STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GREAT LAKES WATER AUTHORITY,
Public Employer-Respondent in MERC Case No. C18 E-040,

-and-

AMERICAN FEDERATION OF STATE, COUNTY &
MUNICIPAL EMPLOYEES LOCAL 2920,
Labor Organization-Respondent in MERC Case No. CU18 E-013,

-and-

MAURIA DAVIS,
An Individual Charging Party.
_____/

APPEARANCES:

Katherine L. DeLong, Staff Attorney, for the Labor Organization

Mauria Davis, appearing on his own behalf

DECISION AND ORDER

On August 10, 2018, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order[1] 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: November 1, 2018

[1] MAHS Hearing Docket Nos. 18-010910 & 18-010909

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

GREAT LAKES WATER AUTHORITY,
Respondent-Public Employer in Case No. C18 E-040; Docket No. 18-010910-MERC,

-and-

AMERICAN FEDERATION OF STATE, COUNTY &
MUNICIPAL EMPLOYEES LOCAL 2920,
Respondent-Labor Organization in Case No. CU18 E-013; Docket No. 18-010909-MERC,

-and-

MAURIA DAVIS,
An Individual Charging Party.
_____/

APPEARANCES:

Katherine L. DeLong, Staff Attorney, for the Labor Organization

Mauria Davis, 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 May 21, 2018, by Mauria Davis against his Employer, Great Lakes Water Authority (GLWA), and his Union, American Federation of State, County & Municipal Employees (AFSCME) Local 2920. 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).

In Case No. C18 E-040; Docket No. 18-010910-MERC, Davis alleges that GLWA violated the Americans With Disabilities Act (ADA) by failing to grant him a reasonable accommodation and by terminating his employment. The charge in Case No. CU18 E-013; Docket No. 18-010909-MERC asserts that AFSCME Local 2920 acted unlawfully by failing or refusing to file and process a grievance on Davis' behalf.

In a pretrial order issued on May 29, 2018, I directed Charging Party to show cause why his charge against the GLWA in Case No. C18 E-040; Docket No. 18-010910-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, Davis' 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 AFSCME Local 2920 to file an answer or position statement addressing the allegations set forth by Charging Party in Case No. CU18 E-013; Docket No. 18-010909-MERC.

On June 18, 2018, I granted both Charging Party and AFSCME Local 2920 a 21-day extension of time in which to file their responses to the pretrial order. Pursuant to that extension, responses were due in a Commission office by the close of business on July 10, 2018. The Union filed its position statement on July 6, 2018. In its position statement, AFSCME Local 2920 asserted that it filed a grievance on Charging Party's behalf and processed that grievance through the contractual grievance procedure. 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 an order issued on July 13, 2018, I indicated that I would be recommending dismissal of the charge against the GLWA in Case No. C18 E-040; Docket No. 18-010910-MERC on the ground that Davis had alleged no facts from which it could be concluded that the Employer violated PERA. With respect to the charge in CU18 E-013; Docket No. 18-010909-MERC, I indicated that the facts asserted by AFSCME, Local 2920 in its position statement, if true, would appear to warrant dismissal of the charge against the Union. For that reason, I directed Davis to file a response to 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. CU18 E-013; Docket No. 18-010909-MERC would be issued without a hearing.

Charging Party's response was due by the close of business on August 3, 2018. To date, Charging Party 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 MAHS, 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 Davis as true, dismissal of the charge against the GLWA in Case No. C18 E-040; Docket No. 18-010910-MERC is warranted.

In the charge, Davis asserts that he was placed on a leave of absence by the GLWA for medical reasons on January 13, 2018, and that his request for a reasonable accommodation was denied by management. Davis contends that he filed a discrimination charge with the EEOC against the GLWA and was subsequently terminated on or about April 7, 2018, for lack of a drivers' license.

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 GLWA fails to provide any factual basis which would support a finding that Davis 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. C18 E-040; Docket No. 18-010910-MERC is warranted.

The charge in Case No. CU18 E-013; Docket No. 18-010909-MERC must also be dismissed on summary disposition on the ground that Davis failed to respond to the order to show cause and because the charge does not set forth facts which would establish a violation of PERA by AFSCME Local 2920. 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).

The charge in Case No. CU18 E-013; Docket No. 18-010909-MERC asserts that after his request for a reasonable accommodation was denied by the GLWA, Davis spoke to the vice president of Local 2920 and was told that a grievance had been filed on his behalf. Davis contends that the president of the Local subsequently told him that "they didn't have time to write the grievance in on my case so I call[ed] arbitration and they told me they don't have a grievance in on my case." In its position statement, the Union asserts that it in fact filed a grievance on Charging Party's behalf on June 4, 2018, requesting that Davis be returned to work and made whole. According to AFSCME Local 2920, the grievance has been processed through the contractual grievance procedure and a third step hearing was held. The Union contends that it is currently awaiting the Employer's response to that hearing. A copy of the grievance is attached to the Union's position statement.

The position statement filed by the Union indicates that the contractual grievance process is still ongoing and, therefore, any claim alleging breach of the duty of fair representation is, at best, premature. In the order to show cause, Charging Party was directed to file a response to the Union's position statement specifically addressing AFSCME's assertion that a grievance has been filed on Davis' behalf and processed through the contractual grievance procedure. In addition, Davis was directed to explain with specificity how the Union's conduct in connection with this matter constitutes a breach of the duty of fair representation. Finally,

Charging Party was directed to indicate how his termination violated the terms of the collective bargaining agreement, with citation to the particular section(s) of the contract which was alleged breached by the GLWA. Davis did not file a response to the order to show cause, nor did he request an extension of time in which to do so. As noted, a charge may be dismissed without a hearing where the charging party fails to respond to a dispositive motion or order to show cause. R 423.165(2)(h). 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 AFSCME Local 2920. Accordingly, I conclude that the charge in Case No. CU18 E-013; Docket No. 18-010909-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 Mauria Davis against his Employer, Great Lakes Water Authority, in Case No. C18 E-040; Docket No. 18-010910-MERC, and Davis' charge against AFSCME Local 2920 in Case No. CU18 E-013; Docket No. 18-010909-MERC are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 10, 2018