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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

PLYMOUTH-CANTON COMMUNITY SCHOOLS,
Public Employer-Respondent in MERC Case No C17 K-101,

-and-

PLYMOUTH-CANTON EDUCATION OFFICE PERSONNEL LOCAL 6172, AFT MICHIGAN,
Labor Organization-Respondent in MERC Case No. CU17 K-034,

-and-

LISA A. FAUR,
An Individual Charging Party.
_____/

APPEARANCES:

Mark H. Cousens, for Respondent AFT Michigan

Edith Willenbrecht, for Charging Party

DECISION AND ORDER

On June 27, 2018, Administrative Law Judge (ALJ) Travis Calderwood issued his Decision and Recommended Order[1] on Order to Show Cause in the above matter finding that Respondents did not violate § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. The ALJ found that Charging Party failed to plead facts that, if proven true, could establish that the Union's actions or decisions were in any way based on an unlawful motive or that its refusal to arbitrate her grievance was otherwise arbitrary, discriminatory or outside the bounds of reasonableness. The ALJ further found that Charging Party failed to plead any facts that, if proven true, could establish that the Employer's decision to terminate her violated her rights under PERA.

The Decision and Recommended Order was served on the interested parties in accordance with § 16 of PERA.

[1] MAHS Hearing Docket Nos. 17-026244 and 17-026245.

After receiving an extension of time, Charging Party filed exceptions to ALJ's Decision and Recommended Order on August 20, 2018. After requesting and receiving an extension of time, Respondent AFT Michigan filed a "Brief Opposing Charging Party's Exceptions and Supporting of Respondent's Exceptions"[2] on September 13, 2018.

In her exceptions, Charging Party asserts that she did state a claim under PERA and that the ALJ erred in concluding that the Union's investigation, which Charging Party characterizes as inept, did not violate the duty of fair representation. Charging Party does not take exception to the ALJ's findings with respect to the case against the Respondent Employer in Case No. C17 K-101.

In its cross exceptions, Respondent AFT Michigan argues that, although the ALJ correctly concluded that the Charging Party failed to present a claim that the Union breached its duty of fair representation, he erred in modifying the party respondent in the case and in failing to dismiss the charge as filed against an improper party.

We have reviewed the exceptions filed by Charging Party and find them to be without merit. We have also reviewed Respondent's cross exceptions and find that, although we agree that the ALJ erred in modifying the party respondent in this case, the ALJ's error was harmless and not material to the outcome of this case.

Factual Summary:

This consolidated case was decided by the ALJ on the basis of Charging Party's response to an Order to Show Cause. Consequently, the following facts are taken from Charging Party's filings, including her unfair labor practice charges and her response to the ALJ's Order to Show Cause, as well as the facts set forth in the Respondent Union's position statement, where not disputed by Charging Party.

Charging Party Lisa A. Faur was employed by the Plymouth-Canton Community Schools (Employer) as an assistant secretary at its Discovery Middle School. As such, she was a member of a bargaining unit represented by Respondent Plymouth-Canton Education Office Personnel, Local 6172 (Local 6172), an affiliate of the American Federation of Teachers (AFT). The Employer and Local 6172 are signatories to a collective bargaining agreement that was in effect from July 1, 2016, through June 30, 2018.

On May 10, 2017, Charging Party was placed on administrative leave pending an investigation by the Employer's Human Resources Department in connection with an incident involving another secretary and fellow bargaining unit member, Lori Rysdorp.

A investigative meeting was held on May 18, 2017, to discuss the incident and to afford Charging Party with "due process" prior to the potential imposition of discipline. In attendance at that meeting were Kurt Tyskiewicz from the Employer's Human Resources Department, Middle School Principal Terry Sawchuk, Charging Party, and Local 6172 Representative Kelly Schacht. A second meeting concerning the incident was held on May 25, 2017.

[2] Cross exceptions.

At the conclusion of these meetings, Mr. Tyskiewicz stated that he would recommend that Charging Party be terminated for her inexcusable language and behavior in connection with the incident involving Lori Rysdorp. Mr. Tyskiewicz noted that Charging Party spoke with Administrator Jim Johnson about Ms. Rysdorp and stated, "I am gonna fucking punch her in the mouth in two minutes." Mr. Tyskiewicz also mentioned "[p]arent complaints, inability to interact with co-workers and teachers."

By letter dated May 31, 2017, Charging Party was terminated for using threatening and improper language in a conversation regarding Ms. Rysdorp. Subsequent to Charging Party's termination, a grievance was filed by Local 6172 challenging the termination.

