STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization-Respondent in Case No. CU07 E-023,

-and-

ANN ARBOR PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C07 E-095,

-and-

JENOATHA R. GREEN,
An Individual-Charging Party.
_____/

APPEARANCES:

Jenoatha R. Green, *In Propria Persona*

DECISION AND ORDER

On June 20, 2007, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the Charges against Respondent Teamsters Local 214 (the Union) and Respondent Ann Arbor Public Schools (the Employer) do not state claims upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended. Charging Party Jenoatha Green alleged that both Respondents committed unfair labor practices when, due to her status as a probationary employee, they denied her the right to grieve the termination of her employment. The ALJ issued an Order to Show Cause to give Charging Party the opportunity to assert additional facts in support of her claims. Upon review of the Charges and Charging Party's response to the Order to Show Cause, the ALJ found that Charging Party failed to allege arbitrary or discriminatory conduct by the Union or improper motive by the Employer. The ALJ concluded that the Charging Party did not assert facts in either case that were sufficient to establish a claim upon which relief can be granted under PERA and recommended that the charges be dismissed. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

On July 12, 2007, Charging Party filed exceptions to ALJ's Decision and Recommended Order. Neither Respondent has filed a response to Charging Party's exceptions.

In her exceptions, Charging Party contends that the ALJ erred in failing to address the

claims asserted in her charges. Upon review of Charging Party's exceptions, we find them to be without merit.

Factual Summary:

On May 9, 2007, two charges were filed in this matter. In Case No. CU07 E-023, the Charge asserts that the Union violated its statutory duty to fairly represent Charging Party by refusing to pursue a grievance over the termination of her employment as a probationary school bus driver. The Charge against the Employer in Case No. C07 E-095 reiterated the allegations against the Union and added a claim that the Employer refused to allow Charging Party to file a grievance to protest her termination. Under the collective bargaining agreement, a probationary employee has no right to pursue a grievance and the Charges do not assert that Charging Party's termination violated the collective bargaining agreement or was otherwise unlawful.

Charging Party questions the propriety of the Union collecting dues from her while not pursuing her grievance. Charging Party does not dispute that she was a probationary bus driver at the time of the termination of her employment or that she was involved in three collisions within two months while driving a school bus.

Discussion and Conclusions of Law:

To prevail against a union on a claim of unfair representation involving a grievance, a charging party must establish that the union breached its duty of fair representation and that a breach of the collective bargaining agreement occurred. *Goolsby v City of Detroit*, 211 Mich App 214 (1995); *Knoke v East Jackson Pub Sch Dist*, 201 Mich App 480, 488 (1993). In the absence of a showing of bad faith, gross negligence, or arbitrary or capricious action by the union, an employee's dissatisfaction with her union's decisions does not establish a breach of the duty of fair representation. *Ann Arbor Pub Sch*, 16 MPER 15 (2003); Michigan Council 25, AFSCME, Local 3308, 1999 MERC Lab Op 132; *Wayne Co, Dep't of Pub Works*, 1994 MERC Lab Op 855, 858.

Like all other bargaining unit members, probationary employees are owed a duty of fair representation by their union, which must represent them to the extent allowed by the collective bargaining agreement. *Michigan State Univ*, 17 MPER 75 (2004); *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 non-probationary employees, including the right not to be disciplined or terminated except for just cause. See, e.g., *Genesee Co Sheriff*, 1990 MERC Lab Op 467; *City of Wyoming (Police Dep't)*, 1983 MERC Lab Op 1024 (no exceptions).

Where an employer and a union concur as to the interpretation of the contract, their construction governs. *Saginaw Valley State Univ*, 19 MPER 36 (2006); *City of Detroit*, 17 MPER 47 (2004); *City of Detroit, Wastewater Treatment Plant*, 1993 MERC Lab Op 716, 719. Here, the Employer and the Union agree that under the contract, the Union had no right to pursue a grievance over the Charging Party's termination because she was a probationary employee. While Charging Party may disagree with their interpretation of the contract and with their refusal to process a grievance on her behalf, the Employer's actions do not constitute a breach of the collective bargaining agreement, nor do the Union's actions violate its duty of fair representation.

We note Charging Party's complaint that the Employer refused to allow her to file a grievance. PERA does not require an employer to assist an employee to file a grievance against it. *Muskegon Hts Pub Sch Dist*, 1993 MERC Lab Op 654. This is particularly true when, as in this case, the employee is probationary and is represented by a labor organization whose agreement with the employer precludes participation in the grievance process by probationary employees. Thus, no PERA violation has been asserted against the Employer.

Similarly, Charging Party's complaint that the Union collected dues from her although she was not a union member and was without access to the grievance procedure regarding her termination, does not state a claim under PERA. It is neither uncommon nor unlawful for parties to a collective bargaining agreement to condition employees' protection from discharge and access to contractual grievance procedures on successful completion of a period of probation. However, probationary employees enjoy other collectively bargained benefits of union representation for which the collection of dues or a service fee is lawful. It is well established that a union's duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations. *Schoolcraft Cmty Coll*, 1996 MERC Lab Op 492, 496; *Jackson Co Med Care Facility*, 1967 MERC Lab Op 455, 457. The amount of union dues and the method by which they are calculated has specifically been held to be an internal union matter when there is no impact on the relationship between the bargaining unit member and her employer. See *Macomb Cmty Coll Faculty Org*, 16 MPER 67 (2003) (no exceptions); *Detroit Fire Fighters Ass'n*, 1992 MERC Lab Op 645 (no exceptions); *AFSCME, Local 118*, 1991 MERC Lab Op 617 (no exceptions). Cf. *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004).

