STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

PONTIAC SCHOOL DISTRICT,
Public Employer-Respondent in MERC Case No. C17 K-091,

-and-

PONTIAC ASSOCIATION OF SCHOOL ADMINISTRATORS (PASA)
Labor Organization-Respondent in MERC Case No. CU17 K-030,

-and-

DEBORAH R. JEFFRIES,
An Individual Charging Party.
_____/

APPEARANCES:

Daryl K. Segars, for the Public Employer

Helm Law, by David Helm, for the Labor Organization

Deborah R. Jeffries, appearing on her own behalf

DECISION AND ORDER

On May 30, 2018, 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: July 6, 2018

[1] MAHS Hearing Docket Nos. 17-025052 & 17-025053

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

PONTIAC SCHOOL DISTRICT,
Public Employer-Respondent in
Case No. C17 K-091; Docket No. 17-025052-MERC,

-and-

PONTIAC ASSOCIATION OF SCHOOL ADMINISTRATORS (PASA)
Labor Organization-Respondent in
Case No. CU17 K-030; Docket No. 17-025053-MERC,

-and-

DEBORAH R. JEFFRIES,
An Individual-Charging Party.
_____/

APPEARANCES:

Daryl K. Segars on behalf of the Pontiac School District

Helm Law, by David Helm, on behalf of the Pontiac Association of School Administrators

Deborah R. Jeffries on her own behalf

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

On November 8, 2017, Deborah R. Jeffries, filed the above captioned unfair labor practice charges against the Pontiac School District (District) and the Pontiac Association of School Administrators (Association). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, these cases were assigned to Administrative Law Judge Travis Calderwood of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission). The charges have been consolidated.

Charging Party's filings against both the District and the Association are identical in nature and make several allegations of wrongdoing in connection with the recent termination of Long Term Disability (LTD) benefits Charging Party had been receiving since being determined disabled in 2001.

These matters were originally set to be heard on January 12, 2018. On January 5, 2018, the District requested an adjournment; the hearing was then set for March 14, 2018. The Association on March 6,

2018, following a substitution of counsel, requested an adjournment. The matter was rescheduled to April 10, 2018.

On March 27, 2018, the Association filed a motion and accompanying brief in support thereof seeking summary disposition pursuant to Rule 165(2)(d) and (f) of the Commission's General Rules, R. 423.165.

A telephone pre-hearing was held on March 29, 2018, during which Charging Party indicated that she is no longer employed with the District and has not been since 2001.2

Upon review of pleadings as filed by the parties, it appeared summary dismissal in favor of both Respondents was warranted. Accordingly, on April 4, 2018, I directed Charging Party to show cause in writing why her charge against both Respondents should not be dismissed without a hearing. Charging Party responded by email on April 23, 2018.

Background:

As originally alleged by Charging Party, she had been employed with the District from 1987 until sometime in 2001 at which time she became "disabled and eventually determined to be eligible for Long Term Disability Benefits." At that time, she was a member of the Association's bargaining unit.

Charging Party claims that the contract in effect in 2001 between the District and Association provided that LTD benefits would be provided until her 70th birthday. That contract, as attached to the Association's motion to dismiss, states at Section I, Item 2.3, "The duration of long-term disability benefits will be in accordance with the ADEA guidelines (age 70 maximum)." Item 3 of that Section states:

> The long-term disability program shall be provided within the underwriting rules and regulation as set forth by the carrier in the master contract held by the policyholder.

Also included with the Association's motion was a copy of the Long Term Disability Insurance policy document provided by Michigan Education Special Services Association (MESSA) in effect in 2001. Included within that policy was the following chart entitled "Maximum Period of Payment"

(a) for disability commencing prior to age 60 – up to age 65,

(b) for disability commencing at or after age 60 and prior to age 66 – up to 5 years,

(c) for disability commencing at or after age 66 – up to the following periods:

Disabled at Age	Duration of Benefits
66	4 years
67	3 years
68	2 years
69	1 year

2 Charging Party retracted this position claiming in her response to my Order to Show Cause that she was in fact an employee of the District.

On or around Charging Party's 65th birthday, in June or July 2017, MESSA notified her that her benefits would expire on her 65th birthday.

Following the termination of benefits, Charging Party contacted MESSA and referenced the collective bargaining agreement provision as set forth above. MESSA declined to adjust its position.

Charging Party next contacted the District and claims a District "representative" stated the matter required review. According to Charging Party, she never received a follow-up on her initial contact with the District and that her attempts to speak with someone at the District have been ignored.

