STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

EATON RAPIDS EDUCATION ASSOCIATION
and MICHIGAN EDUCATION ASSOCIATION,
Respondent-Labor Organization,

Case No. CU00 D-15

-and-

MICHAEL J. GARCIA,
An Individual Charging Party.
_____/

APPEARANCES:

White, Schneider, Baird, Young & Chiodini, P.C., by Thomas A. Baird, Esq., and J. Matthew Serra, Esq., for Respondent

Michael J. Garcia, In propria persona

DECISION AND ORDER

On September 14, 2000, Administrative Law Judge (hereafter "ALJ") Nora Lynch issued her Decision and Recommended Order on Motion for Summary Disposition in the above matter finding that Charging Party Michael J Garcia failed to state a claim under the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, and recommending that we dismiss the charges and complaint. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On November 8, 2000, Charging Party filed timely exceptions to the Decision and Recommended Order of the ALJ, a motion to amend the charges, and a request for oral argument. Respondent Eaton Rapids Education Association and Michigan Education Association filed a timely brief in support of the ALJ's decision on December 26, 2000.

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

Charging Party was a probationary teacher with the Eaton Rapids Public Schools for the 1998-1999 school year and a member of a bargaining unit represented by Respondent. After receiving several negative performance evaluations, Charging Party was notified by the District that his employment would not be renewed for the following school year. Thereafter, Garcia filed a series of grievances concerning the District's evaluation procedures and other issues relating to his employment with the District. On April 13, 2000, Garcia filed an unfair labor practice charge alleging that Respondent breached its duty of fair representation with respect to

the manner in which it processed his grievances. On June 26, 2000, Respondent filed a motion for summary disposition, with a request that the motion be heard on the date originally set for hearing, July 12, 2000. Charging Party filed a response to the Union's motion on July 10, 2000. Following oral argument on the motion, the ALJ determined that Garcia had failed to state a valid claim under PERA and recommended dismissal of the charges.

Charging Party now contends that the ALJ's decision in this matter was erroneous. Several of the 16 exceptions filed by Charging Party are procedural in nature and unrelated to the substance of the charges. For example, Charging Party alleges in Exception 1 that the ALJ erred in failing to dismiss Respondent's motion for bill of particulars on the ground that it was not timely filed. Rule 55(2), R423.455(2), of the General Rules and Regulations of the Employment Relations Commission requires that a motion for bill of particulars be filed within seven days of the filing of the charge. It is true that Respondent's motion for bill of particulars was filed on April 25, 2000, twelve days after the original charge was filed in this matter. However, Garcia did not object to Respondent's late-filed motion. Moreover, the time limit set forth in Rule 55(2) is not statutory in nature; rather, it is merely exists for the purpose of expediting unfair labor practice disputes. We fail to see how the ALJ's decision to grant the Union's motion for bill of particulars under these circumstances was even remotely detrimental to Charging Party's case.

Exceptions 3 and 4 concern Respondent's motion for summary disposition. In Exception 3, Charging Party alleges that the ALJ erred in failing to give him 10 days in which to respond to the Union's motion. In Exception 4, Garcia asserts that the motion for summary disposition should not have been considered because it was filed more than 10 days after the filing of the charge. In support of both of these exceptions, Charging Party cites Rule 55(1), R 423.455(1). However, Rule 55(1) concerns the filing of answers to complaints. Our administrative rules do not limit a party's ability to file a motion for summary disposition, nor is there any time limit specified for the filing of responses to such motions. In any event, Garcia never made any attempt to request an extension of time in which to respond to the Union's motion for summary disposition and, in fact, he filed a 43-page response on July 10, 2000, fourteen days after Respondent filed its motion and two days before the hearing on the matter. Once again, we are unable to discern how Charging Party was in any way prejudiced as result of the manner in which the ALJ conducted the proceedings in this case.

The only other procedural arguments worth noting are Exceptions 5 and 15, in which Charging Party contends that the ALJ failed to comply with the Supreme Court's decision in *Smith v Lansing School District*, 428 Mich 248 (1987). *Smith* requires that parties be afforded an opportunity to present oral argument in support of the legal and factual sufficiency of their claims. That is precisely what occurred on July 12, 2000. Charging Party's assertion that he did not receive proper notice regarding that hearing is specious at best. Both parties were served with a notice of hearing dated May 1, 2000, which set forth the proper time, date and place of hearing. Although the notice indicated that the parties would be afforded the opportunity to "give testimony and evidence," Respondent later filed a motion for summary disposition which included a request that the motion be heard on the date originally set for hearing. A copy of the motion was served on Charging Party. As noted, Garcia filed an extensive response to the Union's motion on July 10, two days before, the hearing. At no point during the July 12 hearing did Charging Party indicate that he was unprepared to argue the merits of his case, nor did he request an adjournment. In fact, Garcia stated on the record that he understood the purpose of

the hearing was to consider whether summary disposition should be granted in Respondent's favor. Even if Garcia was under the mistaken impression that he would be allowed to present evidence on July 12, we simply fail to see how he was prejudiced as a result of that belief. Accordingly, we conclude that Exceptions 5 and 15 are devoid of merit.

