STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Respondent-Public Employer in Case No C02 D-093,

-and-

CLERICAL TECHNICAL UNION OF MICHIGAN STATE UNIVERSITY,
Respondent- Labor Organization in Case No. CU02 D-023,

-and-

MICHAEL J. GARCIA,
Individual Charging Party.
_____/

APPEARANCES:

Samuel A. Baker, Director of Employee Relations, for the Public Employer

Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman, by Bradley T. Raymond, Esq., for the Labor Organization

Michael J. Garcia, in pro per

DECISION AND ORDER

On September 26, 2002, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above entitled matter on motions for summary disposition finding that Charging Party Michael Garcia failed to state a claim against Respondents Michigan State University (MSU) and Clerical Technical Union of Michigan State University (Union) under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201-217, and recommending that the charges be dismissed.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accordance with Section 16 of PERA. On October 15, 2002, Charging Party filed a timely request for an extension of time to file exceptions. The request was granted on October 16, 2003, giving Charging Party until November 20, 2002, to file exceptions. On November 20, 2002, Charging Party filed a timely request for oral argument along with exceptions, which allege that the ALJ erred in dismissing the charge on motions for summary disposition. Respondent Clerical Technical Union of Michigan State University filed a timely

brief in support of the ALJ's Decision and Recommended Order on December 2, 2002.[1] After reviewing the exceptions, we find that oral argument would not materially assist us in deciding this case and therefore deny Charging Party's request for oral argument.

Background:

The material facts are generally not in dispute. Respondent MSU hired Charging Party on April 9, 2001 as a computer operator. On August 22, 2001, before Charging Party's probationary period ended, he was informed by his supervisor that he was discharged. Pursuant to the collective bargaining agreement between the Union and MSU, the Union is precluded from grieving or arbitrating the discharges of probationary employees. However, the Union negotiated an agreement with MSU providing that Charging Party would be placed in another computer operator position, and requiring him to serve another probationary period. The Union signed the letter of agreement on October 18, 2001. MSU and Charging Party signed the letter on October 19, 2001. The individual whose name appeared on the agreement on behalf of MSU was Samuel A. Baker, MSU's Director of Employee Relations. Baker's signature on the letter of agreement was followed by the initials "JN," indicating that Baker's signature was affixed to the document by his subordinate, James Nash.

In January 2002, MSU discharged Charging Party before he completed the probationary period for his second position. After receiving correspondence from MSU regarding his discharge, Charging Party noticed that Baker's signature differed from the signature on the letter of agreement. Charging Party sent letters complaining to MSU and the Union. The Union sent letters dated January 24, and January 31, 2002, to Charging Party notifying him that they did not intend to process a grievance against MSU, because they found his claims that MSU had violated the collective bargaining agreement to be without merit. The Union also pointed out that the collective bargaining agreement precluded the Union from representing probationary employees regarding discipline and discharge.

Charging Party filed the instant unfair labor practice charges against the Union and against MSU on April 19, 2002, and April 24, 2002, respectively. Both the charges complain that the signature on the letter of agreement is a forgery, and that the letter of agreement falsely states that Charging Party's probationary employment was terminated in August of 2001. The Union filed a motion for summary disposition on May 22, 2002. The charges were scheduled for a hearing on August 7, 2002.

In a letter dated July 23, 2002, and in his opening remarks during the August 7th hearing, the ALJ informed the parties that he would hear oral argument on the Union's pending motion for summary disposition and would not take testimony unless he found that the motion should be denied. At the beginning of the hearing, MSU also made a motion for summary disposition. Charging Party objected to MSU's motion for summary disposition arguing that it was improper at that stage of the proceedings and asserting that he was not prepared to respond to MSU's motion. The ALJ explained to Charging Party that a motion for summary disposition could be made at any stage of the proceedings and, noting no appreciable difference between Charging Party's charges against MSU and those against the Union, pointed out that Charging Party's

[1] MSU did not file a brief.

arguments against the respective motions would not differ appreciably. Accordingly, the ALJ ruled that he would hear oral arguments on both motions for summary disposition. Following oral argument, the ALJ concluded that Charging Party had not stated a claim for relief under PERA and dismissed the charges.

