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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UAW Local 1796,
Labor Organization-Respondent,

MERC Case No. 19-G-1467-CU

-and-

SALATHIEL THOMAS,
An Individual Charging Party.

_____/

APPEARANCES:

Salathiel Thomas, appearing on her own behalf

DECISION AND ORDER

On September 30, 2019, Administrative Law Judge Travis Calderwood issued his 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

Edward D. Callaghan, Commission Chair

Robert S. LaBrant, Commission Member

Natalie P. Yaw, Commission Member

Issued: NOV 27 2019

[1] MOAHR Hearing Docket No. 19-015905

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

ORIGINAL

In the Matter of:

UAW Local 1796,
Labor Organization-Respondent,

-and-

Case No. 19-G-1467-CU
Docket Number. 19-015905-MERC

SALATHIEL THOMAS,
An Individual Charging Party.

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APPEARANCES:

Charging Party appearing on her own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE

On July 30, 2019, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, Salathiel Thomas filed the above captioned unfair labor practice charge against her bargaining representative, UAW Local 1796 (Union) with the Michigan Employment Relations Commission (Commission).[1] On August 7, 2019, the charge was assigned to Administrative Law Judge Travis Calderwood, of the Michigan Office of Administrative Hearings and Rules, and acting on behalf of the Commission.

Unfair Labor Practice Charge and Procedural History:

As stated in Fn. 1, Charging Party, in addition to filing the above captioned charge against the Union also filed a charge against her Employer, Wayne County Community College. In the charge against the College, Charging Party who self-identifies as a "person with a disability" under the Americans with Disabilities Act (ADA), claims that on May 14, 2019, she received a letter transferring her to the "Western Campus." That charge went on to claim that Charging Party had previously been receiving "reasonable accommodations" that allowed her to "perform my job duties as a records/registration technician." On May 17, 2019, according to the charge, a "request

[1] Charging Party also filed a charge against her employer, Wayne County Community College District (Employer), Case No. 19-G-1513-CE; Docket No. 19-015833-MERC. However, as discussed herein, Charging Party later withdrew that charge.

for reasonable accommodations were [sic] sent again by my medical provider." The charge concluded by stating that on June 5, 2019, Charging Party received a letter from Human Resources Associate Clara Thurman which denied her accommodations request. The charge's allegations did not reveal what reasonable accommodation Charging Party had sought.

In her charge against the Union, Charging Party begins by claiming that a time sheet she submitted on January 4, 2017, had been modified such that she lost pay. Charging Party goes on to claim that she asked the Union President, Alan Fortune, to file a grievance over the change but no grievance was filed. According to the charge, it appears Charging Party then reached out to the UAW International Union and that an "Appeals Committee Hearing" was held on May 2, 2019; no details regarding the outcome of that hearing were provided in the charge. The remaining allegations against the Union involves the transfer and reasonable accommodation request discussed above. According to Charging Party, she informed Fortune of her issues regarding the accommodation request on May 16, 2019.

On August 23, 2019, I issued an order to show cause directing Charging Party to state, in writing, why both her charges should not be dismissed without hearing for failing to state a claim under PERA and/or because her claims were untimely. On September 23, 2019, Charging Party filed both a request to withdraw her charge against the Employer as well as a response regarding the charge against the Union.

Factual Background:

The following factual background is derived from Charging Party's pleadings filed to date; all well pled allegations are assumed true for purposes of this decision.

Charging Party has worked as a Records/Registration Technician with the Wayne County Community College District for 34 years, maintaining membership in good standing with UAW Local 1796 for 32 years. Charging Party self-identifies as a person with a disability under the American with Disabilities Act (ADA).

In early January of 2017, Charging Party learned that a timesheet she had submitted to her Employer had been altered such that she lost pay. At that time, she asked Union President Alan Fortune to file a grievance over the issue; apparently no grievance was ever filed. At some point between then and mid-2019, Charging Party filed a complaint over the lack of a grievance with the UAW International Union.

