STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GIBRALTAR SCHOOL DISTRICT
Charging Party-Public Employer,

Case No. CU01 I-052

-and-

GIBRALTAR CUSTODIAL-MAINTENANCE ASSOCIATION/MEA
Respondent-Labor Organization.

_____/

APPEARANCES:

Logan, Huchla & Wycoff, P.C. by Charles E. Wycoff, Esq. for the Charging Party

Amberg, Firestone & Lee, P.C. by Joseph H. Firestone, Esq. for the Respondent

DECISION AND ORDER

On June 28, 2002, Administrative Law Judge Roy L. Roulhac (ALJ) issued his Decision and Recommended Order in the above matter finding that the actions of Respondent Gibraltar Custodial Maintenance Association/MEA did not constitute a repudiation of the collective bargaining agreement with Charging Party Gibraltar School District (Employer) in violation of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(3)(c).

The Decision and Recommended Order was served on the interested parties in accord with Section 16 of PERA. On July 22, 2002, Charging Party filed timely exceptions alleging that Respondent's conduct did constitute a repudiation of the collective bargaining agreement. Respondent filed a timely brief in support of the ALJ's Decision and Recommended Order on August 5, 2002.

The facts in this case were fully set forth in the ALJ's Decision and Recommended Order and need not be repeated in detail here. This case involves Respondent's conduct in processing three grievances. The first grievance involved a dispute over the allocation of overtime to temporary employees. The Respondent and the Employer settled the grievance after a joint meeting. Subsequent to the settlement, another grievant (Grievant A) filed grievance #00-01-01. Grievance #00-01-01 involved the identical issue that Respondent and the Employer had previously settled. Nonetheless, Grievant A insisted that Respondent pursue his grievance. Several months later, the Respondent's business agent filed a demand to arbitrate grievance #00-01-01

claiming that the initial settlement was invalid because it was improperly settled by the Respondent's president. Eventually, grievance #00-01-01 was arbitrated, and the arbitrator found that the grievance could not be arbitrated since the same issue had previously been settled by Respondent and the Employer.

In the meantime, a grievance on another issue, #00-01-05, was filed by Respondent's steward. The steward withdrew grievance #00-01-05 two days after he originally filed the grievance. After the withdrawal, the Respondent's secretary informed the Employer that Respondent's executive board had convened and decided that the grievance should not have been withdrawn. Subsequently, Respondent's business agent filed a demand to arbitrate #00-01-05.

On September 25, 2001, Charging Party filed the charge in this matter asserting that Respondent committed an unfair labor practice by demanding to arbitrate grievances that had been settled or withdrawn. Charging Party alleges that the demands to arbitrate these grievances constituted a repudiation of the collective bargaining agreement in violation of PERA.

Discussion and Conclusions of Law:

Although the Commission has the authority to interpret contracts to determine whether an unfair labor practice has been committed under PERA, the Commission will not exercise jurisdiction over every contract dispute. An alleged breach of contract is not an unfair labor practice unless a repudiation is found. *Jonesville Bd of Educ*, 1980 MERC Lab Op 891, 900-01; *County of Wayne*, 1988 MERC Lab Op 73, 76. Repudiation exists when 1) the contract breach is substantial, and has a significant impact on the bargaining unit and 2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Community Sch*, 1984 MERC Lab Op 894, 897. Repudiation can be found where the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Twp of Redford Police Dep't*, 1992 MERC Lab Op 49, 56 (no exceptions); *Linden Community Sch*, 1993 MERC Lab Op 763, 772 (no exceptions). The Commission will not find repudiation on the basis of an insubstantial or isolated breach. *Crawford County Bd of Comm'rs*, 1998 MERC Lab Op 17, 21.

In the instant case, Charging Party asserts that Respondent breached the collective bargaining agreement grievance procedure by filing demands to arbitrate after certain grievances had either been settled or withdrawn. As the ALJ noted, absent conduct that closes the door or substantially frustrates the grievance procedure, the Commission will not get involved in procedural disputes relating to the grievance process. *Kalamazoo Public Sch*, 1977 MERC Lab Op 771, 778, 793; *Twp of Argentine*, 2000 MERC Lab Op 176, 179 (no exceptions). Here Respondent tried to revive grievances that Charging Party believed to be resolved. However, there is no evidence that Respondent's actions substantially frustrated the grievance process. Indeed, it appears that one of the grievances is proceeding to arbitration and the other one has been arbitrated.

