STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Respondent-Public Employer in Case No. C02 G-154,

-and-

CLERICAL-TECHNICAL UNION OF
MICHIGAN STATE UNIVERSITY,
Respondent-Labor Organization in Case No. CU02 G-041,

-and-

MICHAEL J. GARCIA,
An Individual Charging Party.
_____/

APPEARANCES:

James Nash, Interim Director, Employee Relations, Michigan State University, for the Public Employer

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

Michael J. Garcia, In Propria Persona

DECISION AND ORDER

On November 25, 2003, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Motions for Summary Disposition in the above matter finding that Charging Party Michael J. Garcia failed to state a claim upon which relief could be granted 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 ALJ's Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On December 16, 2003, Charging Party filed a timely request for an extension of time to file exceptions. The request was granted on December 17, 2003, giving Charging Party until January 20, 2004, to file exceptions. Charging Party filed timely exceptions and a request for oral argument on January 20, 2004. On January 29, 2004, the Union filed a timely Brief in Support of Decision and Recommended Order of Administrative Law Judge.

An untimely response, filed on behalf of Respondent MSU on February 6, 2004, was not considered.

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. In his exceptions, Charging Party argues that the ALJ erred in recommending that his charges against both Respondents be dismissed.

We have carefully and thoroughly reviewed the record and have decided to affirm the findings and conclusions of the ALJ and adopt the recommended order. With regard to the charge against the Union, the ALJ found, and we agree, that the Union did not breach its duty of fair representation by failing to file grievances on Charging Party's behalf. The contract provided that probationary employees, such as Charging Party, could not grieve discipline or discharge. Even assuming that a grievance could have been filed, a union has considerable discretion in deciding whether or not to file a grievance. *Detroit Federation of Teachers*, 2001 MERC Lab Op 322; *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 146 (1973). The ALJ properly rejected Charging Party's claim that the Union violated sections other than Section 10 of PERA, and the U.S. and Michigan Constitutions. The ALJ correctly recited the law that under Section 16(a) of PERA, the Commission's authority to rule on unfair labor practices is limited to violations of Section 10, and the Commission has no jurisdiction over constitutional issues, such as those alleged by Charging Party. Finally, Charging Party has failed to cite any misrepresentation or misreporting of the facts that would cause us to change our decision regarding the proper result in this case.

With regard to his charge against the Employer, for the reasons cited in the ALJ's decision, we agree that Charging Party failed to state a claim upon which relief can be granted under PERA. We have carefully considered Charging Party's remaining exceptions and arguments and find them to be without merit.

ORDER

For the reasons stated above, we hereby adopt the ALJ's Decision and Recommended Order and dismiss the charges in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Dated:_____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN STATE UNIVERSITY,
Public Employer-Respondent in Case No. C02 G-154

-and-

CLERICAL-TECHNICAL UNION OF MSU,
Labor Organization-Respondent in Case No. CU02 G-041

-and-

MICHAEL J. GARCIA,
An Individual-Charging Party
_____/

APPEARANCES:

Samuel A. Baker, Director, Employee Relations, Michigan State University, for the Respondent Employer

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

Michael J. Garcia, in pro per

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

On July 3, 2002, Michael J. Garcia filed the above charges against his former employer, Michigan State University, and his bargaining representative, the Clerical-Technical Union of MSU, alleging that Respondents violated Sections 1(2), 3, 6(2), 10, 11 and 15 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 et seq.

In Case No.C02 G-154, Garcia alleges that the Employer violated Section 10(1)(a) of PERA by failing to comply with its own employment policies and/or the collective bargaining agreement between the Respondents. Garcia asserts that this conduct interfered with the exercise of his rights under Section 9 of the Act. In October 2001, Garcia and the Union negotiated an agreement with the Employer regarding Garcia's continued employment. Garcia alleges that the Employer violated Section 10(1)(c) of PERA by unlawfully retaliating against him because of this agreement. Garcia also alleges that by failing to recognize his right to express his grievances,

the Employer violated other the sections of PERA cited above, and as well as the Michigan and United States Constitutions.

In Case No. CU02 G-041, Garcia alleges that the Union violated its duty of fair representation under Section 10(3)(a)(i) of PERA by failing to properly investigate, file, process and/or respond to 16 requests that the Union file grievances on his behalf. Garcia also alleges that the Union violated its duty of fair representation by failing to take action to remedy the Employer's unlawful discrimination against him. Garcia alleges that by these actions the Union also violated the other sections of PERA cited above, and as well as the Michigan and United States Constitutions.

