STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

BRIGHTON EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION,
Labor Organization-Respondent,

- and - Case No. CU06 L-056

BRENDA AMBLER and LYNN LINGENFELTER,
Individual Charging Parties.
_____/

Appearances:

Law Offices of Lee & Clark, by Suzanne K. Clark, Esq., for Respondent

Brenda Ambler and Lynn Lingenfelter, *In Propria Persona*

DECISION AND ORDER

On July 12, 2007, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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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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Appearances:

Law Offices of Lee & Clark, by Suzanne K. Clark, Esq., for Respondent

Brenda Ambler and Lynn Lingenfelter, appearing for themselves

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

On December 10, 2006, Brenda Ambler and Lynn Lingenfelter filed the above charge with the Michigan Employment Relations Commission against their collective bargaining representative, the Brighton Educational Support Personnel Association (hereinafter the Union) under Section 10 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of the Act, the charge was assigned to Administrative Law Judge Julia C. Stern.

On May 10, 2007, the Union filed a motion for summary disposition pursuant to Rule 165 of the Commission's General Rules, 2002 AACS, R 423.165. On the facts as set forth in Charging Parties' pleadings, and based on my authority under Rule 165(1), I make the following conclusions of law and recommend that the Commission issue an order dismissing the charge.

The Unfair Labor Practice Charge and Subsequent Proceedings:

On the same date as their charge against the Union, Ambler and Lingenfelter filed an identical charge (Case No. C06 L-296) against their employer, the Brighton Public Schools (hereinafter the Employer). The charge read as follows:

> Harassment, discrimination (sex) (disability), unfair labor practices, hostile work environment, retaliatory conduct, denial of overtime opportunities, etc. Working

conditions. Favorable treatment from employee to employee. Bullying. Singling out by watching. Changing contract language to discriminate us [sic] (unfair).

With their charge form, Ambler and Lingenfelter submitted a copy of the collective bargaining agreement between the Respondents and approximately 150 pages of correspondence, memos, handwritten notes, grievance forms, job descriptions and charges filed by them with the Michigan Civil Rights Commission.

The charges against the two Respondents were consolidated. On December 18, 2006, I issued an order to the Charging Parties to show cause why their charges should not be dismissed for failure to comply with Commission Rule 151(2)1 and for failure to state a claim upon which relief could be granted under PERA.2 I also mailed a copy of the charges to both Respondents. On January 16, 2007, Ambler and Lingenfelter filed an amended charge which again included allegations against both Respondents. Additional documents were attached. In their amended charge, they alleged that the Union failed to represent them properly and that the Employer retaliated against them for filing grievances and charges with the Michigan Civil Rights Commission. While the amended charge was clearer than the original charge, it was difficult to determine the exact nature of the allegations against the Union. Charging Parties clearly alleged that the Union improperly failed to proceed to arbitration on several grievances. Most of the allegations in the charge, however, addressed conduct by the Employer alleged to constitute unlawful retaliation. Charging Parties appeared to allege, in a general way, that the Union breached its duty of fair representation by failing to put a stop to this retaliation. They also complained about the manner in which Union representatives addressed them on occasion, for example, Union representative Sandy Wilson referring to them as "you people."

A complaint was issued on their unfair labor practice charges, and I scheduled a pre-trial conference for May 24, 2007. As noted above, on May 10, 2007, the Union filed a motion for summary disposition of the charge. Attached to the Union's motion was a letter to it from the Employer dated March 21, 2007, confirming that several of the grievances referred to in the charges had been settled on terms favorable to the Charging Parties. In its motion, the Union asserted that the Commission lacked jurisdiction because the Charging Parties had failed to exhaust their internal union remedies. It also asserted that the charge against it was untimely under Section 16(a) of PERA.

On June 6, 2007, after the pre-trial conference, I severed the charge against the Union from the charge against the Employer. Ambler and Lingenfelter were given an opportunity to file a written response to the Union's motion and did so on June 19, 2007. Their response included reference to numerous events occurring after they filed their amended charge on January 16, 2007

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1 Pursuant to Rule 151(2) (c), a charge filed with the Commission must contain a clear and complete statement of the facts which allege a violation of the Act. The Commission may reject a charge for failure to include the required information.

