STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

WAYNE STATE UNIVERSITY,
Respondent-Public Employer in Case No. C03 E-099,

-and-

WAYNE STATE UNIVERSITY STAFF ASSOCIATION,
UAW, LOCAL 2071,
Respondent -Labor Organization in Case No. CU03 E-026,

-and-

ROMELL WESTON,
An Individual Charging Party.
____/

APPEARANCES:

A. L. Rainey, Director of Labor Relations, for the Public Employer

Georgi-Ann Bargamian, Esq., for UAW Local 2071

Romell Weston, In Propria Persona

DECISION AND ORDER

On March 19, 2004, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondents did not engage in certain unfair labor practices and recommending that the Commission dismiss the charges. The charge in Case No. C03 E-099 alleged that Wayne State University (Employer) treated Charging Party unfairly with respect to her termination. In Case No. CU03 E-026, Charging Party alleged that she did not receive proper support from the Wayne State University Staff Association, UAW Local 2071, (Union) in protesting the University's decision. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of PERA. On March 30, 2004, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order, but has not filed a statement attesting to service of those exceptions upon Respondents.

We have carefully and thoroughly reviewed the record, including Charging Party's exceptions, and have decided to adopt the ALJ's recommended order as our final order in this case.

Factual Summary:

The Decision and Recommended Order fully set forth the facts in this case, and they will be repeated only as necessary here. The University employed Charging Party as an Office Service Clerk II at the University's School of Medicine. On March 12, 2003, the University notified Charging Party that her general funded position would end on April 12, 2003. Subsequently, Charging Party was advised to contact the University to determine what her options were according to the collective bargaining agreement. On March 17, 2003, Charging Party was advised of her eligibility to replace a less senior employee within the University in her current classification. She informed the Union that she did not want the new position because she believed that it was not comparable to her old job and because she did not want to take another person's position. After both Charging Party and the Union were assured that her new position would be fully funded and classified similarly to her former job, the University directed that Charging Party report to work on April 22, 2003. Charging Party never reported to work and, instead, advised the Union that she was refusing the position offered to her. The University sent a letter to Charging Party advising her that her failure to report to work on April 22, 2003, was considered a voluntary termination. On April 28, 2003, Charging Party demanded that the Union file a grievance concerning her termination. After the Union concluded that the University had not violated the collective bargaining agreement and refused to file a grievance, Weston filed the charges in this matter.

Discussion and Conclusions:

We agree with the ALJ that the Union did not violate its duty of fair representation. The duty of fair representation requires a union to: 1) serve the interest of all members without hostility or discrimination; 2) exercise discretion with complete good faith and honesty; and 3) avoid arbitrary conduct. *Goolsby v Detroit*, 419 Mich 651 (1984), citing *Vaca v Sipes*, 386 US 171 (1967). The Union here made a reasonable, good faith decision that the collective bargaining agreement had not been violated and elected not to file a grievance. A union has considerable discretion to decide which grievances to press and which to settle and to consider the likelihood of success and the interest of the union membership as a whole. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-46 (1973). Finally, Charging Party failed to demonstrate that the Union either discriminated against her or failed to exercise its discretion in complete good faith and honesty.

With respect to the charge against the Employer, Charging Party has failed to state a claim for relief under PERA. There is no allegation or evidence that the Employer's actions were motivated by anti-union animus or hostility against her for any union or other protected activities. *Ann Arbor Pub Schs*, 16 MPER 15 (2003).

For the reasons set forth above, we adopt the ALJ's conclusions that neither Respondent violated PERA.[1]

[1] We also note that the exceptions are procedurally deficient because we have no statement from Charging Party attesting to service of the exceptions on Respondents.

