STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Public Employer-Respondent,

Case No. 19-K-2181-CE

-and-

AMALGAMATED TRANSIT UNION, LOCAL 26,
Labor Organization-Respondent,

Case No. 19-K-2182-CU

-and-

FRANK LACEY,
An Individual Charging Party.

_____/

APPEARANCES:

City of Detroit (Department of Transportation) by Jason McFarlane, for the Public Employer

Law Offices of Mark H. Cousens by Mark H. Cousens, for the Labor Organization

Frank Lacey, appearing on his own behalf

DECISION AND ORDER

In 2019, Charging Party Frank Lacey requested that Respondent Amalgamated Transit Union, Local 26 (Union) file a grievance asserting that he was improperly compensated under a Fare Box Revenue Sharing Incentive Memorandum of Understanding (Revenue Sharing MOU) contained in the collective bargaining agreement between the Union and the Respondent City of Detroit's Department of Transportation (Employer). In response, the Union advised a class-action grievance was already filed on the fare box revenue issue.

Later that same year, Charging Party filed charges against the Employer and Union. The charge against the Employer alleged a violation of the terms of the Revenue Sharing MOU. In the charge against the Union, Lacey alleged a breach of the duty of fair representation stemming from the Union (i) failing to file his grievance over the revenue sharing issue, (ii) retaliating

against him for having filed prior unfair labor practice charges and for (iii) interfering with his election campaign for Union Vice President.

In a Decision and Recommended Order[1] issued on March 2, 2021, Administrative Law Judge David Peltz (ALJ) recommends that both charges be dismissed. The ALJ concluded that Charging Party lacked standing to bring a breach of contract claim against the Employer, and there was no evidence to support that Charging Party was paid differently under the Revenue Sharing MOU than other employees so as to constitute a PERA violation. As to the Union, the ALJ held that the Union did not violate its duty of fair representation with respect to Lacey's grievance over the revenue sharing agreement. The ALJ also found no basis for a PERA violation by the Union in connection with Lacey having filed prior charges and his challenge to the election for Union Vice President.

In his exceptions, Charging Party asserts that the ALJ erred by finding that he lacked standing to file a contract breach claim against the Employer. Charging Party also asserts that the ALJ erred by concluding that the Union did not violate its duty of fair representation by not filing his grievance on the revenue sharing dispute and did not interfere with his election efforts.

After review, we reject Charging Party's exceptions and agree with the ALJ. In sum, we find that Charging Party did not establish that the Employer violated PERA by paying him less than the maximum amount permitted under the MOU. Lacey also failed to establish grounds of a duty breach by the Union for not pursing a separate grievance on his behalf, or for any inappropriate conduct stemming from Lacey filing prior charges against the Union or his challenges to the Union's election processes.

Procedural History

These matters involve two unfair labor practice charges filed on November 21, 2019. In Case No. 19-K-2181-CE, Charging Party asserts that the Employer violated the terms of the Revenue Sharing MOU. The charge in Case No. 19-K-2182-CU alleges that the Union breached its duty of fair representation by failing or refusing to file a grievance over the revenue sharing issue. In addition, Charging Party contends that the Union retaliated against him for filing a prior charge with the Commission by interfering with his campaign for the Vice President's position. Specifically, Charging Party asserts that Union officers defaced and/or destroyed his election paraphernalia and prevented him from expressing his views to other bargaining unit members. The charges were consolidated and heard in Detroit, Michigan on February 25, 2020.

On March 2, 2021 ALJ Peltz issued a Decision and Recommended Order, in which he recommended that both charges be dismissed. On March 24, 2021, Charging Party filed exceptions to the ALJ's Decision and Recommended Order, and, on March 31, 2021, Respondent Union submitted a brief opposing Charging Party's exceptions. The Employer did not file a response.

[1] MOAHR Hearing Docket Nos. 19-022862 and 19-022863.

Facts

Unless otherwise noted, we adopt the ALJ's findings of fact and repeat them only to the extent necessary.

