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

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN (POAM),
Labor Organization-Respondent,

MERC Case No. CU18 F-019

-and-

DETROIT TRANSIT POLICE OFFICERS ASSOCIATION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

DuJuan Brown, President, Detroit Transit Police Officers Association, for Charging Party

## DECISION AND ORDER

On September 28, 2018, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order[1] in the above matter finding that Respondent 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: November 27, 2018

[1] MAHS Hearing Docket No. 18-012973

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

In the Matter of:

POLICE OFFICERS ASSOCIATION OF MICHIGAN (POAM),
Labor Organization-Respondent,

Case No. CU18 F-019
Docket No. 18-012973-MERC

-and-

DETROIT TRANSIT POLICE OFFICERS ASSOCIATION,
Labor Organization-Charging Party.
_____/

APPEARANCES:

DuJuan Brown, President, Detroit Transit Police Officers Association, for the Charging Party

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

On June 18, 2018, the Detroit Transit Police Officers Association filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the Police Officers Association of Michigan (POAM), pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On June 22, 2018, pursuant to Rule 165(2)(d) and (f) of the Commission's General Rules, 2002 AACS, 2014 AACS, R 423.165(2), I issued an order directing Charging Party to show cause why its charge should not be dismissed because the Commission lacks jurisdiction over the subject matter of the charge and because the charge failed to state a claim upon which relief could be granted under PERA. On August 15, 2018, Charging Party filed its response. The response consisted of a copy of a contract, titled "Service Agreement," signed by representatives of the Charging Party and Respondent and dated April 12, 2018, and a copy of a letter dated May 11, 2018, signed by Ed Jacques, Director of Member Services for the Respondent, acknowledging receipt from Charging Party on May 8, 2018, of a service fee in the amount of $1,750.

The Unfair Labor Practice Charge and Pertinent Facts:

According to the charge, the Detroit Transit Police Officers Association represents a bargaining unit of transit police officers employed by the Detroit Transportation Corporation (the Employer). Charging Party alleges that Respondent POAM violated Section 10(2)(a) of PERA by failing, pursuant to the terms of an agreement between Charging Party and Respondent, to represent several members of Charging Party's bargaining unit after Charging Party filed grievances on their behalf in April, May and June 2018.

The facts as alleged in the charge are as follows. On April 12, 2018, Charging Party President DuJuan Brown and another Charging Party representative signed a written agreement with Respondent in which Respondent, in exchange for a monthly fee, agreed to act as Charging Party's agent in performing certain functions. The functions which Respondent agreed to perform included, but were not limited to, "administering and enforcing the collective bargaining agreement" and "the settling or arbitration of any grievances filed under the collective bargaining agreement." The agreement included this clause:

> The Association agrees, consistent with its independent status, that POAM's service shall only be in the capacity of an agent to the DTPOA, as a labor organization entity, such that the Association shall retain its duties and liability, if any, to its membership in its capacity of exclusive bargaining representative of the unit.

Between April 25, 2018, and June 4, 2018, the Employer terminated five members of members of Charging Party's bargaining unit and suspended another member. Charging Party filed grievances on behalf of these six members and delivered copies of the grievances to Respondent Business Agent Brian Earle. Charging Party asserts that despite repeated inquiries from Brown and the terminated/suspended employees, as of the date of the charge Respondent had done very little to provide counsel to these employees, had stopped taking Brown's calls and had "failed to assist [them] in time-sensitive matters."[2] Charging Party alleges that Respondent's inaction on these grievances constituted a failure to represent and, as noted above, violated Section 10(2)(a) of PERA.

Discussion and Conclusions of Law:

The duty of fair representation is older than PERA. In *Steele v Louisville & National Railroad Co and Brotherhood of Firemen and Engineers,* 323 US 192, 204 (1944), the union representing railroad firemen had negotiated an agreement with the railroads that limited the percentage of African-American fireman in each class of service to 50% and provided that only white men would be hired to fill vacancies until that percentage was reached. The agreement also prohibited the railroads from hiring African-Americans in any district in which they were not then working and diminished the seniority rights of the African-American firemen who were already employed. The US Supreme Court noted that since the union was the exclusive bargaining agent for that craft under the federal Railway Labor Act, 45 USC 151 et seq.,

[2] It is not clear from the charge whether Respondent's inaction caused Charging Party to forfeit its right under the contract to further pursue any or all of these grievances.

minority firemen were deprived by the statute of the right they would otherwise have had to bargain individually or on behalf of themselves over their terms and conditions of employment. It held that since the Railway Labor Act gave the union the power to represent the entire craft in matters of collective bargaining, it also imposed an obligation upon it to represent all members of that class "without hostile discrimination, fairly, impartially, and in good faith." In *Teamsters Local 533 (Miranda Fuel Inc),* 140 NLRB 81 (1962), the National Labor Relations Board (NLRB) held that the National Labor Relations Act (NLRA) 29 USC 151 et seq, which, like the Railway Labor Act, gives unions the right to be designated as exclusive bargaining agents, also incorporates a duty of fair representation. The NLRB noted that the rights guaranteed to employees by Section 7 of the National Labor Relations Act (NLRA) include the right to select "a bargaining agent of their own choosing," and that Section 8(b)(1)(A) of the NLRA prohibits unions from "restraining or coercing" employees in the exercise of their Section 7 rights. It concluded that Section 8(b)(1)(A), therefore, prohibits a union, when "acting in a statutory representative capacity," from taking action against any employee upon considerations which are irrelevant, invidious or unfair.

Sections of PERA were modeled on the NLRA. Like Section 7 of the NLRA, Section 9 of PERA sets out the rights of employees protected by the Act and includes the right to select a bargaining agent of the employees' own choosing. Like Section 8(b)(1)(A) of the NLRA, what is now Section 10(2)(a) of PERA prohibits labor organizations from "restraining and coercing" employees in the exercise of this right. The Commission and Courts have held that the duty of fair representation, as developed under federal and state law, is incorporated into Section 10(2)(a) of PERA. See e.g., *Goolsby v Detroit,* 419 Mich 651 (1984). As the *Goolsby* Court noted, however, at 661, a union's statutory duty of fair representation arises from its statutory power as exclusive bargaining agent to represent all members of a designated unit.

In this case, the facts as alleged by Charging Party indicate that Charging Party, and not Respondent, is the exclusive bargaining agent for the unit of transit police officers employed by the Employer. It is Charging Party, therefore, that owes a statutory duty of fair representation toward its members under PERA. Any obligations Respondent has under its April 2018 service agreement with Charging Party are, I find, contractual obligations rather than obligations arising from PERA. Because the Commission's unfair labor practice jurisdiction is limited to violations of Section 10 of PERA, the Commission lacks jurisdiction to enforce the terms of the service agreement. I conclude that the charge in this case does not state a claim upon which relief can be granted under PERA. I recommend that the Commission dismiss the charge on these grounds and that it issue the following order.

## RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 28, 2018