On July 22, 2002, the Union filed a motion for summary disposition and/or motion for a more definite statement. Attached to the motion for summary disposition were copies of letters from the Union to Garcia dated January 24 and January 31, 2002. On July 22, 2002, I granted the motion for a more definite statement and directed Garcia to provide details regarding each of the 16 grievances mentioned in his charge. Garcia complied with my order on August 27, 2002, attaching to his response copies of the letters and supporting documents he sent to the Union with respect to all 16 grievances. On September 5, 2002, the Union filed a renewed motion for summary disposition, asserting that Garcia had failed to state a claim upon which relief could be granted. Attached to this motion was a copy of the Respondents' collective bargaining agreement, an affidavit from the Union's contract administrator, the transcript of oral argument on motions for summary disposition in a related charge brought by Garcia against the same Respondents, Case Nos. C02 D-093 & CU02 D-023, [1] and other documents. On January 6, 2003, Garcia filed a response to the Union's motion for summary disposition. Oral argument on that motion was held before me on January 21, 2003.

On January 28, 2003, the Employer filed a motion for summary disposition in Case No. C02 G-154, asserting that Garcia had failed to state a claim upon which relief can be granted. Garcia filed his response to the Employer's motion on April 1, 2003. Garcia did not request oral argument on the Employer's motion.

The following facts were set forth in Garcia's pleadings, or in documents and affidavits attached to the Union's motion, and are not in dispute.

Background:

The Union is the exclusive bargaining agent for a unit of clerical and technical employees, including computer operators, employed by the Employer. Respondents were parties to a collective bargaining agreement covering the period 2000-2003. Article 5.1.A of the contract

[1] In April 2002, Garcia filed charges against both Respondents alleging that they violated PERA by presenting him with the October 2001 letter of agreement. Garcia alleged that the agreement falsely stated that he had been terminated. He also alleged that the signature of the Employer representative on the document Garcia was given to sign was not genuine. On September 16, 2002, Administrative Law Judge Roy L. Roulhac recommended that this Commission grant the Respondents' motions for summary disposition. On October 8, 2003, after Garcia filed the charges now before me, the Commission issued a decision and order adopting the ALJ Roulhac's findings and recommendations. *Michigan State University*, 2003 MERC Lab Op_____. As discussed below, Garcia continues to dispute the validity of the letter of agreement.

provides for a 520 working hour probationary period for part-time employees. Article 5.1.B states that "the Union shall represent probationary employees for the purpose of collective bargaining in respect to wages, hours and other conditions of employment, but not for discharge or discipline." Article 5.1.C provides that before a probationary employee can be separated, he must be advised of his deficiencies in work performance or in conduct sufficiently in advance of the decision to terminate in order to allow him reasonable time to improve.

Garcia began working as a part-time computer operator in the Employer's computer laboratory on April 9, 2001. On August 22, 2001, before Garcia had completed his probationary period, the Employer notified him that he was terminated. The Union could not file a grievance on his behalf. However, on October 19, 2001, the Employer, the Union and Garcia entered into a letter of agreement which stated that (1) Garcia had been terminated from his position as a probationary employee, (2) he would be "bypassed" into a vacant position in the Employer's library, and (3) he would serve a full probationary period in that position.

The Employer did not formally remove Garcia from its payroll. Garcia began work at his new position on October 22, 2001. On January 4, 2002, Garcia sent his first letter to the Union asking it to file a grievance. The 16 letters Garcia sent to the Union between January 4 and March 26, 2002 are summarized below.

Grievance No.1: On December 18 or 19, 2001, Garcia had a meeting with his immediate supervisor. The supervisor went over the new employee orientation checklist with him. She also used this meeting as an opportunity to criticize his performance. The supervisor expressed concern about the amount of family sick leave Garcia had used during his two months of employment, stated that Garcia needed to become more proficient in several areas, and indicated that he needed to pick up the pace of his work. Garcia's supervisors prepared an e-mail summarizing the December 19 discussion, and Garcia was required to sign it. On January 4, 2002, Garcia sent a letter to the Union asking it to file a formal grievance over the Employer's failure to hold a new employee orientation meeting within five days after his employment, and over the written summary criticizing his work performance.

Grievance No. 2: On January 10, 2002, Garcia sent a letter to the Union asking it to file a formal grievance against his supervisors for failing to remedy an ergonomic problem at his work site. Garcia reported that an ergonomics specialist came to his work site at the beginning of his employment and made some recommendations, but that he never heard from her again. Garcia also reported that he had recently been diagnosed with tendonitis of his right shoulder due to his work setting.