The remaining exceptions are directed toward the ALJ's analysis of Charging Party's substantive allegations and supporting evidence, and her conclusion that Garcia failed to state a claim for breach of duty of fair representation under PERA. 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; 87 S Ct 903; (1967); *Goolsby v Detroit*, 419 Mich 651(1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123, 146; 82 LRRM 341 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op ___ (Case No. CU99 F-27, issued January 31, 2001). Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe*, *supra*. A union satisfies the duty of fair representation as long as its decision was within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67; 136 LRRM 2721 (1991); *City of Detroit, Detroit Fire Dep't*, 1997 MERC Lab Op 31, 34-35.

On exception, Charging Party cites numerous examples of allegedly unlawful conduct by the Union. For example, Garcia repeatedly takes issue with the Union's failure to assert a "more rigorous defense of his rights under the contract." Charging Party also asserts that the Union failed to keep him properly informed as to the status of his grievances. As noted by the ALJ, however, mere disagreement with Respondent's methods and/or dissatisfaction with the results attained by the Union are not sufficient to establish a breach of the duty of fair representation. Neither the charges nor the evidence offered in support thereof suggest any personal hostility towards Garcia or discriminatory or arbitrary conduct by the Union. To the contrary, the record overwhelmingly establishes that Respondent made a good faith effort to investigate Garcia's complaints and to keep him informed as to the status of his grievances. Even if Charging Party was correct in his assertion that Respondent failed to adequately respond to his requests for information, that fact alone would not 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; *Technical, Professional and Officeworkers Ass'n of Michigan*, 1993 MERC Lab Op 117. Finding nothing in the record to suggest that the Union's actions in connection with Charging Party's grievances were arbitrary, discriminatory or in bad faith, we affirm the ALJ's decision to summarily dismiss the charges.

We have carefully considered Charging Parties' remaining exceptions and conclude that they do not warrant a change in the result of this case.

Lastly, Charging Party requests that he be permitted to amend his charges pursuant to Rule 54(1), R 423.454(1). Rule 54(1) provides that the Commission may permit a charging party to amend the charge "before, during, or after the conclusion of the hearing upon such terms as may be deemed just and consistent with due process." After reviewing Charging Party's

arguments in favor of the amendments, we find no justification or purpose in permitting Charging Party to amend the factual allegations of his charge at this late stage in the proceeding. In so holding, we note that the proposed amendments are simply a reiteration of many of the factual assertions previously set forth by Charging Party and considered by the ALJ. As noted, these allegations, even if true, are insufficient to establish a breach of the duty of fair representation.

ORDER

For the above reasons, we hereby adopt the Administrative Law Judge's Decision and Recommended Order as our final order in this case and dismiss the charges in their entireties.

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: _____

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MICHAEL J. GARCIA,
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APPEARANCES:

Thomas A. Baird, Esq., White, Przybylowicz, Schneider & Baird, P.C., for the Respondent

Michael J. Garcia, In pro per

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

The charges in this matter were filed on April 13, 2000, by individual Charging Party Michael J. Garcia, naming as Respondents the Michigan Education Association and its affiliate the Eaton Rapids Education Association. The charges were assigned to Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission, and a complaint and notice of hearing was issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379 and 1973 PA 25, as amended, MCL 423.216, MSA 17.455(16), setting a hearing date of July 12, 2000. Thereafter, as discussed below, Respondent filed a motion for summary disposition. Oral argument on Respondent's motion took place on July 12, 2000. Based upon the parties' oral and written arguments, the undersigned issues the following recommended order under Section 16(b) of PERA:

The Charge and Background Matters:

In the charge filed on April 13, 2000, Garcia listed twenty instances which he considered to be unfair representation by Respondents, which involved the alleged failure of the Union to effectively process his grievances and its lack of appropriate response to his correspondence and requests for information. On April 26, 2000, Respondent filed a motion for a bill of particulars, asserting that the charges consisted of vague and ambiguous assertions which made a response impossible. An order for bill of particulars was issued by the undersigned on May 1, 2000. Charging Party filed a lengthy response to the order on May 24, 2000. On June 28, 2000, Respondent filed a motion for summary disposition, with a request that the motion be heard on the date originally set for hearing, July 12, 2000. Charging Party filed a response to this motion on July 10, 2000. All of the above filings were accompanied by extensive supportive documentation.

