response from Williams. On December 23, 2014, Attorney Sandra Hanshaw Burink, by letter and on behalf of Charging Party, contacted the Employer and requested that Charging Party be provided information regarding the substance of the allegations against him so that he could prepare for the January 5, 2015, meeting. That letter did not indicate that Attorney Burink would be representing Charging Party at the January 5, 2015, meeting.

Charging Party was accompanied by Union Representative Chad Williams, his (Santiago's) fiancé and future mother-in-law to the January 5, 2015, meeting.[4] At that meeting

3 While Charging Party has throughout his response to the Order to Show Cause repeatedly claimed that all allegations against him were without merit and without proof, included within the deluge of documents submitted by him were eight separate Witness Statements prepared on Employer provided forms, describing various incidents and such involving Charging Party.

4 Charging Party's written response to my Order to Show Cause points out that I incorrectly stated Williams accompanied Charging Party to a December 4, 2014, investigatory meeting with the Employer. The meeting actually took place on January 5, 2015, at which Williams did accompany Charging Party.

Charging Party was provided a document listing the following four incidents that he was alleged to have engaged in:

> September 25, 2014 - the Principal indicated that she witness [sic] you yelling at Kindergartners on two separate occasion. Two (2) older students also reported that they heard you yell to the point that kids are crying and you are picking them up by their arms and forcing them in the directions that you want them to go.
>
> December 1, 2014 – we have a witness statement that you grabbed a student C aggressively and made him cry.
>
> December 2, 2014 – we have a witness statement reporting that you lost student D. You did not even know that the child was in art class.
>
> December 2, 2014 – we have a witness statement reporting that upon entering the building from recess you were yelling at a child. You took the child by the coat sleeve/arm and pulled the child toward you while flinging the child's body. When the child attempted to move back toward his locker you grabbed the child again and swung his body toward you again.

Charging Party was provided with time to review the charges with Williams prior to beginning of the meeting.

However, Charging Party left the meeting soon after being provided the above typed list and without participating in the investigatory portion of the meeting. Charging Party claims he left the meeting after informing Williams that he needed to follow up on medical care he had received previously on January 3, 2015, and wanted to review the written allegations with his attorney. Charging Party indicated that he relayed the reasons for his departure to unidentified Employer staff as he was leaving.

On January 6, 2015, Williams sent Charging Party an email summarizing the sequence of events that occurred at the prior day's meeting. Later that same day, Charging Party responded in an email and wrote:

> As I mentioned yesterday, I requested that I seek prescribed medical attention first, and also I want to review this matter with an attorney. Now, I am under the impression that I can do this, especially when I [am] being frivolously attack[ed]. It does not seem right to not have my fiancé and future mother in law present when supporting figures are needed in this particular instance. I really don't know what you are stating in your letter sent, but according to my understanding, I can seek medical attention and legal advice, as I requested. Now, if the board takes action, nonetheless, I need to be confronted, or told what action will be done in writing, otherwise my contract will be compromised.

Charging Party claims he provided copies of his medical documentation to Williams as well as his Employer.

On January 10, 2015, Charging Party sent the Employer the following letter in which he denied each of the four allegations against him:

> On January 5, 2015, 4:29 PM, I was provided with the attach[ed] document in which it was alleged that I engage[d] with certain behaviors. Due to medical reasons and because I was not provide[d] time to review and prepare to defend myself, I chose not attend the meeting. I respond to the attached document as follows.
>
> Response to the first allegation: I deny that I engaged in any inappropriate behavior. My voice may be considered loud at times, but I was not yelling.
>
> Response to the second allegation: That allegation is, completely, false. I have not, and nor do I grab students.
>
> Response to the third allegation: I lined the kids up as I was directed to do by the principal. At some point the child left the line, but was found with in a matter of five minute period. The student leaving the line was through no negligance [sic] on my part.
>
> Response to the fourth allegation: I deny that I engaged in any inappropriate behavior. My voice may be considered loud at times, but I was not yelling.

