

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

In the Matter of:

DETROIT PUBLIC SCHOOLS  
COMMUNITY DISTRICT,  
Public Employer-Respondent,

MERC Case Nos. 21-C-0442-CE & 21-C-0440-CU

-and-

DETROIT FEDERATION OF TEACHERS,  
Labor Organization-Respondent,

-and-

DAVID CRAIG,  
An Individual Charging Party.

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APPEARANCES:

Nickelhoff & Widick, PLLC, By Marshal J. Widick, for the Labor Organization

David Craig, appearing on his own behalf

**DECISION AND ORDER**

On May 26, 2021, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order<sup>1</sup> 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.

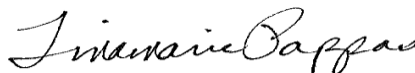
The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

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 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



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Tinamarie Pappas, Commission Chair

  
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William F. Young, Commission Member

Issued: July 30, 2021

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<sup>1</sup> MOAHR Hearing Docket Nos. 21-004653 & 21-004753

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

In the Matter of:

DETROIT PUBLIC SCHOOLS COMMUNITY  
DISTRICT,

Respondent-Public Employer,

Case No. 21-C-0442-CE  
Docket No. 21-004653-MERC

-and-

DETROIT FEDERATION OF TEACHERS,

Respondent-Labor Organization,

Case No. 21-C-0440-CU  
Docket No. 21-004753-MERC

-and-

DAVID CRAIG,

An Individual Charging Party.

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**APPEARANCES:**

Nickelhoff & Widick, PLLC, By Marshal J. Widick, for the Labor Organization

David Craig, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER**  
**OF ADMINISTRATIVE LAW JUDGE**  
**ON SUMMARY DISPOSITION**

This case arises from unfair labor practice charges filed on March 1, 2021, by David Craig against his Employer, the Detroit Public School Community District (DPS), and his Union, the Detroit Federation of Teachers (DFT). 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 charges were consolidated and assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

In Case No. 21-C-0442-CE; Docket No. 21-004653-MERC, Craig alleges that the DPS discriminated against him and treated him differently than other employees in connection with his request for a transfer and discharge. The charge in Case No. 21-C-0440-CU; Docket No. 21-

004753-MERC asserts that the Union acted unlawfully by failing or refusing to investigate a complaint against the DPS concerning the transfer request and discharge.

In a pretrial order issued on March 1, 2021, I directed Charging Party to show cause why his charge against the DPS in Case No. 21-C-0442-CE; Docket No. 21-004653-MERC should not be dismissed for failure to state a claim upon which relief could be granted under PERA. The order specified that to avoid dismissal of the charge, Craig's written response must assert facts that establish a violation of the Act. Charging Party was directed to "clearly and concisely describe who did what and when they did it, and explain why such actions constitute a violation of the Act, with consideration given to the legal principles" set forth in the order. At the same time, I directed the DFT to file a position statement addressing the allegations set forth by Charging Party in Case No. 21-C-0440-CU; Docket No. 21-004753-MERC.

Responses were due by the close of business on March 24, 2021. The DFT filed a timely position statement on March 24, 2021, in which it asserted that Craig could not establish a breach of the duty of fair representation because the issues which he wanted the Union to address were prohibited subjects of bargaining under Section 15(3) of PERA. Charging Party did not file a response to the order or seek to obtain an additional extension of time in which to file such a response.

In a supplemental order issued on April 1, 2021, I indicated that I would be recommending dismissal of the charge against the DPS in Case No. 21-C-0442-CE; Docket No. 21-004653-MERC on the ground that Craig had alleged no facts from which it could be concluded that the Employer violated PERA. With respect to the charge in Case No. 21-C-044-CU; Docket No. 21-004753-MERC, I indicated that the arguments set forth by the DFT in its position statement would appear to warrant dismissal of the charge against the Union. For that reason, I directed Craig to show cause why his charge against the DFT should not be dismissed for the reasons set forth in the Union's position statement. Charging Party was cautioned that if his response to the order did not establish a factual basis upon which to conclude that the Union violated PERA, a decision recommending the dismissal of the charge in Case No. 21-C-044-CU; Docket No. 21-004753-MERC would be issued without a hearing.

