STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT, DEPARTMENT OF WATER & SEWERAGE,
Public Employer-Respondent in MERC Case Nos. C17 A-004 & C17 A-007;
Hearing Docket Nos. 17-001478 & 17-001477,

-and-

AFSCME COUNCIL 25, LOCAL 2920,
Labor Organization-Respondent in MERC Case No. CU17 A-002; Hearing Docket No. 17-001479,

-and-

JOSEPH TWIGGS,
An Individual Charging Party.
_____/

APPEARANCES:

Shawntane Williams, Staff Attorney, for the Labor Organization

Joseph Twiggs, appearing on his own behalf

DECISION AND ORDER

On March 22, 2017, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: June 8, 2017

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF DETROIT, DEPARTMENT OF WATER & SEWERAGE,
Respondent-Public Employer in Case Nos. C17 A-004 & C17 A-007;
Docket Nos. 17-001478-MERC & 17-001477-MERC,

-and-

AFSCME COUNCIL 25, LOCAL 2920,
Respondent-Labor Organization in Case No. CU17 A-002; Docket No. 17-001479-MERC,

-and-

JOSEPH TWIGGS,
An Individual Charging Party.
_____/

APPEARANCES:

Shawntane Williams, Staff Attorney, for the Labor Organization

Joseph Twiggs, appearing on his own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

This case arises from unfair labor practice charges filed on January 10, 2017, by Joseph Twiggs against the City of Detroit, Department of Water & Sewerage (the City) and AFSCME Council 25, Local 2920 (the Union). 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. C17 A-007; Docket No. 17-001477 alleges that the City of Detroit violated PERA by terminating Twiggs on October 27, 2016, for failing to punch in when he worked overtime. Twiggs asserts that he was "targeted" by the Employer to cover up misconduct by a supervisor and that the discipline he received was excessive. The identically-worded charges in Case Nos. C17 A-004 and CU17 A-002; Docket Nos. 17-001478-MERC and 17-001479-MERC allege that Twiggs was not provided with "the appropriate union representation" when he was terminated. Twiggs asserts that although he was a dues-paying member of AFSCME Council 25, Local 2920, he was represented at the disciplinary hearing by a representative of a different union.

In a pretrial order issued on February 8, 2017, I directed Twiggs to show cause why his charges against the City of Detroit should not be dismissed for failure to state a claim under PERA. At the same time, I directed Respondent AFSCME Council 25, Local 2920 to file a position statement addressing the allegations set forth by Twiggs against the Union. Charging Party filed his response to the order to show cause on March 10, 2017. AFSCME Council 25, Local 2920 filed its position statement on March 14, 2017. None of the parties to this proceeding requested oral argument.

In its position statement, AFSCME Council 25, Local 2920 asserts that it had no duty to represent Twiggs because he was not a member of its bargaining unit at the time of the events giving rise to the charge. The Union contends that on December 9, 2015, a settlement agreement was reached in federal court between various AFSCME affiliates, including Local 2920, and the International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America and its affiliated Local 214 (Teamsters Local 214). According to the Union, the parties to the settlement agreed that the classification of Field Service Technician (FST) employed at the City of Detroit, Department of Water & Sewerage would be split between AFSCME Local 2920 and Teamsters Local 214, with AFSCME Local 2290 taking all Level 1 FSTs and all Level 2 FSTs becoming members of the bargaining unit represented by Teamsters Local 214.

AFSCME Local 2920 contends that Charging Party was employed as a Level 2 FST and, therefore, he became a member of the bargaining unit represented by Teamsters Local 214 pursuant to the settlement agreement. The Union asserts that on or about August 10, 2016, the president of Teamsters Local 214 held a meeting with all Level 2 FST employees and informed them that they were now members of Local 214 and directed them to begin paying dues to his labor organization instead of AFSCME Local 2920. According to the Union, Charging Party was present at that meeting. The Union further contends that after Charging Party was terminated on October 27, 2016, Teamsters Local 214 filed a grievance on Twiggs' behalf which remains pending. In addition, the Union asserts that the president of Teamsters Local 214 has spoken directly with Charging Party regarding the grievance.

Although Charging Party was only directed to show cause why his charge against the City should not be dismissed, his response to that order contains several admissions which, as will be explained below, definitively establish that his charge against AFSCME Council 25, Local 2290 fails to state a claim under PERA. Charging Party's response to the order to show cause states, in its entirety:

> I Joseph Twiggs would like to provide explanation as to why I did not request union representation from my union affiliation with Local 2920. My supervisor Kieyonna Jackson informed all employees that we had been switched over from the new 2920 to the Teamsters 214. The union representative from the Local 214 visited our jobsite and offered all employees that were Field Service Technicians the opportunity to complete forms and union cards. I elected not to complete these forms. The president of Local 214 stated they were forced to represent us because we hold CDL licenses, in which the City of Detroit helped to obtain. I did not receive my CDL license through the City of Detroit, and therefore continued to make union dues payment to Local 2920. One of the factors of why I continued to remit payments to the Local 2920 was because the City of Detroit was experiencing so many changes, primarily financial. In addition, I was told by the president of the Local 214 "if you don't sign with my union we are forced to represent you anyway." This is why I never requested representation from my Local 2920 after being terminated from my position.