On July 12, 2017, AFT Michigan Field Representative Johnny Mickles sent a letter, on AFT letterhead, to Charging Party that stated, in relevant part:

> The Plymouth Canton Office Personnel Local 6172 (Union) has decided to withdraw your grievance. The Union filed a step 3 grievance on your behalf according to the collective bargaining agreement. Based on the Union's investigation and the District's response to the step 3 grievance, the Union has decided that your grievance of Article III- Employees' Rights was without merit and not to continue to process your grievance to the next step. This decision was made after conducting an oral interview with you in June, filing a step 3 grievance and receiving a response from Kurt Tyskiewicz. The Union came to their decision by using the just cause procedures of due process.
>
> The Union decided to withdraw your grievance based on several factors:
>
> - Your admission of a verbal threat to a co-worker, "I am about to fucking punch her in two minutes," to the administration in the incident report and in the district's investigation meeting. You also verified this statement to the Union at the union's investigation meeting held on June [sic].
>
> - Lori suffered an injury during a pushing match at the administrator's door on her forearm. Although the union concluded who caused the bruise was inconclusive.
>
> - And lastly, there was no due process violation of the collective bargaining agreement. The union took into account the oral warning you received on March 9, 2017, which discussed your inability to work with colleagues and warned you of disciplinary action up to termination.
>
> Because of these factors the union considers this matter to be closed.

On November 22, 2017, Charging Party filed a charge against "AFT Michigan – Att. Johnny Mickles" alleging "wrongful termination" on the Commission provided charge form. Attached to that form was an October 31, 2017 letter from Attorney Edith Willenbrecht to AFT Michigan Field

Representative Mickles requesting that the Union continue to represent Ms. Faur in the grievance process at the Plymouth-Canton Board of Education.

On November 22, 2017, Charging Party also filed a charge against the Employer alleging "wrongful termination" on a Commission provided charge form.[3]

On December 11, 2017, the AFT Michigan filed a motion for summary disposition under Rule 165(2)(d) and (f) of the Commission's General Rules. AFT Michigan argued that Charging Party was a member of a bargaining unit that was represented by Local 6172 and that AFT Michigan, while a labor organization and affiliated with Local 6172, was not the "bargaining agent for any unit which included Charging Party." AFT Michigan further argued that Charging Party failed to state a claim under PERA for which relief could be granted.

On January 16, 2018, Attorney Willenbrecht filed both an appearance on behalf of Charging Party and an Answer and Brief in response to the Union's motion, including several exhibits.

On April 11, 2018, ALJ Calderwood issued an Interim Order denying AFT Michigan's motion for summary disposition because it appeared that AFT Michigan Representative Mickles was acting as an agent of Local 6172 and because, the ALJ noted, Section 10(2) of PERA prohibits certain conduct (unfair labor practices) by a "labor organization or its agents." On this basis, the ALJ clarified this case's caption to identify "Plymouth-Canton Education Office Personnel, Local 6172, AFT Michigan" as the Respondent Labor Organization. The ALJ also noted that, while PERA does not provide an individual charging party with a cause of action for "wrongful termination," the letter attached to the charge against the Union appeared to allege a breach of the Union's duty of fair representation. Consequently, the ALJ directed Charging Party to show cause in writing why her charges should not be dismissed without a hearing. Charging Party filed a response to that order on May 2, 2018.

On June 27, 2018, ALJ Calderwood issued his Decision and Recommended Order on Order to Show Cause and recommended that both unfair labor practice charges be dismissed.

Discussion and Conclusions of Law:

In her exceptions, Charging Party appears to contend 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, authorizes 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 Michigan Supreme Court stated:

> 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

[3] The Employer in this dispute has never responded to the charge.

affording the opportunity to present evidence on issues of fact only when such issues exist.

In the present case, there are no material issues of fact in dispute and Charging Party has not alleged any material facts in dispute 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 her exceptions, Charging Party also contends that she did state a claim under PERA and that the ALJ erred in concluding that the Union's inept investigation did not violate the duty of fair representation. Nonetheless, 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 to proceed with a grievance. *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. *AFSCME Council 25, Local 345,* 32 MPER 2 (2018); *Grand Rapids Education Assoc, MEA/NEA*, 30 MPER 72 (2017); *Detroit Dept of Trans*, 30 MPER 61 (2017); *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 does not allege that any failure to act by the Union was based on an unlawful motive or was otherwise discriminatory or outside the bounds of reasonableness. Even if the Union's actions constituted poor judgment or ordinary negligence, such is not sufficient to establish a violation of PERA. *AFSCME Council 25, Local 207*, 23 MPER 101 (2010). A union is not expected to always make the right or best decisions, so long as it acts in good faith and avoids being arbitrary. *Detroit Police Officers Ass'n*, 26 MPER 6 (2012); *City of Detroit*, 1997 MERC Lab Op 31. Although Charging Party characterizes the Union's investigation as inept, Charging Party's pleadings establish that she admittedly used inappropriate language on school property to threaten a co-worker. Charging Party's pleadings further establish that the Union took account of this serious misconduct and of the fact that she was previously warned about her inability to work with colleagues when it determined that it would not take her grievance to arbitration. Consequently, the Union made a reasoned, rationale decision that it should not attempt

