STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UNIVERSITY OF MICHIGAN HEALTH SYSTEM,
Public Employer-Respondent in MERC Case No. 19-H-1754-CE;

-and-

AFSCME COUNCIL 25, LOCAL 1583,
Labor Organization-Respondent in MERC Case No. 19-H-1762-CU;

-and-

RONNEY M. HARRELL,
An Individual Charging Party.
_____/

APPEARANCES:

David J. Masson, Senior Associate General Counsel/Chief Litigation Counsel, for the Pubic Employer

Agenique N. Smiley, Staff Attorney, for the Labor Organization

Ronney M. Harrell, appearing on his own behalf

DECISION AND ORDER

On January 8, 2020, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order[i] 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[i]

Robert S. LaBrant, Commission Member

Edward D. Callaghan, Commission Member

Issued: February 28, 2020

[i] Commissioner Samuel R. Bagenstos recused himself. Order corrected on June 24, 2020.

TRUE COPY

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

In the Matter of:

UNIVERSITY OF MICHIGAN HEALTH SYSTEM,
Respondent-Public Employer in Case No. 19-H-1754-CE;
Docket No. 19-017509-MERC,

-and-

AFSCME COUNCIL 25, LOCAL 1583,
Respondent-Labor Organization in Case No. Case No. 19-H-1762-CU;
Docket No. 19-017510-MERC,

-and-

RONNEY M. HARRELL,
An Individual Charging Party.
_____/

APPEARANCES:

Office of the Vice President & General Counsel, by David J. Masson, Senior Associate General Counsel/Chief Litigation Counsel for the Pubic Employer

Agenique N. Smiley, Staff Attorney, for the Labor Organization

Ronney M. Harrell, in pro per

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

This case arises from unfair labor practice charges filed on August 29, 2019, by Ronney M. Harrell against his Employer, the University of Michigan Health System, and his Union, the American Federation of State, County & Municipal Employees (AFSCME) Council 25, Local 1583. 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 Office of Administrative Hearings and Rules (MOAHR), formally the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

According to the charges, Ronney Harrell has been employed at the University of Michigan Health System since February of 2013. The charge in Case No. 19-H-1754-CE; Docket No. 19-017509-MERC alleges that from October of 2015 through the present, the Employer has subjected Harrell to "various unfair labor practices and contractual violations" which consisted of: discipline and intimidation for exercising the grievance process; harassment through job assignments; unfair overtime distribution; creating a hostile work environment; hazardous work assignments; and verbal abuse from management. Although no further details were provided regarding these allegations, the charge indicates that "[s]tatements with dates along with witness statements shall follow very shortly." The charge in Case No. 19-H-1762-CU; Docket No. 19-017510-MERC, alleges that Harrell began requesting that AFSCME Council 25, Local 1583 file grievances on his behalf in 2015 and that the Union has not properly responded to those requests or provided Charging Party with information regarding the status of those disputes. In addition, Charging Party complains that Union stewards have "no training." An evidentiary hearing was initially scheduled for October 15, 2019.

On September 30, 2019 the Employer filed a motion for more definite statement asserting that the charge in Case No. 19-H-1754-CE; Docket No. 19-017509-MERC does not comply with Rule 151(2), R 423.151(2), of the General Rules and Regulations of the Employment Relations Commission, which requires that an unfair labor practice charge include a clear and complete statement of the facts which allege a violation of PERA, including the date of occurrence of each particular act and the names of the agents of the charged party who engaged therein and the particular sections of PERA alleged to have been violated. Upon review of the pleadings, I concluded that the allegations set forth in the charge against the Employer, as well as Harrell's charge against the Union in Case No. 19-H-1762-CU; Docket No. 19-017510-MERC, failed to meet the minimum pleading requirements as described in Rule 151(2). In an order issued on October 2, 2019, I directed Charging Party to file a more definite statement with respect to both charges. The order specifically directed Charging Party to provide "a clear and complete statement of the facts which allege a violation of PERA." At a minimum, Charging Party was required to describe who did what and when they did it, and explain why such actions constitute violations of the Act. Pursuant to that order, the evidentiary hearing was adjourned without date.

On October 16, 2019, Charging Party filed responses to the order for more definite statement in the form of separate numbered lists. With respect to the Employer, Charging Party's response catalogs the following actions as demonstrating an alleged violation of PERA: (1) job assignments; (2) retaliation for filing grievance; (3) creating a hostile work environment; (4) overtime violation; (5) unsafe work environment; (6) various contract violations; and (7) verbal abuse. With respect to the Union, the list submitted by Charging Party alleges: (1) no due process with respect to the grievance procedure; (2) no trained stewards; and (3) president and bargaining chair misinformed members regarding contract voting.