Discussion and Conclusions of Law:

Pursuant to Rule 165(1), R 423.165(1), of the General Rules and Regulations of the Employment Relations Commission, which govern practice and procedure in administrative hearings conducted by MAHS, the ALJ may "on [his] own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party." See Rule 1501, R 792.11501, of the MAHS Administrative Hearing Rules. After carefully considering the arguments and factual allegations set forth by Twiggs, I conclude that there are no legitimate issues of material fact and that dismissal of the charges on summary disposition is appropriate. Charging Party has failed to state a claim against either Respondent upon which relief can be granted under 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. The types of activities protected by the Act include filing or pursuing a grievance pursuant to the terms of a union contract, participating in union activities, joining or refusing to join a union, and joining with other employees to protest or complain about working conditions. Sections 10(1)(a) and (c) of PERA prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities described above. The Act does not, however, prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for a breach of contract claim asserted by an individual employee. See e.g. *Ann Arbor Sch*, 16 MPER 15 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75. The Commission's jurisdiction with respect to claims brought by individual employees against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in, or refusal to engage in, union or other concerted activities protected by PERA.

In the instant case, the pleadings filed by Charging Party do not provide a factual basis which would support a finding that he was subjected to discrimination or retaliation for engaging in, or refusing to engage in, protected activities in violation of the Act. Nor do those pleadings set forth any facts which, if true, would establish that the City of Detroit violated Twiggs' right to Union representation. In *NLRB v Weingarten, Inc*, 420 US 251 (1975), the National Labor Relations Board (NLRB) recognized that an employee has the right to the presence of a union representative at an investigatory interview when the employee reasonably believes that the interview may lead to discipline. The Commission has adopted the Board's reasoning in cases arising under PERA. See e.g. *Univ of Michigan*, 1977 MERC Lab Op 496. However, it is well established that this obligation arises only when the employee actually requests representation by the Union. *Grand Haven Bd of Water and Light*, 18 MPER 80 (2005); *City of Marine City (Police Dep't)*, 2002 MERC Lab Op 219 (no exceptions). Charging Party concedes that he never requested the presence of an AFSCME representative at the October 17, 2016, meeting. Although Twiggs does not specify whether he requested the presence of a representative of any other labor organization, he admits in the charge that a representative of Teamsters Local 214 attended the meeting on his behalf. Moreover, there is no allegation that the meeting was investigatory in nature. Under such circumstances, it appears summary dismissal of the charges against the City of Detroit, Department of Water & Sewerage in Case Nos. C17 A-004 & C17 A-007; Docket Nos. 17-001478-MERC & 17-001477-MERC is warranted.

Similarly, there is no factually supported allegation against AFSCME Council 25, Local 2290 in Case No CU17 A-002; Docket No. 001479-MERC which, if proven, would establish that the Union violated PERA with respect to Twiggs. 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. Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. To this end, 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. 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. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public Sch Dist*, 201 Mich App 480, 488 (1993).

In its position statement, AFSCME Council 25, Local 2290 asserts that the charge against it should be dismissed because at the time that Twiggs was terminated, he was represented by a different labor organization, Teamsters Local 214. In his response to the order to show cause, Twiggs does not deny that his FST position was represented for purposes of collective bargaining by the Teamsters at the time of his termination. To the contrary, Twiggs states that he had been advised by his supervisor that Teamsters Local 214 had taken over as his bargaining representative and that the president of Local 214 indicated that the Teamsters had a duty to represent him regardless of whether he became a member of that labor organization. Based on these facts, I conclude that there is no basis upon which to conclude that AFSCME Council 25, Local 2290 was Charging Party's bargaining representative at the time of the events giving rise to this dispute and, therefore, no claim for breach of the duty of fair representation can be asserted against the Respondent labor organization in this matter. That Twiggs may have voluntarily chosen to continue paying union dues to AFSCME Council 25, Local 2290 after having been informed of the change does not impart upon AFSCME any continuing legal obligation to represent Twiggs. In fact, once Teamsters Local 214 took over as bargaining representative for Level 2 FSTs, AFSCME could no longer negotiate on Charging Party behalf.[1] Accordingly, I conclude that the charge filed by Twiggs against AFSCME Council 25, Local 2290 in Case No CU17 A-002; Docket No. 001479-MERC must also be dismissed on summary disposition for failure to state a claim under PERA.

RECOMMENDED ORDER

The unfair labor practice charges filed by Joseph Twiggs against the City of Detroit, Department of Water & Sewerage and AFSCME Council 25, Local 2290 in in Case Nos. C17 A-004, C17 A-007 & CU17 A-002; Docket Nos. 17-001478-MERC, 17-001477-MERC & 17-001479-MERC are hereby dismissed in their entireties.

[1] Once a union is selected to represent employees in an appropriate unit, that Union becomes the exclusive bargaining representative for those employees and no other union may negotiate terms and conditions of employment on their behalf. MCL 423.211

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: March 22, 2017