In similar cases, the Commission has found that alleged breaches of grievance procedures did not rise to the level of repudiation. For example, in *County of Wayne,* the employer allegedly wrongfully delivered grievance answers to the union business agent instead of the union steward. A dispute arose between the agent and the steward when the agent decided not to pursue the grievances while the steward filed most of the grievances. The steward filed unfair labor practice charges against the union and the employer. The Commission found that "failure to adhere to the strict letter of their grievance procedure did not result in an unfair labor practice." *Id* at 76.

Moreover, in *City of Pontiac Sch Dist*, 1997 MERC Lab Op 375, the Commission found that the district's failure to timely respond to a series of grievances in accord with its collective bargaining agreement did not, by itself, constitute a repudiation of the agreement. *Id* at 383. As in *County of Wayne* and *City of Pontiac Sch Dist*, the instant case involves a situation where Respondent allegedly did not follow the grievance procedure as understood by Charging Party. As in the aforementioned cases, we find that the alleged breaches did not constitute a repudiation of the collective bargaining agreement. *See also Twp of Argentine*; *Berrien County (Riverwood Center)*, 1993 MERC Lab Op 681 (no exceptions).

Contrary to Charging Party's assertions, the alleged contract breaches do not rise to the level of repudiation. It appears that there was a bona-fide dispute between Charging Party and Respondent with respect to the proper procedure for processing grievances. Moreover, the alleged breaches were not substantial. Accordingly, we find the exceptions of Charging Party to be without merit and adopt the Administrative Law Judge's findings of fact and conclusions of law.

ORDER

It is hereby ordered that the unfair labor practice charge filed by Gibraltar School District be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated:_____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

GIBRALTAR SCHOOL DISTRICT,
Charging Party-Public Employer,

-and-

Case No. CU01 I-052

GIBRALTAR CUSTODIAL-MAINTENANCE
ASSOCIATION/MEA,
LOCAL 502,
Respondent-Labor Organization,
_____/

Appearances:

Logan, Huchla & Wycoff, P.C., by Charles E. Wycoff, Esq., for the Charging Party

Amberg, Firestone and Lee, P.C., by Joseph H. Firestone, for the Respondent

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION TO DISMISS

On September 25, 2001, the Gibraltar School District filed the above charge against the Respondent Gibraltar Custodial-Maintenance Association/MEA. The charge alleged that Respondent violated MCL 423.210(3)(c), MCL 423.215, and MCL 423.217 by filing demands to arbitrate grievances that had been settled or withdrawn. According to Charging Party, Respondent repudiated the collective bargaining agreement and engaged in a pattern or practice of bad faith bargaining, or refused to bargain in good faith.

On December 13, 2001, Respondent filed a motion to dismiss. It asserted that dismissal was appropriate since the facts alleged by Charging Party, even if true, do not support a claim for which relief could be granted under PERA. Charging Party filed an answer to the motion on December 26, 2001, and Respondent filed a reply to Charging Party's answer on January 2, 2002. Oral argument was held on January 24, 2002. Based on the pleadings and the parties' arguments, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

Findings of Fact:

The relevant facts are undisputed. Charging Party and Respondent are parties to a collective bargaining agreement that contains a grievance procedure that ends in binding arbitration. An August 21, 2000, grievance filed by the president of Respondent Gibraltar Custodial-Maintenance Association/MEA, hereafter, "Local Association," alleged that a

temporary employee, rather than a bargaining unit member, was allowed to work overtime. After a September 6, 2000, meeting between the Local Association president and Charging Party Gibraltar School District, the grievance was settled. On the same day, a bargaining unit member filed grievance #00-01-01 that addressed the same issue as the settled grievance. Although the school superintendent informed the grievant that a grievance concerning the same issue had been filed by the Union and resolved, the bargaining unit member demanded that his grievance be processed to the next step.

Six months later, the business agent for the MEA, the Local Association's parent organization Association, filed a demand to arbitrate grievance #00-01-01. He claimed that the Local Association's settlement of the August 21, 2000, grievance was invalid because it was not approved by the Local Association's executive board. In an opinion and award dated November 6, 2001, the arbitrator agreed with Charging Party's contention that grievance #00-01-01 filed on September 6, 2000, was not subject to the arbitration process because a grievance involving the same issue had been settled by the parties.