Grievance No. 3: On January 16, 2002, Garcia sent a letter to the Union asking it to file a formal grievance protesting an e-mail sent to him by his supervisor on January 11, 2002. In this e-mail, his supervisor criticized him for altering his equipment arrangement himself after his ergonomic evaluation. In his letter to the Union, Garcia explained that he had moved his computer monitor to allow him more space to work.

Grievance No. 4: On January 20, 2002, Garcia sent a letter to the Union asking it to file a formal grievance against Dr. Paul Hunt, the Employer's Associate Vice President for Research,

for failing to respond to a letter Garcia sent him on January 1, 2002. In his letter to Hunt, Garcia said that he did not believe that his supervisor was fairly or objectively evaluating his performance and that he believed that his supervisor was demonstrating a "get Garcia" attitude. Garcia asked Hunt if there was a campaign to retaliate against him for engaging in protected concerted activity, i.e. signing the October 2001 letter of agreement, and requested that Hunt put a stop to this campaign. In his letter to the Union, Garcia maintained that Hunt's failure to respond to his letter meant that Hunt knew of retaliatory efforts against him.

Grievance No. 5: On January 21, 2002, Garcia sent a letter to the Union asking it to file a formal grievance over his supervisors' refusal to approve his use of sick leave.[2] Garcia attached a copy of a letter from his supervisor. The documents indicated that Garcia did not report to work from January 14 through January 18. Part of this time, Garcia was receiving physical therapy for his tendonitis ordered for him by a physician at the Employer's medical clinic. Garcia had concluded, however, that he should not come to work at all in order to allow his shoulder to rest. In a letter dated January 18, Garcia's supervisor informed him that he was excused to attend physical therapy sessions. The letter stated, however, that that since the Employer was prepared to meet the work restrictions given Garcia by the doctor, Garcia should have reported to work. Garcia was directed to report to a meeting on Monday morning, January 21, to discuss his unauthorized absence. In his letter to the Union dated January 21, Garcia also asked the Union to file a grievance over his supervisors' demand that he meet with them on a date and time when he was scheduled for physical therapy. Although Garcia asked the Union to file grievances, he stated in his letter that the "remedy" he sought was that the Union file an unfair labor practice charge on his behalf.

At the meeting on January 21, 2002, Garcia was terminated. Garcia was told by his supervisors that his absences from work, as set out above, were unapproved and unauthorized, and that he was terminated from his employment for poor performance.

Grievance No. 6: On January 23, 2002, Garcia sent a letter to the Union asking it to file a formal grievance against the doctor at the Employer's health center for failing to recommend that Garcia be allowed to take sick time to recover from his shoulder injury, or tell Garcia's supervisors that he should not use a computer. According to his letter to the Union, Garcia told several doctors at the health center that the positioning of his hand and arm when using the keyboard and mouse at his worksite was very painful, and he asked the doctor to tell his supervisors that he should not be using the computer at his work site until he recovered.

Grievance No. 7: On January 24, 2002, Garcia sent a letter to the Union asking it to file a grievance over his termination. Garcia argued that the Employer wrongfully considered him to be a probationary employee at the time of his termination, since he had been employed by the Employer for over nine months, and he had been employed for over six months when he began his new position in October 2001.

[2] Article 11(V)(B)(1) of the contract states that sick and disability lease may be used for "personal illness or incapacity over which the employee has no reasonable control which prohibits the performance of the duties of the job."

On the evening of January 23 or 24, 2002, Garcia met with the Union's contract administrator and the Union's president to discuss the letters set forth above, including his January 24, 2002 letter asking the Union to file a grievance over his termination. On January 24, the Union sent Garcia a letter stating that the Union had reviewed his letters and documentation, and had concluded that his claims that the Employer had violated the collective bargaining agreement were without merit. The Union informed Garcia that it would not be filing grievances on any of these claims. The letter noted that Article 5 of the contract precluded the Union from representing probationary employees for "discharge or discipline."

Grievance No. 8: On January 25, 2002, Garcia sent a letter to the Union asking it to file a grievance against his supervisor for misrepresenting the facts pertaining to his performance; not specifying the amount of time needed for, or allowing a reasonable time for, improvement; and failing to "report improvement when that improvement occurred." Garcia alleged that these actions violated Article 5.1.C of the collective bargaining agreement. Garcia attached a copy of an e-mail dated December 20, 2001. This e-mail was a reply from Garcia's supervisor to an e-mail he had sent her. In the e-mail, Garcia's supervisor stated that the Employer had trained many people in the past, and that Garcia was not meeting her expectations.

Grievance No. 9: On January 27, 2002, Garcia sent a letter to the Union asking it to file a grievance against two other supervisors for failing to notify him of deficiencies in his work performance far enough in advance of his termination to allow him to improve. Garcia stated that he felt that he was not correctly and fairly advised of his deficiencies. Garcia attached a lengthy affidavit to his letter to the Union explaining why it was improper for his supervisors to refuse to excuse his absences, and described in detail the conversations he had had with these supervisors about their failure to give him notice of his deficiencies.

Grievance No. 10: On January 29, 2002, Garcia sent a letter to the Union asking it to file a formal grievance against the director of his department for violating Article 19.1 of the collective bargaining agreement. This section states that Workers Compensation benefits will be supplemented by accrued sick leave credits until they are exhausted to maintain regular gross pay. Garcia claimed that the Employer violated this provision by refusing to excuse his absences between January 14 and January 21.

On January 31, 2002, a Union contract administrator sent Garcia a letter indicating that he had read the letters Garcia had sent the Union since January 24 and reviewed the contents of Garcia's personnel files. This letter stated that the Union had concluded that Garcia's claims were without merit and that the Union would not be filing grievances on these claims.

Grievance No. 11: On February 2, 2002, Garcia sent a letter to the Union asking it to file a grievance against the Employer's director of employee relations for failing to inform Garcia and the Union before they signed the letter of agreement in October 2001 that Garcia was no longer a probationary employee because he had been on the Employer's payroll for over 520 hours. The Union did not respond to this letter.

Grievance No. 12: On March 1, 2002, Garcia sent a letter to the Union asking it to file a grievance against one of his former supervisors for making false statements in a memo included

in Garcia's personnel file regarding the basis for Garcia's termination. The Union did not respond to this letter.

Grievance No. 13: On March 4, 2002, Garcia sent a letter to the Union asking it to file a grievance against the Employer's vice president for human resources because of "falsification of information in [his] personnel file which is fraudulent and illegal." Garcia asserted that the letter of agreement, a copy of which was in his personnel file, contained false information, i.e., it stated that he had been terminated from his first position. Garcia also argued that the agreement was not valid because the signature of the Employer representative was not actually his signature. The Union did not respond to this letter.

Grievance No. 14: On March 6, 2002, Garcia sent a letter to the Union asking it to file a grievance against the operations supervisor of the library's human resources office for a memo the she sent to the payroll department dated January 23, 2002. This memo indicated that some of Garcia's hours between January 14 and January 17, 2002 were to be recorded as unpaid. The Union did not respond to this letter.

Grievance No. 15: On March 7, 2002, Garcia sent a letter to the Union asking it to file a formal grievance against ten supervisors and managers employed by the Employer for failing to "be forthcoming in answering the questions put forth to them in my letters to them of the dates indicated above." Garcia wrote to each of these individuals asking them what they knew about retaliation against him for his role in signing the October 2001 letter of agreement. In his letter to the Union, Garcia asserted that the letter recipients' failure to deny knowledge of any retaliation against him should be construed as an attempt to hide what they knew. The Union did not respond to this letter.

Grievance No. 16: On March 26, 2002, Garcia sent a letter to the Union asking it to file a grievance against the Employer's assistant vice president for human resources. On March 8, Garcia sent a letter to the assistant vice president for human resources asking her to reveal what she knew of a "get Garcia" campaign. In his letter to the Union, Garcia asserted that her failure to deny any knowledge of retaliation against him should be construed as an attempt to hide what she knew. The Union did not respond to this letter.

Discussion and Conclusions of Law:

The Union's Motion

In *Smith v. Lansing School Dist.,* 428 Mich. 248 (1987), the Michigan Supreme Court held that the Commission has the authority under PERA, the Commission's rules, and the Michigan Administrative Procedures Act, MCL 24.271 et. seq, to dismiss a charge for failure to state a claim without conducting a full evidentiary hearing. Pursuant to R 165(1), a motion for summary disposition may be made at any time before or during a hearing.