Discussion and Conclusions of Law:

On exception, Charging Party asserts that the ALJ failed to provide a statement of legal authority and jurisdiction for limiting the August 7, 2002 hearing to oral argument. Charging Party claims that he should have been given the opportunity to present evidence of what he considers disputed material facts in an evidentiary hearing. We find Charging Party's contention to be without merit. The ALJ clearly stated legal authority for limiting the August 7, 2002 hearing to oral argument, and his reasons were correctly based on the well-settled law of *Smith* v *Lansing*, 428 Mich 248 (1987).

Charging Party also contends that the ALJ erred in allowing MSU to make a motion for summary disposition at the August 7, 2002 hearing. He alleges that he was unduly prejudiced because he was not notified of MSU's intent to make such a motion or given the opportunity to submit a written response to the motion before the hearing. Rule 165 of the Commission's General Rules, R 423.165, which governs motions for summary disposition, clearly allows any party to make a motion for summary disposition at any time during the hearing. The ALJ did not err by permitting MSU to make a motion for summary disposition during the hearing.

Next, Charging Party raises several exceptions directed towards the ALJ's analysis of Charging Party's substantive allegations and his conclusion that Charging Party failed to state a claim against either MSU or the Union. Even accepting as true the allegation that the signature on the letter of agreement was not Mr. Baker's, as well as Charging Party's assertion that MSU failed to respond to his complaints about the letter of agreement, no cause of action under PERA has been asserted. Charging Party has failed to explain how such actions would demonstrate that MSU interfered with the exercise of his protected concerted rights under PERA. We find, therefore, that Charging Party has not stated a claim against the Employer upon which relief could be granted under PERA.

Likewise, Charging Party has not stated a cause of action against the Union for breach of the duty of fair representation. Allegations in a complaint for breach of the duty of fair representation must contain more than conclusionary statements alleging improper representation. *Martin* v *Shiawassee,* 109 Mich App 32 (1981). The Michigan Supreme Court stated in *Goolsby* v *Detroit*, 419 Mich 651, 661 (1984), that "a breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective-bargaining unit is arbitrary, discriminatory, or in bad faith." In this case, the collective bargaining agreement specifically states that the Union does not have the authority to arbitrate grievances relating to the discharge of probationary employees. Clearly, the Union had no duty to take further action on Charging Party's behalf after MSU discharged him the second time.

Charging Party also objects to the ALJ's conduct at the hearing. According to Charging Party, the ALJ should have provided him with special consideration because he was acting *in pro per*. As acknowledged in *Coopersville Area Pub Sch,* 1977 MERC Lab Op 583, an ALJ must

balance the due process rights of a charging party against the requirements of neutrality and non-advocacy. We find that the ALJ acted properly here. Additionally, Charging Party contends that the ALJ demonstrated bias in favor of the Union. Charging Party has not identified anything in the record that might indicate bias toward any party. Our review of the record persuades us that the ALJ acted with complete impartiality and neutrality. We find no evidence that the ALJ demonstrated any bias in favor of the Union.[2] We have carefully reviewed Charging Party's other exceptions and find them to be without merit.

The Union requests attorney fees and costs associated with the proceedings based on its contention that Charging Party's allegations were frivolous. Because PERA does not specifically authorize the award of attorney fees, Respondent Union's request for attorney fees and other costs is denied. See *Goolsby* v *City of Detroit*, 211 Mich App 214 (1995), *lv to app den*, 450 Mich 1016 (1996); but see *Police Officers Labor Council*, 1999 MERC Lab Op 196, 202.