Charging Party Frank Lacey was employed as a Transportation Equipment Operator (bus driver) by the Employer and was represented by the Union. At all times during these disputes, the Employer and the Union were parties to a collective bargaining agreement covering the period of 2014-2018.[2]

Prior to the complained of events in 2019, Charging Party had filed two unfair labor practice charges against the Union. The first charge was dismissed in a Decision and Order issued by the Commission on April 27, 2015. *Amalgamated Transit Union, Local 26*, 28 MPER 81 (2015) (no exceptions). The second was dismissed, after remand, by the Commission in an order issued on April 16, 2018. *Amalgamated Transit Union, Local 26*, 30 MPER 22 (2016) and 31 MPER 58 (2018).

I. 2019 Union Election

In 2019, Charging Party Lacey ran for the position of Vice President of the Union. After the Union approved the list of candidates, which included Lacey, on or about April 18, 2019, Lacey placed posters, flyers, and other campaign paraphernalia on a Union bulletin board and in various other locations throughout the Employer's Gilbert Terminal. Lacey later discovered that some of the materials he had posted were missing. Glenn Tolbert, who was Vice President of the Union at the time, testified that it was common for campaign posters to fall and that when he came across any materials lying on the ground, he would re-post them.

During the second week of May 2019, Charging Party was campaigning at Gilbert Terminal when he was approached by Schetrone Collier, a member of the Union's executive or governing board. Collier started an argument with Lacey and stated that Lacey should not be elected because he had filed suit against the Union.

The election was held on May 24, 2019 and Charging Party did not win the Vice President's position. Lacey soon filed a challenge with the Union to the conduct of the election that alleged: (1) executive board members were paid by either the ATU or the City of Detroit while voting was ongoing; (2) Collier and Tolbert told members of the bargaining unit that they should not vote for Lacey because he had "sued" the Union; (3) Collier and Tolbert defaced or removed Lacey's campaign posters; (4) Collier started an argument with Lacey while he was campaigning; and (5) at least one member of the bargaining unit voted twice.

Charging Party's challenge to the conduct of the campaign was discussed at a meeting of the Union executive board in June of 2019. During this meeting, Collier stated that one of the

[2] There is no dispute that the collective bargaining agreement was extended to cover the period involved in this dispute.

reasons he had not voted for Charging Party was because Lacey had cost the Union $10,000, presumably referring to one, or both, of the two prior unfair labor practice charges Lacey had filed against the Union. Union Vice President Tolbert then told Collier to be quiet and let the process play out. At Tolbert's recommendation, the executive board did not make any decision regarding Lacey's challenge. Instead, to ensure that an impartial decision was rendered, the board decided to place the matter before the ATU International for review. There is no evidence in the record regarding the ultimate outcome of Lacey's challenge to the election.

II. Revenue Sharing Incentive Dispute

The 2014-2018 collective bargaining agreement between the Employer and the Union (Joint Exhibit 1) includes a Memorandum of Understanding (MOU) which provides for an annual bonus of "Fare Box Revenue Sharing Incentive" to members of the ATU bargaining unit based on total fare box revenues (Joint Exhibit 1, p. 48). The amount of money to be shared with employees each year depends on the increase in total ridership revenues over the 2014-2015 base year, up to a specified maximum amount each year. For the 2018-2019 fiscal year, the annual bonus was capped at $750 per unit member. For bargaining unit members to be eligible for that amount, fare box revenues would have had to increase by six percent over the base year. Pursuant to the MOU, the revenue sharing bonus was payable by September 1st of the following year and was to be equal for all members of the bargaining unit.

For the 2018-2019 fiscal year, the City paid unit members $698 on September 1, 2019, in lieu of the $750 maximum. On October 4, 2019, the Union filed a class-action grievance asserting that its members were entitled to receive the maximum bonus of $750, even though revenues for the fiscal year had fallen short of the target (Union Ex 6, p.1). The Union asserted that several obstacles prevented it from achieving the benchmark set out in the MOU which were out of its control and that employees therefore should be entitled to the maximum bonus of $750 (Union Ex 6, p. 5). As of the date of the hearing in this matter, the class-action grievance was still pending.

On or about October 10, 2019, Charging Party approached Tolbert, who had recently been elected ATU Local 26 President. Believing that he was entitled to the full $750 bonus, Lacey requested that the Union file a grievance with the City. Tolbert explained to Lacey that the Union had already filed a class-action grievance regarding the revenue sharing issue. Nevertheless, Tolbert drafted an individual grievance on Charging Party's behalf and provided Lacey with the grievance number. Thereafter, Lacey contacted Tolbert and indicated that it was not necessary for the Union to pursue the individual grievance.

