STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY CLERK,
Public Employer-Respondent in Case No. C14 L-149; Docket No. 14-038291-MERC,

-and-

AFSCME COUNCIL 25, LOCAL 1659,
Labor Organization-Respondent in Case No. CU14 L-053; Docket No. 14-038070-MERC,

-and-

KIMYETTE LOYD,
An Individual Charging Party.
_____/

APPEARANCES:

Shawntane Williams, Staff Attorney, appearing on behalf of the Labor Organization

Kimyette Loyd, appearing on her own behalf

DECISION AND ORDER

On October 27, 2015, Administrative Law Judge David M. Peltz 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: December 30, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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An Individual Charging Party.
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APPEARANCES:

Shawntane Williams, Staff Attorney, appearing on behalf of the Labor Organization

Kimyette Loyd, appearing on her own behalf

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

These cases arise from unfair labor practice charges filed on December 17, 2014, by Kimyette Loyd against her employer, the Wayne County Clerk, and her labor organization, 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) of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The charge in Case No. C14 L-149; Docket No. 14-038291-MERC alleges that the Wayne County Clerk created a "hostile work environment" by suspending Loyd for five days without pay following several alleged confrontations with co-workers. In Case No. CU14 L-053; Docket No. 14-038070-MERC, Charging Party asserts that AFSCME Council 25, Local 1659 colluded with the Employer to bring about Loyd's suspension and that the Union failed to properly represent Loyd in challenging the discipline.

In an order issued on January 9, 2015, I directed Loyd to show cause why the charges should not be dismissed without a hearing for failure to state a claim under PERA. Charging Party filed her

response to that order on February 17, 2015. Having reviewed the response, I determined that summary dismissal of the charge against the Employer was warranted. In a supplemental order issued on February 26, 2015, I directed AFSCME Council 25, Local 1659, to file a position statement addressing the allegations set forth by Loyd. The Union filed its position statement on March 31, 2015. On April 29, 2015, I issued an order requiring Charging Party and the Union to appear for oral argument on the allegations in Case No. CU14 L-053; Docket No. 14-038070-MERC.

Finding of Facts:

The following facts are derived from the unfair labor practice charges and Loyd's response to the order to show cause, as well as the assertions set forth by Charging Party at oral argument, with all factual allegations set forth by Loyd and accepted as true for purposes of determining whether summary disposition is appropriate.

Kimyette Loyd works as a clerical employee in the office of the Wayne County Clerk. Sometime in the fall of 2014, Loyd was accused of getting into an altercation with a co-worker, Susan Dixon. As a result of that incident, Loyd stopped talking to Dixon. On November 7, 2014, Loyd was called into a meeting with her supervisor, Candace Jenkins. The purpose of the meeting was to resolve the issues between Charging Party and Dixon. Also in attendance at the meeting were Dixon and Joyce Ivory, the President of AFSCME Local 1659.

Ivory began the meeting by telling Charging Party, "I can't believe I'm over here for this." Loyd then presented Ivory with a written document setting forth her account of what had transpired between herself and Dixon. Dixon was also given the opportunity to present her side of the story. Thereafter, Ivory thanked Dixon and accused Charging Party of being "messy and petty." She also described Loyd as "a pest." At that point, some type of physical altercation occurred between Loyd and Ivory. Charging Party was accused of putting her hands in Ivory's face. Loyd denies touching Ivory in the face but admits that she made contact with Ivory's shoulder. Loyd then accused Ivory of failing to properly represent her. As the meeting adjourned, Ivory recommended that Jenkins refer the matter to "the big bosses" downtown and encouraged Jenkins to suspend Loyd.

No discipline initially resulted from the November meeting. Several weeks after the meeting, Ursula Bennett, a friend of Dixon's who works in the probation department, began "nitpicking" at Loyd. On December 2, 2014, Loyd and Bennett exchanged words. After the incident, Loyd contacted Jenkins, who told her to write out a statement of what had transpired. The Employer also obtained written statements from other employees who witnessed the incident.

On December 15, 2014, Charging Party was called into a meeting with Jenkins, Ivory and Joyce Wright, a Union committee person, and informed that she was being suspended for five days. Loyd asked the Union officials to file a grievance on her behalf.

The Union's representatives indicated that a grievance would be filed on January 1, 2015, after the holiday break. Loyd was then escorted off the premises. Two days later, Loyd filed the instant charges against the Wayne County Clerk and AFSCME Council 25, Local 1659.

Charging Party served the five-day suspension. However, she continued to be paid for the time off work, apparently due to an Employer error. To correct the mistake, the Employer began deducting money from Loyd's paycheck beginning on January 1, 2015. Around that same time, Charging Party discovered that the collective bargaining agreement gave employees the right to seek permission from the Employer to forfeit annual leave in lieu of an unpaid suspension. Loyd contacted the Union about this option, but was told that such a request would not be timely because it was not made within five days of the date of the suspension, as required under the contract. Nevertheless, the Union did discuss the matter with the Wayne County Clerk and the Employer agreed to hold off making additional payroll deductions once a grievance was filed on Loyd's behalf. However, that agreement was never implemented because all of the money owed by Loyd had already been recouped as of the date the grievance was filed.