On February 19, 2015, the Employer, by certified mail, sent Charging Party formal notice that its administration would be seeking his termination at the March 2, 2015, Board of Education Meeting. That letter informed Charging Party that he had until noon on February 25, 2015, to provide any written response to the proposed charges contained therein or to request that the charges be considered by the Board in a closed session; Charging Party did not allege that he did either. Included with the letter was a letter addressed to the Board that recommended that the Board terminate Charging Party's employment because Charging Party's "negative and volatile behaviors had had a deleterious impact on educational services provided to students…" That letter went on to list six specific instances of behavior by Charging Party in support of the administration's request to the Board, four of which consisted of the allegations provided to Santiago on January 5. The first new allegation claimed that a parent witnessed Charging Party several times screaming at students. The second new allegation referenced the January 5, 2015, meeting, and stated:

> On or about January 5, 2015, Mr. Santiago was required to come to Human Resources to provide responses to questions about his conduct on or about December 2, 2014. Mr. Santiago arrived but refused to stay to answer questions, yelled so loud that he could be heard in the hallway and stormed out claiming that he was going to the doctor and that he would only put his responses in writing. This behavior is also an example of unprofessional conduct and is insubordinate in that he refused to answer questions in a disciplinary investigation into his conduct.

On February 24, 2015, Charging Party sent Williams and Mary Bouwense an email that stated:

> I just received the letter today, and Grand Rapids Public Schools (GRPS) expects me to respond by tomorrow if I want to be consider [sic], as the letter states "you may submit a written statement to the Board for it to consider along with the proposed changes." Literally, I am given less that [sic] 24 hour to respond to GRPS. The letter reads as follows, "This letter also confirms that we have provided you, along with your GREA representative, with an opportunity to respond to these charges." Yet, I just got this letter in from the post office today. I want to be given an opportunity to be represented and given a response. Is the Union going to help me in this matter?
>
> The letter also states, "If you wish to do so, the statement should be submitted to the Human Resources office by twelve noon on February 25, 2015." It's 2:01 pm on the 24th of February, 2015, and I am expected to respond to this non-sense that is completely false. What do I do? I have been tried nor given my due process. GRPS is just railroading me through a Kangaroo Court that aims to degrade my character, and I [am] not part of the process. Nor, have I been faced with any accusers.
>
> The board is moving forth about conduct that is false and not even proven. Again, no due process has been done. The board states that I denied all of the charges. Yet, the board writes, "we have determined that there is sufficient evidence that he did engage in these behaviors and that [he] violate[d] the district's corporal punishment policy, and demonstrated that he is unfit to teach." Even in many parts of this letter sent, clearly the GRPS is unclear as to what time and day the accusations are made. Again, is the Union going to represent me?
>
> What is it that I should do regarding this matter? Shouldn't I be given sufficient time to respond to this non-sense.

The next day, Charging Party contacted Williams by phone and followed up with an email in which he wrote:

> When I called today asking if the union is going to help me regarding the letter that was forwarded to the union about moving towards dismissal, you stated, "You've received all the representation that you'll get." Apparently, you've received the letter from the Grand Rapids Schools motioning towards the dismissal of my contract, and the union is going to not do anything. If I am incorrect, please let me know.

Williams responded and wrote:

> Your quote is incorrect. I stated that "I've done all that I can do." The way you have disingenuously rephrased my statement connotes a tone and meaning that is incorrect and has no relation to my statement to you in this matter.
>
> I would refer you to my January 6, 2015 and January 13, 2015 emails that explains the representation you received as well as section 38.83 of the Tenure Act that pertains to your probationary employment with Grand Rapids Schools.[5]
>
> > **38.83 Controlling board; statements of performance and notices of dismissal, issuance to probationary teachers.**
> >
> > Sec. 3. (1) Before the end of each school year, the controlling board shall provide the probationary teacher with a definite written statement as to whether or not his or her work has been effective. Subject to subsection (2), a probationary teacher or teacher not on continuing contract shall be employed for the ensuing year unless notified in writing at least 15 days before the end of the school year that his or her services will be discontinued.
> >
> > (2) A teacher who is in a probationary period may be dismissed from his or her employment by the controlling board at any time.
>
> You have received fair representation in this matter, your own actions and failures to meet membership obligations notwithstanding.
>
> I wish you luck in your future endeavors.

