STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

BEAUMONT COMMONS,
Employer-Respondent in MERC Case No. 20-F-1008-CE,

-and-

SEIU HEALTHCARE MICHIGAN,
Labor Organization-Respondent in MERC Case No. 20-F-1017-CU,

-and-

CLAUDETTA SABALLY,
An Individual Charging Party.
_____/

APPEARANCES:

Claudetta Sabally, appearing on her own behalf

DECISION AND ORDER

On July 14, 2020, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order[1] 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

Samuel R. Bagenstos, Commission Chair

Robert S. LaBrant, Commission Member

Issued: October 30, 2020

Tinamarie Pappas, Commission Member

[1] MOAHR Hearing Docket Nos. 20-010379 & 20-010381

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

In the Matter of:

BEAUMONT COMMONS,
Employer-Respondent in
Case No. 20-F-1008-CE; Docket No. 20-010379-MERC,

-and-

SEIU HEALTHCARE MICHIGAN,
Labor Organization-Respondent in
Case No. 20-F-1017-CU; Docket No. 20-010381-MERC,

-and-

CLAUDETTA SABALLY,
An Individual Charging Party.

_____/

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

On June 11, 2020, Claudetta Sabally (Charging Party) filed the above captioned unfair labor practice charges with the Michigan Employment Relations Commission (Commission) against Beaumont Commons (Employer) and SEIU Healthcare Michigan (Union). The charge was assigned to Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules, acting on behalf of the Commission. Pursuant to Rule 164 of the General Rules of the Employment Relations Commission, R 423.164, 2002 AACS; 2014 AACS, these cases were hereby consolidated.

Unfair Labor Practice Charges and Procedural History:

Charging Party, a member of the Union's bargaining unit, claims that she had worked for the Employer for about thirteen (13) years up until she resigned on May 20, 2020. According to her allegations, Charging Party was punched in the arm by another member of the bargaining unit and was otherwise treated in a hostile fashion by that individual following Charging Party's participation in a conference call with the Employer regarding negotiations over pay raises. Charging Party claims she sought the help of the Employer's Human Resources department but ultimately chose to resign "as a result of being in a hostile work environment…"

Upon initial review of the charges, it appeared likely that dismissal of the allegations without a hearing was warranted. Rule 165 of the Commission's General Rules, R. 423.165,

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 Commission lacks jurisdiction over a party or that the charge fails to state a claim. See R. 423.165(2)(a) and (d).

Accordingly, on June 24, 2020, I directed Charging Party to respond in writing and show cause why her charges against the Employer and Union should not be dismissed without a hearing. More specifically, that order directed Charging Party to indicate and provide support for the Commission's exercise of jurisdiction under the Public Employment Relations Act (PERA), 1965 PA 379 as amended, or the Labor Relations and Mediation Act (LMA), 1939 PA 176 as amended. Addressing the possibility that Charging Party's allegations fell under the jurisdiction of the LMA, Charging Party was directed to establish that the National Labor Relations Board (NLRB) either lacked jurisdiction or that it had refused to exercise jurisdiction over the Employer. The preceding jurisdictional questions notwithstanding, that order also indicated that the charge as filed failed to articulate any actionable violation of either PERA or the LMA, and Charging Party was also directed to explain and articulate such a claim.

Pursuant to my June 24, 2020, order, Charging Party's response was due on July 8, 2020. As of the issuance of this Decision and Recommended Order, Charging Party has not filed a response to my order, nor has she sought to obtain an extension of time in which to file such a response.

Discussion and Conclusions of Law:

Charging Party's failure to respond to my June 24, 2020 Order, by itself, is cause for dismissal in favor of Respondents. The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. See R 423.165(h); See also *Detroit Federation of Teachers*, 21 MPER 3 (2008).

Irrespective of Charging Party's failure to respond, it is the finding of the undersigned that these consolidated charges should be dismissed under Commission Rules 165(2)(a) and (d), both because the Commission lacks jurisdiction over the parties and because the allegations set forth do not state a claim for which the Commission could grant relief under either PERA or the LMA.

Addressing first the Commission's jurisdiction, I note that the predominant number of unfair labor practice charges considered by the Commission involve parties subject to PERA. Parties subject to PERA include, and are almost exclusively limited to, public sector employers, public sector employees, and labor organizations representing public sector employees. In the instant matter, Beaumont Commons, appears to be a private employer and therefore not subject to PERA.[1] As such, Charging Party is not a public employee as that term is defined by Section 1(e) of PERA and therefore not subject to the protections provided therein.

[1] Beaumont Commons, formerly known as the Botsford Continuing Care Center, is recognized by Michigan's Department of Licensing and Regulatory Affairs as a Domestic Nonprofit Corporation organized under Michigan's Nonprofit Corporation Act, Public Act 162-1982.

The above notwithstanding, the Commission does enjoy jurisdiction, albeit very limited, over some private employers under the LMA. However, within most cases involving private employers, the NLRB preempts the Commission's jurisdiction where a controversy is arguably subject to the National Labor Relations Act's (NLRA) provisions. *Int'l Longshoremen's Ass'n v Davis*, 476 US 380 (1986). Under the doctrine of federal preemption, the Commission has jurisdiction to resolve unfair labor practice disputes only when the NLRB lacks or refuses to exercise jurisdiction. See e.g., *AFSCME v Dep't of Mental Health*, 215 Mich App 1 (1996). Charging Party has neither alleged nor given any indication that the NLRB lacks or has refused to exercise jurisdiction over the parties. As such, the Commission lacks jurisdiction to address her allegations under the LMA.

Jurisdictional issues aside, dismissal of these charges is nonetheless appropriate as they both fail to state a claim for which relief could be available under either PERA or the LMA.

With respect to the allegations against the Employer, neither PERA nor the LMA prohibit all types of discrimination or unfair treatment. The Commission's jurisdiction with respect to claims brought by individual employees against their 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 union or other protected concerted activities as guaranteed under Section 9 of PERA or Section 8 of the LMA.

Paramount to understanding the Commission's jurisdiction, one must remain cognizant that not all unfair, or even unlawful, treatment of its employees by an employer violates PERA or the LMA. The authority of the Commission is limited to the enforcement of those two Acts. Absent a factually supported allegation that the employer interfered with, restrained, and/or coerced an employee in the exercise of the rights guaranteed under PERA's Section 9 or the LMA's Section 8, or otherwise retaliated against the employee for engaging in, or refusing to engage in, union or other activities of the type protected by the Acts, the Commission has no jurisdiction to make a judgment on the fairness of the employer's actions. See, e.g., *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524. Charging Party's charge against her Employer does not allege any facts that, if proven true, could establish that she was restrained, coerced, and/or retaliated against with respect to the rights guaranteed to her under PERA and/or the LMA.

Similarly, with respect to the charge against the Union, there is no factually supported allegation which, if proven true, could establish that the Union violated its obligations under either PERA or the LMA. 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

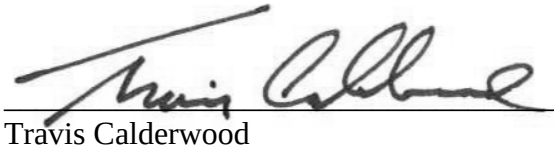
actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991). Charging Party's pleading is devoid of any allegation regarding any action or decision attributable to the Union that, if proven true, could establish that the Union violated its duty if fair representation.

For the reasons stated herein, I recommend that the Commission issue the following order dismissing the charges in its entirety.

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: July 14, 2020