On April 5, 2019, Charging Party was notified by Sarah Laws, the administrative assistant to the UAW International President Gary R. Jones, that an Appeals Committee Hearing regarding Charging Party's complaint against Fortune would be held on May 2, 2019. Charging Party attended that hearing and presented allegations that the Union had "failed to investigate, file, or support the grievance process." According to Charging Party, Laws, who had conducted the hearing, indicated that a decision on the complaint "might take up to four months."

On May 15, 2019, Charging Party received a letter notifying her that she was being transferred from the Employer's Eastern Campus, located in Detroit, to its Western Campus, located in Belleville.

On May 16, 2019, Charging Party received a telephone call from Fortune. The pleadings do not provide any details as to what prompted the phone call. During this call, Charging Party requested that the Union help her in securing a reasonable accommodation, presumably in relation to her recent transfer. According to Charging Party's allegations, Fortune told her that "he meets with management to finalize the contract, and he will have a conversation with them."

On May 17, 2019, Charging Party's physician sent a letter to the Employer requesting that she receive a reasonable accommodation; Charging Party does not indicate what accommodation had been requested. According to the filings, this would have been the second letter sent to the Employer because there was a December 2016 letter already on file. On May 28, 2019, Charging Party received a phone call from Human Resources Associate Clara Thurman informing her that Furquan Ahmed, a Human Resources Administrator, had denied her reasonable accommodation request.

On May 20, 2019, Fortune sent Charging Party a text. While not clear from Charging Party's pleadings, it appears that the text was questioning whether Charging Party was reporting for work; she was not.

On May 29, 2019, Charging Party sent an email directly to Ahmed requesting that she be provided a reasonable accommodation under the ADA. This email, while mentioning her recent transfer from the Eastern Campus to the Western Campus, does not on its face make it clear what reasonable accommodation Charging Party was requesting. According to Charging Party she also copied Fortune, among others, on the email.

On June 4, 2019, Charging Party sent a text to Fortune asking him what the Union had done on her behalf regarding her reasonable accommodation request. According to Charging Party, Fortune asked her when she would return to work, to which she replied she had been taken off work by her physician.

On June 12, 2019, Fortune sent Charging Party another text asking whether she was "covered as it relates to reporting to work?" On June 13, 2019, Charging Party responded asking what steps the Union had taken regarding her reasonable accommodation. On June 14, 2019, Fortune asked via text message whether Charging Party had received anything in writing denying her reasonable accommodation request. Following a couple of more texts that day, Charging Party shared a photo through text of a letter presumably sent by Thurman denying her reasonable accommodation request.

The following day, June 15, 2019, Fortune sent Charging Party another text message, this one asking to meet with her at UAW Region 1 to "discuss your status." Charging Party responded with a text that stated, "I don't understand, meet with you at region 1 regarding what status?" No meeting occurred.

On July 2, 2019, Fortune again texted Charging Party asking whether she was "covered as it relates to your being off of work?" Charging Party's responses stated:

> My question to you Mr Fortune now that the contract has been approved by the Board of Trustees[,] what steps have the Union taken on my behalf in obtaining reasonable accommodations? A question I asked a month ago.

Fortune responded by asking, "What accommodations are you asking for?" Charging Party, in response, wrote, "Alan let's not have this conversation AGAIN I sent you the email and the letter from Ms Thurman..." [emphasis in original].

On July 16, 2019, Charging Party wrote to Frank Stuglin, Director for UAW Region 1 and Sarah Laws, the administrative assistant to the UAW International President, complaining that she was being treated dismissively by Fortune in retaliation for her earlier complaint and the May 2, 2019, internal Union hearing regarding those complaints.