Discussion and Conclusions of Law:

I. Charge Against the Employer

In his exceptions, Charging Party maintains that the Employer breached its contractual obligations under the Fare Box Revenue Sharing Incentive MOU and argues that the ALJ erred when he concluded that Charging Party did not have standing to file a charge alleging a violation of the duty to bargain under § 10(1)(e) of PERA. In *Grand Rapids Employees Independent*

Union, 31 MPER 62 (2018), however, we held that an individual charging party does not have standing to file a charge alleging a violation of the duty to bargain under § 10(1)(e) of PERA:

> ...Charging Party does not have standing to file such a charge because the City's duty to bargain is with the Union and not with an individual employee. See *Coldwater Comm Schs*, 1993 MERC Lab Op 94; *Detroit Pub Schs*, 25 MPER 77 (2012); *Detroit Pub Schs*, 23 MPER 47 (2010) (no exceptions); *Detroit Bd of Educ*, 1999 MERC Lab Op 269 (no exceptions); *City of Detroit*, 7 MPER 101 (1994).

In this case, Charging Party's Employer was obligated to bargain with his Union and not with him or any other individual employee. Consequently, the ALJ properly concluded that Charging Party did not have standing to assert that his employer breached its duty to collectively bargain in good faith.

Moreover, PERA does not authorize generalized claims of unfair treatment. Further, an employee's allegation of a contract violation, without more, does not state an actionable PERA claim. In *City of Detroit (Department of Transportation)*, 33 MPER 48 (2020), we noted:

> PERA does not, however, authorize generalized claims of unfair treatment. See *Wayne County Sheriff and Police Officers Association of Michigan*, 33 MPER 25 (2019); *City of Detroit, Dept of Transp*, 30 MPER 61 (2017); *Ann Arbor Sch*, 16 MPER 15 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75. And an employer's breach of a collective bargaining agreement is not per se an unfair labor practice under Section 10 of PERA. See *City of Detroit*, 23 MPER 98 (2010); *Detroit Bd. of Ed.*, 1995 MERC Lab Op 75, 78; *City of Monroe*, 1994 MERC Lab Op 638 (no exceptions).

Although Charging Party alleges that his Employer violated the Fare Box Revenue Sharing Incentive MOU of the 2014 collective bargaining agreement, such is not sufficient to state a cause of action under PERA. See also *City of Detroit (Pension Bureau)*, 34 MPER 27 (2020).

Charging Party also appears to allege in his exceptions and in his "Response to City of Detroit's Motion for Summary Judgement" that some employees, including Local 26 Board members, received a larger revenue share payout than other employees in violation of Section 10(1)(c) of PERA. We find; however, the record supports the ALJ's conclusion that there is no evidence to suggest that Charging Party was paid less than any other bargaining unit member or that employees were paid different amounts for reasons which would constitute a violation of PERA. See Tr. 37-46, 55.

Consequently, we do not believe the ALJ erred in concluding that Charging Party failed to establish that the Employer violated the Act with respect to the revenue sharing payments.

II. Charge Against the Union

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 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 so 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. Sound reasons for not advancing a grievance do not breach the duty of fair representation. *City of Detroit (Dept of Transportation)*, 33 MPER 18 (2019).

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 present case, although Charging Party contends that the Union breached its duty of fair representation when it would not file a grievance on his behalf over the revenue sharing dispute, the record establishes that, on October 4, 2019, the Union filed a class-action or group grievance with the Employer's Labor Relations Manager requesting that each Transportation Equipment Operator who qualified for the Fare Box Revenue Sharing Incentive receive the maximum bonus of $750, despite the fact that revenues for that fiscal year fell short of the target (Union Exhibit 6). That grievance, one that covered Charging Party as well as other bargaining unit members, remained pending as of the date of the hearing in this matter.

In addition, despite the filing of the class-action grievance, Union President Tolbert also drafted an individual grievance on Charging Party's behalf pertaining to the revenue sharing issue. Charging Party admitted in his charge that he received a grievance file number (Charge, p. 2). Although the Union chose not to pursue this grievance further, Tolbert testified that any individual grievance filed on Charging Party's behalf would be considered an invalid duplicate grievance (Tr. 96-97). Tolbert further testified that he did not process the individual grievance because Lacey decided it was unnecessary (Tr. 78, 96), testimony specifically credited by the ALJ. The Union, therefore, as in *City of Detroit (Dept of Transportation)*, supra, had sound reasons for not advancing Charging Party's individual grievance and did not breach its duty of fair representation.

In addition, nothing in the record establishes a breach of the collective bargaining agreement by the Employer. Charging Party, in fact, admitted that nothing in the MOU as it is written requires a $750 incentive payment (Tr. 54).

Under such circumstances, we do not believe the ALJ erred when he concluded that the Union did not act arbitrarily, discriminatorily or in bad faith with respect to its enforcement of the revenue sharing MOU.

With respect to Charging Party's contention that the Union interfered with his efforts to run for office because he previously filed charges with the Commission, we do not find a violation of PERA. In *Amalgamated Transit Union, Local 26*, 30 MPER 22 (2016), the Commission held that a union that resorts to restraint and coercion to restrict the right of an employee to file a charge violates Section 10(2)(a) of PERA:

> Section 16 of PERA grants the Commission the exclusive authority to prevent and remedy unfair labor practices and gives any person covered by the Act the right to file an unfair labor practice charge. The right to file a charge is indispensable to the administration of the Act because the Commission cannot initiate its own processes. As such, an individual' s right under § 9 of PERA to give testimony or institute proceedings has long been recognized. *Lake Erie Transportation Commission*, 17 MPER 50 (2004); *Huron County Road Commission*, 1994 MERC Lab Op 407 (no exceptions); *Antrim/Kalkaska Community Mental Health*, 1995 MERC Lab Op 121 (no exceptions). Consequently, a labor organization that resorts to restraint and coercion to restrict the right of an employee to file a charge, restrains or coerces the employee in the exercise of a § 9 right in violation of § 10(2)(a).

See also *Grand Rapids Employees Independent Union*, 33 MPER 41 (2020).

There is no dispute in this case that Charging Party previously filed two charges with the Commission against the Union. In his exceptions, Charging Party contends that the ALJ erred when he failed to recognize that the Union interfered with his efforts to run for office because he previously filed these charges. According to Charging Party, Union Steward Mike Toler removed and/or defaced his campaign materials. As noted by the ALJ, however, Charging Party failed to offer any admissible evidence establishing that Union Steward Toler or any other Union officer was responsible for the missing campaign materials (Tr. 48). Additionally, Union President Tolbert testified that it was not uncommon for posters to fall off the Union bulletin board (Tr. 74-75).

Although Lacey also asserts that Schetrone Collier, a member of the Union's executive board, started an argument with him while he was campaigning during the second week of May 2019 and stated that Lacey should not be elected because he filed suit against the Union (Tr. 49-50), Charging Party offered no proof that Collier's actions were authorized or sanctioned by the Union (Tr. 51, 75-77). Additionally, Charging Party did not establish what impact the conversation had, if any, on the election.

Finally, although Charging Party testified that, during a meeting to discuss his challenge to the election held in June 2019, Collier stated that one of the reasons he had not voted for Charging Party was because he had cost the Union $10,000, the record establishes that Union President Tolbert then responded by telling Collier to be quiet (Tr. 37). Additionally, as noted by the ALJ, Collier's statement did not impact the disposition of Lacey's challenge to the election because Tolbert testified without contradiction that the executive board decided to refer the matter to the ATU International in order to ensure that the matter underwent an impartial review (Tr. 86-88).

In view of the foregoing, we believe the ALJ properly found that Charging Party failed to prove that the Union retaliated against him for filing prior charges with the Commission by interfering with his campaign for the Vice President's position.

