STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SAGINAW TRANSIT AUTHORITY REGIONAL SERVICES,
Respondent-Public Employer in Case No. C05 I-213,

-and-

UNITED STEELWORKERS OF AMERICA, LOCAL 9036,
Respondent-Labor Organization in Case No. CU05 I-036,

-and-

SHARLENE YOUNG,
An Individual Charging Party.
_____/

APPEARANCES:

The Williams Firm, by Timothy R. Winship, Esq., for the Public Employer

Daniel A. Nadolski, Staff Representative, for the Labor Organization

Sharlene Young, *in propria persona*

DECISION AND ORDER

On April 20, 2006, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Nora Lynch, Commission Chairman

_____
Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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Daniel A. Nadolski, Staff Representative, for the Labor Organization

Sharlene Young *in pro per*

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard at Detroit, Michigan on February 13, 2006, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the record made at hearing, I make the following findings of fact, conclusions of law, and recommended order.

On September 12, 2005, Sharlene Young filed unfair labor practice charges against the Saginaw Transit Authority Regional Services (STARS) and the United Steelworkers of America, Local 9036. The charge in Case No. C05 I-213 reads:

> I believe I have been wrongfully terminated. I have been employed at Stars for ten years, out of the ten years of employment I can recall the times I was late and the records show, the following dates: 3/14/05, 5/23/05, 7/8/05, and 7/13/05. On the following date 7/8/05, a dispatch assigned me a run that comes in at 5:45 a.m. and I passed the run and the dispatch told me I was not allowed to do

> so; I was mislead into thinking that I was suppose[d] to be there at 5:45 am the next day because that's my usual time, punching in at 5:37 am, the dispatch toll [sic] me I was suppose to be in at 5:00 am and that incident I got write [sic] up for [was] a no show. On the following date 7/13/05, Debby Miller, the supervisor, was harassing me about false accusations from passengers, For ten years I have no problems with anyone. Now all of a sudden Mrs. Miller say's she's been getting email about complaining passengers, which can no[t] possibly be true.
>
> Mrs. Miller calls me into her office on a daily basis telling me she received an email last night or in the morning about false complained [sic] never came in and filed a complaint. Going to Mrs. Miller's office on a daily basis made coming to work and my job very stressful, due to the stress it lead me to the doctor's office. I also didn't receive the right procedures of corrective action before termination, I received a written warning but, didn't receive a suspension I decision making leave, they went straight to termination and also on July 13, 2005 a work meeting was scheduled at 5:00 am and the meeting was canceled and dispatch Terry said that I was a no show and I wasn't even on the schedule as of July 13. I have done no wrong and believe that I should still be employed.

In Case No. CU05 I-036, Young contends that the Union violated its duty of fair representation with respect to her termination. Specifically, the charge alleges, in pertinent part:

> The Union met with S.T.A.R.S. on August 1, 2005 without thoroughly preparing or investigating the situation at hand. There were many different avenues I feel that although I received warnings, I never was place on the extra board (at bottom) as a discipline prior to being terminated. I also feel that I am being singled out as far as "no show" are concerned, though I was late I worked my entire shift to only be classified as a "no show". This is something that is not being done across the board and if the union would investigate it they would find that many others are late or don't swipe their time cards and only receive a "late show". . . . The Union also advised me to go to my supervisor and beg for my job back; which I feel is unacceptable because I pay them to make sure I get treated fairly by my employer.

At the evidentiary hearing on February 13, 2006, Charging Party testified briefly concerning her termination from employment with STARS and entered a number of documents into evidence. Her testimony was consistent with the charge in Case No. C05 I-213. However, Young made no reference to the conduct of the Union, nor did she present any additional witnesses. Following the conclusion of Charging Party's proofs, Respondents moved for a directed verdict, arguing that Young had failed to establish that either the Employer or Union violated PERA. I agreed and granted the motion, with a written order to follow.

Discussion and Conclusions of Law:

In her charge, Young contends that the Employer wrongfully terminated her employment with STARS. PERA does not prohibit all types of discrimination or unfair treatment. Absent any evidence or allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation or evidence suggesting that the Employer was motivated by Young's union or other activity protected by PERA, I conclude that the charge against the Employer fails to state a claim upon which relief can be granted.

There is also nothing in the record that establishes a PERA violation on the part of the Union. To establish a violation of the duty of fair representation, it must be demonstrated that the union's conduct toward the bargaining unit member was arbitrary, discriminatory or in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). Furthermore, to prevail on such a claim, the complainant must establish not only a breach of the duty of fair representation, but also a breach of the collective bargaining agreement. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992). In the instant case, Charging Party has not presented any evidence even suggesting that the Union's conduct toward her was unlawful.

For the reasons set forth above, I conclude that Charging Party has failed to establish a valid claim under PERA. Accordingly, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge

Dated: _____