On July 31, 2019, Charging Party received a letter, dated July 23, 2019, from Fortune indicating that the Union filed a grievance over her "request for travel accommodations..." That letter went on to claim that a request had been made to the Employer requesting information regarding her initial request. The letter also asked whether Charging Party had any documentation from the Employer which granted her travel accommodation requests previously.

On August 9, 2019, Fortune texted Charging Party and informed her that there would be a hearing on August 15, 2019, regarding her grievance and that she was invited to attend. Charging Party responded by stating she would attend and asked for a copy of the grievance. Charging Party received a copy on August 12, 2019.

Charging Party attended the grievance meeting on August 15, 2019, along with several individuals from both the Employer and the Union. During the meeting, Fortune requested that Charging Party be granted the reasonable accommodation of being placed at a location closer to her home instead of the Western Campus located in Belleville. Fortune also asked that Charging Party be placed on administrative leave with pay until the Employer made its decision. At this point, it appears that Charging Party had been off work since mid-May and had exhausted both her sick and vacation leave during this period. According to Charging Party, Fortune specifically asked that the administrative leave with pay be for a period of five days. [2]

On August 19, 2019, Fortune sent a text to Charging Party which indicated that the Employer had until August 29, 2019, in which to respond to the grievance. Charging Party's text sent in response claimed that the Union's filing of the grievance was untimely and that it should have been filed in May and not July.

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[2] It appears from Charging Party's pleading that she is claiming that Fortune asked for five days because he believed that the Employer had five days to respond. However, as indicated above, it appears the Employer has ten days to respond to the grievance.

As part of Charging Party's filings, she quoted two sections from the Union's contract with the Employer. The first, from Article XI, Grievance Procedures, states:

> Prior to the filing of a written grievance, but no later than three (3) working days after the cause of the grievance, or the grievant knew of the cause or should have known the cause, the grievant, with or without a representative of the Union, shall meet with the appropriate supervisor in whose area the grievance arose to discuss the matter with the object of conflict resolution.
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> * * *
>
> Grievances shall be processed as rapidly as possible. The number of working days indicated at each level shall be considered as maximum, and every effort shall be made to expedite the grievance process.

The second quoted section, Article V, Fair Employment Practices, according to Charging Party provides in the relevant part:

> 1. The Employer and the Union recognize their respective responsibilities under federal, state, and local laws relating to fair employment practices.
>
> 2. The Employer and the Union recognize the moral and legal principles involved in the area of civil rights and reaffirm in this collective bargaining agreement their commitment not to discriminate because of race, creed, color, age, sex, marital status, sexual orientation or political beliefs and activities, membership in any labor organization, handicaps or disability persons [sic], by adhering to valid equal employment opportunity, affirmative action, and Title IX rules and regulations and/or guidelines.

Nowhere within Charging Party's pleadings does she indicate what response if any the Union has provided with response to her initial complaint against Fortune and the subsequent hearing or what response the Employer has provided with respect to her grievance.

Discussion:

Rule 165 of the Commission's General Rules, states that the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the charge is untimely or it 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).

In Michigan's public sector, a union owes those employees it represents a duty of fair representation under Section 10(2)(a) of PERA. This duty 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. *Goolsby v Detroit*, 419 Mich 651 (1984). A union is guilty of bad faith when it "acts [or fails to act] with an improper intent, purpose, or motive . . ." *Merritt v International Assn of Machinists and Aerospace Workers*, 613 F3d 609, 619 (CA 6, 2010), citing *Spellacy v Airline Pilots Assn*, 156 F3d 120, 126 (CA 2, 1998). The *Gooslby* Court described "arbitrary" conduct by a union as: (a) impulsive, irrational or unreasoned conduct; (b) inept conduct undertaken with little care or with indifference to the interests of those affected; (c) the failure to exercise discretion; and (d) extreme recklessness or gross negligence. *Id* at 679. The Commission will not find an unfair labor practice on the mere fact that a member is dissatisfied with their union's efforts. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131.