Charging Party also tried to enlist the help of the Association in an effort to restore the LTD benefits to which she thought she was entitled. According to Charging Party's pleading, the "PASA expressly declined to represent [her] interest."

While Charging Party's pleadings presume to establish that it was not until after MESSA terminated her benefits that she learned that the PASA would not assist her, attached to the Association's motion is an email from her dated April 18, 2017, to the PASA in which she recounts her struggle with MESSA regarding the LTD and then requesting "any further steps from PASA for me to follow." The next day Charging Party received an email which purported to be a forwarding of a statement from the attorney representing the Association. That response stated in the relevant part:

> This dispute cannot be resolved under the PASA contract. First, Ms. Jeffries is not an employee of the District and has no access to the PASA grievance process. Second, her dispute is with MESSA and not the District; MESSA is not subject to the PASA grievance procedure.
>
> Ms. Jeffries may have some residual rights under the old contract but she would have to try to enforce them as an individual. Therefore PASA cannot use the grievance procedure to assist her. We can encourage her to contact private counsel.

It is undisputed that Charging Party has not received any LTD benefit payments since July 2017.

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, Rule 151(2)(c), of the Commission's General Rules, 2002 AACS; 2014 MR 24, 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).

Rule 165 of the Commission's General Rules, 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).

In the present matter, there is a legitimate question regarding the status of Charging Party as it relates to both Respondents, as by her own pleadings she claims she was determined to be permanently disabled in 2001 and had been receiving LTD benefits from MESSA since that same time until July 2017. A predicate to any action against a union alleging a breach of its duty of fair representation requires that the charging party is a member of the union's bargaining unit. See *Schneider Moving & Storage Co v. Robbins*, 466 US 364 (1984), quoting *Vaca*, supra, at 342. Additionally, as the Commission has previously recognized, individuals who are no longer employed by a public employer, such as persons who have resigned or retired, are not "public employees" within the meaning of PERA. See *Washtenaw County*, 18 MPER 40 (2005). Ignoring the preceding question, however, it is the opinion of the undersigned that the Charging Party has failed to plead a claim with respect to either the District or the Association that, if proven true, would entitle her to relief under PERA.

With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment nor does it confer upon an individual the right to pursue a breach of contract claim against an employer. The Commission's jurisdiction with respect to claims brought by individual employees against public 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. See *Wayne Co*, 20 MPER 109 (2007). Moreover, an employee's allegation that an employer violated the collective bargaining agreement, without more, does not state a valid claim under PERA. *Ann Arbor Pub Sch*, 16 MPER 15 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75. Here, Charging Party has failed to plead any allegations that, if proven true, could establish that the District discriminated or retaliated against her because of union or other protected concerted activity while she was an employee of the district. Accordingly, the charge against the District must be dismissed.

A union, acting as the exclusive agent for employees covered by a bargaining unit, has a duty to fairly represent all members of a designated unit. *Vaca v Sipes*, 386 US 171 (1967). As stated by the Court in *Vaca*, a union's statutory duty of fair representation traditionally runs only to members of its collective bargaining unit and is coextensive with its statutory authority to act as the exclusive representative for all the employees within the unit. *Id.* at 182. Furthermore "[a] breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective-bargaining unit is arbitrary, discriminatory, or in bad faith." *Goolsby v Detroit*, 419 Mich 651 (1984). Commission case law is clear that a member's dissatisfaction with their union's effort or with the union's ultimate decision or with the outcome of its decisions is insufficient to constitute a proper charge of a breach of the duty of fair representation. See, *Eaton Rapids Education Association*, 2001 MERC Lab Op 131. Moreover, in order to survive a motion for summary disposition that a charging party has failed to state a claim, the pleadings "must contain more than conclusory statements alleging improper representation." *AFSCME, Local 2074*, 22 MPER 83 (2009), citing *Martin v Shiawassee County Bd of Commrs*, 109 Mich App 166, 181; 310 NW2d 896 (1981). Here, Charging Party has not alleged any facts that, if proven true, could establish that the Association's actions, whatever they may be, were in any way based on an unlawful motive or that its refusal to arbitrate her grievance was otherwise arbitrary, discriminatory or outside the bounds of reasonableness.

I have considered all other arguments as set forth by the Charging Party in her filings and have concluded such does not warrant a change in the result. Accordingly, and for the reasons set forth above, I recommend that the Commission issue the following order.

Recommended Order

The unfair labor practice charges filed against the Pontiac School District and the Pontiac Association of School Administrators are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: May 30, 2018