STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ANN ARBOR PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C01 F-112,

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, LOCAL 1182,
Labor Organization-Respondent in Case No. CU01 F-030,

-and-

LARRY H. CATTELL,
Individual Charging Party.
_____/

APPEARANCES:

Miller, Canfield, Paddock & Stone, by Charles A. Duerr, Jr., Esq., for Respondent Public Employer

Miller Cohen, by E. Lynise Bryant-Weekes, Esq., for Respondent Labor Organization

Larry H. Cattell, in pro per

DECISION AND ORDER

On May 17, 2002, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents Ann Arbor Public Schools and American Federation of State, County, and Municipal Employees, Local 1182 (AFSCME), did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, and recommending that the charges be dismissed. The Decision and Recommended Order of the ALJ was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended. On May 29, 2002, Charging Party Larry H. Cattell filed timely exceptions to the ALJ's Decision and Recommended Order.

Background:

The facts of 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 Larry H. Cattell filed unfair labor practice charges on June 7, 2001, against the Employer, the Ann Arbor Public Schools, and his bargaining representative, the AFSCME, Local 1182. At a January 9, 2002 hearing, Charging Party withdrew all of his charges against the Employer except his charge that the Employer violated the collective bargaining agreement by refusing to give him a ten percent pay increase

after he completed his associates degree in heating, ventilation, and air conditioning (HVAC). Charging Party additionally withdrew all of his charges against AFSCME, except for his charge that the Union violated its duty of fair representation by refusing to arbitrate his grievance over the alleged contract violation by the Ann Arbor Public Schools.

Charging Party alleged that the Employer violated the collective bargaining agreement by refusing to comply with Article 16, Section 7 of the collective bargaining agreement. The agreement states in part that:

> Maintenance personnel who, in order to discharge responsibilities assigned to them by the Employer, are legally required to have proper governmental license (state, county, city, e.g.) and are so licensed, shall receive 10% over their stipulated wage base.

In October 1995, Charging Party responded to the Employer's posting of a new position listing the following requirements:

> a. The successful applicant to the new position must be accepted into the HVAC program at Washtenaw Community College.
> b. While in the position, the applicant must complete the program within four years with at least a "B" average (3.0).

In April 1996, Charging Party obtained the position as a maintenance employee, and he promptly enrolled at the Washtenaw Community College. Charging Party completed the HVAC program in August of 2000, and fulfilled the required "B" average prescribed by the Employer. He did not receive any wage increase following his certification with Washtenaw Community College, so he requested that the Union file a grievance on his behalf asking for a ten percent wage premium as prescribed by Article 16, Section 7. The Union filed the requested grievance on February 21, 2001. The Employer denied it on February 27, 2001. At some point between March and August, the Union Local asked the Union's arbitration review panel to approve the arbitration of Cattell's grievance.

Cattell filed unfair labor practice charges on June 7, 2001.

The Union's arbitration review panel rejected the request to proceed to arbitration on August 8, 2001, stating that Cattell's file did not indicate that the Employer had promised Cattell that he would get the ten percent wage premium upon successfully completing the HVAC certification course at Washtenaw Community College. The local union appealed to the arbitration review panel for reconsideration of the panel's decision. Upon reconsideration, the panel issued a letter on August 30, 2001, confirming its decision to reject Charging Party's claim. Upon further review, the panel rejected Charging Party's claim again on September 20, 2001. The panel issued its final decision rejecting Charging Party's claim on November 26, 2001.

Discussion and Conclusions of Law:

On exception, Charging Party does not dispute any legal standard used in the Recommended Decision and Order. Charging Party merely disagrees with the ALJ's

recommendation and complains that he was disadvantaged because he was not represented by an attorney. More specifically, Charging Party contends that he never received anything from MERC telling him about his rights to legal counsel, and how the hearing would be conducted. The record proves the contrary. Since Cattell was representing himself at the hearing, the ALJ clearly outlined the process and gave Cattell clear instructions on the hearing procedures. Cattell attended the hearing with the intent to represent himself, and it was so reflected in the record.

Secondly, Charging Party asserted that the ALJ's Decision did not match the contents of the transcripts. Review of the record reveals that this charge is wholly without merit as the ALJ's decision accurately reflects the testimony and other evidence offered by the parties.

Finally, Charging Party asserts that the ALJ arbitrarily dismissed most of the charges. This assertion also lacks merit as the record shows that Charging Party withdrew all charges against the Union except his charge that the Union breached its duty of fair representation by failing to arbitrate his grievance and that he withdrew all charges against the Employer except his claim that the Employer breached the contract. Charging Party had the right to withdraw such charges and did so of his own accord.

In recommending dismissal of the remaining charges, the ALJ concluded that the Union did not violate its duty of fair representation. As the ALJ noted, 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 failed to establish that the Union breached those responsibilities when it decided not to pursue his grievance further.

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).

