

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

AFSCME COUNCIL 25, LOCAL 1583,
Labor Organization-Respondent

MERC Case No. 20-A-0150-CU

-and-

CHRISTOPHER E. SZWEDA,
An Individual Charging Party.

APPEARANCES:

Hilary M. Lauver, Staff Attorney, for the Labor Organization

Christopher E. Szweda, appearing on his own behalf

DECISION AND ORDER

On August 6, 2020, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order¹ 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

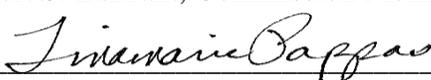


Samuel R. Bagenstos, Commission Chair



Robert S. LaBrant, Commission Member

Issued: October 30, 2020



Tinamarie Pappas, Commission Member

¹ MOAHR Hearing Docket No. 20-002286

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

In the Matter of:

AFSCME COUNCIL 25, LOCAL 1583,
Labor Organization-Respondent,

Case No. 20-A-0150-CU
Docket No. 20-002286-MERC

-and-

CHRISTOPHER E. SZWEDA,
An Individual Charging Party.

Appearances:

Hilary M. Lauver, Staff Attorney, for the Labor Organization

Christopher E. Szweda appearing on his own behalf

**DECISION AND RECOMMENDED ORDER OF
ADMINISTRATIVE LAW JUDGE ON
MOTION FOR SUMMARY DISPOSITION**

On January 17, 2020, Christopher E. Szweda, an individual charging party, filed Case No. 20-A-0150-CU; Docket No. 20-002286-MERC against his authorized bargaining representative, AFSCME Council 15, Local 1583 (Union) and Case No. 20-A-0135-CE; Docket No. 20-001880-MERC, against his employer, the University of Michigan (University or Employer).¹ 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 assigned to Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (Commission).

Charging Party's filings against both Respondents included an identical set of allegations presented in bulleted form as an attached page and repeated below:

- Pay Checks being entered incorrectly consistently
- Charging PTO time for time clock punches within grace period
- Once grievance was filed, supervisor threatened that all punches will be unexcused

¹ As will be discussed more fully herein, the Employer and the Charging Party eventually reached a settlement resulting in the withdrawal of Case No. 20-A-0135-CE; Docket No. 20-001880-MERC.

- The day following the grievance (November 27th) I was reprimanded for a policy that he could not provide to me or show me in our contract book or U of M policy
- Requested a Union Steward at that point. As of December 15, 2019, I still have not received one
- Overtime given out not followed per contract
- Several harassment incidents
- Being told to do assignments that unsafe
- Work not being distributed fair
- Not given tools to do our job
- Not getting a steward when requesting one

On January 29, 2020, my office consolidated the cases and issued a Complaint and Notice of Hearing for March 2, 2020, complete with a copy of both charges, including the above allegations. On February 25, 2020, the hearing was adjourned pending the selection of a new date because of a medical issue involving a necessary participant.

On February 27, 2020, the Union filed a Motion for More Definite Statement. Upon review of that motion, it appeared that the Union had made the motion without having either received and/or reviewed the attachment to the charge which contained Charging Party's bulleted allegations. On March 3, 2020, I sent the parties an email which included the charge filings and attached allegations. That email stated in part:

Please note that at this time I am denying the Union's motion as it is incomplete insofar as it does not acknowledge the above referenced allegations. The Union is free to amend its motion and refile it at which time I will consider it.

On March 25, 2020, the Respondent Union filed a Renewed Motion for More Definite Statement and a Motion for Summary Disposition. Charging Party submitted a response to the motion for summary disposition on May 7, 2020. After careful review of the pleadings, I determined that oral argument was necessary before making a decision on the Union's motion(s). On June 10, 2020, I issued an Interim Order indicating that in the interest of efficiency and judicial economy, I was scheduling both oral argument and an evidentiary hearing on the consolidated charges for the same day. I further indicated that at the beginning of the hearing I would conduct oral argument on the Union's motion and allow Charging Party to argue why that charge should not be dismissed. Following Oral Argument, it was my stated intent to take evidence on the charge against the Employer and whatever remained, if anything, on the charge against the Union. The parties were instructed to be prepared to present witness testimony and provide exhibits at that time. The hearing was scheduled for July 13, 2020.

On July 10, 2020, I received an email from Charging Party in which he indicated that he had reached settlement with the Employer and sought to withdraw Case No. 20-A-0135-CE; Docket No. 20-001880-MERC. That charge was withdrawn by order dated July 13, 2020.

On July 13, 2020, the Union and Charging Party appeared before the undersigned via video conferencing. After oral argument on the Union's motion, I concluded that the Charging Party had not alleged any claim under PERA for which relief could be granted. I indicated on the record

that upon receipt of the transcript I would issue a Decision and Recommended Order to that fact. This is that Order.

Discussion:

The Commission does not investigate charges filed with it. Charges filed with the Commission must comply with the Commission's General Rules. More specifically, Commission Rule 151(2)(c), 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 therein, and the sections of LMA or PERA alleged to have been violated.

Charges which comply with the Commission's rules, are timely filed, and allege a violation of PERA are set for hearing before an administrative law judge. In order to be timely filed, the charge must be filed within six months of the alleged unfair labor practice. MCL 423.216(a).

Commission Rule 165, 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 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). See R. 423.165(2)(d).

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). The *Goolsby* 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. 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).

Although a union owes a duty of fair representation to every employee it represents, the primary duty is to its bargaining unit's entire membership as a whole. *Lowe v Hotel Employees*, 389 Mich 123 (1973). In this regard, a union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the situation and/or issue in the manner it determines to be best. See *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. In other words, a union possesses 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*, supra. 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.

At the oral argument, Charging Party confirmed the basis of his complaints against the Union. First, according to the Charging Party, while the Union processed a grievance in 2018 relative to the assignment of overtime, it was not enforcing the terms of the contract on overtime to his liking. Secondly, Charging Party's claims he was not provided a steward during a meeting with his manager in November of 2019 during which adverse actions were taken against him by the same manager. Charging Party revealed during the hearing that he eventually learned that while he made the request for a steward to his manager, as was the common practice, the manager later lied to him and told him that a steward would be unavailable until a much later date when in fact the manager had never actually relayed his request to the Union.²

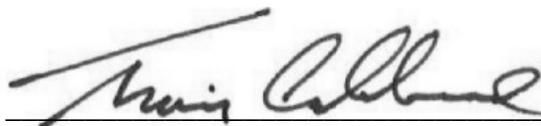
Here, Charging Party has failed to provide any allegation that, if proven true, could establish that the Union acted in a manner that was arbitrary under *Goolsby*, supra, or otherwise engaged in discriminatory and/or unlawful conduct as defined within *Vaca*, supra. Addressing Charging Party's first complaint relative to the Union's policing of the overtime provisions in the contract, Charging Party's mere dissatisfaction with the Union's efforts alone cannot establish a violation of PERA. Moreover, to the extent that Charging Party claims he requested a union steward but that one was never provided to him, it is clear from Charging Party's own statements during the Oral Argument that his manager was the cause of the delay. For these reasons, summary disposition in favor of the Union is appropriate as Charging Party has not articulated any allegation that, if proven true, could establish that the Union violated its duty of fair representation under the Act.

I have considered all other arguments as set forth by the parties in this matter and have concluded such does not require a change in the result. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge brought by Christopher A. Szweda against AFSCME Council Local 25, Local 1583 is hereby dismissed in its entirety.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES



Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 6, 2020

² Charging Party indicated during the Oral Argument that the discipline and/or adverse employment action that occurred as a result of that meeting had been "taken care of" by the Employer as part of the settlement between the two.