ORDER

The charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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
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In the Matter of:

WAYNE STATE UNIVERSITY,
Respondent-Public Employer in Case Nos. C03 E-099

-and-

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UAW, LOCAL 2071,
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ROMELL WESTON,
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APPEARANCES:

A. L. Rainey, for the Public Employer

Georgi-Ann Bargamian, Esq., for the Labor Organization

Romell Weston, In Pro Per

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, *et seq*., this case was heard in Detroit, Michigan on November 5, 2003, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. This proceeding was based upon unfair labor practice charges filed against Respondent Wayne State University (hereafter, "WSU" or "Employer") and Respondent Wayne State University Staff Association, UAW Local 2071 (hereafter, " Union") by Charging Party Romell Weston. Based upon the record and a post-hearing brief filed by the Union on January 20, 2004, I make the following findings of fact, conclusions of law and recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charges:

In her May 7, 2003 charges against Respondents WSU and the Union, respectively, Charging Party states:

Case No. C03 E-099 (WSU)
Due to reduction in work force, I had ongoing questions about the endowment funded position placement being comparable to my general funded position. There were questionable actions by Employment Services and Personnel Office of SOM. I was trying to protect my best interest. This is the second situation that I felt I was treated unfairly.

Case No. CU03 E-026 (the Union)
I have been a member of the Staff Assoc. since May 1995. This is the second situation that I did not receive proper support. When I came to WSU I made a personal decision not to take part in voting. Is it lawful to not support me this reason? Recently I was effected [sic] by work force reduction action. I was concerned about being put in endowment fund position because current position was general funded. There were questionable actions by Employment Services and union president so I turn the position down. I tried to explain and, realize I may have taken the wrong course. I received letter [sic] stating I voluntary [sic] terminated my self [sic].

Findings of Fact:

The relevant facts are undisputed. The Employer employed Charging Party Romell Weston, a member of the Union's bargaining unit, as an office services clerk II, a general funded position at the School of Medicine. Respondents WSU and the Union are parties to a collective bargaining agreement that governs the terms and conditions of employment of employees in various classifications, including clerical employees. Pertinent parts of Article 18, Reduction of Work Force and Recall, of the Respondents' agreement provide that if the number of employees is reduced or a position is eliminated, the affected employee shall be transferred to a vacancy within the same department, division and department, respectively, but if no vacancy exists, the employee shall exercise bargaining unit seniority to replace the least senior Employee within the University in her classification. Subsection 14 of Article 18 states that any Employee refusing employment offered shall be considered voluntarily terminated.

On March 12, 2003, WSU notified Charging Party that her general funded position as an office services clerk II in the Development and Alumni Affairs Office would be ending on April 12, 2003. The Employer also informed Charging Party that she did not have to report to work the next day and she would be paid until April 12. After Charging Party protested, she was permitted to work Thursday and Friday, March 13 and 14, and was promised written notice that she would be paid until April 12.

The Employer sent Charging Party a letter on March 17, 2003, confirming the elimination of her position on April 12, 2003; advising her last day of work was March 14, 2003; informing her that she would continue to be paid until she was placed in a comparable position; and pointing out that she was eligible to exercise bargaining unit seniority to replace a less senior employee within the University in her current classification.

Subsequently, Charging Party was informed that she had been placed in an office services clerk II position in the College for Urban, Labor and Metropolitan Affairs ("CULMA"). In an April 8, 2003 letter to the Union, Charging Party indicated that she did not wish to take the CULMA position because she felt

that it was not comparable to her prior job. McClusty, the Union's president, contacted the Employer and was assured that Charging Party would not lose any rights under the parties' agreement and the position at CULMA was completely funded. McClusty relayed this information to Charging Party.

Despite informing the Union that the position offered to Charging Party was completely funded, on April 16, 2003, the WSU sent Charging Party a letter advising her that her position would only be funded at 80%. The Union telephoned CULMA and complained that its letter to Charging Party was incorrect and that the position that she was offered had to be funded at 100%. The Union was assured that CULMA had erred and that the April 16, 2003 letter should not have been sent. McClusty relayed this information to Charging Party and advised her to report to work on Monday, April 21, 2003.

Charging Party did not report to work despite assurances from the Employer and the Union that the position was 100% funded. Instead, Charging Party went to the Union's office where she complained about her placement. McClusty, after speaking by phone with the Employer's representative, received approval for Charging Party to report to work the next day, Tuesday, April 22. WSU also agreed to provide Charging Party with written confirmation that the position she had been offered was 100% funded. McClusty advised Charging Party to go to CULMA, meet her new supervisors and co-workers, get the letter and report to report to work the next day, April 22, 2003.

