STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UNITED STEELWORKERS OF AMERICA,
LOCAL 14317,
Respondent-Labor Organization,

Case No. CU01 H-043

-and-

RICHARD T. MURRAY and RONALD STURGEON,
Individual Charging Parties
_____/

APPEARANCES:
Miller Cohen, P.L.C., by Eric Frankie, Attorney for the Labor Organization

Richard T. Murray and Ronald Sturgeon, In Pro Per

DECISION AND ORDER

On March 28, 2002, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was 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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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 and MCL 423.216, this case was heard in Lansing, Michigan on November 9, 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 against Respondent United Steelworkers of America, Local 14317, by Charging Parties Richard T. Murray and Ronald Sturgeon on August 13, 2001. Based upon the record and briefs filed by December 28, 2001, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charge:

Charging Parties claim that Respondent and its agents violated its duty of fair representation by (1) withdrawing an unfair labor practice charge against the Cadillac Wexford Transit Authority (CWTA) over its refusal to meet on more than one grievance at a time; and (2) refusing to advance a grievance to arbitration regarding Murray's discharge or to process other grievances filed on his behalf.

Findings of Fact:

Charging Parties Richard T. Murray and Ronald Sturgeon were formerly employed by CWTA as bus drivers. They were members of United Steelworkers of America, Local 13417, and

served as grievance chairperson and alternate grievance chairperson, respectively. The collective bargaining agreement between Respondent and CWTA contains a three-step grievance procedure that ends in binding arbitration.

On October 23, 2000, James Hughes, the Union's sub-district director, filed an unfair labor practice charge, Case No. C00 J-168, against the CWTA that alleged, among other things, that the employer refused to meet on more than one of several pending grievances during grievance meetings. Most of the pending grievances when the charge was filed involved adverse actions taken by CWTA against Murray.

Three months later, on February 9, 2001, another grievance was filed on Murray's behalf that challenged his February 5 suspension for allegedly making an unauthorized departure from his bus route on January 31, 2001. CWTA alleged that Murray, while he was transporting two community mental health facility passengers, pulled into a fellow employee's driveway, conversed with the employee's husband, and gave him a letter to deliver to his co-worker. The next day, February 1, in a meeting with CWTA officials and a union representative, Murray denied stopping at his co-worker's home and claimed that his driving log for January 31 was accurate.

In a February 4, 2001, letter to Harry Lester, the Union's district director, Murray requested Union representation to assist him in defending against CWTA's claim that he had delivered a letter to an employee's home while he was on duty. In a three-page statement, Murray denied that he departed from his route or that he left a letter or anything else at his co-worker's home. Rather, Murray claimed that he spoke with his co-worker's husband while he was stopped at the bottom of the driveway repairing the bus's windshield wiper.

During its investigation of the January 31 events, CWTA took the depositions of one of the bus passengers and of his co-worker. The passenger testified that Murray pulled into the Stivason's driveway, honked the bus horn, and gave his co-worker's husband an envelope. According to Murray's co-worker,. her husband told her that Murray stopped at their home and when she got home on January 31, she found a letter from Murray on the kitchen table. On February 27, 2001, after CWTA concluded its investigation, Murray was discharged.

On March 2, 2001, Murray and Sturgeon filed a grievance challenging Murray's discharge. The Union and CWTA held a step three meeting on June 20, 2001 to discuss Murray's discharge grievance and others that had been filed on Murray behalf. After the Employer explained its rationale for terminating Murray, Murray refused an opportunity to make a statement in his defense. Hughes testified that he (Hughes) decided not to proceed with any of Murray's other grievances because Murray might "do the same thing to two or three more grievances" by not saying anything.

On June 29, CWTA denied Murray's discharge grievance. Thereafter, on July 12, Hughes sent Murray a letter informing him that he was withdrawing his grievance and would not advance it to binding arbitration, because "witnesses have, and will again, testify that on January 31, 2001 you did drive a CWTA bus off route to the Stivason's house without company permission and then

denied this ever happened." At the hearing in this matter, Murray admitted that his prior statements to the Union and to CWTA about the events of January 31 were lies and that he was terminated because his departed from his route to deliver an envelope.

In the meantime, four months earlier, in a February 23, 2001 letter to the Administrative Law Judge assigned to adjudicate the unfair labor practice charge in Case No. C00 J-168, Hughes wrote that the parties had resolved their dispute and that the Union was withdrawing the charge. Hughes, however, testified that the charge was withdrawn sometime after June 20, 2001 when he entered into an agreement with CWTA to discuss more than one pending grievance during future meetings.

Conclusions of Law:

Under PERA, a union's duty of fair representation is comprised 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. *Goolsby v City of Detroit*, 419 Mich 651, 659, citing V*aca v Sipes*, 386 US 171; 64 LRRM 2369 (1967). 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 & Restaurant Employees Union, Local 705,* 389 Mich 123, 146; *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 148. Because the union's ultimate duty is toward the membership as a whole, when determining which grievances should be pressed and which should be settled or dropped, 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 is within the range of reasonableness. *Airline 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, 34035. An employee does not have the absolute right to have his or her grievance taken to arbitration. *Goolsby, supra* at 661.

In this case, the Union claims that it did not breach its duty of representation by not pursuing Murray's discharge grievance to arbitration. The facts establish that the likelihood of successfully arbitrating the grievance was minimal and the Union's decision not to advance Murray's discharge grievance to arbitration was reasonable. During the third step grievance hearing, the evidence presented by CWTA to demonstrate that Murray made an unauthorized stop on January 31 was unrebutted. Two witnesses provided sworn testimony that Murray's versions of the events of January 31, 2000, were false and that he, as alleged, varied from his bus route to deliver a letter to a co-worker's home.1 I also find that the Union did not violate its duty to fairly represent Murray by refusing to conduct step three hearings on other grievances filed on Murray's behalf. Hughes reasonably concluded that if Murray did defend himself during his step three-discharge hearing, the most serious of his pending grievances, he would display similar conduct during discussions of other less serious grievances.

1 Murray even acknowledged during the hearing in this matter that on January 31, 2001 he varied from his route without authorization.

Further, I find no merit to Charging Parties' claim that the Union violated its duty of fair representation by withdrawing the unfair labor practice charge in Case No. C00 J-168. The duty to bargain runs between the employer and the recognized bargaining agent. *Coldwater Community Schools,* 1993 MERC Lab Op 94; *Detroit Public Schools*, 1985 MERC Lab Op 789. As such, only employers and labor organizations have standing to file unfair labor practice charges that allege a refusal to bargain, i.e., failure to process grievances. Bargaining union members have no standing to file charges that allege a refusal by an employer to bargain, or to dictate which charges filed by the labor organization should be withdrawn or litigated. Moreover, there is nothing on the record that would support a finding that Respondent's decision to withdraw the Case No. C00 J-168 affected Charging Parties' terms or conditions of employment.

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

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Roy L. Roulhac
Administrative Law Judge

Dated: _____