to arbitrate Charging Party's discharge grievance. The Union, therefore, did not engage in arbitrary conduct or act in bad faith when it refused to arbitrate this grievance. Additionally, Charging Party does not allege facts that, if proven true, would establish a breach of the collective bargaining agreement by the employer. The mere fact that an employer discharges an employee does not establish a violation of the collective bargaining agreement. Consequently, the ALJ correctly dismissed the charges filed by Charging Party Faur in Case Nos. C17 K-101 and CU17 K-034 for failure to state a claim under PERA.

With respect to Respondent's contention that the ALJ erred in modifying the party respondent in this case, we agree that the ALJ should not have effectively amended the charge sue sponte on April 11, 2018. Instead of proceeding as he did, the ALJ should have instructed the Charging Party to amend the charge. Nonetheless, the ALJ's error was harmless and not material to the outcome of this case.[4]

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Issued: APR 03 2019

[4] In any event, it is not apparent to even the most seasoned legal mind that the correct Respondent Union was not the AFT Michigan, as the letter from Mickles identifies the Union as such.

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

PLYMOUTH-CANTON COMMUNITY SCHOOLS,
Public Employer-Respondent in
Case No C17 K-101; Docket No. 17-026244-MERC,

-and-

PLYMOUTH-CANTON EDUCATION OFFICE PERSONNEL LOCAL 6172, AFT MICHIGAN,
Labor Organization-Respondent in
Case No. CU17 K-034; Docket No. 17-026245-MERC,

-and-

LISA A. FAUR,
An Individual Charging Party.

_____/

APPEARANCES:

Mark H. Cousens for the Respondent-AFT Michigan

Edith Willenbrecht for the Charging Party

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

On November 22, 2017, Lisa A. Faur filed the above unfair labor practice charges. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, these cases were 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 charges were consolidated under Rule 164 of the Commission's General Rules, R 423.164, 2002 AACS; 2014 AACS.

Unfair Labor Practice Charge and Procedural History:

Charging Party's initial filing against the Plymouth-Canton Community Schools (Employer) alleges "wrongful termination" on the Commission provided charge form. Charging Party attached to that form a narrative in which she complains of the actions of several Employer representatives following her filing of a "harassment/bullying complaint" against a fellow

bargaining unit member. The actions that Charging Party objects to include, but are not limited to, the Employer's failure to conduct a "real investigation" on her behalf, and the Employer's investigation into allegations made against Charging Party by the same fellow employee she herself made a complaint about. Charging Party was terminated effective May 31, 2017, as a result of the investigation(s).

Charging Party's initial filing against AFT Michigan also alleges "wrongful termination" on the Commission provided charge form. Attached to that form is an October 31, 2017, letter from Attorney Edith Willenbrecht to AFT Michigan Field Representative Johnny L. Mickels III. That letter, in part, states:

> We are requesting that you continue to represent Ms. Faur in the grievance process at the Plymouth Canton Board of Education. We are requesting that Ms. Faur be made whole and get her job back and that she receive back pay.
>
> The Union representative states that an investigation was done and that due process has been achieved. However, the union letter dated July 12, 2017 results [sic] show a poorly performed investigation with erroneous statements – which would have been evident had an actual investigation been conducted.

The letter went on to identify, with specifics, several alleged inconsistencies that occurred in the Employer's investigation. Additionally, the letter stated:

> Finally, Mr. Mikels [sic] you stated in your voicemail to Ms. Faur that you would represent the member who the harassment claim has been brought against and that the District would represent Ms. Faur. This is a complete violation of the union contract. Ms. Faur also filed a harassment claim. How did you determine who the union would represent? The District terminated [Charging Party]. How did the District represent her? The District acted in a manner on opposition to the person they supposedly represented. Did the District know that they were representing [Charging Party] in some manner? Is there a policy that this is the way coworkers are represented?

Both of the unfair labor practice charges were filed by Charging Party Faur and not by Attorney Willenbrecht, despite Willenbrecht's letter serving as the substance of the charge against AFT Michigan.

