

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

In the Matter of:

MICHIGAN AFSCME LOCAL 1690,
Labor Organization-Respondent,

MERC Case No. 21-L-2213-CU

-and-

BRADLEY MANDLEY,
An Individual Charging Party.

APPEARANCES:

Miller Cohen PLC, by Bruce A. Miller and Andrea M. Frailey, for Respondent

Law Office of Robert E. Donald Jr. PLLC, by Robert E. Donald, for Charging Party

DECISION AND ORDER

On April 28, 2022, 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



Tinamarie Pappas, Commission Chair



William F. Young, Commission Member

Issued: June 24, 2022

¹ MOAHR Hearing Docket No. 21-032857

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

MICHIGAN AFSCME LOCAL 1690,
Labor Organization-Respondent.

Case No. 21-L-2213-CU
Docket No. 21-032857-MERC

-and-

BRADLEY MANDLEY,
Individual Charging Party.

APPEARANCES:

Miller Cohen PLC, by Bruce A. Miller and Andrea M. Frailey, for the Respondent

Attorney Robert E. Donald appearing on behalf Charging Party

**DECISION AND RECOMMEND ORDER OF
ADMINISTRATIVE LAW JUDGE ON
MOTION FOR SUMMARY DISPOSITION**

On December 13, 2021, Charging Party, Bradley Mandley, filed the above captioned unfair labor practice charge with the Michigan Employment Relations Commission (Commission) against his bargaining representative, Michigan AFSCME Local 1690 (Union or Respondent). 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 Travis Calderwood, Administrative Law Judge for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (the Commission).

Unfair Labor Practice Charges and Procedural History:

Charging Party's unfair labor practice filing alleges that the President of the Union has "failed to represent his membership" in relation to "engaging" with the employer on allowing Charging Party to work from home.¹ According to Charging Party, the Union's apparent reluctance to pursue working from home violates its duty to fairly represent its membership.

¹ I note that Charging Party's filing appears to indicate that it is filed on behalf of Charging Party individually as well as "several other members" of the local union. However, to the extent that Charging Party is the only individual named within the filing documents and there is no identification as it relates to the "several other members" nor their consent to participate in the present proceeding, the undersigned shall limit his consideration solely to Charging Party as an individual.

On April 4, 2022, the Respondent filed a Motion for Summary Disposition under Commission Rule 165(2)(d) arguing that the charge fails to state a claim upon which relief could be granted under PERA. R. 423.165(2)(d). Upon careful review of Charging Party's initial filing and the arguments made within the Respondent's motion, it was the opinion of the undersigned that summary disposition in favor of the Respondent may be appropriate. As such, I issued an Interim Order that day, April 4, 2022, directing Charging Party to respond in writing to the Respondent's motion and show cause why his Charge should not be dismissed without a hearing. That order went on to adjourn the April 6, 2022, hearing pending a decision on Respondent's motion.

Pursuant to my April 4, 2022, order, Charging Party's response was due on April 25, 2022. As of the issuance of this Decision and Recommended Order, Charging Party has not filed a response to my order, nor has he sought to obtain an extension of time in which to file such a response.

Discussion and Conclusions of Law:

Charging Party's failure to respond to my April 4, 2022, order, by itself, is cause for dismissal in favor of Respondents. The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. See R 423.165(h); See also Detroit Federation of Teachers, 21 MPER 3 (2008). Charging Party's failure to respond notwithstanding, it is clear from review of the allegations as filed that dismissal of the charges is required under Rule 423.165(2)(d), because Charging Party has failed to state a claim under PERA where relief could be granted.

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 AACCS; 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 [the Act]..." Only charges that are timely and properly allege a violation of PERA are set for hearing before an administrative law judge.

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). The *Goolsby* Court described "arbitrary" conduct by a union 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; and (d) extreme recklessness or gross negligence. *Id* at 679. 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).

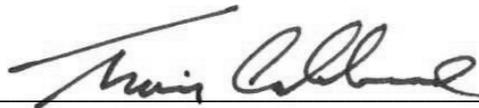
Although a union owes a duty of fair representation to every employee it represents, the primary duty is to its bargaining unit's entire membership as a whole. *Lowe v Hotel Employees*, 389 Mich 123 (1973). In this regard, a union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the situation and/or issue in the manner it determines to be best. See *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. In other words, a union possesses 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. *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218, citing *Lowe*, supra. The Commission will not find an unfair labor practice on the mere fact that a member is dissatisfied with their union's efforts. *Eaton Rapids Ed Ass 'n*, 2001 MERC Lab Op 131. Here, Charging Party's filings focuses on the Union's inaction relative to Charging Party's desire to work from home. However, Charging Party does not allege facts that, if proven true, could establish that the Union's inaction was arbitrary under *Goolsby*, supra, or otherwise engaged in discriminatory and/or unlawful conduct as defined within *Vaca*, supra.

Despite having been given a fair and full opportunity to do so, Charging Party has failed to set forth any factually supported allegations which would state a claim for which relief could be available under PERA. For this reason, and based upon the fact that Charging Party did not file a response to the Respondent's Motion for Summary Disposition, I recommend that the Commission issue the following order:

Recommended Order

The unfair labor practice charges filed by Bradley Mandley against Michigan AFSCME Local 1690 is hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: April 28, 2022