STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

POLICE OFFICERS LABOR COUNCIL,
Respondent-Labor Organization, Case No. CU97 F-25

-and-

JULIE BYARSKI,
An Individual Charging Party.
_____/

APPEARANCES:

Law Offices of John A. Lyons, by Barton J. Vincent, Esq., for Respondent

Robert J. Krupka, Esq., for Charging Party

DECISION AND ORDER

On December 22, 1998, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent violated its duty of fair representation under Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210; MSA 17.455(10). Respondent Police Officers Labor Council (POLC) filed timely exceptions to the Decision and Recommended Order of the ALJ and a request for oral argument on January 11, 1999. Charging Party did not file a brief in response to the Union's exceptions.

After reviewing the exceptions, we find that oral argument would not materially assist us in deciding this case. Therefore, Respondent's request for oral argument is hereby denied.

Background:

Charging Party Julie Byarski was a corrections officer with the Huron County Sheriff's Department and a member of a bargaining unit represented by the POLC. She began working full-time for the County on May 1, 1995. At that time, the POLC and the Employer were operating under the terms of a collective bargaining agreement which had expired in December of 1995. Article VIII, Section B, of that contract provides, in pertinent part:

> It is understood that employees are subject to a probationary period of twelve (12) consecutive months of regular, full-time employment, during which time the County shall have the sole right to discharge, discipline, transfer, demote or layoff [sic] said employees for any reason, without regard to the provisions of this Agreement and such probationary employee shall be deemed an employee at will; and no grievance shall arise therefore except a grievance alleging retaliation for Union activity.

Two days before Byarski's probationary period was due to expire, she was called into a meeting with the jail administrator. Corrections steward Larry Heider also attended the meeting at Byarski's request. The jail administrator presented Byarski with a "Letter of Understanding" and told her that she would be terminated if she did not sign it. The letter memorialized an agreement to extend Byarski's probation for six months and to give the County the right to terminate her for any reason, with or without cause, during that period. In consideration for the Employer's agreement to extend the probationary period, the letter specified that Byarski would waive her right to legal action arising out of her employment with the County, including all claims of discrimination and breach of contract. The letter stated that Byarski would be rendered a "voluntary quit" if she failed to comply with the terms of the agreement. The jail administrator indicated that the letter was the result of a report which the Employer had received alleging that Byarski had been rude to a citizen a few months prior to the expiration of her probationary period. The jail administrator also told Byarski that there had been a problem with her time clock tapes, and that she had released a prisoner early. It is undisputed that none of these issues had previously been brought to Byarski's attention and that there was no documentation of them in her personnel file. Heider did not ask the jail administrator to substantiate these allegations, nor did he raise any objections to the Letter of Understanding.

Byarski testified that when she left the meeting, she asked Heider to file a grievance on her behalf. She told Heider that she suspected the Employer had issued the Letter of Understanding, in part, in retaliation for her vocal opposition to the County's wage proposal. The following day, Byarski called POLC field representative Paul Konopa and again asked for a grievance to be filed on her behalf. Konopa told Byarski that there was nothing the Union could do for her and that she should sign the Letter of Understanding if she "valued her paycheck." Later that day, Byarski presented a letter to the Employer in which she indicated that she would not sign the Letter of Understanding, but that she was "ready, willing and able to work" and that she would report to duty on her next scheduled shift. On April 30, 1997, Byarski was notified by the County that she was deemed to have voluntarily resigned her employment. Thereafter, Byarski filed unfair labor practice charges with this Commission, naming the POLC, the Huron County Board of Commissioners and the Huron County Sheriff's Department as Respondents. The charge against the board of commissioners and the sheriff's department was subsequently withdrawn.

Following an evidentiary hearing on the matter and the submission of post-hearing briefs by the parties, the ALJ issued a Decision and Recommending Order in which she concluded that the Union had engaged in arbitrary conduct with respect to Byarski and thereby breached its duty of fair representation. On exception, the POLC argues that the ALJ applied the wrong legal standard in finding a violation of Section 10 of PERA. According to Respondent, the Decision and Recommended Order mistakenly suggests that mere negligence is sufficient to constitute a breach of the duty of fair representation. Respondent also contends that the ALJ made an erroneous finding

of fact when she determined that the Letter of Understanding issued to Byarski specified that she would be considered a voluntary quit if she refused to sign. Finally, the Union asserts that the record is insufficient to support the ALJ's finding that its representatives acted with "indifference to and disregard for Byarski's rights."

