STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 79,
Respondent-Labor Organization,

MERC Case No. CU18 J-036

-and-

DONNA JOHNSON,
An Individual Charging Party.
_____/

APPEARANCES:

Donna Johnson, appearing on her own behalf

DECISION AND ORDER

On November 26, 2018, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order[1] 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

Issued: February 15, 2019

[1] MAHS Hearing Docket No. 18-020264

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 79,
Respondent-Labor Organization,

Case No. CU18 J-036
Docket No. 18-020264-MERC

-and-

DONNA JOHNSON,
An Individual Charging Party.
_____/

APPEARANCES:

Donna Johnson, appearing on her own behalf

DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on October 16, 2018, by Donna Johnson against Service Employees International Union (SEIU), Local 79. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

In an order issued on October 26, 2018, I directed Johnson to show cause why the charge should not be dismissed on the ground that MERC lacks jurisdiction over the dispute and because the charge fails to state a claim upon which relief can be granted under PERA. Charging Party was cautioned that a timely response to the Order must be filed to avoid dismissal of the charge without a hearing. Pursuant to the order, Johnson's response was due on November 16, 2018. To date, Charging Party has not filed a response to the order or sought to obtain an extension of time in which to file such a response.

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." Among the various grounds for summary dismissal of a charge is the failure by the charging party to "respond to a dispositive

motion or a show cause order." Rule 165(2)(h). See also *Detroit Federation of Teachers*, 21 MPER 3 (2008), in which the Commission recognized that the failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. In any event, accepting all of the allegations set forth by Johnson as true, dismissal of the charge is warranted in this matter.

In the charge, Johnson asserts that she was an employee of Regency at Waterford which appears to be a private employer. The National Labor Relations Board (NLRB) has exclusive authority to hear unfair labor practice charges involving employees of most private entities. Despite having been given ample opportunity to do so, Charging Party has not established that she was an employee within the jurisdiction of the Commission at the time of the events giving rise to this dispute.

Moreover, the charge does not set forth facts which would establish a breach of the duty of fair representation by Respondent. A union's duty of fair representation is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. The union's ultimate duty is toward the membership as a whole, rather than solely to any individual. The union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729.

The Commission has "steadfastly refused to interject itself in judgment" over grievances and other decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab Op 1, 11. The Union's good faith decision on how to proceed is not unlawful as long as it is not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. The mere fact that a bargaining unit member is dissatisfied with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Furthermore, to prevail on a claim of unfair representation, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public Sch Dist*, 201 Mich App 480, 488 (1993).

Although the charge asserts that Respondent failed to properly represent Johnson following her termination, there is no factually supported allegation which, if true, would establish that the Union's actions were undertaken for unlawful reasons or were so outside a wide range of reasonableness as to be irrational. As noted above, a union has the legal discretion to make judgments about the general good of the membership and to proceed on such judgments, despite the fact that they may conflict with the desires or interests of certain employees. In addition, there is no assertion in the charge that Johnson's termination constituted a breach of the collective bargaining

agreement. For these reasons, I recommend that the Commission issue the following order dismissing the charge in its entirety.

RECOMMENDED ORDER

The unfair labor practice charge filed by Donna Johnson against SEIU, Local 79 in Case No. CU18 J-036; Docket No. 18-020264-MERC is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 26, 2018