2 Under Rule 165(1), an administrative law judge may, on his or her own motion, issue an order recommending the dismissal of a charge without an evidentiary hearing for any of the reasons set forth in Rule 165, including failure to state a claim upon which relief can be granted.

and allegedly constituting further retaliation against them by the Employer. These events included the Employer's failure to discipline other employees for verbal abuse and threatening conduct toward them, its decision to exclude Lingenfelter from an employee break room, and a disciplinary warning issued to Ambler on May 18, 2007 for leaving work without authorization. The response again blamed the Union generally for allowing the alleged retaliation to continue but did not allege any specific misconduct or omission by the Union during this period.

Facts:

The facts pertinent to Lingenfelter's and Ambler's allegations against the Union, as set out in their January 16, 2007 amended charge, are as follows. Both Lingenfelter and Ambler are employed by the Brighton Area Schools and are part of a bargaining unit represented by the Union. Lingenfelter is a custodian and Ambler is a grounds employee. Both are assigned to the Employer's high school. They are friends. In November 2004, Lingenfelter complained to the Employer that her immediate supervisor had engaged in inappropriate sexual behavior, including hugging her and patting her on the buttocks. She also subsequently complained that the supervisor was "picking on her" by refusing to approve her holiday pay and by following her around to catch her smoking on school property. In December 2004 and January 2005, the Employer held several meetings with Lingenfelter to discuss this complaint. Lingenfelter's union representative, Sandy Wilson, was present at these meetings. Although Lingenfelter received the holiday pay, the supervisor was not disciplined and he was not removed as Lingenfelter's supervisor as she had requested. Lingenfelter was dissatisfied with the outcome of her complaint. She was also upset by Wilson's statements to the Employer that she (Wilson) did not believe that the supervisor's conduct constituted sexual harassment.

Funeral Day Grievance

On March 30, 2006, the Employer's high school was closed so that students and staff could attend a funeral. Custodial employees were told that if they reported for work, they would be credited with an additional leave day. If they chose not to report, they would be paid for the day. On a previous occasion when the school closed for a funeral, custodians were paid for the day whether or not they attended the funeral. Lingenfelter did not attend the funeral and did not report to work. Later, she was told that she would have to use a leave day unless she could provide some sort of proof that she had attended the funeral. On April 11, 2006, Lingenfelter filed a grievance, citing Article 15(H) of the collective bargaining agreement:

> In the event it becomes necessary for the District to send Employees in this division home because of a bomb threat or other school closing that does not effect the entire District, the Employees that are sent home will be paid for the balance of their regular hours. If circumstances permit, the district may reassign the Employees to another location in lieu of sending them home or if they have not yet reported, direct them to report to an alternate location.

On September 25, 2006, the Union's local executive board sent Lingenfelter a letter stating that it had decided not to take her April 11 grievance to arbitration because it had concluded that there was no language in the contract that addressed whether the Employer had to pay her under

these circumstances. It stated, however, that it would have the grievances reviewed by the Michigan Education Association (MEA), the organization with which it is affiliated.

According to the letter from the Employer's superintendent to the Union dated March 21, 2007, sometime after the charge was filed the Employer agreed to give Lingenfelter a paid leave day for the day that the high school was closed. Lingenfelter has not yet been credited with an additional leave day.

Grounds Position Grievance

In early June 2006, an employee in the Employer's grounds department was absent on an extended medical leave. The local Union approached the Employer to ask for more help in the grounds department. The local Union, including area representative Bill Fleck, outgoing president Rosemary Densmore, and incoming president Chris Stone, reached an agreement with the Employer to reassign George Iles, a custodian, to the grounds department for the duration of the employee's medical leave with the understanding that Iles would then fill a grounds position that was to be vacated by a retiring employee. Iles had worked in the grounds department until he was bumped to a custodial position when his grounds position was eliminated in a round of budget cuts several years before. On June 6, Lingenfelter complained to Densmore that the permanent position vacated by the retiring employee should have been posted for bid per Article 12 of the collective bargaining agreement and the temporary vacancy caused by the medical leave should have been posted pursuant to Article 16(A). Densmore argued that since Iles had been involuntarily transferred from a grounds position after a layoff, he was entitled to fill the vacancy under the layoff and recall provision of the contract, Article 13. Article 13(D) states, "An employee will be recalled in inverse order of layoff to positions for which he/she is qualified within the Division and classification from which he/she was laid off provided he/she is qualified." Lingenfelter said that since Iles had not been laid off, Article 13(D) did not apply. Lingenfelter told Densmore that she was tired of being discriminated against because she was not a man, and accused the Union and Employer of "picking and choosing" the contract language they wanted to follow. On June 13, 2006, Lingenfelter filed a grievance protesting the filling of the position without posting. Sometime after the grievance was filed, the Union told Lingenfelter that they had agreed to let Iles fill the position and were bound by that agreement. They showed her a memo written by Fleck and dated June 8 confirming this agreement.

In a letter dated September 25, 2006, the local Union executive board told Lingenfelter that it would not proceed to arbitration with her grievance because the Union and the Employer had agreed to allow the other employee to return to the grounds department position because he had been "bumped out of this department during cutbacks." The Union told her that it would have her grievance reviewed by the MEA. According to the Employer's March 21, 2007 letter to the Union, the Employer continues to take the position that the parties' June 2006 agreement was binding on the Union.

Head Custodian Position Grievance

In early June 2006, Lingenfelter interviewed for, but failed to get, a position as head custodian. Pursuant to Article 12(D) of the contract, most vacant positions are to be awarded to the most senior applicant meeting the qualifications listed on the posting and job description. However,

Article 12(D) states that certain positions, including head custodian, "are to be awarded to the most qualified applicant meeting the minimum qualifications within the Division (i.e. leadership abilities, work record, experience and custodial and technical skills for Head Custodian and Custodial Shift Leader.)" Lingenfelter and seven other applicants for the position were interviewed by a three-person committee. On June 13, 2006, Lingenfelter filed a grievance asserting that the position had not been awarded to the most qualified applicant. In her grievance, Lingenfelter asserted that the successful candidate had told her that two school principals had met to discuss him before he was awarded the job. In October 2006, Lingenfelter requested information on the interview process and received an "interview evaluation summary" showing the scores she had received from the interview panel on six separate factors. The summary indicated that Lingenfelter's score ranked her fifth among the candidates. The Employer told Lingenfelter that this summary sheet was the only document it had retained from the interviews.

In a letter dated September 25, 2006, the local Union executive board told Lingenfelter that it would not proceed to arbitration with her grievance because "the contract clearly stated that head custodian positions were not to be filled on a seniority basis but on a variety of factors of which experience is but one." The Union told Lingenfelter that it would have her grievance reviewed by the MEA. According to the Employer's March 21, 2007 letter, the Employer continues to take the position it acted within its contractual rights in refusing to award the position to Lingenfelter.

Grievances over June 2006 Disciplinary Warnings

On June 13, 2006, Lingenfelter received a written warning from Bill Blanchard, the Employer's director of operations for: (1) being away from her job site beyond her scheduled break time on June 6, 2006; and (2) parking in an unauthorized part of the school parking lot. On June 21, 2006, Lingenfelter filed a grievance asserting that she did not remember what she had done on June 6, but that other employees regularly took longer breaks. Lingenfelter also maintained that she had not known that she was not supposed to park in the restricted area since Blanchard himself parked there. She accused Blanchard of harassment. On June 14, 2006, Ambler received a written verbal warning for being away from the job site for longer than her scheduled break time on June 6, 2006. Ambler also filed a grievance demanding that the warning be removed from her file and accusing Blanchard of harassment. During discussions of these grievances with the Employer and Union, Lingenfelter and Ambler disclosed that it was sometimes their practice to combine their breaks with their lunch hour, especially if they had not had time to take a morning break. They asserted that other employees also followed this practice, and that employees did not have to ask permission to do this. Blanchard maintained that this was not permitted. Blanchard and Lingenfelter also disagreed over whether he had told Lingenfelter where to park.

The collective bargaining agreement included the following provision:

> Employees … covered by this agreement shall receive one (1) fifteen (15) minutes rest period to be taken midway through the first (1st) four (4) hours worked and one (1) fifteen minutes (15) minutes rest period to be taken midway through the second (2nd) four (4) hours worked per day. Rest periods must be taken on or around the job site and do not include travel time.

In a letter dated September 25, 2006, the local Union executive board told Lingenfelter that it would not proceed to arbitration on the break time issue because it could not find any contract language that addressed the issue. It agreed with her that the Employer had a contractual obligation to supply adequate parking places, but noted that the issue seemed to be whether she was told where to park. The Union told Lingenfelter that it would have her grievance reviewed by the Union's legal counsel. The Union executive board also told Ambler that it would not proceed to arbitration with her grievance.

In January 2007, the Union and Employer ratified a new collective bargaining agreement containing a provision stating explicitly that breaks and lunch periods were not to be combined. According to the Employer's letter dated March 21, 2007, sometime after the charge was filed the Employer agreed to remove the June 2006 disciplinary letters from Ambler's and Lingenfelter's personnel files. Ambler and Lingenfelter have not yet received confirmation from the Employer that the documents have been removed.

Employer's Investigation of Charging Parties' Harassment Complaints

In early July 2006, the Employer hired a law firm to conduct an independent investigation of Ambler's and Lingenfelter's complaints of unfair treatment and harassment. Charging Parties asked the Union if they could have an attorney present at their interviews or record them, and also asked if the Union would provide them with an attorney. After checking with the Employer, the Union said that this would not be possible. Union president Chris Stone said that if they did not cooperate with the investigation "their grievances would be null and void." Stone also sent an e-mail to the Employer stating the Ambler and Lingenfelter were refusing to meet with the investigators without an attorney. Both Ambler and Lingenfelter protested that they had not refused to meet.

Lingenfelter and Ambler met with the investigators in late July 2006. A Union representative was present at these meetings and took notes. The investigators issued a report on September 12, 2006, although Charging Parties and the Union did not receive a copy of the full report until sometime in November. The report concluded that there was no evidence of a pattern of discrimination or harassment and "little basis" for determining that any of their discipline resulted from retaliation. The investigators concluded that communication and trust between the parties had broken down, and recommended that the parties meet with a mediator to discuss issues, that rules and expectations regarding parking and break times be more clearly delineated in writing, and that the parties advise an appropriate Employer representative of inappropriate conduct in the future. Ambler and Lingenfelter sent the Employer a letter protesting the report's conclusions. Sometime between the interviews and the issuance of the report, Ambler and Lingenfelter filed complaints with the Michigan Civil Rights Commission alleging that the Employer was discriminating against them based on their sex.3

3 The January 16, 2007 amended charge includes an allegation by Ambler that the Employer unlawfully failed to assign her overtime on September1, 2006. Ambler subsequently filed a grievance over this action. Ambler asserts that when she told Union representative Wilson that she wanted to allege that this constituted sex discrimination, Wilson told her that she would not write this on the grievance and that Ambler would have to fill out the form herself. However, Ambler has not specifically alleged that the Union refused to process or mishandled this grievance.

Discussion and Conclusions:

A union violates its duty of fair representation under PERA when its conduct with respect to its members is arbitrary, discriminatory, or in bad faith. *Goolsby v Detroit*, 419 Mich 651, 679 (1984); *Vaca v Sipes*, 386 US 171,177 (1967). As long as it acts in good faith and exercises its discretion, a union has considerable latitude in deciding how or whether to proceed with a particular grievance. A union must be allowed to evaluate each grievance on its individual merit. Because the union owes a duty to its membership as a whole, it has the right to weigh the cost of arbitration against the likelihood of success. *Lowe v Hotel and Restaurant Employees Union, Local 705*¸389 Mich 123, 145-146. (1973). When a union makes a deliberate decision not to pursue a grievance, that decision is not arbitrary as long as it is within a broad range of reasonableness. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *Ann Arbor Pub Schs*, 16 MPER 15 (2003); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. The fact that the charging party is dissatisfied with the union's efforts to enforce the contract, or disagrees with its interpretation of contract language, is not sufficient to establish a breach of the duty of fair representation. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131; *Wayne Co (Dep't of Public Works)*, 1994 MERC Lab Op 855.

In its motion for summary disposition, the Union asserts that the charge should be dismissed because Charging Parties failed to exhaust the Union's internal union remedies for breaches of the duty of fair representation. It notes that Article 10 of the MEA Constitution states, "The Executive Committee shall have original and only jurisdiction over all disputes arising under alleged violations of the duty of fair representation."4 It also cites Article IV, subsection D of the MEA's bylaws, which require a member to exhaust all procedures and remedies provided for in the Constitution and bylaws before bring a claim before any "court, tribunal or agency."