Discussion and Conclusions of Law:

Although Respondent makes numerous arguments in support of its contention that the ALJ erred in finding a violation of the duty of fair representation, the gravamen of this case is the Union's assertion that it had no duty to represent probationary employees such as Byarski. It is fairly well-established that a labor organization has no responsibility to file a grievance challenging the discharge of a probationary employee where the collective bargaining agreement contains a clause giving the employer the unilateral right to take such action. *Genesee County Sheriff Dep't*, 1990 MERC Lab Op 467, 470 (no exceptions); *Wyoming Police Dep't*, 1983 MERC Lab Op 1024, 1028-1032 (no exceptions). See also *Van Leeuwen v US Postal Serv*, 628 F2d 1093; 105 LRRM 2097 (CA 8, 1980). However, we have previously held that the duty of fair representation encompasses more than merely the filing of grievances. *Wayne County Community College*, 1976 MERC Lab Op 347, 352. Probationary employees have certain rights inuring to them under the contract which the union has a statutory duty to protect. *Laminates Unlimited, Inc v Baltimore Regional Joint Bd*, 292 NLRB 595; 130 LRRM 1352 (1989). See also *Amalgamated Transit Union Local 1564, AFL-CIO v Southeastern Michigan Transportation Authority*, 437 Mich 441 (1991); *Internal Revenue Service, Jacksonville District*, 1 FLRA 266 (1979). More importantly, the contractual provision in the instant case does not completely deny probationary employees access to the grievance procedure. To the contrary, Article VIII, Section B explicitly states that a grievance may be filed alleging retaliation against a probationary employee for union activity. See *Tatum v Frisco Transp Co*, 626 F2d 55, 104 LRRM 3089 (CA 8, 1980) (union had duty to investigate grievance involving discharge of probationary employee where contract provision prohibited discharge of a probationary employee for purposes of "evading the contract.").

Having determined that the Union was obligated to represent Byarski fairly and, under certain circumstances, function as her advocate, the next question is whether that duty was in fact breached. 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, 177 (1967). "Arbitrary conduct," includes (a) impulsive, irrational, or unseasoned 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. *Goolsby v Detroit*, 419 Mich 651, 679 (1984). See also *Detroit Fire Fighters Ass'n*, 1995 MERC Lab Op 633, 637-638. The Union correctly asserts that mere negligence is insufficient to constitute a breach of the duty of fair representation. *Goolsby*, 419 Mich at 680. Based upon an examination of the record in this case, however, including the transcript and exhibits, we agree with the ALJ's determination that the conduct of the union representatives reflected a total indifference to and disregard for Byarski's rights.

Byarski told Heider that she suspected the Employer was retaliating against her for publically

opposing the County's wage proposal. The record also indicates that the Union was aware of the Employer's displeasure with Byarski. After the wage proposal was rejected by the membership, Byarski talked to Heider and several other employees and expressed her opinion that probationary employees should be treated like everyone else with respect to the wage scale. She also asked Heider to look into how she was being paid. Shortly thereafter, Heider called Byarski and informed her that the undersheriff and the jail administrator were upset with her. When Byarski met with the jail administrator, she was told that if she had questions about her wages, she should use the chain of command, starting with him, and not the Union. Approximately three months later, the Employer asked Byarski to sign a letter which would have extended her probation for six months and required her to waive all legal rights arising from her employment with the Sheriff's Department. Neither Heider nor Konopa objected to the letter or made any attempt to modify its terms. Moreover, union representatives made no effort to verify the allegations which gave rise to the letter, or even to seek Byarski's side of the story. It is undisputed that Byarski was never disciplined with regard to the incidents referred to by the jail administrator, and that there was no documentation in her personnel file regarding these allegations. In fact, none of these issues had even been brought to Byarski's attention prior to the meeting. Although Byarski admits that she released a prisoner twelve hours early, she denies the other charges. Under such circumstances, the Union's failure to inquire into the validity of the stated reason for the issuance of the letter "constitutes more than mere negligence or ineptitude." *Service Employees International Union, Local 579 v Evans*, 229 NLRB 692; 95 LRRM 1156 (1977). We conclude that the Union's conduct in this case was "so unreasonable as to be arbitrary" and, therefore, constituted a breach of the duty of fair representation. *Id*.