The Union maintains that summary disposition is proper in this case because the facts as alleged by Garcia do not indicate that the Union violated its duty of fair representation under Section 10(1)(a)(i). Citing *Goolsby v Detroit,* 419 Mich 651, 659 (1984), the Union asserts that

Garcia has not presented any facts to establish that the Union refused to file Garcia's grievances because of personal hostility, ill will, or bad faith, that the Union was guilty of invidious discrimination, or that the Union acted arbitrarily or perfunctorily.

A union is not required under PERA to file a grievance every time a member requests that it do so. Rather, a union has considerable discretion to decide whether to assert, process or settle a claim on a member's behalf. *Lowe* v *Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-147 (1973). However, the duty of fair representation requires a union to (1) serve the interests of all members without hostility or discrimination; (2) exercise discretion with complete good faith and honesty, and (3) avoid arbitrary conduct. *Goolsby*, supra at 664. A union owes a duty of fair representation to probationary employees, and must represent them to the extent that the collective bargaining agreement allows them to do so. *Police Officers Labor Council*, 1999 MERC Lab Op 196. However, a union may lawfully agree in a collective bargaining agreement that probationary employees will not have certain contractual rights possessed by nonprobationary employees, including the right not to be disciplined or terminated except for just cause. See, e.g. *Genesee County Sheriff*, 1990 MERC Lab Op 467; *City of Wyoming (P.D.)*, 1983 MERC Lab Op 1024.

Here, Garcia does not assert that the Union was motivated by personal hostility, or that it discriminated against him based on his race, sex or other suspect category. The essence of Garcia's claim is that the Union handled his grievance requests perfunctorily by failing to investigate them, pursue them, or respond to them, and that it irrationally decided that they lacked merit.

The Union denies that it failed to respond to Garcia's requests, and the undisputed facts support its claim. Although the Union did not respond immediately to Garcia's early letter, on January 23 or January 24, 2002, the Union's contract administrator met with Garcia to discuss the matters covered in his letters denominated as grievances one through seven. This included Garcia's January 21, 2002 termination. The Union subsequently sent Garcia a letter informing him that it would not be filing grievances on these claims. On January 31, 2002, the Union sent Garcia another letter informing him that it had concluded that the claims denominated as grievances seven through ten lacked merit. The Union did not respond to the letters Garcia sent it between January 31 and March 26. However, as the Union maintains, these letters merely reiterated arguments that the Union had already rejected.

The Union also argues that it did not arbitrarily refuse to investigate or file grievances on any of the matters Garcia raised. As discussed below, the Union asserts that it made reasoned decisions that Garcia's claims lacked merit based on his letters and the documentation that he attached to them.

With respect to Grievance No. 1, the Union points out that nothing in the contract or the October 2001 letter of understanding dealing with Garcia's reemployment explicitly requires the Employer to provide new employee orientation. [3] Moreover, the contract does not prohibit the

[3] Garcia alleges that Article 4.II of the contract requires the Employer to provide new employee orientation within five days. Article 4.II reads, " the parties are mutually committed to promoting respect, civility, teamwork and empowerment in the work place."

Employer from criticizing an employee's performance but, in fact, requires the Employer to advise a probationary employee of deficiencies in his performance or conduct before terminating him to give him a reasonable time to improve.

With respect to Grievance No. 2, the Union maintains that the only contract language arguably applicable to this situation, Article 31, provides only that the Respondents will "cooperate for the purpose of eliminating accidents and health hazards." Since it was undisputed that the employer had performed an ergonomic analysis of Garcia's work site, and that Garcia had made his own alterations to his workstation, there was no basis for filing a grievance. With respect to Grievance No. 3, the Union asserts that the supervisor's criticism of Garcia's alterations to his workstation did not violate any contractual provision.

The Union maintains that although Article 24 of the contract allows the Union to request certain information from the Employer, the failure of Dr. Paul Hunt to respond to Garcia's letter was not a violation of the contract (Grievance No. 4). Moreover, the Union asserts that it could not have contractually compelled Hunt to respond to a request that he disclose the names of individuals who allegedly were out to "get" Garcia.

With respect to Grievance No. 5, the Union points out that it was not clear from Garcia's letter whether he was asking the Union to file an unfair labor practice charge or claiming that the Employer violated the contract by denying him sick leave. In any case, Garcia provided the Union with documents indicating that Garcia had refused to report to work between January 14 and January 21, despite the fact that a doctor had released him to work with restrictions. Although Garcia asked the Union to file a grievance against a physician at the Employer's health center for failing or refusing to inform his supervisors that he was not able to work at all between January 14 and January 21 (Grievance No. 6), Garcia did not cite any provision of the contract which had been violated. According to the Union, the lengthy affidavit that Garcia attached to his January 23 letter did not provide any facts which could have formed the basis for a grievance.