For a charging party to prevail on a duty of fair representation claim regarding a disputed grievance handling claim, the party must allege and prove not only a breach of the duty of fair representation by their union, but also allege and prove the second prong of the claim, that is, that there was an underlying breach of the collective bargaining agreement by the Employer. *Goolsby*, supra; *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993).

Charging Party's pleadings clearly indicate that she is upset that her accommodation request was denied by the Employer, and that she believes the Union should have done more and/or acted quicker in assisting her. Charging Party claims that the Union's failure to act, or the speed at which it did act, is attributable to, and in retaliation for, her earlier complaints against Fortune.[3]

At the outset, Charging Party has not cited any, nor is the undersigned aware of any, Commission precedent that would place the ADA within the realm of representation that public sector labor unions owe to the members they represent.[4] Ignoring the preceding for a moment, Charging Party's pleadings do not indicate that she actually specified what accommodation she was seeking. Instead, her pleadings reveal that, while at one point Fortune asked her directly what accommodation she was seeking, she did not provide him with a direct response. Moreover, at no point does Charging Party allege that she actually asked that a grievance be filed regarding her request for a reasonable accommodation. See *Lansing Education Association*, 2000 MERC Lab Op 30 (2000) (A union does not owe an employee a duty under PERA to pursue a grievance unless the employee files a grievance or requests that the union file one on their behalf). Charging Party's

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[3] To the extent that Charging Party's allegations relate back to the Union's failure to file a grievance regarding the incident involving her timesheet in 2017, such allegations are clearly untimely under PERA's six-month statute of limitations and will not be discussed herein. See MCL 423.216(a).

[4] As part of her response to my Order to Show Cause Charging Party did provide the following quote:

> Federal labor law imposes a duty of fair representation on unions, that is, they must act reasonably, in a non-discriminatory fashion and in good faith, with respect to the employees they represent. This duty of fair representation may include assisting an employee in obtaining reasonable accommodation, or cooperating with an employer in attempting to determine a reasonable accommodation within the bargaining unit and the terms of the collective bargaining agreement

However, the above quotation does not appear in any judicial proceeding the undersigned is aware of or was able to find. Instead, using a simple internet search, the above quote is found within an online brochure entitled, "The ADA and Collective Bargaining Issues", and hosted on the Southwest ADA Center's website.

failures to plead necessary elements notwithstanding, her filings clearly indicate that the Union did in fact file a grievance after it learned what accommodation Charging Party sought. Accordingly Charging Party has not pled a claim under PERA with respect to her claimed factual scenario for which relief could be granted.[5]

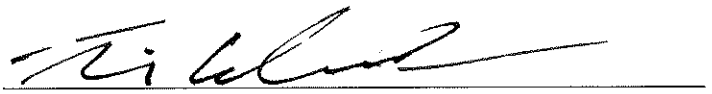
Charging Party also appears to take issue with Fortune's request during the grievance meeting that she be placed on administrative leave with pay for five days only to then inform her that the Employer had additional time in which to respond. However, while Fortune may have been mistaken when he requested five days as opposed to additional days, this lapse or failure on his part at most constitutes ordinary negligence, which remains insufficient to establish a violation of PERA. See *AFSCME Council 25, Local 207*, 23 MPER 101 (2010).

I have considered all arguments set forth by the Charging Party and conclude that such do not warrant any change in this result. Accordingly, for the reasons set forth above, it is my finding that Charging Party has failed to establish that the Union violated its duty to fairly represent her. For this reason, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Charging Party's unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES



Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 30, 2019

[5] I note that while Charging Party did include in her pleadings communications with Fortune that claim the grievance was untimely filed, there is no indication that the Employer has made the same determination or refused to process the grievance on that basis. Accordingly, it would be improper for the undersigned to consider such a claim for the reason it is not ripe for adjudication. See *Huntington Woods v Detroit*, 279 Mich App 603, 615-616; (2008) (A claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all).