In so holding, we emphasize that this decision does not in any way enlarge the scope of the duties which a labor organization owes to its probationary employees, nor does it ease the burden of proof necessary to establish a breach of those responsibilities. In this case, there was a contractual provision giving probationary employees access to the grievance procedure for purposes of alleging retaliation for union activity, and the circumstances surrounding Byarski's discharge were, at the very least, suspicious. On these facts, the Union's perfunctory attendance at a few meetings with the Employer was wholly insufficient to ensure that her rights were protected.

We also note that this Commission is in agreement with the ALJ's footnote concerning the imposition of attorney fees, and we decline to award such a remedy in this case only because we are constrained from doing so by the decision of the Michigan Court of Appeals in *Goolsby v City of Detroit*, 211 Mich App 214 (1995). We believe that *Goolsby* was wrongly decided and urge the Court of Appeals to revisit the issue. See MCL 423.216(b); MSA 17.455(16)(b); *Dutrisac v Caterpillar Tractor Co*, 749 F2d 1270; 113 LRRM 3532 (CA 9, 1983).

ORDER

Pursuant to Section 16 of PERA, we hereby adopt the recommended order of the ALJ as our order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated:_____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

POLICE OFFICERS LABOR COUNCIL (POLC),
(HURON COUNTY SHERIFF)
Respondent-Labor Organization

-and- Case No. CU97 F-25

JULIE BYARSKI,
Individual Charging Party
/

APPEARANCES:

Barton J. Vincent, Esq., Law Offices of John A. Lyons, for the Labor Organization

Robert J. Krupka, Esq., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Detroit, Michigan, on March 24, 1998, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on June 30, 1997, by individual Charging Party Julie Byarski, alleging that the Police Officers Labor Council had violated Section 10 of PERA. [1] Based upon the record and briefs filed on or before June 4, 1998, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

The charge alleges that as a result of the Union's actions and conduct by its officers, agents, and representatives, the Charging Party was denied those rights guaranteed to her under sections 9 and 10(3)(a) and (b) of PERA.

Facts:

[1]This charge was originally consolidated for hearing with Case No. C97 F-142, which named the Huron County Board of Commissioners and Sheriff's Department as Respondents. That charge was withdrawn on November 12, 1997.

The Police Officers Labor Council (POLC) represents a bargaining unit of all full-time employees working in the Sheriff's Department, excluding the sheriff, undersheriff, chief deputy, sheriff's secretary, and jail administrator. The unit includes clericals, road patrol officers, dispatchers and correction officers.

Charging Party Julie Byarski began work in the Huron County Sheriff's Department in June of 1995 as a part-time corrections officer. She became full-time on May 1, 1996. At that time she was aware that her position was included in a bargaining unit represented by the POLC and that she was subject to a probationary period of one year. Byarski was hired pursuant to a resolution of the Huron County Board of Commissioners which included the following language:

> ...Julie Mellas-Byarski will be hired as a full time Correctional Officer effective May 1, 1996 at a yearly salary starting rate of $21,103.00 with a one year probationary period and to comply with the Police Officers Labor Council and the David Griffith and Associates , Ltd., job classification study, grade 8, step l;

The Griffith job classification study evaluated the job performance of employees of other municipalities, broke them into different categories and classifications, and recommended certain pay levels. Several years ago, in 1993, the sheriff indicated to the Union that due to budget cuts he was unable to hire more full-time employees under the wages in the contract. At that time the Union agreed to allow the Employer to apply the wage rates of the Griffith study to new hires, rather than the contractual wage rate. Since that time eight employees, including Byarski, have been hired under the David Griffith study.

At the time Byarski was hired, the Union and the Employer were negotiating a successor contract and were operating under the terms of the collective bargaining agreement which had expired in December of 1995. This contract provided at Article VIII, Section B, Probationary Period:

> It is understood that employees are subject to a probationary period of twelve (12) consecutive months of regular, full-time employment, during which time the County shall have the sole right to discharge, discipline, transfer, demote or layoff said employees for any reason, without regard to the provisions of this Agreement and such probationary employee shall be deemed an employee at will; and no grievance shall arise therefore except a grievance alleging retaliation for Union activity. . . .