The Union filed the grievance challenging Charging Party's suspension on January 26, 2015. A grievance hearing was held on March 19, 2015. Charging Party and Ivory both attended the hearing. The Employer's representative, Terry Dennings, questioned Loyd about the Dixon and Bennett incidents and allowed Loyd to present her account of what had transpired. Dennings also interrogated Jenkins and Ivory and asked them why Loyd was the only employee suspended. At some point, Charging Party was asked to briefly step out of the room. When she returned, she learned that a settlement had been proposed which would reduce the discipline to a three-day suspension. Charging Party expressed her opinion that the terms of the settlement were unfair. Thereafter, the Union representatives asked to speak privately with Loyd in the hallway. Once out of the room, Ivory recommended to Loyd that she accept the settlement. Charging Party raised the possibility of taking the grievance to arbitration, but Ivory indicated that it was unlikely she would prevail in that forum. Loyd then asked for some time to seek the advice of a private attorney.

When the parties reconvened in the hearing room, the Union asked the Employer to give Loyd some additional time to consider the settlement offer. The Employer refused and indicated that if Loyd did not immediately accept the settlement, the five-day suspension would stand. At that point, Charging Party agreed to the Employer's settlement proposal and the meeting concluded. As a result of the settlement agreement, Loyd's suspension was reduced by two days.

Discussion and Conclusions of Law:

Rule 1513, R 792.11513, of the MAHS Administrative Hearing Rules allows for a pre-hearing dismissal of a charge, or for a ruling in favor of the charging party. In the instant case, it appears that dismissal of the charges without a hearing is warranted on the ground that Charging Party has failed to state a claim upon which relief can be granted as to either Respondent. In Case No. C14 L-149; Docket No. 14-038291-MERC, Loyd asserts that her employer, Wayne County Clerk, created a "hostile work environment" by suspending her for five days without pay.

With respect to public employers, the Act does not prohibit all types of discrimination or unfair treatment, nor does the Act provide a remedy for an employer's breach of a collective bargaining agreement. 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 refrain from engaging in, union or other concerted activities protected by PERA. In the instant case, neither

the charges nor Loyd's response to the order to show cause provide a factual basis which would support a finding that Charging Party was subjected to discrimination or retaliation for engaging in, or attempting to refrain from, union activities in violation of the Act. Accordingly, Loyd's charge against the Wayne County Clerk in Case No. C14 L-149; Docket No. 14-038291-MERC must be dismissed.

Similarly, there is no factually supported allegation against the AFSCME Council 25, Local 1659 in Case No. CU14 L-053; Docket No. 14-038070-MERC, which, if proven, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Loyd. 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 or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. To this end, the union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. Poor judgment, or ordinary negligence, on the union's part, is not sufficient to support a claim of unfair representation. *Goolsby* at 672; *Whitten v Anchor Motor Freight, Inc*, 521 F 2nd 1335 (CA 6 1975). See also *Detroit Fed of Teachers*, 21 MPER 5 (2008) (no exceptions); *Wayne Co Cmty College*, 19 MPER 25 (2006) (no exceptions); *Wayne Co Sheriff Dept* 1998 MERC Lab Op 101 (no exceptions).

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. The union's decision on how to proceed is not unlawful as 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. The mere fact that a member is dissatisfied with their union's efforts or ultimate decision, is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 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).

In the instant case, Charging Party has failed to adequately explain how the actions of AFSCME Council 25, Local 1659 constitute a violation of PERA. There is no factually supported allegation which would establish that the Employer breached the collective bargaining agreement or that the Union acted arbitrarily, discriminatorily or in bad faith toward Charging Party. Although the Union may not have acted to challenge the five-day suspension as quickly as Loyd would have liked, it did file a grievance on Charging Party's behalf and there is nothing in the record to suggest that the Employer ever refused to consider the grievance on timeliness grounds. In fact, a grievance hearing

was held on March 19, 2015, during which a settlement was proposed which would reduce Loyd's suspension by two days. The Union advised Loyd to accept the settlement because it believed it was unlikely that she would prevail if the matter were advanced to arbitration. When Loyd indicated that she wasn't sure whether to accept the agreement, the Union attempted to convince management to give her more time to consider her options. Ultimately, the Employer refused to delay the matter further and Loyd reluctantly agreed to the deal which had been arranged.

Although Charging Party now takes exception to the representation she received from the Union, there is no factually supported allegation which, if true, could establish that AFSCME Council 25, Local 1659 was hostile to Loyd, that it treated her differently than other, similarly situated bargaining unit members or that it in any manner acted arbitrarily, discriminatorily or in bad faith in connection with this matter. As noted above, a union 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. To this end, the Michigan Supreme Court has held, "When the general good conflicts with the needs or desires of an individual member, the discretion of the union to choose the former is paramount." *Lowe*, at 146 (1973).1

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation or articulate any legal theory which would establish that either Respondent violated PERA. Accordingly, I conclude that the charges must be dismissed on summary disposition and recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charges filed by Kimyette Loyd against the Wayne County Clerk and AFSCME Council 25, Local 1659 in Case Nos. C14 L-149 & CU14 L-053; Docket Nos. 14-038291-MERC & 14-038070-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: October 27, 2015

1 It is unclear whether Loyd is alleging that the Union acted unlawfully by failing to notify her of her right to use vacation and/or sick time to cover the period during which she was suspended. Although Loyd referenced the issue in her response to the order to show cause, such an allegation was not included in the charge against the Union and Loyd never sought to amend the charge. To the extent that such a claim is being asserted, however, no PERA violation has been established. Even assuming, for argument's sake, that the Union had an affirmative duty to notify Loyd of her rights under the contract, the failure to do so would, at best, constitute ordinary negligence. As discussed above, poor judgment, or ordinary negligence, on the union's part, is not sufficient to support a claim of unfair representation.