Discussion:

Based upon the supportive documents submitted by the parties, the following facts emerge. Michael Garcia was a probationary teacher with the Eaton Rapids Public Schools for the 1998-99 school year, teaching high school Spanish and German. As a teacher, his position was included in the bargaining unit represented by the Eaton Rapids Education Association, MEA-NEA. After several negative evaluations of his performance by the District, Garcia was notified on April 29, 1999, that his employment would not be renewed for the following year.

Garcia filed a series of grievances objecting to the District's evaluation procedures, including the failure to follow timelines and other alleged irregularities, as well as the decision not to renew. The grievances were processed by the Union along normal channels. Six of the grievances were withdrawn, five were settled. MEA Uniserv Director Nancy Knight kept Garcia informed of the status of his grievances by written correspondence.

According to the collective bargaining agreement, the termination of services or failure to re-employ a probationary teacher is not a grievable matter. Garcia requested MEA representation in his attempt to challenge his nonrenewal through a tenure petition before the State Tenure Commission. Since the Union concluded that there was little likelihood of success on the merits of his tenure claim, the MEA refused Garcia's request for representation in that proceeding under its legal representation policy. However, during Garcia's appeal of the MEA's denial of representation, the MEA did provide him with legal assistance in appealing the decision of the Tenure Commission's Administrative Law Judge who denied his claim.[1] Garcia appealed the MEA's decision not to pursue his tenure claim at all levels within the MEA, which included the Director of Legal Services, the MEA Executive Director, the Executive Committee, and the Board of Directors. At each level he was informed in writing of the denial of his appeal.

[1]On November 8, 1999, the Michigan State Tenure commission upheld the ALJ decision dismissing Garcia's petition. His application for leave to appeal was denied by the Court of Appeals on January 28, 2000, and his motion for rehearing also denied on April 6, 2000. Garcia applied for leave to appeal to the Michigan Supreme Court on April 27, 2000 (Docket No. 116800).

Throughout the processing of his grievances, during his tenure claim, and after those proceedings concluded, Garcia wrote numerous letters to MEA representatives, challenging the way his grievances were being processed, complaining that Union representatives were not responding effectively, and objecting that they failed to carry out a more rigorous defense of his rights under the contract. MEA representatives responded to Garcia's many letters until February 18, 2000, when staff attorney Jeffrey Murphy informed Garcia that as he had exhausted all procedures available to him within the MEA, the matter was considered final and MEA representatives would no longer respond to his inquiries.

Conclusions:

A breach of a union's duty of fair representation occurs only where the union's conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. *Goolsby v Detroit,* 419 Mich 651 (1984); *Vaca v Sipes,* 386 US 171 (1967). A complaint alleging a breach of the union's duty must contain more than conclusory statements alleging unfair representation; there must be supportive facts in order to state a valid claim. *Goolsby, supra,* at 677; *Pearl v Detroit*, 126 Mich App 228, 235-238, 336 NW2d 899 (1983); *Martin v Shiawassee County Bd of Comm,* 109 Mich App 32, 35, 310 NW2d 896 (1981); *Merdler v Detroit Bd of Ed,* 77 Mich App 740, 746, 259 NW2d 211 (1977).

In his lengthy charge, the written responses to the order for a bill of particulars and the motion to dismiss, and in his oral argument, Garcia expresses his disagreement with the Union's methods and dissatisfaction with the fact that the Union was unable to obtain his reinstatement. He states that the Union failed to carry out a "more rigorous defense" and refused to "effectively respond" to his communications. He also claims that there "appeared to be" negligence, indifference, and collusion. However, Garcia specifies no facts which would support these conclusionary allegations. A review of the extensive documentation which he submitted reveals nothing which would evidence bad faith or arbitrariness in the Union's actions. The Union filed several grievances on Garcia's behalf; kept him informed of the status of his grievances and appeals; responded to his many letters and memos; and continued to represent him during the tenure proceeding until a final MEA decision was reached in his appeal. In essence, Garcia's complaint against the MEA is that they were unable to achieve the remedy he sought, which was to have his contract renewed. However, such dissatisfaction does not raise an issue of fair representation, absent a showing of bad faith, gross negligence, or arbitrary conduct on the part of the Union. *Michigan Council 25, AFSCME, Local 3308*, 1999 MERC Lab Op 132, 134; *Michigan Council 25, AFSCME, Local 1023,* 1992 MERC Lab Op 742.

Under *Smith v Lansing School Dist,* 428 Mich 248 (1987), summary disposition in administrative proceedings is appropriate where no material facts are at issue; a charging party must simply be afforded opportunity to present oral and written arguments opposing summary disposition. Charging Party has been given that opportunity in this case and has failed to state a claim under PERA. It is therefore recommended that Respondent's motion for summary disposition be granted and that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

DATED: