STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 274,
Respondent-Labor Organization,

Case No. CU99 F-27

-and-

LYNNETTE F. BUGENSKE,
An Individual Charging Party.
_____/

APPEARANCES:

Pinsky, Smith, Fayette & Hulswit, by Michael L. Fayette, Esq., for Respondent

Robert J. Krupka, Esq., for Charging Party

DECISION AND ORDER

On October 6, 2000, Administrative Law Judge (hereafter AALJ@) Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent International Alliance of Theatrical Stage Employees (hereafter AIATSE@), Local 274, did not breach its duty of fair representation in violation of Section 10 of the Public Employment Relations Act (hereafter APERA@), 1965 PA 379, as amended, MCL 423.210; MSA 17.455(10). The Decision and Recommended Order of the ALJ was served upon the interested parties in accord with Section 16 of PERA. On October 27, 2000, Charging Party Lynnette F. Bugenske filed timely exceptions to the ALJ=s Decision and Recommended Order. IATSE filed a timely brief in support of the ALJ=s recommended order on November 17, 2000.

In recommending dismissal of the charges, the ALJ concluded that the Union did not violate its duty of fair representation by refusing to process Bugenske=s grievances. In so holding, the ALJ cited *Lowe vs. Hotel Employee=s Union, 389 Mich 123 (1973)*, for the proposition that a union has Acomplete discretion regarding whether it will accept a grievance, how far it will proceed, and how it will be presented at arbitration.@ On exception, Charging Party argues that the ALJ misinterpreted the legal standard applicable to fair representation cases.
In *Lowe*, the Court acknowledged that a union hasAconsiderable discretion@ in the area of grievances, including Alatitude to investigate claimed grievances by members against their employers, *and has the power to abandon frivolous claims*.@ *Id*. at 145-146 (emphasis supplied). Similarly, this Commission has repeatedly emphasized the broad nature of the union=s discretion with respect to the processing of

grievances. See e.g. *Bloomfield Hills Association of Paraprofessionals, MEA/NEA*, 1997 MERC Lab Op 221; *City of Detroit, Police Department*, 1994 MERC Lab Op 1150*; East Jackson Public School Dist*, 1991 MERC Lab Op 132, aff=d 201 Mich App 480 (1993); *South Redford Education Association*, 1989 MERC 803. While the phraseAcomplete discretion@ may not have been a particularly precise characterization of the union=s authority in this area, a review of the record, including the transcript and exhibits submitted by the parties, convinces us that the ALJ=s decision in this matter was well-reasoned and proper.

As noted by the ALJ, 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). In recommending dismissal of the charges, the ALJ concluded that the Union=s refusal to process Bugenske=s grievances did not constitute an abuse of discretion because those grievances primarily related to her dispute with IATSE. The record supports the ALJ=s conclusion in this regard. Not one of Bugenske=s five grievances alleged a violation of the collective bargaining agreement. Rather, the grievances mainly pertained to IATSE=s decision to remove Bugenske from the production of *Beauty and the Beast*, an internal union matter. The grievance procedure is designed to resolve disputes between the employer and the employees with respect to the interpretation, application or enforcement of the collective bargaining agreement. Accordingly, we agree with the ALJ=s finding that IATSE did not abuse its discretion in refusing to process Charging Party=s grievances.

We have reviewed the remaining exceptions and find them to be without merit. There is no evidence that IATSE acted arbitrarily in this case. The record indicates that the Union=s decision to remove Bugenske from the production of *Beauty and the Beast* reflects a legitimate effort on the part of IATSE to improve its reputation for providing quality referrals and in no way evinces an abuse of discretion on the part of the Union. Nor did Charging Party offer any proof, beyond her vague allegations of discrimination, that the Union was motivated by hostility or bad faith with respect to their treatment of her in this matter. Accordingly, we adopt the Decision and Recommended Order as our order in this case.

ORDER

It is hereby ordered that the unfair labor practice charges filed by Lynnette F. Bugenske against International Alliance of Theatrical Stage Employees, Local 274 be dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated:

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 274,
Respondent - Labor Organization

Case No. CU99 D-73

- and -

LYNNETTE F. BUGENSKE,
An Individual Charging Party
_____/

APPEARANCES:

Pinsky, Smith, Fayette & Hulswit, by Michael L. Fayette, Esq., for the Labor Organization

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

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, *et seq.;* MSA 17.455(10) *et seq*., this case was heard in Lansing, Michigan on April 12, 2000, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. Based upon the record and briefs filed by June 28, 2000, I make the following findings of fact and conclusions of law, and issue a recommended order pursuant to Section 16(b) of PERA:

The Charge:

Charging Party claims in her June 23, 1999, unfair labor practice charge that Respondent violated Section 10(3)(a)(i)(b) of PERA. Pertinent parts of the charge read:

> On or about January 27, 1999, the Union advised the Charging Party she had been terminated from her position with the employer Michigan State University. Under the agreement between the Union and Michigan State University if there is an improper termination of employment, the agreement provides for a grievance procedure.
>
> On or about February 23, 1999, the Charging Party presented five grievances to Michael Wright, the president of the Union . . . Michael Wright wrote the Charging Party and

stated the grievances were improper and refused to process them. The Charging Party was further advised she was being disciplined by the Union and not fired.

The Charging Party attempted to utilize the internal union dispute resolution procedures to resolve the failure of the Union to represent her and to process her grievances as requested. The Union refused to follow it=s own procedures in acknowledging the charges the Charging Party had filed.

In its July 12, 1999, answer, Respondent denied the charges and raised various affirmative defenses.

