STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C01 D-70,

-and-

GREATER DETROIT BUILDING TRADES COUNCIL,
LOCAL 344,
Respondent-Labor Organization in Case No. CU01 D-25,

-and-

DEBRA WILLIAMS,
Individual Charging Party.
_____/

APPEARANCES:

Gordon J. Anderson, Attorney, for Respondent Public Employer

Korney & Heldt, by J. Douglas Korney, Attorney for Respondent Labor Organization

Debra Williams, In Pro Per

DECISION AND ORDER

On October 19, 2001, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent Greater Detroit Building Trades Council, Local 344, did not breach its duty of fair representation in violation of Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ also found that the allegations made by Charging Party against Respondent Detroit Public Schools do not state a claim for which relief can be granted under PERA. Accordingly, the ALJ recommended that the charges be dismissed.

On November 8, 2001, Charging Party Debra Williams filed timely exceptions to the ALJ's Decision and Recommended Order. Neither Respondent filed a response to the exceptions.

The facts in this case were set forth fully in the ALJ's Decision and Recommended Order and need not be repeated in detail here. Briefly, Charging Party Debra Williams is employed by Respondent Detroit Public Schools (Employer). She is a member of a bargaining unit represented by Greater Detroit Building Trades Council, Local 344 (Union). On March 7, 2001, Charging Party met

with a Union representative regarding her claim that she had been denied overtime opportunities since 1999. Although she was asked to provide more specific information regarding the alleged denials, she failed to do so. She was also advised that the collective bargaining agreement between the Employer and the Union required grievances to be filed within 10 days of the act that is the subject of the grievance. Nevertheless, the Union filed a grievance on Charging Party's behalf. The grievance was denied by the Employer. Subsequently, the Union conducted an investigation into whether Charging Party had been denied the opportunity to work overtime during the ten day period preceding March 7, 2001. Based on that investigation, the Union determined that Charging Party had been offered overtime work on March 3, 2001, but she had turned it down. The Union then concluded that the grievance was without merit and should not proceed to arbitration. Charging Party contends that she was not asked to work overtime on March 3, 2001, and that the Union failed to ask her about that when it made its investigation.

Charging Party takes exception to the ALJ's findings of fact and contends that the parties did not discuss the facts found by the ALJ. However, the record reveals that, while there was no testimony offered, the attorney for the Union recited the facts and Charging Party expressed disagreement only with respect to whether she was asked about the opportunity to work overtime on March 3, 2001.

In recommending dismissal of the charges, the ALJ concluded that the Union did not violate its duty of fair representation by refusing to proceed to arbitration with Charging Party's grievance. 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). Charging Party has not shown that Respondent breached any of those responsibilities.

Charging Party's claim is based on the Union's failure to pursue her grievance after it investigated its merits. However, the Union has latitude to investigate claimed grievances by its members against their employers, and has the power to abandon frivolous claims. The Union is not required to carry every grievance to the highest level, but must be permitted to assess each with a view to individual merit. In doing so, the Union must consider the good of the general membership and may weigh the burden upon contractual grievance machinery, the amount at stake, the likelihood of success, the cost, and even the desirability of winning the award, in determining whether to pursue a given grievance. See *Lowe* v *Hotel Employee's Union,* 389 Mich 123, 146 (1973).

Charging Party contends that the Union's investigation was inadequate because she was not questioned about whether she was given the opportunity to work overtime on March 3, 2001. In the absence of evidence that the Union's investigation was conducted arbitrarily, discriminatorily, or in bad faith, we will not find that the alleged failure to provide Charging Party with the opportunity to dispute or verify the results of that investigation was a breach of the Union's duty of fair representation. See *Goolsby* v *Detroit*, 419 Mich 651 (1984).

With respect to her charge against the Employer, Charging Party has alleged that the Employer failed to fairly distribute opportunities to work overtime. She would have us find that her allegation of the unfair distribution of overtime opportunities, without more, establishes a violation

of Section 10 of PERA, MCL 423.210. Charging Party has not alleged that the Employer's actions were in any way motivated by anti-union animus, or hostility against her for any union or other protected activities. Nor has she alleged that the employer's distribution of overtime opportunities is in violation of the collective bargaining agreement. Accordingly we agree with the ALJ that Charging Party has failed to state a claim for which relief can be granted under PERA.

We have carefully considered each of the arguments set forth by Charging Party in her exceptions, and for the reasons set forth above, we find the exceptions of Charging Party to be without merit. Accordingly, we adopt the Administrative Law Judge's findings of fact and conclusions of law and find that the charges against Respondent Greater Detroit Building Trades Council, Local 344, and against Respondent Detroit Public Schools should be dismissed.

ORDER

The charges in this case are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION[1]

_____
Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Dated:_____

[1] Commission Chair Maris Stella Swift did not participate in this case.

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APPEARANCES:

Gordon J. Anderson, Attorney, for the Public Employer

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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, MSA 17.455(10) *et seq*., this case was heard in Detroit, Michigan on September 20, 2001, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. This proceeding was based upon an unfair labor practice charge filed by Debra Williams against Respondents Detroit Public Schools (hereafter "Employer"), and the Greater Detroit Building Trades Council, Local 344 (hereafter "Union"). Based upon the record I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

Findings of Fact:

The parties stipulated to the following facts: The Union is the exclusive bargaining agent for approximately 150 non-supervisory building trades persons employed by the Employer as plumbers,

pipe-fitters, sheet metal workers, laborers, among others. Charging Party Debra Williams is a laborer. On March 7, 2001, she met with Union representative Edward Coffey and complained that she had been denied overtime opportunities during some unknown dates since 1999. Coffey filed a grievance on Charging Party's behalf although he explained to her that the contract requires that grievances be filed within ten days of an alleged violation.

After the Employer denied the grievance the Union conducted an investigation to determine whether Charging Party had been denied an opportunity to work overtime within ten days of the March 7 grievance. The Union, without questioning Charging Party during its investigation, found that she had refused an offer to work overtime on Saturday March 3, 2001. Williams testified that she was never presented with an opportunity to work overtime on March 3. The Union concluded that the Charging Party's grievance lacked merit and would not be advanced to arbitration.

Conclusions of Law:

Charging Party claims that the Union breached it duty of fair representation by not asking her if she refused to work overtime on March 3. A union violates PERA when its conduct toward its members is arbitrary, discriminatory, or in bad faith. *Goolsby v Detroit*, 419 Mich 651 (1984). A union is not required to advance every grievance to arbitration, but may weigh factors that include the likelihood of success, the costs, and the burden on the contractual grievance machinery. *East Jackson PS*, 201 Mich App 480 (1993), *aff'g* 1991 MERC Lab Op 132. I find nothing in the record to establish that the Union violated its duty to fairly represent Charging Party. Even if the Union did not ask Charging Party whether she refused to work overtime, she presented no evidence that the decision not to advance her grievance to arbitration was arbitrary, discriminatory, or in bad faith.

In her charge against the Employer, Charging Party alleges that she was denied overtime and was not satisfied with the Employer's denial of her grievance. The Employer argues that these allegations do not state a claim for which relief can be granted under PERA. I agree. Based on the above discussion, I find that Charging Party failed to establish that the Employer or the Union violated PERA. I, therefore, recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Roy L. Roulhac
Administrative Law Judge

Dated: _____