I reviewed the responses and determined that the vague and generalized allegations set forth therein by Charging Party failed to comply with the order for more definite statement. Accordingly, in an order issued on October 18, 2019, I directed Harrell to show cause why the charges should not be dismissed without a hearing. The order specified that to proceed with this matter, Charging Party must provide good cause for failing to comply with the earlier order for more definite statement. At the same time, Charging Party was directed to fully and completely

explain how the actions of both the Employer and the Union violated PERA and to state the date of occurrence of each alleged PERA violation, the names of the agents of the charged parties who engaged therein and the particular sections of PERA alleged to have been violated.

On November 13, 2019, Charging Party filed a response to the order to show cause, along with various documents and photographs. Charging Party's response is set forth below exactly as filed:

> A. 6/12/19 Contacting Barganing chair about the over time codes and getting a steward, requesting a steward threw the proper channels per contract thru a supervisor is meet with non available or sick etc,. pic 1 coworker who had no problem with gettin over time,. Pic 2 me and my coworkers and our over time amonts.
>
> B. 9/6/19 Exapmle of over time assignment for me 2 stairwells 9th floor to b2 by myself in hopes I would not ask for over time. Requesting that I sign it so immediate supervisor manager Ziad Awwad hold this against me.
>
> C. 1&&2 example of damage equipment thats very hazordous cord that are damaged from employes that have not recieved proper training but are not reported,. Floor outlet that have blown and have caused a fire. Where the Annarbor fire department responed and maintanace along with security, and are supervisor and manager came but the power was never turn off.
>
> D. Me and my coworkers requested a steward the 1st week of September each time they came unprepared result in rescheduling, then we get a cheif steward that came with out notice,. Per contract notice is givin so that grievant is prepared so if grievant has evidence.
>
> Above information is just part of a contiuation over the past 4 ½ years.

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 under PERA by MOAHR, 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 a failure by the charging party to state a claim upon which relief can be granted. Rule 165(2)(d). Accepting all of the allegations set forth by Harrell as true, dismissal of the charge against the Employer in Case No. 19-H-1754-CE; Docket No. 19-017509-MERC and the charge against the Union in Case No. 19-H-1762-CU; Docket No. 19-017510-MERC is warranted.

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. The types of activities protected by the Act 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, none of the allegations set forth by Charging Party, to the extent that they can be understood, provide a factual basis which would support a finding that Harrell was subjected to discrimination or retaliation for engaging in, or refusing to engage in, protected activities in violation of the Act during the six-month period preceding the filing of the charges. Most of Charging Party's claims relate to matters over which this Commission has no jurisdiction when brought by an individual employee, such as allegations that the Employer created a hostile work environment, that it violated the collective bargaining agreement and that it failed to provide safe equipment for its employees. Although Charging Party made a generalized allegation that he was retaliated against for filing grievances, he failed to provide sufficient information, either in the charge or in his response to the various orders issued by the undersigned, sufficient to put the Employer on notice of the nature of the claims and enable it to prepare a defense. As noted, Rule 151(2), R 423.151(2), of the General Rules and Regulations of the Employment Relations Commission requires that a charge contain a "clear and complete statement of the facts which allege a violation of . . . PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged therein and the sections of. . . PERA alleged to have been violated." For the above reasons, I recommend summary dismissal of the charge against the Employer in Case No. 19-H-1754-CE; Docket No. 19-017509-MERC.

Similarly, the charge against the Union in Case No. 19-H-1762-CU; Docket No. 19-017510-MERC must also be dismissed on summary disposition. 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.

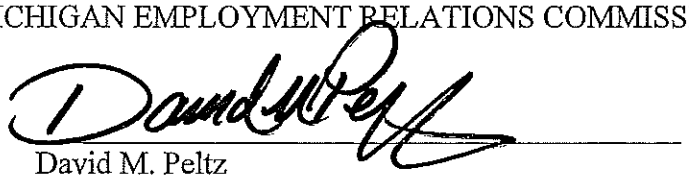
The charge in Case No. 19-H-1762-CU; Docket No. 19-017510-MERC, as best as it can be understood, does not specifically identify any conduct by the Union which would be violative of PERA. In the Order to Show Cause, Charging Party was directed to "clearly and concisely describe who did what and when they did it, and explain why such actions constitute a violation of the Act, with consideration given to the legal principles" set forth therein. In his response, Charging Party asserts that the Union violated the terms of its contract with the University and that its stewards were not properly trained or prepared. Such allegations, standing alone, do not establish a breach of the duty of fair representation. To whatever extent that Charging Party may disagree with the Union's actions or decisions, there is no factually supported allegation which would suggest that AFSCME Council 25, Local 1583 acted arbitrarily, discriminatorily or in bad faith in connection with this matter. Accordingly, I conclude that the charge against the Union in Case No. 19-H-1762-CU; Docket No. 19-017510-MERC must be dismissed without a hearing.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to meet his burden of proving that either of the Respondents violated PERA. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Ronney Harrell against his Employer, the University of Michigan Health System, in Case No. 19-H-1754-CE; Docket No. 19-017509-MERC, and Harrell's charge against AFSCME Council 25, Local 1583 in Case No. 19-H-1762-CU; Docket No. 19-017510-MERC are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



David M. Peltz
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: January 8, 2020