STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AFSCME COUNCIL 25,
Labor Organization-Respondent,

MERC Case No. 22-B-0388-CU

-and-

SENOJ HUNTER,
An Individual Charging Party.
_____/

APPEARANCES:

Michael J. Szappan, Staff Attorney, for Respondent

Senoj Hunter, appearing on her own behalf

DECISION AND ORDER

On June 1, 2022, 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

Tinamarie Pappas, Commission Chair

William F. Young, Commission Member

Issued: July 29, 2022

[1] MOAHR Hearing Docket No. 22-006728

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

In the Matter of:

Case No. 22-B-0388-CU

AFSCME COUNCIL 25, Docket No. 22-006728-MERC
Respondent-Labor Organization,

-and-

SENOJ HUNTER,
An Individual Charging Party.
_____/

APPEARANCES:

Michael J. Szappan, Staff Attorney, for the Labor Organization

Senoj Hunter, appearing on her own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on February 23, 2022, by Senoj Hunter against the American Federation of State, County & Municipal Employees (AFSCME) Council 25. 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 and Rules (MOAHR), acting on behalf of the Michigan Employment Relations Commission (Commission).

The charge alleges that the Union violated the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, by failing to provide Hunter with a copy of a written reprimand issued to her by her employer and by ignoring her request for a copy of the collective bargaining agreement between the City and AFSCME Council 25, Local 542. In addition, the charge asserts that the Union violated PERA and the AFSCME constitution by failing to properly represent her with respect to a grievance. According to the charge, the Union indicated to Hunter that a hearing on her third-step grievance would be scheduled for August 2021 but that such a hearing had not been scheduled as of the date of the initiation of this proceeding.

On May 2, 2022, the Union filed a motion for summary disposition, along with an affidavit and various emails and other documents. Pursuant to Rule 161(3), R 423.161(3), of the

General Rules and Regulations of the Employment Relations Commission, which govern practice and procedure in administrative hearings conducted under PERA by MOAHR, Charging Party's response was due within 10 days after service of the motion. To date, Charging Party has not filed a response to the Order to Show Cause, nor has she requested an extension of time in which to do so. Accordingly, the factual assertions set forth in the Union's affidavit may be accepted as true for purposes of determining whether there is a genuine issue of material fact warranting a hearing in this matter.

Discussion and Conclusions of Law:

Pursuant to Rule 165(1), R 423.165(1), of the Commission's rules, 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. Setting aside Charging Party's failure to respond to the Union's motion for summary disposition, dismissal of the charge is nonetheless appropriate for the reasons set forth below.

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. To prevail on a claim of unfair representation, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Knoke v East Jackson Public Sch Dist*, 201 Mich App 480, 488 (1993).

In the instant case, Charging Party contends that the Union violated FOIA by failing to respond to her requests for a copy of the collective bargaining agreement and other documents. Such an allegation fails to state a claim upon which relief can be granted. The Commission has no jurisdiction to remedy an alleged violation of FOIA.[1] While it is true that public employers and labor organizations have a duty under PERA to supply relevant information to each other in a timely manner, see e.g. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995

[1] FOIA imposes certain duties on local units of government. The Union is a private organization which is not subject to those requirements.

MERC Lab Op 384, 387, there is no corresponding duty on the part of a union to provide individual members with specific information pertaining to their employment, nor does a union have any legal obligation to disclose the existence of such information to its members. *Utica Cmty Schs*, 28 MPER 11 (2014); *Michigan Ed Ass'n*, 22 MPER 85 (2009) (no exceptions). As noted, the union's sole obligation is to carry out its bargaining responsibilities in good faith and without hostility toward any individual member and to avoid arbitrary conduct. *Vaca*; *Goolsby*. In any event, Charging Party's claim that she was denied access to the collective bargaining agreement appears to be without merit. In a sworn affidavit attached to the Union's motion for summary disposition, AFSCME Staff Representative DeAngelo Malcom indicates that employees have had online access to the collective bargaining agreement since the Fall of 2021.

Allegations in the charge pertaining to the scheduling of a third-step grievance hearing must also be dismissed without a hearing. First, the charge does not set forth any factually supported allegations which, if true, would prove that Hunter's employer violated the collective bargaining agreement. As noted, a charging party must establish a breach of the collective bargaining agreement in order to prevail on a duty of fair representation claim. *Knoke v East Jackson Public Sch Dist*. Even if a breach of contract could be established, the record indicates that the Union in fact took action on Charging Party's behalf. In the affidavit submitted by the Union, Malcolm states that he was involved in processing two grievances relating to Charging Party. The Union filed Grievance No. D33026-542-20 challenging a three-day suspension issued to Hunter on June 30, 2020, and subsequently advanced that grievance to arbitration. The Union also grieved a thirty-day suspension/discharge issued to Hunter on March 4, 2021. That grievance, which was designated No. D33334-542-21 was appealed to the third-step on March 9, 2021. According to the Malcom affidavit, the hearing was delayed due to a "significant backlog" in cases resulting from the Employer's refusal to hold arbitration hearings during the Covid-19 pandemic. However, a third-step hearing was ultimately scheduled for May 19, 2022. It is well-established that a delay in processing a grievance is not a breach of the union's duty of fair representation where the delay does not result in the grievance being denied. *Teamsters Local 214*, 1995 MERC Lab Op 185.[2] In addition, the Commission has repeatedly held that a lack of communication regarding the status of a grievance is not, standing alone, sufficient to establish a breach of the duty of fair representation. See e.g. *Detroit Ass'n of Educational Office Employees, AFT Local 4168*, 1997 MERC Lab Op 475; *Southfield Schools Employees Ass'n*, 1981 MERC Lab Op 710.

Even assuming that the delay in scheduling the third-step grievance hearing violated specific provisions within the Union's constitution or by-laws, no PERA claim has been stated. It is well-established that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations which do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004); *SEIU, Local 586*, 1986 MERC Lab Op 149. Internal union matters are outside the scope of PERA, but are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*,

[2] Similarly, an employer does not violate PERA merely by failing to abide by timelines set forth in a collective bargaining agreement. Absent conduct closing the door to the entire grievance procedure, the Commission does not involve itself in procedural matters relating to grievance processing. *Kalamazoo Public Schools*, 1977 MERC Lab Op 771, 793.

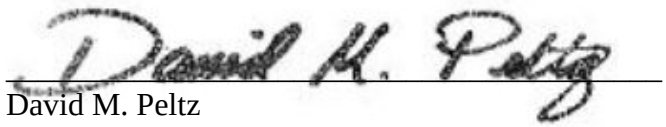
1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. This principle is derived from Section 10(2)(a) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *SEIU, Local 586*. The Commission has held that the duty of fair representation applies only to those policies and procedures having a direct effect on terms and conditions of employment. See e.g. *Organization of Classified Custodians*; *SEIU, Local 586*. As noted, the Union has advanced one of Charging Party's grievances to arbitration and a third-step hearing has been scheduled on the grievance challenging Hunter's thirty-day suspension/discharge. Under such circumstances, Charging Party cannot establish that the alleged breach of the AFSCME constitution has had any impact on her terms and conditions of employment.

For the above reasons, I conclude that the charge must be dismissed on summary disposition without a hearing and recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Senoj Hunter against AFSCME Council 25 in Case No. 22-B-0388-CU; Docket No. 22-006728-MERC is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



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

Dated: June 1, 2022