STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GENESEE INTERMEDIATE SCHOOL DISTRICT,
Public Employer-Respondent in Case No. C15 G-099; Docket No. 15-046378-MERC,

-and-

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU15 H-022; Docket No. 15-049423-MERC,

-and-

CRYSTAL R. CHANNEL,
An Individual Charging Party.
_____/

Crystal R. Channel, appearing on her own behalf

DECISION AND ORDER

On October 20, 2015, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order 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 25, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

GENESEE INTERMEDIATE SCHOOL DISTRICT,
Respondent-Public Employer in Case No. C15 G-099; Docket No. 15-046378-MERC,

-and-

MICHIGAN EDUCATIONAL ASSOCIATION,
Respondent-Labor Organization in Case No. CU15 H-022; Docket No. 15-049423-MERC,

-and-

CRYSTAL R. CHANNEL,
Individual Charging Party.
_____/

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

On July 17, 2015, Crystal R. Channel, filed the above unfair labor practice charges with the Michigan Employment Relations Commission (Commission) against both her employer, the Genesee Intermediate School District (GISD or Employer), and her authorized bargaining representative, the Michigan Educational Association (MEA or Union). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, both charges were assigned to Travis Calderwood, Administrative Law Judge for the Michigan Administrative Hearing System (MAHS). The charges were consolidated.

Unfair Labor Practice Charges and Procedural History:

The charges filed by Channel consist of two separate Commission provided charge forms, one identifying the GISD as the respondent and the other identifying the MEA as the respondent, along with several individual documents, which include emails, official correspondence from the GISD to Channel, Corrective Action Forms, handwritten notes, and several event narratives, among other miscellaneous documents. Only one copy of each charge form was filed. Only one copy of the assortment of documents was filed without reference to which charge they relate to.

Charging Party's allegation against her employer begins with the following handwritten statement:

> I was placed on non-disciplinary leave of absence for leaving work on 11-25-14. I was sick and off work on 11-25-14. I was sick and off of work for over a month. I was taken off of non-disciplinary leave of absence when I received time off of work from my doctor. This is why I believe the corrective action should be removed from my record.

Included with the litany of documents provided by Charging Party with respect to her employer is a "Corrective Action Plan" dated March 16, 2015. That form indicates that Charging Party was issued a "Written Reprimand." That form also lists several examples of "Misconduct", of which the following were marked with an "X":

> Conduct which violates any established rules, regulations, policies or directives of the board and administration.
>
> Conduct which violates any provision of the collective bargaining agreements between the board and the union or association.
>
> Conduct that exposes the district or educational profession to contempt, censure, ridicule or reproach.
>
> Negligence.
>
> Other, please specify[:] failing to report for a scheduled work shift, poor professional judgment[.]

The March 16, 2015, "Corrective Action Form" states in the section entitled "Circumstances, Facts and Supportive Data…" the following:

> On Tuesday March 5, 2015, a pre-corrective action meeting was held with Crystal Channel and her union representative to discuss concerns relating to an incident that took place on November 25, 2014. Specifically, [o]n November 25, 2014, Crystal did not report for her afternoon bus run, nor did she follow district procedures for reporting her absence. When asked about her absence on this day, Crystal stated that she knew and understood the protocol regarding reporting absences, however she did not follow it due to her having an anxiety attack.

Also included with the litany of documents provided by Charging Party with respect to her employer is a "Record of Verbal Counseling/Coaching" dated November 7, 2014. That form shows that both "Unprofessional Behavior" and "Insubordinate" were selected with an "X".

Charging Party's allegations against her Union were (1) that the Union agreed to an extension of time, without her consent, with respect to a grievance it had filed on her behalf challenging the March 16, 2015, corrective action, and (2) that the Union failed to file a grievance challenging the November 7, 2014, verbal coaching.

Following my review of the charges, on August 26, 2015, I issued an order, pursuant to MAHS Rule 1513, 2015 MR 1, R 792.1513, directing Charging Party to show cause in writing why her charges should not be dismissed for failure to allege any specific facts which if proven true could establish a valid claim under PERA. That order directed Channel to respond in writing on or before September 16, 2015. Charging Party did not respond to the order nor did she contact MAHS to request an extension of time in which to file a response. Based upon the facts as alleged by Charging Party in her charges, I make the following conclusions of law and recommend that the Commission issue the following order.

Discussion and Conclusions of Law:

Foremost, Charging Party's failure to respond to my order dated August 26, 2015, by itself is cause for dismissal of the charges. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

The Commission does not investigate charges filed with it. Charges filed with the Commission must comply with the Commission's General Rules.[1] More specifically, Rule 151(1) of the Commission's General Rules, 2002 AACS; 2014 MR 24, R 423.151(1), states:

> A charge that a person has engaged in or is engaging in an unfair labor practice in violation of LMA or PERA, may be filed with the commission. The charge shall, except for good cause shown, be prepared on a form furnished by the commission. An original and 4 copies of the charge shall be filed with the commission.

Rule 151(2)(c) of the Commission's rules, R 423.151(2)(c), requires that an unfair labor practice charge filed with the Commission include:

> A clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged in the violation or violations, and the sections of LMA or PERA alleged to have been violated.

MAHS Rule 1505(1), 2015 MR 1, R 792.11505(1), provides:

> After a charge is filed, the administrative law judge may serve upon each named respondent a complaint, a copy of the charge upon which the complaint is based, and a notice of hearing, or, at the discretion of the commission or administrative law judge, a complaint, a copy of the charge upon which the complaint is based, and a notice of prehearing conference, or other order.

MAHS Rule 1513, 2015 MR 1, R 792.1513, provides that an administrative law judge may, on his own motion or on a motion by any party, order dismissal of a charge without a hearing on the grounds set out in that rule, including that the Commission lacks jurisdiction over

[1] MAHS Rule 1504, 2015 MR 1, R 792.11504, requires that the "filing, service, processing, and withdrawal of an unfair labor practice charge prior to referral to an administrative law judge is governed by [Commission] R 423.151, R 423.154, R 423.181, and R 423.182.

the subject matter of the charge, or that the charge does not state a claim upon which relief can be granted under PERA. See *Oakland County and Sheriff*, 20 MPER 63 (2007); aff'd 282 Mich App 266 (2009); aff'd 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986), lv den 428 Mich 856 (1987).

The Commission administers and enforces PERA. Section 9 of PERA 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. "Lawful concerted activities for mutual aid and protection" includes complaining with other employees about working conditions and taking other kinds of actions with other employees to protest or change working conditions.

With respect to public employers, Section 10(1)(a) of PERA prohibits public employers from engaging in "unfair" actions that seek to interfere with an employee's free exercise of the specific rights contained in Section 9 of the Act. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). PERA does not prohibit all types of discrimination or unfair treatment. *Detroit Pub Sch*, 22 MPER 16 (2009). Absent a valid claim under PERA, the Commission lacks jurisdiction to address the fairness of an employer's actions. *Id.* Charging Party has failed to offer any factual allegation that, if proven true, could establish that she had engaged in any protected activity for which she was subjected to unlawful discrimination or retaliation.

In addressing charges levied against a union, it is well established law that a union's obligation to its members is comprised of three responsibilities: (1) to serve the interest 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 City of Detroit*, 419 Michigan 651 (1984). Furthermore, a union's actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991). A union's duty of fair representation extends to union conduct in representing employees in their relationship with their employer, but does not embrace matters involving the internal structure and affairs of labor organizations that do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Education Ass' n*, 17 MPER 25 (2004); *SEIU, Local 586*, 1986 MERC Lab Op 149. As such, the Commission has consistently held that internal union matters fall outside the scope of PERA and instead are properly left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11*; MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. MERC derives that principle from Section 10(2)(a) of PERA, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership.

Charging Party's displeasure alone with the Union regarding its decision to grant an extension of time in processing the grievance or its decision not file a grievance challenging the November 25, 2014, verbal coaching, is not enough to establish a violation of the Union's duty of fair representation. Charging Party has failed to assert any factual allegation that, if proven true, could establish a breach of the Union's obligations to her, or could establish any other valid claim under PERA.

Simply put, despite being directed to do so, Charging Party has failed to state a valid claim under PERA against either her Employer or her Union for which relief could be available. Accordingly, for the reasons set forth herein, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charges in Case No. C15 G-099; Docket No. 15-046378-MERC, and Case No. CU15 H-022; Docket No. 15-049423-MERC, be dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: October 20, 2015