

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

In the Matter of:

WAYNE COUNTY TREASURER,
Public Employer-Respondent in MERC Case No. C17 K-092,

-and-

AFSCME COUNCIL 25, LOCAL 1659,
Labor Organization-Respondent in MERC Case No. CU17 K-031,

-and-

KHALID RIZVI,
An Individual Charging Party.

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APPEARANCES:

Khalid Rizvi, appearing on his own behalf

DECISION AND ORDER

On December 19, 2017, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order¹ 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: February 20, 2018

¹ MAHS Hearing Docket Nos. 17-025054 and 17-025055

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

WAYNE COUNTY TREASURER,
Respondent-Public Employer in Case No. C17 K-092; Docket No. 17-025054-MERC,

-and-

AFSCME COUNCIL 25, LOCAL 1659,
Respondent-Labor Organization in Case No. CU17 K-031; Docket No. 17-025055-MERC,

-and-

KHALID RIZVI,
An Individual Charging Party.

APPEARANCES:

Khalid Rizvi, 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 November 9, 2017, by Khalid Rizvi against his Employer, Wayne County Treasurer, and his Union, American Federation of State, County & Municipal Employees (AFSCME) Council 25, Local 1659. 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 Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The identically worded charges allege that Rizvi was unlawfully terminated from his employment with the Wayne County Treasurer's Office. In a pretrial order issued on November 22, 2017, I directed Charging Party to show cause why the charges should not be dismissed for failure to state claims upon which relief could be granted under PERA. The order specified that to avoid dismissal of the charges, Rizvi's written response must assert facts that establish a violation of the Act. Charging Party was directed to "clearly 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.

Charging Party filed his response to the order to show cause by email on December 12, 2017.² In his response, Rizvi asserts that his termination was “unjustified and [constituted a] violation of labor law” because he was wrongly classified as a probationary employee at the time of his discharge. Attached to the response were copies of a pay stub, a direct deposit notification and the separation report dated October 31, 2017.

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 MAHS, the ALJ may “on [his or her] own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party.” See Rule 1501, R 792.11501, of the MAHS Administrative Hearing Rules. In the instant case, accepting all of the allegations in the charges as true, dismissal of these consolidated cases on summary disposition is warranted.

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, neither the charges nor the response to the order to show cause provide a factual basis which would support a finding that Rizvi 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 against the Wayne County Treasurer in Case No. C17 K-092; Docket No. 17-025054-MERC is warranted.

Similarly, there are no factually supported allegations in the charge filed in Case No. CU17 K-031; Docket No. 17-025055-MERC which, if proven, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Rizvi. 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

² Charging Party filed an original copy of his response with MAHS on December 15, 2017.

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.

In the instant case, the charges make no reference to any act or omission on the part of AFSCME Council 25, Local 1659, nor does Rizvi set forth any factual allegations against the Union in his response to the order to show cause. Given that there are no allegations which, if true, would prove that the Union acted arbitrarily, discriminatorily or in bad faith in connection with this matter, I conclude that the charge in Case No. CU17 K-031; Docket No. 17-025055-MERC must also be dismissed without a hearing.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegations which could establish that either the Wayne County Treasurer or AFSCME Council 25, Local 1659 engaged in conduct violative of PERA. For this reason, I conclude that the charges must be dismissed for failure to state a claim upon which relief can be granted under the Act and recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Khalid Rizvi against the Wayne County Treasurer in Case No. C17 K-092; Docket No. 17-025054-MERC, and Rizvi's charge against AFSCME Council 25, Local 1659 in Case No. CU17 K-031; Docket No. 17-025055-MERC are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: December 19, 2017