Because the Charges do not state claims against the Union or the Employer under PERA, they must be dismissed.

ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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JENOATHA R. GREEN,
An Individual Charging Party.
_____/

APPEARANCES:

Jenoatha R. Green, the Charging Party appearing personally

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

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 assigned to Doyle O'Connor, Administrative Law Judge (ALJ) on behalf of the Michigan Employment Relations Commission.

The Charges and Findings of Fact:

On May 9, 2007, two nearly identical charges were filed in this matter. The charge in Case No. CU07 E-023 asserts that the Respondent Teamsters Local 214 (the Union) violated its statutory duty to fairly represent Jenoatha R. Green (the Charging Party) by refusing to pursue a grievance over the termination of her employment as a school bus driver. The second charge, filed against Respondent Ann Arbor Schools (the Employer) in Case No. C07 E-095, made the same allegations as the charge filed against the Union, and added the allegation that the Employer refused to allow Green to file a grievance over her termination. Both charges assert that the Employer and the Union contended that as a newly hired probationary employee, Green did not have the right under the collective bargaining agreement to file a grievance over her termination from employment. The charges do not dispute the determination by the Employer and the Union that under the collective bargaining agreement, as a probationary employee, Green had no right to pursue a grievance. The charges also do not challenge the Employer's assertion that Green was involved in three collisions in two months while a probationary school bus driver.

The charges do not assert that the termination of Green was done for any unlawful reason, or that the termination violated the collective bargaining agreement. The charges question the propriety of the Teamsters collecting dues from probationary employees and then not pursuing particular grievances for them. Green also asserts an unwillingness to return to employment with Ann Arbor Schools.

As it appeared that the allegations filed in the above matters did not properly state claims under the Public Employment Relations Act (PERA), the statute that this agency enforces, an order to show cause why the charges should not be dismissed was issued on May 16, 2007. Green filed separate timely responses as to both charges on June 5, 2007. The responses to the order reiterate the allegations made in the original charges, while additionally seeking an award of punitive damages and damages for mental anguish, pain, and suffering. The response regarding the charge against the Employer additionally asserts that Charging Party is no longer able to perform her former duties as a bus driver.

Discussion and Conclusions of Law Regarding the Charge Against the Union:

Green does not dispute that she was a probationary bus driver at the time of the termination of her employment, or that she was involved in three collisions within two months while driving the school bus. While Green is clearly dissatisfied with the Union's failure to pursue a grievance over her termination, Green does not assert facts indicating arbitrary or discriminatory conduct by the Union.

A union does owe a duty to fairly represent probationary employees, and must do so 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. It is not unusual, or improper, for collective bargaining agreements to prohibit the filing of grievances on behalf of discharged probationary employees, even if that individual is a union member. See, *Michigan State University*, 17 MPER 75 (2004); *Genesee County Sheriff*, 1990 MERC Lab Op 467. A union is not required under PERA to file a grievance every time a member requests that it do so. *Michigan State Univ*, *supra.* Rather, a union has considerable discretion to decide whether or not to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973). The fact that a member is dissatisfied with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855.

At most what has been alleged here is a dispute over the proper interpretation of the collective bargaining agreement. Accepting Green's allegations as true, the Employer and the Union agree that under the contract the Union had no right to pursue a grievance over the termination because Green was a probationary employee. The decision in *Saginaw Valley State University*, 19 MPER 36 (2006), addressed a similar claim, arising where the employer and union agreed with each other and disagreed with an individual employee on the interpretation of

a term in a collective bargaining agreement. In dismissing the claim the Commission noted that it has long held that where an employer and a union concur as to the interpretation of the contract, their construction governs. *Saginaw Valley State, supra*; *City of Detroit*, 17 MPER 47 (2004); *Detroit, Wastewater Treatment Plant*, 1993 MERC Lab Op 716; *Muskegon Co*, 1992 MERC Lab Op 356, 363.

Green also complains that the Union collected dues from her, even though she was a probationary employee without access to the grievance procedure regarding the termination of her employment. It is well established that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations. *Service Employees Int'l Union, Local 517*, 2002 MERC Lab Op 104; *Service Employees International Union, Local 586*, 1986 MERC Lab Op 149. This principle is derived from Section 10(3)(a)(i) of the Act, which states that a union may prescribe its own rules with respect to the acquisition or retention of membership. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *Service Employees Int'l Union, Local 586, supra*.; *AFSCME Local 1585*, 1981 MERC Lab Op 160. With respect to other internal decision-making procedures such as contract ratification elections, the Commission has held that the duty of fair representation applies only to those policies and procedures having a direct effect on terms and conditions of employment. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *Service Employees Int'l Union, Local 586, supra*.

Taking each factual allegation in the charge and in the response to the order to show cause in the light most favorable to Charging Party, the allegations filed in Case No. CU07 E-023 do not properly state a claim against the Union under PERA and the charge therefore must be dismissed.

Discussion and Conclusions of Law Regarding the Charge Against the Employer:

The charge filed against the Employer merely reiterates the claim brought against the Union, that is, that as a probationary employee, Green was not allowed to file a contractual grievance over her termination from employment. PERA does not prohibit all types of discrimination or unfair treatment by employers, nor is the Commission charged with interpreting a collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524.

Taking each factual allegation in the charge and in the response to the order to show cause in the light most favorable to Charging Party, the allegations filed in Case No. C07 E-095 do not properly state a claim against the Employer under PERA and the charge therefore must be dismissed.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Doyle O'Connor
Administrative Law Judge

Dated:_____