On December 11, 2017, Respondent AFT Michigan filed a motion for summary disposition under Rule 165(2)(d) and (f) of the Commission's General Rules, R 423.165, 2002 AACS; 2014 AACS.

AFT Michigan argued that Charging Party, when employed at Plymouth-Canton Community Schools, was a member of a bargaining unit that was represented by Plymouth-Canton Education Office Personnel, Local 6172 (Local 6172), and that AFT Michigan, while a labor organization and affiliated with Local 6172, was not the "bargaining agent for any unit which

included Charging Party." AFT Michigan further argued that Charging Party's claim of "wrongful termination" failed to state a claim under PERA for which relief could be granted.

On January 16, 2018, Attorney Willenbrecht filed both an appearance on behalf of Charging Party and an Answer and Brief in response to AFT Michigan's motion, inclusive of several exhibits. On January 24, 2018, AFT Michigan filed a reply to Charging Party's response.

On April 11, 2018, I issued an Interim Order denying Respondent AFT Michigan's motion, as it appeared that Mickles of the AFT Michigan was acting as an agent of Local 6172 and that Section 10(2) of PERA prohibits unfair labor practices by a "labor organization or its agents." I further found that, while AFT Michigan was correct in its assertion that PERA does not provide an individual charging party with a cause of action for "wrongful termination", the letter attached to the charge against the Union appeared to allege a theory predicated on the Union's refusal to process Charging Party's grievance any further, i.e., breach of the Union's duty of fair representation.

While my above interim order denied AFT Michigan's motion, I noted therein that dismissal of the charges may nonetheless be appropriate on the grounds that Charging Party had failed to state a claim under PERA for which relief could be granted against either Respondent. To that point, the above order directed Charging Party to show cause in writing why her charges should not be dismissed without a hearing. Charging Party filed a response to that order on May 2, 2018.[1]

Background Facts

The following factual summary derived from the parties' pleadings is uncontested, and considered in the light most favorable to Charging Party.

Charging Party worked as an assistant secretary at Discovery Middle School. In that position she was a member of a bargaining unit represented by Local 6172. Local 6172 and the Employer are signatories to a collective bargaining agreement in effect from July 1, 2016, through June 30, 2018. That agreement was signed on behalf of Local 6172, by Mary Whitlark, its President, along with other individuals including Mickles as a "Business Representative." It is undisputed that Local 6172 and AFT Michigan are affiliated in some fashion.

Article XVII of the collective bargaining agreement, entitled "Professional Problems", provides a four-step grievance procedure which culminates with binding arbitration. Step 1 begins with an informal conference between the employee and their supervisor. Step 2 escalates the grievance to a writing, while Step 3 further escalates the grievance to the Superintendent, or his/her designee. Arbitration occurs at Step 4.

Sometime on or around May 5, 2017, Charging Party and another secretary and fellow unit member, Lori Rysdorp, each filed separate complaints against the other – with Charging Party's

[1] On May 9, 2018, AFT Michigan filed a Renewed Motion for Summary Disposition. However, since this Decision and Recommended Order disposes of the claims as alleged by Charging Party against the Respondent, there is no need to either discuss or consider said motion.

occurring first. According to Charging Party, Rysdorp's complaint was in the form of an email to Discovery Middle School Principal Terry Sawchuk. On May 10, 2017, Charging Party was placed on non-disciplinary administrative leave pending an investigation by the Employer's Human Resources Department. There is no indication whether Rysdorp was also place on leave.

Charging Party claims that, on May 11, 2017, Rysdorp amended her earlier allegations against Charging Party. Notably the revised allegations against Charging Party now claimed that Rysdorp was "struck" by a door that Charging Party "angrily yanked" open, an allegation that was not included in the original email to Sawchuk.

A meeting was held on May 18, 2017, to discuss the complaint against Charging Party. In attendance at that meeting were Kurt Tyskiewicz from the Employer's Human Resources Department, Middle School Principal Terry Sawchuk, Charging Party, and Local 6172 Representative Kelly Schacht.

A second meeting concerning the complaint against Charging Party was held on May 25, 2017. In addition to the same four individuals from the May 18, 2017, meeting, another Local 6172 member, Karen Tharp, also attended.

By letter dated May 31, 2017, Charging Party was terminated for, according to Charging Party, making "a verbal threat against Lori Rysdorp..." Sometime following Charging Party's termination, a grievance was filed by Local 6172 challenging the same.