Findings of Fact:

The relevant facts are undisputed. Respondent International Alliance of Theatrical Stage Employees (IATSE), Local 274, and Michigan State University (MSU) are parties to a collective bargaining agreement which covers the period September 1996 through August 1999. The contract contains a grievance procedure designed to resolve differences of opinion or disputes between MSU and employees regarding an interpretation or alleged violation of its provisions. Article 16 of the IATSE=s constitution and by-laws provides that members may file charges against local union officers.

Respondent represents on-call stage employees which it assigns to work at the Wharton and Breslin Centers at MSU and other venues in the Lansing area. On-call bargaining unit members perform Abehind the scenes@ work as carpenters, riggers, electricians, wardrobe workers, etc., for small plays and touring Broadway shows. Charging Party Lynnette F. Bugenske has been a member of Local 274 for over twenty years. Generally, Charging Party works in the wardrobe department as a dresser. Dressers assist in costume preparation and help performers get in and out of their costumes.

In January 1999, *Beauty and the Beast*, a large, costume-intensive Broadway production began a four-week run at Wharton Center. Prior to the call for the stage crew, MSU informed Respondent that it had been advised by the *Beauty=s* production staff of its requirement that the same dressers be used for the show=s entire run. On January 15, Charging Party accepted the call to work as a dresser. However, she failed to inform the wardrobe department head that she was enrolled in an applied electrician class at Delta College in Saginaw and needed to be absent three Thursdays because more absences would result in automatic failure. A week later, after attending orientation and working during the production=s first week, Charging Party told the wardrobe department head of her schedule conflict had and that she had arranged for Jean Rogers, the Aswing@ dresser, to substitute during her absences.

Two days later, Charging Party was informed that Respondent=s executive board denied her request for three Thursdays off. Charging Party sent a fax to the Union and demanded, among other things, that the executive board explain its denial of her request. Charging Party was told the executive board could not accept her request because she did not disclose her schedule conflict when she accepted the dresser assignment. Thereafter, Charging Party sent a fax to the Wharton Center manager and asked if she could still work on *Beauty* if she secured a substitute. The manager told her that it was okay with the Center if *Beauty*=s production staff approved. On January 27, Respondent dismissed Charging Party from the *Beauty* production, but continued to refer her for work in other venues. Jean Rogers, Charging Party=s replacement, worked the remainder of the production, except for four days that she went to Texas.

On February 23, 1999, Charging Party sent Respondent a two-page letter and five grievances regarding Respondent=s decision to remove her from the *Beauty* production. Among other things, she alleged that her request for time off was consistent with past practice and was improperly handled by Respondent and MSU; her discipline was unprecedented, singular and discriminatory; her firing did not follow any of MSU=s policies and procedures and was not approved in advance by MSU Office of Employee Relations; and MSU=s failure to exercise its management right to intervene or overturn her Afiring@ subjected her to harm, ridicule, discrimination, and loss of income, experience, and seniority. Respondent refused to process the grievances and advised Charging Party that her grievances were improper because she was disciplined by the Union and not Afired@ by MSU, and her view that MSU=s stage managers have the authority to hire and fire Union members was in direct conflict with the Local=s position.

Thereafter, in a twenty-count affidavit, Charging Party requested that Respondent=s trial board suspend or fine all of Respondent=s executive board members, except her husband, for violating her rights under the Union=s constitution and by-laws. She also requested that she be made whole and issued an apology. Respondent referred Charging Party=s complaint to its International office. In an April 5, 1999 letter, the International=s president advised Charging Party that her charges were not cognizable. He explained that the enforcement of work referral rules by officers did not subject them to internal union charges each time a member disagreed with a determination. Moreover, Charging Party was informed that her complaint did not make clear what sections of the Union=s constitution were alleged to have been violated.

Conclusions of Law:

A union=s duty of fair representation under PERA consists of three 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); *Goolsby* v *Detroit*, 419 Mich 651, 679 (1984). A union has complete discretion regarding whether it will accept a grievance, how far it will proceed, and how it will be presented at arbitration. *Lowe* v *Hotel Employees Union,* 389 Mich 123 (1973).

Charging Party claims that Respondent violated its duty of fair representation by refusing to process her grievances. According to Charging Party, Respondent=s admission that it was not MSU,

but rather the Union that fired her is clear evidence that Respondent breached its duty. I disagree. The grievance procedure is designed to resolve disputes between employers and employees about interpretations of the contract, not disputes between the union and employees. The grievances which Respondent refused to process primarily relate to Charging Party=s disagreement with Respondent=s decision to remove her from the *Beauty* production. Nowhere within any of the five grievances does Charging Party allege that the Employer violated the collective bargaining agreement. Therefore, I find that Respondent did not abuse its discretion is refusing to process Charging Party=s grievances.

Moreover, the Commission has consistently held that disputes which involve internal union matters are not within its jurisdiction. *Detroit Public Schools*, 1985 MERC Lab Op 789; *Lansing School District*, 1985 MERC Lab Op 48. Charging Party acknowledges that Respondent is solely responsible for providing workers for employers which have contracts with Local 274. I find that Respondent=s decision to remove Charging Party from the *Beauty* production and its refusal to process her complaint against Respondent=s executive board relate to internal union affairs and are outside PERA=s scope.

I have carefully considered all other arguments raised by Charging Party and conclude that they do not warrant a change in the result. Therefore, I recommend that the Commission issue the order set forth below:

Order

It is hereby ordered that the charge be dismissed.

_____

Roy L. Roulhac
Administrative Law Judge

Dated:_____