We have repeatedly reiterated the broad nature of a union's discretion with respect to the processing of grievances. *See e.g. Detroit Pub Schs –and- Greater Detroit Building Trades Council,* 2002 MERC Lab Op _____ (issued May 17, 2002); *Bloomfield Hills Ass'n of Paraprofessionals MEA/NEA*, 1997 MERC Lab Op 221; *City of Detroit, Police Dep't,* 1994 MERC Lab Op 1150; *East Jackson Pub Sch Dist,* 1991 MERC Lab Op 132, *aff'd* 201 Mich App 480 (1993).

The Union local appropriately handled Cattell's case, carrying it through the proper channels of the arbitration panel. However, throughout repeated reviews, the arbitration panel concluded that Cattell was not entitled to the wage premium unless the Employer was actually assigning him work that he could not have done without completing the HVAC program. The conclusion of the arbitration review panel was within the range of reasonableness and its decision not to take Cattell's grievance to arbitration was not arbitrary, discriminatory or indicative of bad faith. Thus, it is apparent that the charge against the Union must be dismissed.

With respect to his charge that the Employer breached the contract by failing to pay him an additional ten percent of his wages, Charging Party has failed to state a claim for relief under PERA. Charging Party has not alleged that the Employer's actions were in any way motivated by anti-union animus, or hostility against him for any union or other protected activities. Charging Party's allegation that the employer violated the collective bargaining agreement is, by itself, insufficient to state a claim under PERA. *Knoke* v *East Jackson Pub Sch Dist*, 201 Mich App 480 (1993); *Detroit Bd of Educ,* 1995 MERC Lab Op 75. Accordingly, we find that Cattell's charge against the Employer must also be dismissed.

ORDER

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

_____
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 423.216, this case was heard at Detroit, Michigan on January 9, 2002, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the record, including exhibits admitted at the hearing and transcript of this proceeding, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

Larry H. Cattell filed these charges on June 7, 2001 against his employer, the Ann Arbor Public Schools, and his bargaining representative, the American Federation of State County and Municipal Employees (AFSCME), Local 1182. At the hearing on January 9, Cattell withdrew all of his allegations against the Employer except his claim that the Employer violated the collective bargaining agreement by refusing to give him a 10% pay increase after he completed his

associate's degree in HVAC (heating, ventilation, and air conditioning). Cattell also withdrew all his allegations against the Union except his claim that the Union violated its duty of fair representation by refusing to arbitrate Cattell's grievance over the alleged contract violation.

Facts:

AFSCME Local 1182 represents a bargaining unit of custodial, maintenance and warehouse employees of the Ann Arbor Public Schools. Cattell has been a member of this unit since 1979, when he was hired as a custodian.

Article 16, Section 7 of the Respondents' collective bargaining agreement states:

> Maintenance personnel who, in order to discharge responsibilities assigned to them by the Employer, are legally required to have proper governmental license (state, county, city, e.g.) and are so licensed, shall receive 10% over their stipulated wage base.

From 1991 until sometime in 2000, Respondent's collective bargaining agreement also included a memorandum of understanding stating that individuals enrolled in an apprenticeship program would receive a 2½ % wage increase upon entering the program, and an additional 2½ % wage increase after completing it. The Employer discontinued its participation in apprenticeship programs sometime in the mid 1990s, but the memorandum was not immediately removed from the contract.

In October 1995, the Employer posted a new position titled "Mechanical Maintenance - HVAC/Employee in Training." The October 1995 posting stated that the successful applicant for the new position must fulfill the conditions for acceptance into the HVAC program at Washtenaw Community College, and, while in the position, must complete the program within four years with at least a "B" average. Cattell was awarded the position in April 1996, became a maintenance employee, and enrolled at Washtenaw Community College. Cattell successfully completed the HVAC program, as required by the posting, in August 2000.

Cattell did not ask what he would be paid after he completed the HVAC program at the time he was awarded the training position. When Cattell did not receive a wage increase after he graduated in August 2000, he asked the Union's local president and its chief steward to file a grievance. Cattell maintained that he was entitled to a wage increase both under Article 16 and under the memorandum of understanding. The chief steward told Cattell that the Union was about to arbitrate a grievance under Article 16 for two electricians, and that it wanted to wait for the arbitrator's decision before filing a grievance for him. On February 21, 2001, the Union filed a grievance asking that Cattell receive the 10% wage premium provided by Article 16, Section 7. The Employer denied the grievance at the first step on February 27. The Union continued to process Cattell's grievance through the steps of the grievance procedure. According to the Union's rules, the Union's arbitration review panel must approve all demands for arbitration. Sometime between March and August 2001, Local 1182 asked the panel to approve the

arbitration of Cattell's grievance. It is not clear from the record if Cattell knew the status of his grievance during this period. Cattell testified that the chief steward told him several times that he (the steward) "was trying to get the grievance through." On June 7, 2001, Cattell filed the instant unfair labor practice charges.

Cattell testified that he and the Union local vice-president do not get along. Around the time Cattell first asked the chief steward to file a grievance, Cattell had a conversation with the Union's local vice-president about Cattell's pay raise. The local vice-president told Cattell, "I have a degree in computers and they're not giving me ten percent, why should they give you ten percent?" After Cattell filed his unfair labor practice charges, the local vice-president told Cattell that the Union was mad at him for the statements he made in the charge.