On June 8, 2017, Charging Party sent an email to President Whitlark asking several questions regarding the grievance. A week later, on June 15, 2017, Whitlark responded and among other things stated, "I am awaiting Johnny's response for what the next step is." It is presumed that the "Johnny" Whitlark was referring to was Johnny Mickles, the AFT Field Representative.

On July 12, 2017, Mickles sent a letter to Charging Party on AFT letterhead that stated in the relevant part:

> The Plymouth Canton Office Personnel Local 6172 (Union) has decided to withdraw your grievance. The Union filed a step 3 grievance on your behalf according to the collective bargaining agreement. Based on the Union's investigation and the District's response to the step 3 grievance, the Union has decided that your grievance of Article III- Employees' Rights was without merit and not to continue to process your grievance to the next step. This decision was made after conducting an oral interview with you in June, filing a step 3 grievance and receiving a response from Kurt Tyskiewicz. The Union came to their decision by using the just cause procedures of due process.
>
> The Union decided to withdraw your grievance based on several factors:
>
> - Your admission of a verbal threat to a co-worker, "I am about to fucking punch her in two minutes", [sic] to the administration in the incident report and in the district's investigation meeting.

You also verified this statement to the Union at the union's investigation meeting held on June [sic].

- Lori suffered an injury during a pushing match at the administrator's door on her forearm. Although the union concluded who caused the bruise was inclusive.

- And lastly, there was no due process violation of the collective bargaining agreement. The union took into account the oral warning you received on March 9, 2017, which discussed your inability to work with colleagues and warned you of disciplinary action up to termination.

Because of these factors the union considers this matter to be closed.

Discussion and Conclusions of Law:

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 General Rules, 2002 AACS; 2014 MR 24, 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 therein, and the sections of LMA or PERA alleged to have been violated.

Rule 165 of the Commission's General Rules, 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 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986), lv den 428 Mich 856 (1987),

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 breach of the duty of fair representation. See, *Eaton Rapids Education Association*, 2001 MERC Lab Op 131. Moreover, a labor organization possesses the legal discretion to make judgments about the general good of its membership, and to proceed on such judgments despite the fact that they may be in conflict with the desires or interests of certain employees. *Lansing School District,*

1989 MERC Labor Op 210. A union must be granted broad discretion in discriminating between various categories of members and weighing the interest of various categories of members in collective bargaining negotiations. See *Ford Motor Co v Huffman*, 345 US 330 (1953); See also *Port Huron Area Sch Dist*, 1998 MERC Lab Op 43.

In order to survive a motion for summary disposition predicated on the premise that Charging Party has failed to state a claim of a breach of the duty of fair representation, Charging Party's allegations "must contain more than conclusory statements alleging improper representation." *AFSCME, Local 2074*, 22 MPER 83 (2009), citing *Martin v Shiawassee County Bd of Commrs*, 109 Mich App 166, 181 (1981).

In the present proceeding, Charging Party's allegations against the Union are predicated on Local 6172's decision to support Rysdorp, at the expense of Faur, in the conflict between the two fellow bargaining unit members. That the Union made this decision alone does not establish a violation of PERA's duty of fair representation. Rather, despite being given ample opportunity, Charging Party has failed to plead facts that, if proven true, could establish that the Union's actions or decisions were in any way based on an unlawful motive or that its refusal to arbitrate her grievance was otherwise arbitrary, discriminatory or outside the bounds of reasonableness. To the extent that Charging Party's allegations are premised on an improperly conducted investigation by the Union, here to Charging Party has failed to plead facts that, if proven true, could establish that the Union's investigation was arbitrary, discriminatory or outside the bounds of reasonableness. Moreover, while the *Goolsby* Court, at 679, did also include "inept conduct" as violative of the duty of fair representation, Charging Party has failed to plead or allege that the investigation was undertaken in a manner that is indicative of "extreme recklessness or gross negligence" as to violate PERA.

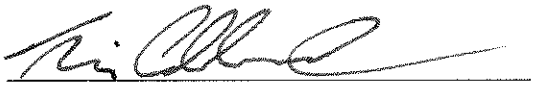
With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment. The Commission's jurisdiction with respect to claims brought by individual employees against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in union or other protected concerted activities. See *Wayne Co,* 20 MPER 109 (2007). Here, there is no allegation that the Employer violated, interfered with, or otherwise infringed on Charging Party's Section 9 rights. Simply put, Charging Party has failed to plead any facts that, if proven true, could establish that the Employer's decision to terminate her violated her rights under PERA.

I have considered all other arguments as put forth by Charging Party and conclude such does not warrant any change in the result. I recommend that the Commission issue the order set forth below.

Recommended Order

The unfair labor practice charges are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 27, 2018