

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

In the Matter of:

UNIVERSITY OF MICHIGAN,  
Public Employer-Respondent in MERC Case No.21-E-1149-CE,

-and-

AFSCME COUNCIL 25, LOCAL 1583,  
Labor Organization-Respondent in MERC Case No. 21-E-1152-CU,

-and-

JACQUELYN LEATH,  
An Individual Charging Party.

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**APPEARANCES:**

Jacquelyn Leath, appearing on her own behalf

**DECISION AND ORDER**

On June 24, 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.

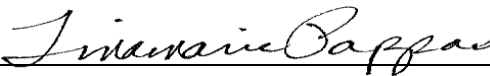
The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.


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 any 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: August 13, 2021

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<sup>1</sup> MOAHR Hearing Docket Nos. 21-009757 & 21-009920

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

In the Matter of:

UNIVERSITY OF MICHIGAN,  
Respondent-Public Employer,

Case No. 21-E-1149-CE  
Docket No. 21-009757-MERC

-and-

AFSCME COUNCIL 25, LOCAL 1583,  
Respondent-Labor Organization,

Case No. 21-E-1152-CU  
Docket No. 21-009920-MERC

-and-

JACQUELYN LEATH,  
An Individual Charging Party.

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**APPEARANCES:**

Jacquelyn Leath, appearing on her own behalf

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

This case arises from unfair labor practice charges filed on May 12, 2021, by Jacquelyn Leath against her Employer, the University of Michigan, and her Union, American Federation of State, County and Municipal Employees (AFSCME), Council 25, Local 1583. 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 & Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The charges assert that Respondents violated PERA by engaging in unspecified unfair labor practices and that the Employer and the Union created a “hostile work environment.” On May 24, 2021, I issued an Order for More Definite Statement requiring Leath to file a complete statement of the allegations against each Respondent in compliance with Rule 151(2)(c) of the Commission’s General Rules and Regulations, 2002 AACS; 2014 MR 24. R 423.151(2). 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. The order specified that to avoid dismissal of the charges, Leath's written response must assert facts that establish a violation of the Act. Charging Party's response was due by the close of business on June 7, 2021. 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.<sup>1</sup>

#### Discussion and Conclusions of Law:

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 University of Michigan in Case No. 21-E-1149-CE; Docket No. 21-009757-MERC fails to provide any factual basis which would support a finding that Leath was subjected to discrimination or retaliation for engaging in, or refusing to engage in, protected activities in violation of the Act.

Similarly, Leath's charge against AFSCME Council 25, Local 1583 in Case No. 21-E-1152-CU; Docket No. 21-009920-MERC fails to state a claim upon which relief can be granted under 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). 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

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<sup>1</sup> On June 7, 2021, Charging Party contacted my office asking whether she needed to file anything in addition to the unfair labor practice charges she had previously submitted. In a response sent to Leath by email that same day, MOAHR's support staff wrote "We have all of that paperwork. [The ALJ] needs you to send a More Definite Statement, which means he needs more information/proof that you have a valid unfair labor practice charge. Please reread [the] Order that was sent to you for instructions. Since it is due today, you may want to ask for an extension so that your charge doesn't get dismissed." Charging Party did not respond to that message.

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. In the instant case, Leath has failed to set forth any factually supported allegation which, if true, would establish that the Union breached its duty of fair representation in violation of the Act.

For the above reasons, and based upon Charging Party's failure to file a response to the Order for More Definite Statement, I conclude that the charges must be dismissed without a hearing and recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Jacquelyn Leath against the University of Michigan in Case No. 21-E-1149-CE; Docket No. 21-009757-MERC, and Leath's charge against AFSCME Council 25, Local 1583 in Case No. 21-E-1152-CU; Docket No. 21-009920-MERC are hereby dismissed in their entirety.

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: June 24, 2021