On August 8, 2001, the arbitration review panel sent the local president a letter rejecting his request to arbitrate Cattell's grievance. The panel said that Cattell's file did not indicate that the Employer had promised Cattell that he would get the 10% wage premium upon successfully completing the course, and that absent such a promise simply completing the course did not entitle Cattell to the premium.

The local appealed the panel's decision. On August 27, the panel met to reconsider the case. On August 30, it sent a letter stating:

> There was nothing in the appeal information establishing a need to be licensed or certified in order for the grievant "to discharge responsibilities," so the original rejection of August 10 stands.

On September 11, Union Staff Representative Angela Tabor sent a memo to the head of the Union's arbitration department on Cattell's behalf. Tabor stated that Cattell had fulfilled the requirements of the job posting, but that the Employer refused to assign him the work because it did not trust him. Tabor said:

> The case keeps getting rejected based on the grievant has to perform the work in order to receive the premium pay. However, he cannot perform the work if it is not assigned to him. (Employer refuses to assign him the work.) Therefore, he met all the requirements of the posting and is available to perform the work, so he should receive the 10% premium pay.

The panel agreed to review the case again, but issued another rejection on September 20. The panel wrote, "Article 16, Sec. 7 clearly states the 10% differential is based not simply upon one obtaining the proper education, licensure, and/or certifications but that it be a requirement of their position in order for them to perform their duties." The panel said that there was a lack of evidence that Cattell was being assigned to perform work that required HVAC training. The

panel also said that the memorandum of understanding was not relevant unless Cattell had been a participant in an apprenticeship program.

The chief steward asked Cattell for copies of work orders and other documentation indicating that he was performing HVAC work to send to the panel. On November 26, 2001, the panel issued its final decision:

> The language of the contract is clear. In order to receive the differential, the employee must be working in "responsibilities assigned to them by the Employer." If the Employer has determined that they do not need an additional body in that classification, they are within their rights.

Discussion and Conclusions of Law:

A union's duty of fair representation consists 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 651,679(1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131,134. A union demonstrates bad faith when it intentionally acts or fails to act for dishonest or fraudulent reasons. *Goolsby*, at 679. That is, if a union refuses to process a grievance because of personal dislike and for reasons unconnected to the merits of the grievance, it may breach its duty of fair representation. When the union acts in good faith, however, it 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 124, 146 (1973); International *Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. Because the union's ultimate duty is to the membership as a whole, the union may consider such factors as the likelihood that an arbitrator would rule in the union's favor and the cost of an arbitration proceeding. *Lowe, supra*. A union's decision not to arbitrate a grievance is not "arbitrary" as long as it is within the range of reasonableness. *Air Line Pilots Assn v O'Neill*, 499 US 65,67 (1991); City *of Detroit (Fire Dept)*, 1997 MERC Lab Op 31,34-35.

In this case the Union local vice-president told Cattell that Cattell did not deserve the contractual 10% wage premium because he (the vice-president) did not receive it. Later he suggested to Cattell that the Union might not process his grievance because the Union was mad at him for filing the unfair labor practice charge. However, there is no indication of animosity toward Cattell by any other Union representative, and no indication that the local vice-president had any role in deciding the fate of Cattell's grievance. I find that the record does not support the conclusion that the Union acted in bad faith when it refused to take Cattell's grievance to arbitration.

As stated above, in deciding whether or how far to pursue a grievance, a union has the discretion to weigh the likelihood that an arbitrator would rule in its favor against the cost of arbitration. If the union has exercised its discretion in good faith, and its decision is within the range of reasonableness, it has not violated its duty of fair representation. In this case the Union

representatives all agreed that Cattell's completion of the HVAC training program was equivalent to a "license" within the meaning of Article 16, Section 7. The arbitration review panel, however, took a different view from the local of the meaning of the "in order to discharge responsibilities assigned to them by the Employer" language in that provision. The arbitration panel concluded that Cattell was not entitled to the wage premium unless the Employer was actually assigning him work that he could not have done without completing that program. The arbitration panel also concluded that Cattell was not being assigned such work. Finally, the arbitration panel concluded that the memorandum of understanding did not apply to Cattell because he was not and had not been in an apprenticeship program. I find that that decision of the arbitration review panel was within the range of reasonableness and that its decision not to take Cattell's grievance to arbitration was not "arbitrary," as defined above. I conclude that Cattell did not demonstrate that the Union violated its duty of fair representation in this case.

At the hearing Cattell withdrew all allegations against the Employer except his claim that the Employer breached the contract. An individual does not state a cause of action under PERA merely by alleging that his or her contractual rights were violated. *Utica CS*, 2000 MERC Lab Op 268; *Detroit Bd of Ed*, 1995 MERC Lab Op 75. Cattell's charge against the Employer should be dismissed since he has not stated a claim against the Employer under the Act.

In accord with the findings of fact, discussion and conclusions of law set forth above, I conclude that neither Respondent has violated PERA. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____