It is well established that before bringing a court action against a union for violation of its duty of fair representation, an employee must exhaust his or her internal union remedies if: (1) the internal appeals procedure can result in the reactivation of the member's grievance or award him the full relief he seeks; (2) union officials are not so hostile to the member that he or she could not hope to obtain a fair hearing on the claim; and (3) exhaustion of the internal procedures would not unreasonably delay the member's opportunity to obtain a judicial hearing. *Clayton v International Union, UAW*, 451 US 679, 689 (1991); *Rogers v Buena Vista Schs*, 2 F3d 163, 166 (CA 6, 1993). However, the National Labor Relations Board (the Board), the federal agency that administers the collective bargaining statute upon which PERA was modeled, does not require a union member to exhaust his internal union remedies before filing a fair representation charge with it, reasoning that this would violate public policy by discouraging free access to the Board's administrative processes. *Ironworkers Local 843, International Ass'n of Bridge, Structural & Ornamental Ironworkers*, 327 NLRB 29, (1998); *Auto Workers Local 148 (McDonnell-Douglas)*, 296 NLRB 970, 996, fn 19 (1989); *Electrical Workers IBEW, Local 581*, 287 NLRB 940, 950 fn 25 (1987). See also *NLRB v Marine & Shipbuilding Workers*, 391 US 418 (1968) (Union cannot lawfully fine or expel a member for filing charge with the Board before exhausting internal union remedies.) Although the

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4 The Union is an affiliate of the MEA.

Commission, unlike the Board, does not investigate charges before setting them for hearing, Commission has never required union members to exhaust their internal union remedies before filing a charge.

The Union also argues that the charge was untimely under Section 16(a) of PERA. The charge was filed on December 10, 2006. Under Section 16(a) of PERA, a charge must be filed and served on the respondent within six months of the date the claim accrues. This is the date the charging party knows, or reasonably should have known, of the alleged violation. *Huntington Woods v Wines*, 122 Mich App 650 (1983), *aff'g* 1981 MERC Lab Op 836. The majority of Ambler's and Lingenfelter's claims against the Union address its refusal to proceed to arbitration with their grievances. The local Union notified Lingenfelter and Ambler on September 26, 2006 that it did not intend to proceed to arbitration on the grievances filed over their June 2006 disciplinary actions, Lingenfelter's grievance over the Employer's failure to pay her for the day the high school was closed for a funeral, her grievance over the failure to post the grounds position, or her grievance protesting the Employer's failure to award her the head custodian position. The Union does not maintain that Ambler or Lingenfelter knew or should have known the Union was not going to go forward with their grievances before that date. I find that the charge includes allegations of unfair labor practices occurring within six months of the filing of the charge and that these allegations were timely filed.

For reasons set forth below, however, I conclude that the charge should be dismissed because none of the allegations of the charge state a claim upon which relief could be granted under PERA.

Lingenfelter's first allegation against the Union is that it breached its duty of fair representation by refusing to proceed to arbitration on her grievance over the Employer's refusal to pay her for March 30, 2006, the day the high school was closed to allow students and staff to attend a funeral. The local Union executive board decided that Article 15(H) of the contract language did not apply to this situation, and that there was no contract provision that required the Employer to pay her. While Lingenfelter disagrees with the Union's interpretation of the contract, the Union's decision was within a broad range of reasonableness and thus not arbitrary as the courts have defined this term. Lingenfelter and Ambler have not alleged facts supporting their assertion that the Union's decision was based on personal dislike of Lingenfelter or was otherwise made in bad faith. Since Lingenfelter and Ambler have failed to allege facts which, if proven, would indicate that the Union acted in bad faith or in an arbitrary or discriminatory fashion, I find that this allegation does not state a claim for breach of the Union's duty of fair representation under the standards established by the law.

