STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

PLUMBERS UNION LOCAL 98,
Respondent-Labor Organization,

Case No. CU98 D-17

-and-

SAMUEL R. WILSON,
An Individual Charging Party.
_____/

APPEARANCES:

Boaz Siegel, Esq. for the Respondent

Samuel R. Wilson *in pro per*

DECISION AND ORDER

On January 25, 1999, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 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

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date: _____

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APPEARANCES:

For the Respondent: Boaz Siegel, Esq.

For the Charging Party: Samuel R. Wilson, in pro per

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

This case was heard at Detroit, Michigan on July 17, 1998, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. This hearing was conducted pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 & 423.216, MSA 17.455(10) & 17.455(16). Based upon the entire record, including the exhibits and transcript of the hearing received on August 14, 1998, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The unfair labor practice charge was filed by Samuel R. Wilson, an individual, on April 4, 1998, and amended on April 28, 1998. The charge, as amended, alleges that Charging Party was employed as a plumber's apprentice with the City of Detroit and was a member of a bargaining unit represented by Respondent. According to the charge, on December 10, 1997, Charging Party was instructed by Respondent to take a drug test as a precondition to his enrollment in the apprentices' training school. Charging Party failed the test and was removed from the apprenticeship program. Charging Party asserts in his charge that Respondent breached its duty of fair representation to him by: (1) requiring him to take a drug test and/or failing to notify him that a drug test was required; (2) refusing to give him a copy of the results of his drug test; (3) failing to assist him in challenging his removal from the apprenticeship program.

Facts:

Charging Party has been employed by the City of Detroit since October 1984. In 1997, he was working in the City's wastewater treatment plant, and was a member of a bargaining unit represented by AFSCME Local 207. In March or April 1997 Charging Party applied to become a plumber's apprentice for the City. On November 10, 1997, he was removed from his former job and assigned to work alongside licensed plumbers in the department of public works. From this date he was paid the rate the City pays to plumbers' apprentices, and the City ceased deducting AFSCME dues from his paycheck. Charging Party was never asked to sign membership documents or a dues deduction authorization for Respondent.

The length of a plumber's apprenticeship is five years, and apprentices both work and attend formal training during that period. The formal training is provided by the Metropolitan Detroit Plumbing Industry Training Center Joint Apprenticeship Committee. This committee is made up of three trustees from two major plumbing industry employer associations and three trustees from Respondent.[1] If an apprentice works for a private employer that is a member of one of the employers' associations, the apprentice signs an apprenticeship agreement with the joint apprenticeship committee as his or her sponsor. This process is called indenturing. Apprentices working for the City of Detroit are indentured by the City. All apprenticeship agreements are required to be filed with the U.S. Department of Labor. Generally, plumbers' apprentices begin classes at the Plumbers Industry Training Center at the same time they begin working. However, the apprenticeship school was full at the time Charging Party began work. Charging Party was told that he would start school as soon as there was an opening. Charging Party did not sign an apprenticeship agreement with the City, and his apprenticeship was not registered.

On December 1, Charging Party received a letter from the Plumbing Industry Training Center directing him to report to the center on December 10 to complete 'the appropriate paperwork." At the training center he received a statement of rules for apprentices issued by the joint apprenticeship committee, and was given papers to fill out. Charging Party was also instructed by the center to report to a clinic to take a drug test.

The record indicates that the plumbers' joint apprenticeship committee has for several years routinely screened all apprentices for drugs prior to their beginning formal training. This testing is independent of any drug testing that may be required by their employers. The training center does not normally give applicants who have failed its drug screen a copy of their test results. However, the training center routinely allows prospective apprentices to be retested, at their own expense. In January 1998, after Charging Party took his drug test, the City began requiring prospective plumbers' apprentices to pass a drug screen before sending them to the training center.

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[1] The City of Detroit is not a member of either of these employers' associations. The joint apprenticeship committee has an informal agreement with the City to provide classroom instruction to apprentices enrolled in the City's apprenticeship program.

Charging Party continued working as a plumbers' apprentice until January 1998. On January 9, 1998, Charging Party was called to a meeting with the apprenticeship coordinator in the City's department of human resources. Respondent's steward was also present at this meeting. Charging Party was handed a letter which stated:

> You had positive results on the Plumbing Training Center's drug screen taken December 10. Positive results bar you from their school. Accordingly, you are being removed from the apprenticeship program and will be reverted to your former classification effective January 12, 1998.
>
> Any questions you may have concerning the failed test should be directed to the Plumbing Industry Training Center.

The steward told the apprenticeship coordinator that he had been a plumber and a member of Respondent for 20 years, and that he had no knowledge that the training school required drug testing. The steward asked that Charging Party be given the right to take the drug test again. The apprenticeship coordinator told Charging Party and the steward that he could not provide them with any information, and told them to call the training center. About a week later, Charging Party met with Respondent's chief steward. The chief steward said that he also was not aware that the training school was requiring testing, and he told Charging Party that he would get in touch with the training school. Charging Party had one more conversation with the chief steward, also in January. The chief steward said that he had not been able to get any information from the school and would get back to Charging Party. Charging Party had no further communication with Respondent.