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. Accordingly, we affirm the ALJ's decision that the instant charges should be dismissed in their entirety.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Tinamarie Pappas, Commission Chair

Robert S. LaBrant, Commission Member

William F. Young, Commission Member

Issued: June 8, 2021

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

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION), Respondent-Public Employer,	Case No. 19-K-2181-CE Docket No. 19-022862-MERC
-and-	
AMALGAMATED TRANSIT UNION, LOCAL 26, Respondent-Labor Organization,	Case No. 19-K-2182-CU Docket No. 19-022863-MERC
-and-	
FRANK LACEY, An Individual Charging Party.	

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APPEARANCES:

Jason McFarlane, for the Public Employer

Mark H. Cousens, for the Labor Organization

Frank Lacey, appearing on his own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

This case arises from unfair labor practice charges filed by Frank Lacey against his Employer, the City of Detroit (Department of Transportation), and his Union, Amalgamated Transit Union (ATU), Local 26. 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). Based upon the entire record, including the transcript of the hearing, exhibits and post-hearing briefs filed on or before May 11, 2020, I make the following findings of fact, conclusions of law and recommended order.

Background:

Charging Party is employed by the City of Detroit (Department of Transportation) as a bus driver and is a member of a bargaining unit represented by ATU, Local 26. He is assigned to the Gilbert Bus Terminal. In 2014, Lacey filed an unfair labor practice charge against Local 26 alleging a breach of the duty of fair representation. That charge was dismissed in a Decision and Order issued by the Commission on April 27, 2015. *Amalgamated Transit Union, Local 26*, 28 MPER 81 (2015). The following year, Lacey filed another charge raising various allegations against Local 26, including a claim that he was prevented from running for Union office because he had filed the prior charge. That case was dismissed by the Commission in an order issued on September 19, 2016. *Amalgamated Transit Union, Local 26*, 31 MPER 58 (2018).

Lacey filed the instant unfair labor practice charges on November 21, 2019. In Case No. 19-K-2181-CE; Docket No. 19-022862-MERC, Lacey asserts that the City of Detroit (Department of Transportation) violated the terms of an agreement with the Union concerning revenue sharing. The charge in Case No. 19-K-2182-CU; Docket No. 19-022863-MERC alleges that ATU, Local 26 breached its duty of fair representation by failing or refusing to file a grievance over the revenue sharing issue. In addition, Charging Party contends that Local 26 retaliated against him for filing a prior charge with the Commission by interfering with his campaign for a position on the Union's executive board. Specifically, Lacey asserts that Union officers defaced and/or destroyed his election paraphernalia and prevented him from expressing his views to other bargaining unit members.[1] The charges were consolidated and heard in Detroit, Michigan on February 25, 2020.

Findings of Fact:

I. Union Election

In 2019, Charging Party sought to run for a position on the ATU Local 26 executive board. The Union approved the list of candidates, which included Lacey, on or about April 18, 2019. Thereafter, Charging Party placed posters, flyers and other campaign paraphernalia on a Union bulletin board and in various locations throughout the Gilbert Terminal. Lacey later discovered that some of the materials he had posted were missing. Glenn Tolbert, who was vice president of Local 26 at the time, testified that it was not uncommon for campaign posters to fall down and that when he came across any materials lying on the ground, he would re-post them.

During the second week of May 2019, Charging Party was campaigning at the bus terminal when he was approached by Schetrone Collier, a member of the Union's executive board. Collier started an argument with Lacey for no reason.

The election was held on May 24, 2019. Charging Party did not win a position on the Union's executive board. Thereafter, Lacey filed a challenge to the conduct of the election in which he asserted the following allegations: (1) executive board members were paid by either the ATU or the City of Detroit while voting was ongoing; (2) Collier and Tolbert told members of the

[1] Lacey raised several other allegations in his charges, including assertions regarding the conduct of a safety committee meeting. No evidence was presented pertaining to these claims at the hearing in this matter. Accordingly, I consider these issues to have been abandoned.

bargaining unit that they should not vote for Lacey because he had "sued" the Union; (3) Collier and Tolbert defaced or removed Lacey's campaign posters; (4) Collier started an argument with Lacey while he was campaigning; and (5) at least one member of the bargaining unit voted twice.