In Grievance No. 7, Garcia asked the Union to file a grievance over his January 21 termination. According to the Union, Garcia's argument that he was not a probationary employee at the time of his termination was nonsensical. According to the Union, Garcia, the Union and the Employer all understood that Garcia was fired from his first job on August 21, that this termination was the basis for the October letter of agreement, and that Garcia was to serve a separate probationary period in his new position.

In Grievances Nos. 8 and 9, Garcia asked the Union to file grievances against his supervisors for violating Article 5.I.C of the contract. According to the Union, Garcia was well aware that he had been notified of deficiencies in his performance in December 2001, and in fact had complained about this notice in his January 4, 2002 letter to the Union. The Union points out that it is precluded by Article 5.I.B from grieving either discipline or discharge actions taken against probationary employees.

According to the Union, Grievances Nos. 10 through 14 were simply reiterations of Garcia's previous arguments that he was not a probationary employee in January 2002, and that the Employer had no right to refuse to excuse his absences between January 14 and January 21.

According to the Union, in Grievances Nos. 15 and 16, as in Grievance No. 4, Garcia sought, without any contractual basis, to compel various Employer supervisors and administrators to admit or deny knowledge of a campaign against him.

I agree with the Union that the undisputed facts do not indicate that the Union arbitrarily refused to investigate or file grievances on Garcia's behalf. The October 19, 2001 letter of agreement precluded the Union from asserting that Garcia was not a probationary employee between October 22, 2001 and his termination on January 21, 2002. Based upon that agreement, the Union could not grieve Garcia's discipline or termination. Although Garcia argues that "discipline" means only formal disciplinary actions, and not the unfair criticism he received from his supervisors, there is nothing in the contract that allows the Union to grieve informal criticism of an employee's performance. Garcia's letters, and the documents he attached to them, clearly demonstrated that none of the other issues which Garcia wanted the Union to grieve were violations of the collective bargaining agreement.

Garcia also alleges that the Union violated its duty of fair representation by failing to take action to remedy the Employer's unlawful retaliation against him. Garcia had many disagreements with his supervisors, and he informed the Union that he believed that there was a concerted plan to "get" him. However, Garcia never provided the Union with any information to support his claim that his supervisors had a retaliatory motive.

Garcia also alleges that the Union violated Sections 1(2), 3, 6(2), 11 and 15 of PERA, and his rights under the Michigan and United States Constitutions. However, per Section 16(a) of PERA, the Commission's authority to find and remedy unfair labor practices is limited to violations of Section 10 of the Act. Moreover, the Commission, an administrative agency whose authority is prescribed by statute and not a court of general jurisdiction, has no authority to decide whether an individual's constitutional rights have been violated.

For reasons set forth above, I conclude that Garcia failed to state a claim against the Union upon which relief can be granted under PERA, including a claim against the Union for breach of its duty of fair representation under Section 10(1)(a)(i).

The Employer's Motion:

The Employer asserts that Garcia has not stated a claim against it for which relief can be granted under PERA. PERA does not provide an independent cause of action for breach of a collective bargaining agreement by an Employer. In a hybrid action alleging both breach of contract by an employer and breach of a union's duty of fair representation, a party cannot pursue the breach of contract claim unless it is successful in its claim of breach of the duty of fair representation. *Knoke v East Jackson School District*, 201 Mich App 480, 485 (1993).

Although it was not clear from his original charge, Garcia also alleges that that the Employer retaliated against him for negotiating the October 2001 letter of agreement with the Union. However, in his pleadings, including his response to the Employer's motion, Garcia asserts no facts to connect the Employer's allegedly unfair treatment of him to the October 2001 letter of agreement.

Garcia also alleges that the Employer violated Sections 1(2), 3, 6(2), 11 and 15 of PERA, and the Michigan and United States Constitutions. As noted, however, these are not claims upon which relief can be granted under PERA. For reasons set forth above, I conclude that Garcia has failed to state a claim against the Employer under the Act.

Based on the facts set forth in Garcia's pleadings and undisputed facts contained in the affidavits and briefs attached to the Union's motion, and on the discussion and conclusions of law set forth above, I recommend that the Commission grant both Respondents' motions for summary disposition and issue the following order.

RECOMMENDED ORDER

The charges are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____