STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer

- and –

Case No. C01 D-69
DETROIT ASSOCIATION OF EDUCATIONAL OFFICE EMPLOYEES (DAEOE), and CU01 C-20
Respondent-Labor Organization

- and –

CASSANDRA PETTWAY
Individual Charging Party
_____/

APPEARANCES:

Gordon Anderson, Esq., for the Public Employer

Law Offices of Mark H. Cousens, by John E. Eaton, Esq., for the Labor Organization

Ronald D. Roberts, Esq., for the Charging Party

DECISION AND ORDER

On May 3, 2002, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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Gordon Anderson, Esq., for the Public Employer

John Eaton, Esq., Law Offices of Mark Cousens, for the Labor Organization

Ronald D. Roberts, Esq., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455 (10), this matter came on for hearing at Detroit, Michigan, on July 20, 2001, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed by individual Charging Party Cassandra Pettway, alleging that the Detroit Public Schools and the Detroit Association of Educational Office Employees (DAEOE) had violated Section 10 of PERA. Based upon the record, including briefs filed on or before October 4, 2001, 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 Charges:

On March 14, 2001, Cassandra Pettway filed a charge against the Detroit Association of Education Office Employees alleging that the Union failed to assist her in resolving a wage inequity issue. Pettway charges that she filed a grievance in November of 2000 which the Union failed to pursue, in violation of its duty of fair representation.

On April 10, 2001, Pettway filed a charge against the Detroit Public Schools which reads as follows:

Article XIV – Employee in Acting position Section A and B
Unfair Wage Act of 1963
Fair Labor Act of 1938
Discrimination
Equal Opportunity

Facts:

Cassandra Pettway began working for the Detroit Public Schools in February 1998 as a computer technician in the Information Technology Department at a salary of $35,000. This position is included in a bargaining unit represented by the DAEOE. Pettway's background included a BBA degree in marketing and experience as a computer instructor and an educational technician repairing computers in schools. According to Pettway, when hired she expected her salary to be higher, in the range of $42,000. When she discussed her salary with department director Jim Davis, Pettway was told to speak to her Union representative about it. Pettway then spoke to Union President Ruby Newbold, who told her that it was the responsibility of the Employer to place employees on the salary schedule based on their qualifications.

Pettway subsequently had several other conversations with Newbold. According to Pettway, Newbold acknowledged that there was a problem in the department and indicated that the Union was in negotiations with the Board because so many employees were complaining about their salaries and workloads. Pettway also talked to another technician, Michael Hughley, who was hired in May of 1998 at a salary of $42,000. According to Pettway, she continued to press for an increase and was told by her supervisors that they were taking care of the matter and were waiting for the paperwork to be completed.

Newbold testified that Pettway and another employee came to the Union office in September of 2000 to protest the disparity between their wages and others in the department, indicating that they were doing as much or more work than other employees. Newbold told them that the Union needed more

information. According to Newbold, in November of 2000, they came back with additional information and submitted a grievance complaint form. Newbold testified that the Union needed to verify the information, including the names of individuals, their classifications, and whether or not they were included in the DAEOE bargaining unit. According to Newbold, they could not compare employees from another bargaining unit and those names had to be eliminated. In addition, there was an improper mixture of different classifications, such as computer programmer and computer technician.

In early 2001, after the Union's investigation was concluded, they requested a special conference with the Employer. Pettway attended this meeting. Union representatives asked management who determined where individuals were placed on the salary schedule and what criteria were used. Newbold testified that the Employer representatives stated that they would conduct an investigation and report back to the Union. According to Newbold, she continued to press management for an answer and also kept Pettway informed with respect to the process. Newbold testified that after repeated inquiries, the Employer did provide the Union with a response which satisfied the Union's concerns. At that point, it was decided by Union representatives that Newbold had been properly placed on the salary schedule and a grievance was not justified. The decision was reviewed by the Union grievance committee and executive board and both determined that there was no basis for a grievance.

Pettway left the employ of the school district in April of 2001, when the information technology function was taken over by a private company, Compuserve.

Discussion and Conclusions:

The Charging Party alleges that she sought assistance from the DAEOE to resolve an unfair wage issue and nothing substantive was done by the Union to address her concerns. Respondent Union maintains that the Union made a reasoned decision not to pursue a grievance after conducting an investigation and hearing the Employer's response to its inquiries regarding the salary scale.

To fulfill its duty of fair representation a union must: 1) serve the interests of all members without hostility or discrimination toward any; 2) exercise its discretion in complete good faith and honesty; 3) avoid arbitrary conduct. *Goolsby v Detroit*, 419 Mich 651, 120 LRRM 3235 (1984); *Vaca v Sipes*, 386 US 171, 64 LRRM 2369; *Detroit Police Officers Assn*, 1999 MERC Lab Op 227. A union has considerable discretion in deciding whether or not to pursue a grievance and may properly consider factors such as the burden on the contractual grievance machinery, the amount at stake, the likelihood of success, and the cost. *Lowe v Hotel Employees*, 389 Mich 123, 82 LRRM 341 (1973); *East Jackson Pub School Dist*, 1991 MERC Lab Op 132. As long as its decision with respect to the grievance is within the range of reasonableness, a union satisfies its duty. *Air Line Pilots Assn Intl v O'Neil*, 499 US 65, 136 LRRM, 2721 (1991). The fact that an employee is dissatisfied with the union's efforts or ultimate decision is insufficient to establish a breach of duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855.

The record reveals that Pettway disagreed with the Employer regarding where she had been placed on the salary scale. DAEOE representatives listened to Pettway's concerns and proceeded to investigate the matter and seek information from the Employer. Although there was some delay on the Employer's part in producing this documentation, eventually the Union had the opportunity to review it. At that point, it was decided that there was no basis for a grievance. Both the Union grievance committee and executive board concurred in this decision. Charging Party has failed to establish that this was other than a reasoned, good faith, non-discriminatory decision. Under these circumstances, I conclude that a violation of the DAEOE's duty of fair representation has not been demonstrated.

As to the charge against the Employer, neither the pleadings nor the evidence establish a cause of action under PERA. It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby recommended that the charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Nora Lynch
Administrative Law Judge

Dated: _____