Later that evening Charging Party responded and wrote:

> So, basically, you stated, and I will paraphrase what you wrote, but correct me if I'm wrong. The Union is not going to do anything else, even though I am up for dismissal on March 2, 2015, in which a letter was sent to the union stating that [it] is going to be proposed this Monday at the board meeting. Also, GRPS states that I denied all these charges, but they will move forth with this motion, when none of it is true. Yet you "(I've) done all that I can do", as you wrote. Even though at the meeting you did not bring forth that I was going to seek legal counsel and retrieve prescribed medical attention, as my future mother-in-law and fiancé witness. Where did you represent me by letting them know what I asked you, specially [sic] to do about legal counsel and medical attention? Is that all that you, the union, can do? Please let me know if I am wrong.

The Employer ultimately chose not to address the charges brought against Charging Party on March 2, 2015, and instead rescheduled to March 16, 2015. Charging Party was sent another letter with attachments, dated March 11, 2015, identical to the previous letter and attachments,

5 Charging Party's response to my Order to Show Cause did not include a copy of a January 13, 2015, email allegedly sent to him by Williams.

save for the changing of dates. That letter informed Charging Party that he had until noon on March 13, 2015, to provide any written response to the proposed charges contained therein or to request that the charges be considered by the Board in a closed session; again Charging Party did not allege that he did either.

On March 13, 2015, Charging Party emailed Williams and wrote:

> Ms. Tina Rachal called today and made me aware of a certified letter that I have not receive[d]. She asked me if I want a closed session at the dismissal meeting. I was not able to answer because I need representation. Is the Union going to represent me in this matter?

Williams responded a short time later by email and wrote:

> This matter is now an issue of employment with the district, which the district has exclusive right of hiring, placement, and termination of probationary employees. It is not however a contractual matter that requires or compels union representation.

Later that day Charging Party responded and wrote:

> On page 70 of the Contract [,] Article 13, Letter G. Complaint About An Employee, states:
>
> "1. Any complaint directed towards an employee which is to become a part of that employee's permanent personnel record and [any] other legitimate complaint shall promptly be called to that employee's attention."
>
> When the Grand Rapids Public Schools gave me a letter on December 2, 2014, they just stated "unprofessional conduct" without any details of when, where, what and who. They never gave me any specifics as to what was going on.
>
> I was in the dark until January 5th, 2015, when they finally scheduled an investigatory meeting. At that meeting, when my fiancé, her mother (a former teacher) got there, it is when they wrote up charges. After ten minutes of reviewing the charges, at 4:30pm, when the board finally wrote them up, I decided it be best to take Legal Shield's advice to consult with them [before] answering 4 frivolous allegations. I also explained that I will follow up with prescribed medical attention because I had gone to Emergency on January 3, 2015. As I left, I look at the Human Resources members and state that I will have an answer in writing and I will be following up with my health.
>
> On page 73 of Article 13, Letter I. Staff Reprimand, the Grand Rapids Public Schools does not follow any of those procedures, yet on January 5, 2015, GRPS unprepared, [writes] up 4 allegations which are not true.
>
> I want to file a grievance for inappropriate procedures.

Charging Party claims he never received a response from Williams.

On March 16, 2015, Charging Party claims he contacted the "central office" for the Michigan Education Association, and was informed by the "help desk" that Chad Williams had relocated to Lansing.

Charging Party then sent an email to Paul Helder, another Association representative, in which he wrote:

> Ms. Kylie B from the help desk office stated that the Union will call me regarding my dismissal hearing today. She also mentioned that Mr. Chad Williams has been transfer[ed] [to] the Lansing Office, indicating that he is no longer my representative. Is the GREA going to represent me at this hearing.

Charging Party and Helder spoke by phone with Helder promising that he would follow up with Charging Party regarding representation. Helder then sent Charging Party an email in which he stated:

> Per our conversation this afternoon, I have attempted to reach out, as promised, to my immediate supervisor to confirm that the understandings both Mr. Williams and myself have of MEA policies as they pertain to the Association's ability to represent you tonight are correct. Unfortunately, I was unable to reach her.
>
> I was however able to reach MEA Secretary-Treasurer, Rick Trainor.
>
> He confirmed that our understanding of MEA policy is correct. Your refusal to pay your membership dues leaves you without entitlement to representation beyond the contract. While I will see you at tonight's Board of Education meeting, I will not be acting as your representative during the Board's closed session. If however, we find that you[r] contractual rights were violated, we will, of course pursue a grievance over the issue.

At the March 16, 2015, meeting, the Board passed a resolution terminating Charging Party's contract effective that same day due to violation of Board Policy and Rules #8300, entitled "Student Discipline (Corporal Punishment)" and unprofessional conduct including violation of "professional norms."

On March 17, 2015, Charging Party sent an email to Helder in which he repeats much of what he had already written to Chad Williams, including his assertions that his contractual rights had been violated, that Williams, by not informing the Employer at the January investigative meeting why he, Santiago, had left before speaking with them had not fairly represented him, and finally his request that a grievance be filed on his behalf.

On March 25, 2015, Helder responded by email in which he addressed Charging Party's claims that his contractual rights had been violated. First, in addressing the claim brought by Charging Party under Article 13.G., Helder stated:

> [T]he issue of promptness as it applies to this article has never, to my knowledge, been clearly defined. There are no grievances in our archive over violation of this specific article. As far as past practice goes, the district generally waits until such time as the allegation has been made to some degree substantiated before notifying the employee. This is done to meet the contractual standard. The actual language of the contract requires prompt notification in the event that the district believes that the complaint is "legitimate" and therefore will "become a part of that employee's permanent personnel record." In order to meet the standard I believe that you are setting, the language would have to state that the district is obligated to notify the employee about "any and all allegations" against him/her... Neither the past practice or the actual language of the article appear to have been violated, and I can find no record of a prior grievance resolution that would support our claim.

With respect to Article 13.I.2., Helder stated:

> While the section continues to refer to both "ancillary staff" and "teacher," the specific subsections of each article refer only to "ancillary" staff. This article was a "just cause" protection article that was changed in the last negotiation to comply with changes removing "just cause" protections from all Michigan teachers. In short, the specific processes mentioned do not apply to you as you are not an ancillary staff member (School Social Worker, Psychologist, Counsellor, Nurse, etc.) Even if we could manufacture a process violation, the fact would remain that the process in question does not apply to teachers.

Helder concluded his email by stating, "I can find no enforceable violation of the GREA Master Agreement in either of the articles you cited."

The next day Charging Party replied to Helder's email by repeating the same claims and allegations made in his previous emails both to Helder and Williams, including that the District should have allowed him a Union representative at the December 2, 2014, meeting in which he was provided the letter placing him on leave; and that the District had violated the contract with respect to notice and promptness. New to this email however, Charging Party questioned the competency level of Williams as his representative while also alleging that Williams and Principal Fernandez had a personal relationship. Furthermore, Charging Party stated that he should have been notified by the Association that Williams was being reassigned to Lansing.

Helder responded by stating he would be referring the matter to MEA Southern Zone Director, Mary Halley, his supervisor.

On March 29, 2015, Charging Party sent Halley an email in which he repeated all of his prior allegations against both the Employer and the Association, including his claims that Williams did not inform the Employer why he left the January 5, 2015, meeting and that the contract had

not been followed. Charging Party concluded his email by stating, "I even offer [sic] to pay to have representation a[t] the dismissal hearing, but that was completely ignored." Charging Party once again requested that a grievance be filed over the alleged violation of Article 13, G, 1, and Article 13, I, 2.

On March 30, 2015, Halley responded by asking Charging Party whether he was a member in good standing, i.e., dues fully paid, because such would have a "huge impact on the law and our representation policy…"

Over the next week several more emails went back and forth between Halley and Charging Party in which the two attempted to set up time to meet to discuss what had happened. On April 7, 2015, Halley wrote:

> I need to be very clear with you that we have researched all of the correspondences sent to you and have checked your membership status. You are not a member in good standing, therefore, the services that were done on your behalf were in accordance with all policies and state law. The alleged actions taken by the district were beyond the contractual language and beyond our requirement to represent you due to your membership status.

Charging Party responded on April 10, 2015, and asked whether Halley had considered all the correspondence before forming her opinion. Charging Party went on to accuse Williams and Helder of being "friends" of Principal Fernandez. Charging Party admitted that he had not paid dues but claimed it was because of the financial hardship that resulted from the recent passing of his father.

On April 11, 2015, Halley responded and in addition to again offering to meet with Charging Party, wrote:

> I have documentation from Chad Williams, Paul Helder and from Mary [Bouwense], GREA President. I also have the news articles. Allegations of "shaking" or touching students is discipline, which as you know, teacher discipline and just cause are not in the contract. We have an obligation to represent what is in the contract and matters of grievance for what is in the contract.

Later that day Charging Party responded by repeating the same prior allegations that his contractual rights had been violated.

On April 14, 2015, Halley sent Charging Party an email in which she referred him to MEA General Counsel, Mike Shoudy, should he have further questions or wished to submit a formal appeal.

On May 6, 2015, Charging Party sent Shoudy an email stating that he had not been helped by the Union. On May 14, 2015, presumably referring to the present matter, Shoudy responded and wrote:

> Given that there is pending litigation, the MEA suggests that you seek counsel to assist you on this matter. At this point, all matters will be addressed through the litigation process.

Discussion:

The Commission does not investigate charges filed with it. Charges filed with the Commission must comply with the Commission's General Rules. More specifically, Rule 151(2)(c) of the Commission's rules, R 423.151(2)(c), requires that an unfair labor practice charge filed with the Commission include:

> A clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged in the violation or violations and the sections of LMA or PERA alleged to have been violated.

Rule 165 of the Commission's General Rules, R 423.165, states that the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the charge does not state a claim upon which relief can be granted under PERA. See, *Oakland County and Sheriff*, 20 MPER 63 (2007); *aff'd* 282 Mich App 266 (2009); *aff'd* 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986).

The Commission administers and enforces PERA. Section 9 of PERA protects the rights of public employees to form, join, or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. "Lawful concerted activities for mutual aid and protection" includes complaining with other employees about working conditions and taking other kinds of actions with other employees to protest or change working conditions.

A union's 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. That duty extends to union conduct in representing employees in their relationship with their employer, but does not embrace matters involving the internal structure and affairs of labor organizations that 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.

It is well established law that a union's obligation to its members is comprised of three responsibilities: (1) to serve the interest 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 City of Detroit*, 419 Michigan 651 (1984). Furthermore, a union's actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991). Commission case law is 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. Furthermore, for a charging party to prevail on a duty of fair representation claim regarding disputed grievance handling claim, the party must allege and prove not only a breach of the duty of fair representation by their union, but also allege and prove the second prong of the claim, that is, that there was an underlying breach of the collective bargaining agreement by the Employer. *Goolsby*, supra; *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993).

Charging Party claims in his charge against the Union that the Union has failed to properly represent him since as early as October 29, 2014. While Charging Party alleges in his pleadings that neither Williams nor anyone else with the Association acted on the concerns raised by him in his October 29, 2014, letter, his email to Williams on December 5, 2014, states that there were discussions regarding those issues but that "few answers were given." Even ignoring that portions of Charging Party's allegations are contradicted by the very items submitted in support of his claims, Charging Party nonetheless does not allege that any failure to act by the Association was based on an unlawful motive or was otherwise arbitrarily, discriminatory or outside the bounds of reasonableness. Additionally, with respect to the claims regarding this letter, Charging Party has not alleged any actual contractual violation by the Employer with any semblance of specificity, let alone shown that he could prove such a breach, as required under *Goolbsy* or *Knoke.* Furthermore, while Williams and the Association could have been more direct in responding to Charging Party's concerns expressed in the October 29, 2014, letter, neither was explicitly obliged to do so. Our Commission has consistently 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); *Wayne Co (Sheriff's Dep't),* 1998 MERC Lab Op 101, 105 (no exceptions).

The brunt of Charging Party's allegations against the Association are over its handling of the events leading up to and following his termination from employment, beginning with the December 2, 2014, meeting in which he was denied union representation. The only evidence offered by Charging Party in support of his allegations against the Association comes in the form of a personal narrative and scores of emails between himself and various Association representatives.[6] Furthermore, Charging Party at no point, other than the January 10, 2015, letter, sought to defend himself against the allegations against him and instead chose to challenge compliance with notice portions of the collective bargaining agreement, and even the defense as set forth in that letter was substantively deficient.

