

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

In the Matter of:

AFSCME LOCAL 312,
Labor Organization-Respondent,

MERC Case No. CU18 B-003

-and-

KEIR JACKSON,
An Individual Charging Party.

APPEARANCES:

Nicholas Caldwell, for Respondent

Keir Jackson, appearing on his own behalf

DECISION AND ORDER

On November 19, 2018, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order¹ in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service, and no exceptions have been filed by either of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: February 6, 2019

¹ MAHS Hearing Docket No. 18-002349

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

In the Matter of:

AFSCME LOCAL 312,
Labor Organization-Respondent,

-and-

KEIR JACKSON,
An Individual Charging Party.

Case No. CU18 B-003
Docket No. 18-002349-MERC

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APPEARANCES:

Nicholas Caldwell for Respondent

Keir Jackson appearing on his own behalf

**DECISION AND RECOMMENDED ORDER OF
ADMINISTRATIVE LAW JUDGE**

On February 2, 2018, Charging Party Keir Jackson filed the present unfair labor practice charge against AFSCME Local 312 (Respondent or Union) alleging that the Union had breached its duty of fair representation as it related to Charging Party's frequent conflicts with various direct supervisors. 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).

The parties appeared before the undersigned for hearing on April 18, 2018. The only witness to testify at the hearing was Charging Party, who did so in narrative form. Moreover, while several exhibits were marked for admission, none were actually admitted for lack of foundation and/or authenticity.

At the conclusion of Charging Party's narrative, I held, on the record, that Charging Party had failed to state a claim under PERA for which relief could be granted. I indicated that I would issue a written decision and recommended order to that effect; this is said order.

Findings of Fact:

Charging Party, at the time of the hearing, was employed by the City of Detroit's Department of Transportation as a diesel mechanic. Charging Party, prior to working for the City, had been the

recipient of training funded in part, or wholly, through federal grant monies. Charging Party had worked in his present position for approximately two and a half years.

According to Charging Party, he had filed charges with the City's Human Resources Department in 2017 against his direct supervisor, Mark Clark – January 17 and March 23, 2017. Charging Party did not provide copies of the complaints or explain, with any specificity, as to what were the nature of those charges nor did he indicate whether there had been any resolution or response of said charges. Furthermore, Charging Party did not claim that the Union had been involved in the filing of the charges.

Sometime on or around March 18, 2017, an incident occurred between Clark and Charging Party that, according to Charging Party, culminated with Clark choking him for several moments. Charging Party claimed that he was eventually able to release himself from Clark's grip. Charging Party claimed that he then immediately called his Union Steward Art Hill. Charging Party then called the Detroit Police. Eventually officers with either the Detroit Police Department or the Detroit Transit Police appeared at the work-site. Charging Party claims that he was sitting in the location's guard shack speaking with the officers when the Department's Superintendent, Mike Dawley, appeared asking what had happened. Charging Party testified that he then explained that Clark had just choked him and requested to go to the hospital. Eventually Charging Party did go to the hospital, was examined, and was discharged.

Charging Party claims that sometime after the above incident the Union "got involved" and that he "somehow or another was told to go to human resources." Although it is not entirely clear from Charging Party's testimony, it appears that he was suspended for several weeks as a result of the altercation with Clark.

At some point during the suspension, Charging Party attended a Union meeting where he spoke with Larry Clark, no relation to Mark Clark, whom Charging Party identified as a Union "official." Larry Clark instructed Charging Party to give him all his "paperwork" and further stated that the Union would file a grievance. Charging Party also claimed that Larry Clark told him that he would be transferred to a different job site and that Mark Clark would be demoted because of the incident.

Sometime later, Charging Party was instructed by the Human Resources Department to report back to work at the same job site where the alleged incident with Mark Clark had occurred; Charging Party had been moved to a shift not supervised by Mark Clark. Not long after returning to work on the different shift, Charging Party claims he began having issues with his new supervisor, Curtis Sanders. According to Charging Party, in late January of 2018 he filed charges with the Human Resources Department over said issues – again there is no indication whether there was any investigation and/or resolution to these charges.

Following the filing of the charges against Sanders, Charging Party claims he began to be retaliated against by the supervisor. The actions complained of by Charging Party included, but were not limited to, shorting him of hours, disciplining him twice over the same issue, and assigning him to clean up buses that had been defecated and/or vomited in by passengers. According to Charging Party, he then filed more charges against Sanders and Superintendent Mike Dawley as well – again

there is no indication whether there was any investigation and/or resolution to these charges. Charging Party further claims that he spoke with the Union's President who informed him that he was "not going to get a dime" from his earlier suspension resulting from the incident with Mark Clark.

The Union's representative at the hearing did attempt to introduce documentary evidence which purported to show that the Union had actively grieved Charging Party's initial suspension and was proceeding to arbitration over the matter. Despite producing these documents at the hearing, the Union's representative was not prepared to offer any witness testimony attesting to the documents' respective foundation and/or authenticity. Charging Party denied ever seeing the documents before.

Discussion:

A union representing public employees in Michigan owes those employees a duty of fair representation under Section 10(2)(a) of PERA. The 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. The union's legal duty 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. *Goolsby v Detroit*, 419 Mich 651, 679 (1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131,134. Also see *Vaca v Sipes*, 386 US 171, 177 (1967). A union breaches its duty to avoid discriminatory conduct if it engages in discrimination that is "intentional, severe, and unrelated to legitimate union objectives." *Vaca*, at 177. "Arbitrary" conduct by a union was described by the Court in *Goolsby*, supra, as (a) impulsive, irrational or unreasoned conduct; (b) inept conduct undertaken with little care or with indifference to the interests of those affected; (c) the failure to exercise discretion; or (d) extreme recklessness or gross negligence.

The above standards notwithstanding, 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 a 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).

In the instant case, Charging Party's recitation of events is, in the opinion of the undersigned, devoid of any actionable claim under PERA. While Charging Party claims that he approached the Union and requested that a grievance be filed on his behalf he offers no corroborating evidence to substantiate the claim. Moreover, he has made no allegations that, even if the Union failed to file a grievance on his behalf, this refusal was somehow based either wholly or in part on an unlawful

motive and/or discriminatory manner.² Equally fatal to the charge is Charging Party's inability to claim a contract breach. See *Goolsby*, supra; *Knoke*, supra.

I have considered all other arguments as set forth by the parties and conclude that such does not justify a change in my conclusion. Accordingly, for the reasons set forth above, I recommend that the Commission issue the following Order:

Recommended Order:

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 19, 2018

² I note that the Union intended to introduce documentary evidence in support of its claim that it was in fact grieving the suspension and prepared to proceed to arbitration.