STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

JEFFERSON EDUCATION ASSOCIATION,
Labor Organization-Respondent

MERC Case No. 20-A-0079-CU

-and-

MICHAEL P. CENTALA,
An Individual Charging Party.
_____/

APPEARANCES:

White Schneider PC, by Aubree A. Kugler, for Respondent

Michael P. Centala, appearing on his own behalf

DECISION AND ORDER

On August 3, 2020, Administrative Law Judge David M. Peltz 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

Samuel R. Bagenstos, Commission Chair

Robert S. LaBrant, Commission Member

Issued: October 30, 2020

Tinamarie Pappas, Commission Member

[1] MOAHR Hearing Docket No. 20-001140

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

In the Matter of:

JEFFERSON EDUCATION ASSOCIATION,
Respondent-Labor Organization,

Case No. 20-A-0079-CU
Docket No. 20-001140-MERC

-and-

MICHAEL P. CENTALA,
An Individual Charging Party.
_____/

APPEARANCES:

White Schneider PC, by Aubree A. Kugler, for Respondent

Michael P. Centala, appearing on his own behalf

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on January 14, 2020, by Michael P. Centala against the Jefferson Education Association (JEA). 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 charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings & Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

Charging Party is employed as a teacher by the Jefferson School District and is a member of a bargaining unit represented by the JEA. In his charge, Centala asserts that the Union violated PERA with respect to its conduct in negotiating with the school district on a new collective bargaining agreement. Specifically, the charge alleges, in pertinent part:

> The Jefferson Education Association agreed to and passed a resolution in our new contract that was to cause a 2% wage deduction for employees in Jefferson Schools starting in September 2019. September 10th, 2019 was the first payday of that which at that time I noticed that my wages were reduced by 4% instead of the agreed to 2%. I questioned the Jefferson Education Association (JEA) Susan Labeau as [to] why there was a discrepancy in the deduction. I was informed certain member salaries were outside Monroe Counties [sic] average and they

> were going to adjust those that were. I informed her that I never heard anything about this but she informed me that it was discussed at the meeting (which I did not attend for being out of town) and that a majority overwhelming [sic] passed the vote to enact the new agreement.

In the charge, Centala also asserts that he referred the matter to the EEOC "since those who all lost more than 2% were over the age of 40."

On July 15, 2020, Respondent filed a motion for summary disposition asserting that the charge should be dismissed because there is no genuine issue of material fact and the allegations fail to state a claim under PERA. The motion was supported by a sworn affidavit from Susan Lebeau, president of the JEA. In the affidavit, Lebeau asserts that the Union agreed on a new contract with the Jefferson School District on or about July 18, 2019, which included an agreement to cut teacher salaries. The affidavit asserts that the terms of the contract were overwhelmingly approved by a vote of the JEA membership at a meeting which Charging Party did not attend. According to Lebeau, Charging Party's salary was reduced by about 4% as a result of that agreement.

A response to the Union's motion for summary disposition was due by the close of business on July 27, 2020. Charging Party did not file a response to the motion, nor did he request an extension of time in which to do so.

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 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 the failure by the charging party to "respond to a dispositive motion or a show cause order." Rule 165(2)(h). See also *Detroit Federation of Teachers*, 21 MPER 3 (2008), in which the Commission recognized that the failure of a charging party to respond to an order to show cause may, in and of itself, warrant dismissal of the charge. Moreover, it is well-established that in order to survive a motion for summary disposition which is supported by a sworn affidavit, the adverse party may not rest upon the mere allegations in his or her pleading but rather must, by affidavit or other documentary evidence, set forth specific facts showing that there is a genuine issue of material fact. See e.g. *Allen v Comprehensive Health Services*, 222 Mich App 426, 433-434 (1997). For these reasons, I find that dismissal of the charge is warranted based upon Centala's failure to file a response to the Union's motion.

In any event, accepting all of the allegations set forth by Centala as true, dismissal of the charge is warranted. The gravamen of the charge is an allegation that the Union violated PERA by negotiating a collective bargaining agreement pursuant to which certain members, including Charging Party, were subject to a salary cut. 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 what will serve 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.

In the instant case, the charge does not set forth any facts which would establish a violation of PERA. Centala does not claim that he was denied meaningful input into the collective bargaining process. See *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *Service Employees Int'l Union*, 1986 MERC Lab Op 149. Rather, the charge merely alleges that Respondent negotiated a collective bargaining agreement which contains terms that negatively impact certain members, including himself. There is no suggestion that the JEA had an unlawful motive in negotiating the agreement, nor is there any factual allegation that the Union's actions were otherwise arbitrary, discriminatory or outside the bounds of reasonableness. Rather, it appears that Charging Party simply disagrees with the terms agreed to by the Union. As noted, the Commission will not interject itself in judgment over discretionary decisions made by a labor organization merely because individual members perceive themselves to be adversely impacted. *City of Flint*. A union has broad discretion to weigh the interest of various categories of members and to make its decisions on behalf of the membership as a whole, including within the context of negotiating or interpreting collective bargaining agreements. *Anchor Bay Education Ass'n*, 32 MPER 46 (2019) (no exceptions); *Detroit Ass'n of Educational Office Employees*, 30 MPER 20 (2016) (no exceptions); *Port Huron Area Sch Dist*, 1998 MERC Lab Op 43; *Detroit Bd of Education*, 1986 MERC Lab Op 305. See also *Ford Motor Co v Huffman*, 345 US 330 (1953).

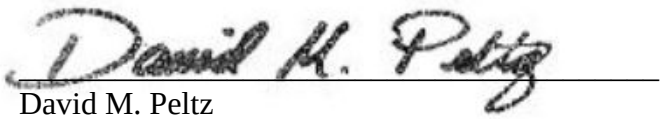
There is an implication in the charge that the salary reduction which the school district ultimately imposed upon certain bargaining unit members was greater than the amount set forth in the agreement ratified by the membership. Even if true, that fact would not constitute a violation of the duty of fair representation. PERA does not require a union to condition its agreements with an employer on the approval of the union's members. A union's failure to comply with ratification requirements set out in the union's constitution or bylaws constitutes an internal union matter not covered by Section 10 of the Act. See e.g. *City of Lansing*, 1987 MERC Lab Op 701 (union did not violate its duty of fair representation by agreeing to delete a provision from the contract after the agreement had been ratified by the union membership).

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported claims which, if true would establish a violation of PERA by the JEA. For that reason, I recommend that the Commission issue the following order dismissing the charge in its entirety.

RECOMMENDED ORDER

The unfair labor practice charge filed by Michael Centala against the Jefferson Education Association in Case No. 20-A-0079-CU; Docket No. 20-001140-MERC is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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

Dated: August 3, 2020