Lingenfelter's second allegation is that the Union breached its duty of fair representation by entering into an agreement with the Employer to allow the filling of a grounds position without posting it and subsequently refusing to proceed to arbitration on her grievance protesting this action. Sometime before June 6, 2006, local Union representatives Stone, Densmore and Fleck agreed to let the Employer fill the position with a custodian who had worked in the grounds department but had been bumped from that position in lieu of layoff. The Union's decision to agree to this transfer was based on its interpretation of the contract's recall provision. Although Lingenfelter argues that the Union's interpretation was incorrect, and that other contract language dealing with the filling of vacancies was controlling, the Union's decision was within the range of reasonableness and was not arbitrary. Lingenfelter and Ambler have not alleged facts supporting their assertion that the Union's

decision was based on personal dislike of Lingenfelter or was otherwise made in bad faith. Once the Union had agreed to this interpretation of the contract, it was bound by it. See *Saginaw Valley State Univ*, 19 MPER 36 (2006); *City of Detroit*, 17 MPER 47 (2004). Since Lingenfelter and Ambler have failed to allege facts which, if proven, would indicate that the Union acted in bad faith or in an arbitrary or discriminatory fashion, I find that this allegation does not state a claim for breach of the Union's duty of fair representation under the standards established by the law.

Lingenfelter's third allegation is that the Union breached its duty of fair representation by refusing to proceed to arbitration on her grievance over her failure to be awarded a head custodian position. The local Union executive board concluded that Lingenfelter's grievance had no contractual basis because, under Article 12(D), the Employer had the right to determine which applicant was the most qualified based on the factors set forth in that section. Lingenfelter disagrees with the Union's reading of the contract, but Union's decision was within a broad range of reasonableness and thus not arbitrary as the courts have defined this term. Lingenfelter and Ambler have not alleged facts to support their assertion that the decision of the Union's executive board not to proceed to arbitration on this grievance was made in bad faith. Since Lingenfelter and Ambler have failed to allege facts which, if proven, would indicate that the Union acted in bad faith or in an arbitrary or discriminatory fashion, I find that this allegation does not state a claim for breach of the Union's duty of fair representation under the standards established by the law.

Lingenfelter and Ambler also allege that the Union breached its duty of fair representation by refusing to proceed to arbitration over their grievances regarding the disciplinary warnings issued to them on June 13 and June 14, 2006. Lingenfelter and Ambler admitted combining their break and lunch periods. The local Union executive board concluded that the contract did not give them the right to do so, and that it would not proceed to arbitration on this issue. The Union's interpretation of the contract was within a broad range of reasonableness and thus not arbitrary as the courts have defined this term. Moreover, Lingenfelter and Ambler have not alleged facts to support their assertion that the local Union's executive board made this decision in bad faith. From the facts as alleged, it appears that the local Union never made a decision on whether to proceed to arbitration on Lingenfelter's claim that she had not been told where to park before she received this warning. In any case, as the Union points out in its motion, it appears that the Employer has agreed to remove these warnings from the Charging Parties' personnel files. Since Lingenfelter and Ambler have failed to allege facts which, if true, would indicate that the Union acted in bad faith or in an arbitrary or discriminatory fashion, I find that this allegation does not state a claim for breach of the Union's duty of fair representation under the standards established by the law.

Lingenfelter and Ambler also allege that the Union violated its duty of fair representation by various conduct related to the Employer's investigation of their harassment complaints in early July 2007. According to the charge, the Union did not insist that Lingenfelter and Ambler be allowed to have an attorney present during the interviews; informed the Employer, incorrectly, that they were refusing to cooperate in the investigation unless they could have an attorney present; and told them that their grievances would be "null and void" unless they cooperated with the investigation. Ambler and Lingenfelter were allowed to have a union representative present during their interviews with the investigator. Charging Parties offered no explanation for why they believed the Union had a right to insist that an attorney be present. Moreover, the Union had the right, and perhaps the duty, to advise them that refusing to cooperate in the Employer's investigation might undermine their claims

that they were being unlawfully harassed. Stone may have been mistaken when he e-mailed the Employer telling it that Lingenfelter and Ambler were refusing to cooperate with the investigation, but, if so the mistake was apparently corrected. I find that these allegations do not state a claim for breach of the Union's duty of fair representation under the standards established by the law.

As discussed above, Ambler and Lingenfelter also allege, in a general way, that the Union violated its duty of fair representation by failing to take actions that would put a stop to the Employer's alleged retaliation against them. I find that this general allegation also fails to state a claim against the Union under PERA.

I conclude, for reasons discussed above, that Ambler and Lingenfelter's charge against the Union fails to state a claim upon which relief can be granted under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____