Charging Party's response was due by the close of business on April 15, 2021. To date, Craig has not filed a response to the order to show cause or requested an extension of time in which to do so.

#### 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 MOAHR, 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 Craig as true, dismissal of the charge against the DPS in Case No. 21-C-0442-CE; Docket No. 21-004653-MERC is warranted.

In the charge, Craig asserts that the DPS discriminated against him and treated him differently than other employees. Section 9 of the Act 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 pursuant to the terms of a union contract, participating in union activities, joining or refusing to join a union, and joining with other employees to protest or complain about working conditions. Sections 10(1)(a) and (c) of the Act prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities described above. PERA does not, however, prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for a breach of contract claim asserted by an individual employee. 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, or refusal to engage in, union or other concerted activities protected by PERA. In the instant case, the charge against the DPS fails to provide any factual basis which would support a finding that Craig was subjected to discrimination or retaliation for engaging in, or refusing to engage in, protected activities in violation of the Act. Accordingly, summary dismissal of the charge in Case No. 21-C-0442-CE; Docket No. 21-004653-MERC is warranted.

The charge in Case No. 21-C-0440-CU; Docket No. 21-004753-MERC must also be dismissed on summary disposition on the ground that Craig failed to respond to the supplemental order to show cause and because the charge does not set forth facts which would establish a violation of PERA by the DFT. 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). 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. A labor organization 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. *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218, citing *Lowe v Hotel and Restaurant Employees Union, Local 705*, 389 Mich 123 (1973). The mere fact that a member is dissatisfied with their union's efforts is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Moreover, 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. *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's dissatisfaction with the DFT is based upon the Union's failure to take action on his behalf with respect to his request for transfer to a different position and discharge. Pursuant to § 15(3)(m) of PERA, decisions about the development, content, standards, procedures, adoption, and implementation of a policy regarding discharge or discipline of an employee, decisions concerning the discharge or discipline of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit are prohibited subjects of bargaining. The Commission has held that § 15(3)(m) is not limited to decisions concerning whether an employee should be disciplined or discharged, but also covers substantive or procedural issues related to the discharge or discipline of individual employees and decisions regarding the procedures set forth in an employer's policy regarding discipline and discharge. *Shiawassee ISD*, 30 MERC Lab Op 13 (2017); *Ionia County ISD*, 30 MPER 18 (2016). The designation of a topic as a prohibited subject forecloses the possibility that a school district can be found to have committed an unfair labor practice by refusing to bargain over a prohibited topic or that a prohibited topic could become part of a collective bargaining agreement. *Michigan State AFL-CIO v MERC*, 212 Mich App 472 (1995), aff'd 453 Mich 262 (1996). Similarly, the transfer of a teacher is a prohibited subject of bargaining under § 15(3)(j) of the Act. *Pontiac Sch Dist*, 27 MPER 52 (2014), aff'd in an unpublished decision of the Court of Appeals on September 15, 2015 (Docket No. 321221).

Because grievance arbitration is an extension of the collective bargaining process, Respondent would have been in violation of § 10(2)(d) of the Act had it sought to challenge the school district's decision to discipline Craig and its response to his transfer request. Under such circumstances, no breach of the duty of fair representation can be established in this matter. *Detroit Fed'n of Teachers*, 28 MPER 42 (2014); *Ann Arbor Pub Sch*, 28 MPER 32 (2014)

Despite having been given a full and fair opportunity to do so, Charging Party has failed to establish that a claim exists under PERA for breach of the duty of fair representation by Respondent DFT. Accordingly, I conclude that the charge in Case No. 21-C-0440-CU; Docket No. 21-004753-MERC must also be dismissed without a hearing and recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by David Craig against the Detroit Public Schools Community District, in Case No. 21-C-0442-CE; Docket No. 21-004653-MERC, and Craig's charge against the Detroit Federation of Teachers in Case No. 21-C-0440-CU; Docket No. 21-004753-MERC are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "David M. Peltz". The signature is written in black ink and is positioned above a horizontal line.

David M. Peltz  
Administrative Law Judge  
Michigan Office of Administrative Hearings & Rules

Dated: May 26, 2021