A meeting was held by the Union on January 14, 1997 to discuss the Employer's wage proposal in negotiations. Union representatives at the meeting included field representative Paul Konopa, chief steward Greg Gordon, corrections steward Larry Heider, and dispatch steward Peggy Bodis. Part of the Employer's proposal included agreeing to accept the Griffith study for all employees. It also set forth a two-tier wage provision which provided that current employees would

reach Step 7 at the end of 5 years; new hires would reach Step 7 after 10 years. According to Byarski, she spoke up about rejecting the proposal because, as a new hire, it would have extended her wages for a five-year period. She asked Konopa whether there was an internal grievance procedure because she felt that she was being unfairly represented by some members of the Union. She asked that a grievance be filed on her behalf with respect to wages as had been done for another probationary corrections officer, but was told that it would be untimely because it was past five days since she had been hired. The Union had previously filed a grievance when corrections officer John Petty was hired because the Board's resolution referenced only the David Griffith study and not the POLC contract. Byarski also stated at the meeting that she was looking into filing an unfair labor practice charge because no one was answering her questions. According to Byarski, chief steward Gordon told her that she shouldn't be complaining now because she was happy when she originally got the job.

Union representatives also testified with respect to this meeting. Field representative Konopa recalled that Byarski asked whether there was an internal procedure to remove stewards from their positions, because she was not happy with the way they had negotiated the contract. According to Konopa, Byarski stated that many people in the room were not being represented. She also spoke about bringing in another union, wanting to contact her own attorney, and made other comments in that vein. Konopa testified that there was much discussion at the meeting and at one point it almost turned into a shouting match. Union steward Heider testified that the meeting was attended by 30 or 40 individuals and everyone was unhappy with the proposal. He recalled that Byarski was present but testified that he had no recollection of her comments.

Because of objections to the Employer's proposal raised by Byarski and others it was decided to delay voting on the proposal for three days. The proposal was then rejected by the membership. Byarski subsequently talked to corrections steward Heider and several other employees. She expressed her opinion at that time that probationary employees should be treated like everyone else with respect to the wage scale. She also asked Heider to look into how she was currently being paid under the Griffith study because no one had adequately explained it to her. In early February, Heider called her and told her he had spoken with the undersheriff and the jail administrator and that she had better have her facts and figures straight because they were upset with her. Byarski went to see the jail administrator, Tyler Ramsey, who asked why she wanted to file an unfair labor practice charge, and stated that if she had concerns about the Griffith study and her wages she should use the chain of command, starting with him, and not the Union. In March a contract proposal was left in employee mailboxes by the Union and employees were told to vote on the proposal; at that time it passed.

Byarski's probationary period was due to expire on April 30, 1997. On April 28, 1997, her day off, she was called at home by jail administrator Ramsey who said he wanted to see her. When she asked if she was in trouble, he told her: ". . . no, I just want to put a few things past you." Byarski then called steward Heider and asked if he knew why she was being called in. According to Byarski, Heider told her that they had a letter for her to extend her probation. When Byarski asked why, Heider said he didn't know the reasons yet but that he had been on the phone all day with field representative Konopa and then stated: "As far as what I can do for you, Julie, my hands are tied. . . . There's nothing I can do for you."

Later that day Byarski met with jail administrator Ramsey. She asked for Union representation and Heider attended the meeting with her. Ramsey presented Byarski with a Letter of

Understanding for her signature and that of a Union representative. This was a two-page document extending her probation for six months, indicating the Employer's right to terminate her for any reason, with or without cause, and waiving all rights with respect to legal actions against her Employer. The letter also indicated that if she did not sign, she would be considered a voluntary quit. The reasons that the letter was presented were also discussed. Byarski was told that a few months prior it had been reported that she was rude to a citizen. She was also told that there was a problem with her time clock tapes, and that she had released a prisoner early. Byarski admitted that she had inadvertently released a prisoner 12 hours early, but denied the other charges. None of these issues had been previously brought to Byarski's attention, nor was there any documentation in her personnel file. Heider said nothing during the meeting; he did not ask for documentation and made no investigation with respect to the Employer's complaints about Byarski's work. Heider raised no objections to the Letter of Understanding and did not suggest any modifications.

Byarski did not sign the Letter of Understanding. She testified that when they left the meeting she asked Heider to file a grievance on her behalf. Heider did not recall Byarski asking him to file a grievance, nor did he recall talking to her until they went into the jail administrator's office. He also testified that he had not talked to Konopa prior to that meeting, and that when he subsequently talked to Konopa he told Heider that there was nothing the Union could do.