Charging Party's challenge to the conduct of the campaign was discussed at a meeting of the Union executive board in June of 2019. During the meeting, Collier stated that one of the reasons he had not voted for Charging Party was because Lacey had cost the Union $10,000, presumably referring to one or both of the prior unfair labor practice charges Lacey had brought against ATU Local 26. Tolbert told Collier be quiet and let the process play out. At Tolbert's recommendation, the executive board did not make any decision regarding Lacey's challenge. Rather, in order to ensure that an impartial decision was rendered, the board decided to place the matter before the ATU International for review. There is no evidence in the record regarding the ultimate outcome of Lacey's challenge to the election.

II. Revenue Sharing

At the time of the events giving rise to this dispute, the City of Detroit and ATU Local 26 were parties to a collective bargaining agreement covering the period 2014-2018. That contract included a Memorandum of Understanding (MOU) which provided for an annual bonus to members of the ATU bargaining unit based on total fare box revenues. The amount of money shared with employees each year was to be dependent on the total increase in total ridership revenues over the 2014-2015 base year, up to a specified amount each year. For the 2018-2019 fiscal year, the bonus was capped at $750 per unit member. In order for members of Local 26 to be eligible for that amount, fare box revenues would have had to have increased by six percent over the base year. Pursuant to the MOU, the revenue sharing bonus was payable by September 1st and was to be equal for all members of the bargaining unit.

For the 2018-2019 calendar year, the City calculated the revenue sharing bonus at $698. On October 4, 2019, the Union filed a class-action grievance asserting that its members were entitled to receive the maximum bonus of $750, despite the fact that revenues for that fiscal year had fallen short of the target by seven percent. As of the date of the hearing in this matter, the class-action grievance was still pending.

On or around October 10, 2019, Charging Party approached Tolbert, who had recently been elected president of Local 26. Believing that he was entitled to the full $750 bonus, Lacey requested that the Union file a grievance with the City. Tolbert explained to Lacey that Local 26 had already filed a class-action grievance regarding the revenue sharing issue. Nevertheless, Tolbert drafted an individual grievance on Charging Party's behalf and provided Lacey with the grievance number. Thereafter, Lacey contacted Tolbert and indicated that it was not necessary for the Union to pursue the individual grievance.

Discussion and Conclusions of Law:

In Case No. 19-K-2181-CE; Docket No. 19-022862-MERC, Charging Party contends that the City of Detroit violated the terms of the revenue sharing agreement by failing or refusing to pay him a $750 bonus for the 2018-2019 fiscal year and by paying other employees more than

the $698 that he received. It is well established that the duty to bargain is between the public employer and the labor organization acting in its capacity as the employees' exclusive bargaining representative. For that reason, the Commission has consistently and repeatedly held that an individual bargaining unit member has no standing to assert that a public employer breached the duty to collectively bargain in good faith, as such a claim can only be brought by the designated bargaining representative. See e.g. *City of Detroit (Bld. & Safety Engineering)*, 1998 MERC Lab Op 359, 366; *Oakland University*, 1996 MERC Lap Op 338, 342-343; *Detroit Fire Dep't*, 1995 MERC Lab Op 604, 613-615; *AFSCME Council 25*, 1994 MERC Lab Op 195; *Detroit Pub. Sch.*, 1985 MERC Lab Op 789, 791-793; *Oakland County (Sheriff's Dep't)*, 1983 MERC Lab Op 538 542, enf'd, Mich. App. Docket No. 72277 (12-6-84). This includes an allegation that an employer has repudiated its contractual obligations, as such a claim is premised upon an employer's duty to bargain in good faith under Section 15 of the Act. See e.g. *Shelby Twp*, 28 MPER 77 (2015) (no exceptions); *Wayne State Univ*, 28 MPER 17 (2014); *Kent County*, 25 MPER 29 (2011) (no exceptions); *Coldwater Cmty Schs*, 1993 MERC Lab Op 94. Accordingly, Charging Party has no standing to bring a breach of contract claim against the City.

With respect to the latter allegation, there is simply no evidence in the record to suggest that Lacey was paid less than any of his fellow bargaining unit members or that employees were paid different amounts for reasons which would constitute a violation of PERA. For these reasons, I find that Charging Party has failed to establish that the City violated the Act with respect to the revenue sharing payments.

Similarly, the record does not support a finding that ATU, Local 26 violated its duty of fair representation with respect to enforcing the revenue sharing agreement. 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 what will serve 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. 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).