[2] Charging Party also contends that the ALJ's actions in conducting the hearing infringed upon his constitutional rights of fair and just treatment under Mich Const Art 1, Sec 17. This Commission's jurisdiction is limited to PERA issues. *Muskegon Heights Pub Sch Dist*, 1993 MERC Lab Op 654; *Garden City/Dearborn Pub Sch Adult Ed*, 1994 MERC Lab Op 1. We note, however, that Charging Party raised similar claims in *Garcia* v *Eaton Rapids Ed Ass'n*, (unpublished opinion per curiam of the Court of Appeals, decided May 27, 2003, Docket No. 234584) and the court found "no violations of any protections under the federal or state due process clauses, or the fair and just treatment clause…because the appellant was allowed to present written argument to the MERC, and was also afforded oral argument previously before the ALJ." *Garcia* at 2.

ORDER

For the reasons stated above, were hereby adopt the Administrative Law Judge's Decision and Recommended Order and dismiss the charges in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Nora Lynch, Commission Chairman

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Maris Stella Swift, Commission Member

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Harry W. Bishop, Commission Member

Dated:_____

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Michael J. Garcia, in pro per

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTIONS FOR SUMMARY DISPOSITION

On April 19, 2002, Charging Party filed identical unfair labor practice charges against Respondents Michigan State University ("MSU") and the Clerical-Technical Union of Michigan State University ("the Union). The charges were assigned to Roy L. Roulhac, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. A complaint and notice of hearing was issued pursuant to Section 16 of the Public Employment Relations Act (PERA), MCL 423.216. A hearing was set for August 7, 2002.

The Unfair Labor Charge and Procedural challenges:

Charging Party claims that the Union committed fraud, perjury, and unfair labor practices by presenting him with an October 19, 2001 letter of agreement that contained a non-genuine signature and falsely stated that his probationary employment was terminated. According to Charging Party, MSU allowed the letter of agreement to be fraudulently presented to him without telling him that the signature of Samuel A. Baker, the Director of Employee Relations,

was not his actual signature. He claims that the forged signature represents collusion by MSU and the Union, and a failure by MSU to bargain in good faith. As a remedy, Charging Party requests that the letter of agreement be expunged from his record, the negotiation of a new agreement, and reinstatement with back pay.

On May 22, 2002, the Union filed a motion for summary disposition. It claimed that, on its face, the charge does not state facts to support a violation of PERA. In a June 21, 2002, twenty-eight page brief with eleven exhibits attached, Charging Party, relying on former Commission Rule 55(1) (1979 Administrative Code, R 423.455(1)), claimed that the Union's motion for summary disposition should be denied because it was not filed within 10 days after service of the initial complaint. Rule 155(1), (1979 Administrative Code, R 423.155(1)), replaced Rule 55(1) on February 1, 2002. Both rules, however, deal with filing answers to complaints. Rule 165, (Administrative Code, R 423.265), governs summary disposition motions and permits them to be made at any time before or during the hearing.

On July 23, 2002, I advised the parties that on August 7, the date set for an evidentiary hearing, Charging Party would be given an opportunity to present oral argument on the Union's summary disposition motion. On July 29, Charging Party requested an explanation of my decision to substitute oral argument for the evidentiary hearing. In a July 30 response to Charging Party's objection, the Union stated that his objections were plainly frivolous. The Union cited *Smith v Lansing,* 428 Mich 248 (1987), for the view that MERC may consider and decide motions for summary disposition provided charging parties are afforded an opportunity to present oral argument on issues of law and policy. On August 2, Charging Party telephoned me to ascertain whether I planned to make a written response to his objection to oral argument in lieu of conducting an evidentiary hearing on August 7. I informed him that oral argument on summary disposition motions was permitted by *Smith v Lansing*, and that I agreed with the Union's response to his request.