The following morning Byarski called the undersheriff and asked to meet with him. Byarski testified that prior to the meeting she called Konopa and again asked to file a grievance. According to Byarski, Konopa told her that if she valued her paycheck she would sign the letter. When she asked if the Union could do anything for her, he replied "no." The second meeting was attended by the undersheriff, the jail administrator, Byarski and Heider. According to Byarski, the undersheriff asked her to reconsider signing it because she was a good employee and told her that he would give her a few hours to consider it. Byarski then presented the following letter to those at the meeting:

> This is to inform you that I will not be signing your offer of "Letter of Understanding" offered to me on April 28, 1997.
>
> This offer is contrary to my legal rights and this offer of "Letter of Understanding" is asking that I nullify those rights.
>
> I am ready, willing and able to work and will report to duty on my scheduled shift.

After the undersheriff read the letter he told Byarski not to return to work and to wait for a letter from the County attorney. Byarski subsequently received a letter dated April 30, 1997, stating that by refusing to accept the additional six-month probationary period she was considered as having voluntarily resigned her employment as of April 29, 1997.

When asked at hearing whether he agreed with the Letter of Understanding, Heider testified that he did not have an option, since Byarski was a probationary employee the Employer could do whatever it wanted. Heider has been employed as a corrections officer with Huron County for over seven years and served as Union steward for corrections officers from April of 1995 to

February of 1998. Heider worked with Byarski on the midnight shift and had been partners with her several different times. Heider testified that he had received complaints about work not being done on the shift, primarily laundry not being picked up. He characterized these as personal complaints, rather than complaints made to him in his capacity as steward. Heider took these complaints to the undersheriff and jail administrator and suggested that they check the tapes on midnights. According to Heider he did not make accusations against any individual corrections officer.

Gordon has been employed by the County for 22 years and served as chief steward until just after the last contract was ratified, in the spring of 1997. Gordon testified that he did not believe that it was the policy of the County to extend probationary periods. Business representative Konopa testified that to his knowledge it was the first time a probationary employee had been terminated in Huron County.

Discussion and Conclusions:

Charging Party alleges that the Union's failure to take any action on her behalf when the Employer attempted to extend her probationary period was motivated by hostility towards her and constituted a violation of its duty of fair representation. Respondent Union asserts that because Byarski was a probationary employee, the collective bargaining agreement prohibited the Union from filing a grievance on her behalf and therefore the charge should be dismissed.

To satisfy its duty of fair representation, a union must 1) serve the interests of all members without hostility or discrimination towards any; 2) exercise its discretion with complete good faith and honesty; and 3) avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967). In *Goolsby v Detroit*, 419 Mich 651 (1984), the Michigan Supreme Court reiterated that a failure to comply with any one of these standards constitutes a breach of the duty of fair representation. Thus to establish arbitrary conduct, the Court found that it is not necessary to also demonstrate bad faith. The Michigan Supreme Court indicated that arbitrary conduct constituting a breach of the duty is that which reflects "reckless disregard for the rights of the individual employee." The Court further stated at 679:

> . . . for purposes of PERA, we do not interpret a union's responsibility to avoid arbitrary conduct narrowly. In addition to prohibiting impulsive, irrational, or unreasoned conduct, *the duty of fair representation also proscribes inept conduct undertaken with little care or with indifference to the interests of those affected.*[Emphasis added.]

In the opinion of the undersigned, the Union's treatment of Bysarski falls within the Michigan Supreme Court's definition of arbitrary conduct. Although the Union appears to take the position that Article VIII of the contract and Byarski's status as a probationary employee relieved it of any responsibility to represent her, this is simply not the case. The duty of fair representation is not limited to the processing of grievances. See *Wayne County Community College*, 1976 MERC Lab Op 347, 352. A union has the duty to safeguard the interests of all bargaining unit members in matters affecting their employment. A bargaining unit member whose employment security is threatened is

in particular need of the assistance of a knowledgeable union representative. *Cf., NLRB v Weingarten*, 420 US 251, 88 LRRM 2689 (1975).