The charge in Case No. 19-K-2182-CU; Docket No. 19-022863-MERC asserts that Tolbert, the president of ATU Local 26, refused Lacey's request that the Union file a grievance regarding the revenue sharing payments for 2018-2019. It is undisputed, however, that at the time Lacey made his request, the Union had already taken action to challenge the amount of the

bonus paid to the members of its unit. On October 4, 2019, the Union filed a class-action grievance asserting that its members were entitled to receive the maximum bonus of $750, despite the fact that revenues for that fiscal year fell short of the target by seven percent. That grievance remained pending as of the date of the hearing in this matter. Despite the filing of the class-action grievance, Tolbert also drafted an individual grievance on Charging Party's behalf pertaining to the revenue sharing issue. In fact, Lacey conceded in his charge that he received a grievance file number. Tolbert testified credibly that he did not process the individual grievance because Lacey decided it was unnecessary. Under such circumstances, there can be no finding that the Union acted arbitrarily, discriminatorily or in bad faith with respect to its enforcement of the revenue sharing MOU.

Likewise, Charging Party failed to prove that the Union breached its duty of fair representation in connection with the 2019 internal union election. It is well established that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations which do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004); *SEIU, Local 586*, 1986 MERC Lab Op 149. Internal union matters are outside the scope of PERA, but instead are left to the members themselves to regulate. *AFSCME Council 25, Local 191*8, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. This principle is derived from Section 10(2)(a) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. See e.g. *Org of Classified Custodians*, 1993 MERC Lab Op 170; *SEIU, Local 586, supra*. With respect to the conduct of internal union elections, the Commission will exercise jurisdiction only when a charging party can establish that the union's policies and procedures had a direct effect on terms and conditions of employment or that a right protected under Section 9 of PERA has been implicated. See e.g. *Org of Classified Custodians, supra*; *Amalgamated Transit Union, Local 26*, 30 MPER 22 (2016). No such showing has been made in the instant case.

Charging Party contends that members of the ATU Local 26 executive board removed and/or defaced his campaign materials. In support of this contention, Lacey testified that after posting flyers at the Gilbert Terminal, he discovered that some of the materials had disappeared. However, he failed to offer any admissible evidence establishing that Union officers were responsible for the missing paraphernalia. In fact, Tolbert testified that it was not uncommon for posters to fall off the Union bulletin board. Similarly, there is nothing in the record to establish that ATU, Local 26 interfered with Charging Party's efforts to campaign for Union office. Although Lacey asserts that Collier started an argument with him while he was campaigning during the second week of May 2019, that fact, standing alone, would not establish a violation of the duty of fair representation. There is no testimony establishing the nature of the argument or its impact, if any, on other employees, nor is there any proof that Collier's actions were authorized or sanctioned by the Union. Moreover, it appears that the incident occurred more than six months prior to the filing of the charge and, therefore, is untimely under Section 16(a) of the Act.

Finally, Charging Party failed to prove that the Union acted unlawfully with respect to its handling of Lacey's challenge to the conduct of the election. Lacey testified that during a meeting to discuss his challenge to the election, Collier stated that one of the reasons he had not

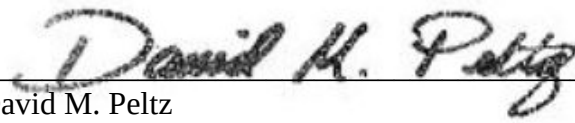
voted for Charging Party was because Lacey had cost the Union $10,000. However, the record establishes that Tolbert, the Union president, responded by telling Collier to be quiet. In any event, there is no possibility that Collier's statement impacted the disposition of Lacey's challenge to the election. Tolbert testified without contradiction that the executive board decided to refer the matter to the ATU International in order to ensure that the matter underwent an impartial review.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported claims which, if true would establish a violation of PERA by either of the Respondents within six months of the filing of the charges. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Frank Lacey against the City of Detroit (Department of Transportation) in Case No. 19-K-2181-CE; Docket No. 19-022862-MERC, and his charge against the Amalgamated Transit Union in Case No. 19-K-2182-CU; Docket No. 19-022863-MERC, are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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

Dated: March 2, 2021