Around 4 p.m. on the same day, Monday, April 21, 2003, Charging Party went to CULMA and expressed concerns about her ability to do the job. Charging Party was told that she could attend training and staff would work with her "one-on-one." Charging Party was advised that a letter, confirming that her salary and benefits would remain at 100% was being prepared for her. Rather than wait for the letter, Charging Party left and told her new supervisor that she would pick up the letter when she reported to work the next day.

On Tuesday, April 22, 2003, Charging Party did not report to work nor pick up the letter. Rather, before 8:30 a.m., she left a voice message at CULMA indicating that she was refusing the CULMA position. Charging Party testified that she was still uncertain about job security at CULMA and did not want to displace the employee who held the position that she had been offered.

The next day, April 23, 2003, the Employer sent Charging Party a letter informing her that her refusal to report to work on April 22, 2003, was considered a voluntary termination in accordance with Article 18, sub-section 14 of the collective bargaining agreement. The following day, Charging Party hand-delivered a letter to the Union complaining that she did not understand that she could be terminated as a voluntary quit by not reporting to work on April 22. She wrote, "Judy, please help me. I am so confuse[d]. I really don't know what to do. I have made a mistake." McClusty told Charging Party that she should have reported to work on April 22, and there was nothing that the Union could do because the Employer had not violated the collective bargaining agreement.

Conclusions of Law:

Charging Party claims that the Union violated its duty of fair representation by not filing a grievance protesting the Employer's decision to consider her refusal to report to work on April 22, 2003, as a voluntary termination. The duty of fair representation requires a union to (1) serve the interest of all members

without hostility or discrimination, (2) exercise discretion with complete good faith and honesty, and (3) avoid arbitrary conduct. *Goolsby v Detroit,* 419 Mich 651 (1984), citing *Vaca v Sipes*, 286 US 171 (1967). A union has considerable discretion to decide which grievances to press and which to settle and to consider the likelihood of success and the interest of the union membership as a whole. *Lowe v Hotel & Restaurant Employees Union, Local 705,* 389 Mich 123, 145-146. Charging Party also claims that the WSU violated the collective bargaining agreement by considering her refusal to report to work as a voluntary termination.

Charging Party failed to present any evidence that the Union breached its duty to fairly represent her or that WSU breached the collective bargaining agreement. *Lowe v. Hotel & Restaurant Employees, Local 705*, 389 Mich 123, 145-152, 82 LRRM 3041, 3048-3050 (1973); *Leider v. Fitzgerald Ed. Ass'n*, 167 Mich App 210, 215 (1988); *Detroit Bd of Ed.*, 1997 MERC Lab Op 394, 398. In hybrid breach of contract/breach of the duty of fair representation cases, a viable claim under PERA cannot be established without evidence that the labor organization breached its duty of fair representation and the employer violated the collective bargaining agreement. *Knoke v. E. Jackson Sch. Dist*., 201 Mich App 480, 485, 145 LRRM 2246, 2248 (1993); *Martin v. E. Lansing Sch. Dist*., 193 Mich App 166, 181 (1992).

In this case, WSU did not violate the contract by considering Charging Party's failure to report to work on April 22, 2003, as a voluntary termination. The collective bargaining agreement clearly provides that if a position is discontinued and no vacancy exists within the employee's department, division or within the University, the employee shall exercise bargaining unit seniority to replace the least senior employee within the University in the employee's classification. Subsection 14 of Article 18 provides that if the employee refuses the employment offered, the employee shall be considered voluntarily terminated. It is undisputed that Charging Party was given the opportunity to exercise her right to displace a less senior employee in CULMA, but refused to accept the position offered because, by her own admission, she did not wish to displace the employee holding the position that she was offered and she had reservations about job security.

Absent evidence that WSU violated the collective bargaining agreement, I find that the Union did not violate its duty of fair representation by refusing to file a grievance protesting WSU's decision to consider her failure to report to work on April 22, 2003, as a voluntary termination. Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: March 19, 2004