In the meantime, on June 27, 2001, the Local Association steward filed grievance #00-01-05 that involved testing for promotion from custodial to maintenance classifications. Two days later, on June 29, the steward withdrew the grievance. However, six weeks later, the Local Association's secretary advised Charging Party that the Local Association's executive board had met and determined that the grievance should not have been withdrawn. Thereafter, on August 29, 2001, the MEA's business agent filed a demand to arbitrate grievance #00-01-05. In a September 20, 2001, response to the School District's objection to arbitrating a grievance that had been withdrawn, the business agent reiterated that the executive board had voted to forward the grievance to arbitration and that any internal Association difficulties were strictly its business. An arbitration hearing is pending on grievance #00-01-05.

Conclusions of Law

Charging Party claims that Respondent's action of demanding to arbitrate settled or withdrawn grievances repudiates the settlement agreements and the collective bargaining agreement and violates MCL 423.210(3)(c) and MCL 423.215. Charging Party also claims that the Local Association's refusal to abide by grievance settlements and the business agent's insistence on overriding Local Association decisions is a violation of MCL 423.217 and a unilateral change in terms and conditions negotiated by the parties in violation of MCL 423.210(3)(c).

It is noted at the outset, that under MCL 423.216 of PERA, the Commission is only authorized to find unfair labor practices based on violations of MCL 423.210. Nowhere in the Act is the Commission authorized to remedy alleged violations of other sections of the Act. Thus, Charging Party's claim that Respondent violated MCL 423.215 and 423.217 will not be addressed. The two issues to be decided are whether Respondent violated PERA (1) by filing demands to arbitrate grievances that had been settled or withdrawn by the Local Association president and steward, respectively; and (2) by the business agent's insistence on approving the withdrawal or settlement of grievances.

In its motion to dismiss, Respondent asserts that if all of Charging Party's allegations are taken as true, they fall woefully short of the Commission's repudiation standard. Moreover, according to Respondent, the matters that Charging Party complains about are internal union affairs that are not subject to the Commission's jurisdiction. I agree.

The Commission has defined "repudiation of a collective bargaining agreement" as an attempt to rewrite the contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501; *Redford Two Bd of Ed*., 1992 MERC Lab Op 894; *Jonesville Bd of Ed*., 1980 MERC Lab Op 891. The Commission has also held that it will find repudiation only when (1) the contract breach is substantial and has a substantial impact on the bargaining unit; and (2) no bona fide dispute over contract interpretation is involved. *Crawford County Bd of Commissioners*, 1998 MERC Lab Op 17. *Plymouth-Canton CS*, 1984 MERC Lab Op 894. The Commission will find repudiation only when there has been a substantial abandonment of the collective bargaining agreement or collective bargaining relationship. *Township of Argentine*, 2000 MERC Lab Op 176.

Charging Party would have the Commission believe that Respondent's decision to demand arbitration of grievances that were settled or withdrawn has a significant impact on the bargaining unit. According to Charging Party, if Respondent's actions are allowed to stand, Charging Party will never make an effort to resolve outstanding issues between the parties and will litigate every dispute and allow them to be submitted to arbitration.

The Commission has long held that absent conduct that closes the door to the entire grievance procedure, it will not involve itself in procedural matters relating to grievance processing. Disputes regarding procedures for processing grievances are issues that can properly be resolved by an arbitrator and do not involve a refusal to bargain or repudiation of the collective bargaining agreement. *Kalamazoo Public Schools*, 1977 MERC Lab Op 771, 793. Indeed, in this case, an arbitrator has already issued an opinion and award finding that grievance #00-01-01 could not be arbitrated because the parties had entered into a prior settlement agreement involving the same issue. Further, a hearing is pending to determine whether Respondent is entitled to arbitrate grievance #00-01-05 that was withdrawn by a Union steward. I find that Respondent's demands to arbitrate these grievances do not rise to the level of repudiation or an abandonment of the collective bargaining agreement or relationship.

I also find no merit to Charging Party's claim that the business agent's alleged insistence on approving the withdrawal or settlement of grievances is a unilateral change or a refusal to bargain. Even if the business agent insists on having the last word in determining which grievances to withdraw or settle, such action is an internal union matter over which the Commission will not assert jurisdiction. *County of Wayne*, 1988 MERC Lab Op 73, 76. In *County of Wayne*, the Commission found that a dispute between a business agent and a union steward about who should participate in the grievance process was an internal union matter over which it would not assert jurisdiction. Here the dispute involves the authority of union officers to resolve grievances without the approval of the union's executive board. Clearly, this is also an internal union matters that is outside of the Commission's jurisdiction.

Based on the above facts and conclusions of law, I recommend that the Commission issue the order set forth below:

Recommended Order

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____