As to the first contractual provision Charging Party claims was violated, Article 13.G., the fact remains that, even if he could prove it was violated, he has not alleged beyond mere speculation that the Association's alleged failure to act was in any based on an unlawful motive or was otherwise arbitrarily, discriminatory or outside the bounds of reasonableness.

6 Charging Party did include two affidavits sworn to by both his fiancé and her mother, however those affidavits only address the events of the January 5, 2015, investigatory meeting, and do nothing to further Charging Party's claim that Williams failed to represent him in good faith.

As to the second contractual provision that Charging Party requested the Association to file a grievance over, Article 13. I, it is clear from his allegations that the contractual provision does not apply to him in his position of probationary teacher, thereby foreclosing any possibility that Charging Party could satisfy the requirements of *Goolsby* or *Knoke.* Article 13. I., sets a disciplinary standard of just cause for matters of discipline for ancillary staff, not teachers. Furthermore, Section 15(3)(m) of PERA precludes the parties from bargaining over discipline and discharge of those individuals whose employment is regulated by the Teachers Tenure Act (TTA). MCL 423.215. Article 2, Section 3(2), of the TTA provides that a probationary teacher may be terminated at any time. MCL 38.83.

While Charging Party's pleadings and attachments allege and show several times where Association representatives did make reference to Charging Party's lack of good standing as a member for failure to pay dues, Charging Party's own narrative and documents belie his claim that the Association failed to represent him and instead shows a repeated attempt to represent him, despite his lack of cooperation.

Williams, his statements regarding Charging Party's membership status notwithstanding, clearly recognized his duty under *NLRB v J Weingarten Inc*, 420 US 251 (1975), as adopted by the Commission in *University of Michigan*, 1977 MERC Lab Op 496, and communicated such to Charging Party in the first several emails after Charging Party had been placed on administrative leave.[7] Furthermore, by Charging Party's own admission, Williams met with Charging Party to discuss the situation prior to attending the January 5, 2015, meeting as his representative. Nowhere within Charging Party's pleadings and attachments does he plead any facts that, if proven true, could establish that Williams breached the duty of fair representation as it relates to the time period leading up to and directly following the January 5, 2015, investigatory meeting; a meeting in which Charging Party freely admits he left abruptly. [8]

Following the January 5, 2015, investigatory meeting, communications continued between Charging Party and various Association representatives, including Williams and later Helder and Halley. Each of those three commented on Charging Party's membership status to varying degrees and, taken individually or collectively, may have seemed to imply that the Association could have or would have done more for Charging Party in his defense over the termination had he been a dues paying member. However, aside from those comments, Charging Party's pleadings and attachments are devoid of any alleged facts that, if proven true, could establish that the Association failed to or refused to represent him because of his lack of union membership.

Additionally, while under *Rockwell v Board of Ed of School Dist of Crestwood*, 393 Mich. 616 (1975), our Supreme Court held that in situations where the TTA and PERA conflict, PERA is the controlling law, the present situation operates where there is no conflict between the two Acts, i.e., Article 2, Section 3(2), of the TTA provides that a probationary teacher may be

7 The Supreme Court in *Weingarten*, held that an employee covered by the National Labor Relations Act has the right, upon request, to the presence of a union representative at an investigatory interview when the employee reasonably believes that the interview may lead to discipline.

8 The fact that Charging Party is upset with Williams for not informing the Employer the reasons why he chose to leave the meeting abruptly is not evidence that Williams failed to represent him fairly. This is especially true, as Charging Party admits throughout his pleadings and attached documents, he himself told those present why he was leaving.

terminated at any time and Section 15(3)(m) has removed teacher discipline and discharge from collective bargaining. The collective bargaining agreement recognized such.

Accordingly, it is the opinion of the undersigned that Charging Party, despite being provided ample opportunity, has failed to state a claim for which relief can be granted under PERA against the Association. As such, I recommend that the Commission issue the order as set forth below.

RECOMMENDED ORDER

The unfair labor practice charge filed by Andres Santiago against the Grand Rapids Education Association, MEA/NEA is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 24, 2016