The record reflects a total indifference to and disregard for Bysarski's rights by Union representatives. The Union steward did nothing more than accompany Byarski to the meetings with her Employer; he did not speak on her behalf or represent her interests in any way. Despite the fact that there was no contractual provision regarding extending probationary periods, and no history of the Employer doing so, Union representatives raised no issue in that regard.[2] The document which the Employer requested Byarski to sign extended her probation another six months, and essentially required that she waive all legal rights against the Employer; again, Union representatives made no attempt to modify the Letter of Understanding or lessen its impact. Byarski had worked successfully as a part-time employee for almost a year, and was within a day or two of completing a year's probation as a full-time employee; according to Byarski, the undersheriff called her a good employee. Byarski had not been disciplined previously, and the charges against her were largely unsubstantiated, yet the Union did not question their validity, nor did it undertake any investigation into the merits of these charges. Taking all of these factors into consideration, I find that the Union engaged in arbitrary conduct with respect to Byarski and thereby breached its duty of fair representation under PERA. Given this finding, the indication of hostility by the Union due to the Charging Party's opposition to the new contract need not be considered.

As a remedy, Charging Party requests that the Union be ordered to pay Byarski back wages and benefits that she would have received had she not been terminated, and attorney fees. Under the circumstances of this case and existing precedent, this is not a permissible remedy. In *City of Detroit (Environmental Protection & Maintenance)* 1993 MERC Lab Op 268, *aff'd in pertinent part sub nom.Goolsby v City of Detroit*, 211 Mich App 214 (1995), *lv to app den* 450 Mich 1016 (1966), the Commission indicated that a remedial order of wages to victims of a failure to represent is improper unless a breach of contract by the employer is found. *Cf., Iron Workers Local 377,* 326 NLRB No. 54, 159 LRRM 1097 (1998). No breach of contract has been demonstrated here. In addition, in *City of Detroit, supra*, the Commission granted "fair and reasonable" attorneys fees to the charging parties because they were required to seek outside legal services due to the union's breach of duty. However, in *Goolsby, supra*, the Michigan Court of Appeals reversed the Commission's award of attorney fees and costs to the charging parties, determining that no specific language in PERA authorizes the award of attorney fees [3] It appears that under these limitations, only a cease and

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[2]See *Amalgamated Transit Union Local 1564, AFL-CIO v Southeastern Michigan Transportation Authority, 437 Mich 441 (1991), aff'g* 1987 MERC Lab Op 721, where despite the waiver of the Union's right to grieve on behalf of probationary employees, the Michigan Supreme Court affirmed the Commission's finding of a bargaining duty with respect to their discipline. See also *United Steelworkers of America, Local 15063,* 281 NLRB 1275, 124 LRRM 1368 (l986); *Internal Revenue Service, Jacksonville District, and National Treasury Employees Union,* 1 FLRA 266 (1979), regarding the representation of probationary employees.

[3]In doing so, the Court declined to follow the holdings of two prior panels of the Court that PERA authorizes the award of attorney fees pursuant to MCL 423.216(b), MSA 17.455 (16)(b), which states that the Commission has the power "to take such affirmative action . . as will effectuate the policies of this act." *Amalgamated Transit Union v Detroit,*150 Mich App 605,

desist order may appropriately be issued. It is therefore recommended that the Commission issue the following order:

607; 389 NW2d 98 (1985); *Hunter v Wayne-Westland Community School Dist*, 174 Mich App 330, 337, 435 NW2d 483 (1989). The Court also rejected the analysis found in the federal case relied upon by the Commission, *Dutrisac v Caterpillar Tractor Co.*, 749 F2d 1270 (CA 9, 1983), which awarded attorney fees to plaintiff as damages. Since the remedial language of Section 16(b) of PERA closely follows that of Section 10(c) of the federal act, the Commission has generally patterned its remedial orders on those of the National Labor Relations Board (NLRB). The broad discretion of the NLRB to fashion appropriate remedies to effectuate the policies of the Act has been recognized by the U.S. Supreme Court which has stated: "Congress has vested the Board, not the courts, with broad discretion" to determine remedial orders. *NLRB v Food Store Employees Local 437 (Heck's Inc.), 417 US 1, 86 LRRM 2209 (1974)*. This discretion has included the granting of litigation expenses and attorney fees. The decision of the Michigan Court of Appeals in *Goolsby* adversely limits the remedial powers of the Commission and effectively deprives Charging Party of any remedy for the wrong done her.

RECOMMENDED ORDER

It is hereby ordered that the Police Officers Labor Council, its officers, agents, and representatives, cease and desist from violating its duty of fair representation under PERA by engaging in arbitrary conduct with respect to bargaining unit members .

It is further ordered that the POLC post copies of the attached Notice to Members in conspicuous places at all locations where notices to members are customarily posted for a period of thirty (30) consecutive days. The Employer, Huron County, is also requested to post the same notice in places where employees represented by the POLC are employed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

Dated: _____