Thereafter, on August 3, Charging Party requested a stay of proceedings. He claimed that I abused my discretion and disregarded his due process rights by not responding, in writing, to his request for an explanation. He also alleged that I exhibited extreme prejudice by agreeing with the Union's reply to his request, and disregarded *Smith v Lansing.* He requested that I be replaced by an ALJ who would be required to provide him with a written explanation of why he was not entitled to an evidentiary hearing. I denied the motion. During the hearing, MSU also made motion for summary disposition. It claimed that the allegations set forth in the charge did not allege facts to support a violation of PERA. I denied Charging Party's request to postpone the hearing.

Discussion:

The Union is the exclusive bargaining agent for MSU's clerical and technical employees. The Union and MSU are parties to a collective bargaining agreement that contains probationary periods for new employees and a procedure for filling vacancies. It limits the Union's representation of probationary employees to disputes over wages, hours and other conditions of employment, except discipline and discharge.

On April 9, 2001, Charging Party was hired as a probationary computer operator II in the computer laboratory. He was terminated on August 22, 2001, prior to completing probation. Although the collective bargaining agreement states that the Union will not represent probationary employees who were discharged, the Union and MSU discussed Charging Party's termination and agreed to give him a second chance. A letter of agreement was signed by the Union on October 18, 2001, and by the University and Charging Party on October 19, 2001. The agreement contains a signature for MSU's Director of Human Resources, Samuel A. Baker, that is followed by the initials "JN". Pertinent parts of the agreement read:

> 1. The parties acknowledge that the employee, Michael J. Garcia, was employed as a probationary employee as a Computer Operator II in the Computer Laboratory, a Division of Libraries, Computing and Technology, between the dates of April 9, 2001 and August 22, 2001, and that his probationary employment was terminated.
>
> 2. The employee will be bypassed into a vacant Computer Operator II position in the Library, also a Division of Libraries, Computing and Technology, subject to all provisions of the Collective Bargaining Agreement, and serve a full probationary period as outline in Article 5.

On or about January 21, 2002, prior to completing his second probationary period, Charging Party was terminated. According to Charging Party, on February 8, 2002, while comparing letters of understanding in the collective bargaining agreement with the letter of agreement he signed on October 19, 2001, he noticed that the handwriting of Samuel A. Baker was different. Charging Party then sent a letter of grievance to the CTU, Baker, and MSU President Peter McPherson. The unfair labor practice charges were filed on April 19, 2002.

Conclusions:

During oral argument, Charging Party was unable to demonstrate how the facts alleged in his charges – an October 19, 2001 letter of understanding contained a non-genuine signature and falsely stated that he was a probationary employee when he was terminated on August 22, 2001 – stated a claim for relief Under PERA against MSU or the Union. Charging Party's argument focused on why, despite numerous requests, MSU refused to tell him who signed Baker's name on the October 19, 2002 letter of agreement. Even assuming that Baker did not sign the letter of agreement and it contained a false statement, these facts are insufficient to state a claim for which relief can be granted under PERA.

I find that Charging Party's charge and his procedural challenges are frivolous and lack merit. They mirror objections he raised in *Eaton Rapids Education Association and Michigan Education Association,* 2001 MERC Lab Op 131. In *Eaton Rapids,* Charging Party filed an unfair labor practice charge against his bargaining agent after the Eaton Rapids Public Schools terminated his employment as teacher while he was on probation. There, like here, he urged the Commission not to consider a summary disposition motion because it was filed more than ten days after the charge. He also claimed that the ALJ failed to comply with *Smith v Lansing, supra,* by canceling a scheduled evidentiary hearing and affording him an opportunity to present oral argument in support of his charge. After the Commission's May 10, 2001 decision in *Eaton*

Rapids, Charging Party was clearly aware that the Commission's administrative rules do not limit a party's ability to file motions for summary disposition and that an ALJ is empowered to grant summary dismissal of a charge without a hearing on the merits. However, in his June 21, 2002, response to the Union's motion for summary disposition, he raised the same procedural objections that the Commission rejected in *Eaton Rapids*. I find that Charging Party's charges and his procedural challenges are completely groundless and recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____