Charging Party returned to his job as a water maintenance mechanic. He tried to file a complaint about his treatment with the U.S. Department of Labor, but discovered that he could not because his apprenticeship had not been registered. On April 8, 1998, he called the Plumbing Industry Training Center and asked for a copy of his drug test results. He spoke to the director, who told Charging Party that he would have to check to see if he could release this information.[2] Charging Party did not hear anything more from him, and filed this charge three weeks later.

Discussion and Conclusions of Law:

The charge originally named both Local 98 and the Plumbers Industry Training Center as Respondent. According to Charging Party, he believed at the time the charge was filed that the training center was operated by Respondent. However, the record establishes that the training center is operated by an independent entity, the Metropolitan Detroit Plumbing Industry Training Center Joint Apprenticeship Committee. The sole function of this entity is to administer the apprenticeship program. It does not represent employees for purposes of collective bargaining and, therefore, is not a labor organization as that term is used in Section 10(3) of PERA. I find that the Plumbers Industry

[2] A copy of Charging Party's test results was attached to Respondent's answer to the charge. Charging Party therefore received a copy of his test result after the charge was filed.

Training Center is not an agent of Respondent and is not a proper respondent in this case.

I also note that this record does not affirmatively establish that Respondent owed a duty of fair representation to the Charging Party. Charging Party testified that he assumed that Respondent represented him after he was assigned to work as a plumber's apprentice in November 1997 because (1) the City stopped deducting AFSCME dues from his check, (2) the City-employed plumbers that he worked alongside were members of Respondent, and (3) a steward from Respondent was present at the meeting at which he was told that he was being removed from the apprentice program. The only witness who testified for Respondent at the hearing was the director of the training center. The director stated that although he is a member of Respondent, he is not an officer and is an employee of the joint committee. The director testified that he assumed that Respondent had a collective bargaining agreement with the City, but did not know this for a fact. Since Respondent did not deny that it represented Charging Party at the time of the events herein, I will assume for purposes of the discussion below that Respondent did owe Charging Party a legal duty of fair representation under Section 10(3)(i) of PERA.

Charging Party's first allegation against Respondent is that it violated its duty of fair representation by requiring him to take a drug test and/or by failing to inform him that a drug test was required. His second allegation is that Respondent refused to give him a copy of his drug test results. As for the first part of this claim, the record established that the Metropolitan Detroit Plumbing Industry Training Center Joint Apprenticeship Committee, not Respondent, required Charging Party to take the drug test. Moreover, the record also established that Charging Party's drug test results were in the possession of the training school, not Respondent. With regard to the other allegation, I find that Respondent had no duty to affirmatively advise Charging Party that a drug test would be required as a condition of continuing in the apprenticeship program. As the Court said in *Lowe* v *Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973):

> The union must be concerned for the common good of the entire membership. That is its first duty.
>
> That duty of concern for the good of the total membership may sometimes conflict with the needs, the desires, even the rights of an individual member.
>
> When the general good conflicts with the needs or desires of an individual member, the discretion of the union to choose the former is paramount.
>
> When the general good conflicts with the legal or civil rights of an individual member, the courts will recognize those rights and enforce them as against the will of the majority of the union membership.

Respondent 's membership has a legitimate interest in ensuring that illegal drug users are not allowed to become members of the trade, since they might thereby endanger the safety of members working alongside them. Providing prospective apprentices with advance notice that they will have to take a drug test could give drug users the opportunity to cover up their drug use. On the other

hand, while prospective apprentices may have the desire to know beforehand that they will be required to take a drug test, they have no legal right to this knowledge. Whether or not to tell apprentices that they will have to take a drug test is clearly a decision within Respondent's discretion.

Charging Party's final allegation is that Respondent breached its duty of fair representation by failing to assist him in challenging his removal from the apprenticeship program.
The record indicates that Respondent's steward argued on Charging Party's behalf at the January 9, 1998 meeting where the City's representative informed Charging Party that he was being removed from the apprenticeship program. The City's response was that Charging Party would have to talk to the training center. Charging Party later spoke with Respondent's chief steward, who said that he would keep trying to get information from the school. While it is not clear whether Charging Party's removal from the apprenticeship program was a matter that could have been grieved under Respondent's contract with the City, it is clear that Charging Party never asked Respondent to file a grievance. Moreover, there is no indication that there was anything else Respondent could have done about Charging Party's removal from the program. I conclude that Charging Party has not shown that Respondent acted in bad faith, or in an arbitrary or discriminatory manner. See *Goolsby v Detroit*, 419 Mich 651 (1984).

In accord with the discussion above, I conclude that Respondent Plumbers Union Local 98 did not commit an unfair labor practice under Section 10(3) of PERA in this case, and I recommend that the Commission issue the following order.

Recommended Order

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____