STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT TRANSPORTATION CORPORATION,
Public Employer-Respondent in MERC Case No. C17 D-034/Hearing Docket No. 17-008319,

-and-

POLICE OFFICERS LABOR COUNCIL,
Labor Organization-Respondent in MERC Case No. CU17 D-015/Hearing Docket No. 17-008320,

-and-

DEREK TURNER,
An Individual Charging Party.
_____/

APPEARANCES:

Thomas R. Zulch, for Respondent-Labor Organization

Derek Turner, appearing on his own behalf

DECISION AND ORDER

On June 22, 2017, Administrative Law Judge Julia C. Stern issued her 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: August 24, 2017

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DETROIT TRANSPORTATION CORPORATION,
Public Employer-Respondent in Case No. C17 D-034/Docket No. 17-008319-MERC,

-and-

POLICE OFFICERS LABOR COUNCIL,
Labor-Organization-Respondent in Case No. CU17 D-015/Docket No. 17- 008320-MERC,

-and-

DEREK TURNER,
An Individual-Charging Party,
_____/

APPEARANCES:

Thomas R. Zulch, for the Police Officers Labor Council

Derek Turner, appearing for himself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On April 18, 2017, Derek Turner filed the above unfair labor practice charges with the Michigan Employment Relations Commission (the Commission) against his former employer, the Detroit Transportation Corporation (the Employer), and his collective bargaining agent, the Police Officers Labor Council (the Union), alleging violations of Section 10 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of that Act, the charges were assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

On May 1, 2017, I sent a letter to the Union directing it to file a position statement in response to Turner's allegations. The Union filed its position statement on May 11, 2017. On May 16, 2017, pursuant to Rule 165 of the Commission's General Rules, 2014 AACS, R 423.165, I issued an order to Turner to show cause why his charge against the Employer should not be dismissed because it did not allege a violation of PERA and his charge against the Union dismissed based on the facts asserted by the Union in its position statement.

On June 13, 2017, I received letter from Turner that read as follows:

> The union (POLC) is now representing me in regards to this matter. However, there is another issue. The employer is refusing to follow the current CBA in regards to the grievance process. They won't even talk to the union in reference to this wrongful termination. The union will file another unfair labor practice complaint in the very near future.

I interpret Turner's letter as a withdrawal of his charge against the Union. Based on facts set out in the charge and the Union's position statement, I make the following conclusions of law with respect to Turner's charge against the Employer and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge against the Employer and Facts:

Turner was hired by the Employer as a transit police sergeant on March 7, 2016. He then became a member of a bargaining unit represented by the Union. The collective bargaining agreement between the Employer and Union requires new hires to serve a six-month probationary period. In some circumstances at least, the probationary period can be extended. Under the terms of the collective bargaining agreement, employees terminated during their probationary period cannot grieve or arbitrate their terminations.

On or about September 13, 2016, Turner received a letter from the Employer stating that his probationary period had been extended for sixty days. The letter did not give a reason for the extension. On December 9, 2016, Turner was notified that he was terminated. The letter he received did not give a reason for his discharge. After receiving his termination letter, Turner asked the Union to file a grievance. He told the Union that he was not on probation, but did not apparently give the Union a copy of the September 13, 2016, letter. The Union filed a grievance on Turner's behalf. An Employer representative then orally informed a Union staff representative that the Employer had extended Turner's probationary period for three months. On February 14, 2017, the Union's grievance committee reviewed the information about Turner's grievance compiled by the staff representative and voted not to arbitrate the grievance. Turner was notified of his right to appeal the grievance committee's decision if he had any new or additional information. Turner appealed, and attached a copy of the Employer's September 13, 2016, letter to his appeal. On April 10, 2017, when the grievance committee met again, it reviewed Turner's appeal and the September 13, 2016 letter. The grievance committee instructed the staff representative to contact the Employer and ask if it had documentation that Turner's probation had been extended a second time. On April 18, 2017, after the Employer had not responded, the Union sent the Employer a demand to arbitrate Turner's grievance and took other steps to initiate the arbitration.

In his charge against the Employer, Turner alleges that the Employer discharged him without just cause and in violation of the collective bargaining agreement. He also alleges that the Employer failed to provide him with due process in connection with his termination.

Discussion and Conclusions of Law:

Rule 165 of Michigan Employment Relations Commission's General Rules, R 423.165, states that an administrative law judge assigned to hear a case for the Michigan Employment Relations Commission may, on his or her own initiative or on a motion by any party, order

dismissal of a charge or issue a ruling in favor of a party without a hearing based on grounds set out in the rule, including failure to allege a claim on which relief may be granted by the Commission.

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 PERA include filing or pursuing a grievance under a union contract, participating in union activities, joining or refusing to join a union, joining with other employees to protest or complain about working conditions, and, in certain circumstances, making complaints to the employer about working conditions on behalf of other employees.

Section 10(1)(a) of PERA prohibits a public employer from interfering with or coercing employees in the exercise of their rights under Section 9. In addition, Section 10(1)(c) of PERA prohibits a public employer from discriminating against employees because they have engaged in, or refused to engage in, union activities.

However, not all types of wrongful discharges by a public employer violate PERA, and the Commission does not have the authority to remedy all "unfair" terminations. PERA does not provide employees with an independent cause of action against their employer for breach of a collective bargaining agreement. *City of Lansing (Board of Water & Light),* 20 MPER 33 (2007); *Detroit Pub Schs,* 22 MPER 63 (2009) (no exceptions). The Commission also lacks jurisdiction to address an employee's claim that he has been denied his constitutional rights to due process. *Plymouth Educational Center,* 30 MPER 4 (2016). Absent an allegation that the employer interfered with, restrained, coerced, or retaliated against the employee for engaging in, or refusing to engage in, union or other activities of the type protected by PERA, the Commission has no jurisdiction to make a judgment on the fairness of the employer's actions. See, e.g., *City of Detroit (Fire Dep't*), 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524.

In the charge he filed against the Employer in this case, Turner alleges that he was discharged without just cause. He also alleges that he was not provided with due process in connection with his termination. Turner does not assert that he was terminated because of union activity, or that the Employer interfered with his exercise of his rights under Section 9 of PERA. I find, for the reasons set forth above, that Turner's charge against the Employer does not state a claim upon which relief can be granted under PERA.

In his June 13, 2017, letter, Turner asserts that the Employer is now refusing to process or discuss his grievance with the Union. An employer's refusal to accept and/or discuss a grievance filed by a bargaining representative under the parties' contract may constitute a violation of the employer's duty to bargain in good faith under Section 10(1)(e) of PERA. See, e.g., *City of West Branch,* 1978 MERC Lab Op 352. However, an individual employee does not have standing to allege a refusal to bargain by his or her employer. Because the employer's duty to bargain is owed to the bargaining agent, only the bargaining agent can file a charge alleging a violation of Section 10(1)(e) of PERA. *City of Hazel Park,* 1979 MERC Lab Op 177; *Coldwater Comm Schs,* 1993 MERC Lab Op 94. It does not appear that Turner intended in his June 13, 2017, letter to amend his charge against the Employer. In any case, Turner does not have standing to allege that the Employer has violated PERA by refusing to discuss a grievance with his bargaining agent.

In accord with the discussion and conclusions of law set out above, I recommend that the Commission issue the following order in Case No. C17 D-034/17-008319-MERC. As indicated above, I consider the charge in Case No. CU17 D-015/17-008320-MERC to have been withdrawn.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 22, 2017