STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TAYLOR FEDERATION OF TEACHERS,
Labor Organization-Respondent

- and -

TAYLOR SCHOOL DISTRICT,
Public Employer-Respondent

Case Nos. CU07 C-013
and C07 C-050

- and -

DEEDY POLIDORI,
Individual Charging Party.
_____/

APPEARANCES:

Nicholas Roumel, Esq., for the Charging Party

Mark H. Cousens, Esq., for the Respondent Union

Clark Hill PLC, by Robert A. Lusk, Esq., for the Respondent Public Employer

DECISION AND ORDER

On May 3, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were 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: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TAYLOR FEDERATION OF TEACHERS,
Respondent-Labor Organization
in CU07 C-013,

Case No. CU07 C-013
& C07 C-050

-and-

TAYLOR SCHOOL DISTRICT,
Respondent-Public Employer
in C07 C-050,

-and-

DEEDY POLIDORI,
An Individual Charging Party.
_____/

APPEARANCES:

Nicholas Roumel, for the Charging Party

Mark H. Cousens, for the Respondent Union

Robert A. Lusk, for the Respondent Public Employer

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

On March 13, 2007, two identical charges were filed in this matter. The charge in CU07 C-013 asserts that the Respondent Taylor Federation of Teachers (the Union) violated its statutory duty to fairly represent Deedy Polidori (the Charging Party) regarding a dispute with her employer. The second charge, filed against Respondent Taylor School District (the Employer) in C07 C-050, made the identical allegations as the charge filed against the Union. On April 5, 2007, pursuant to R 423.165(2)(d), the Charging Party was ordered to show cause why the two charges should not be dismissed for failure to state claims upon which relief can be granted. A timely response was filed on April 26, 2007.

The Charge and Findings of Fact Regarding the Union:

The charge asserts that the Employer eliminated a position due to declining class size and that the Employer then exercised its claimed right to transfer Polidori. Based on her reading of the collective bargaining agreement, Polidori concluded that the transfer was improper. She approached her Union for assistance. According to the charge, Polidori met with the following in sequence, discussed her claims at length with them and was advised by each of them that they believed her reading of the collective bargaining agreement was mistaken and that there was nothing the Union could, or would, do regarding the transfer: Rob Stewart, Local Executive Secretary; Nancy Myers, Local President; David Beddingfield, Executive Board member; John Schlosser, Field Representative; and finally the Union Grievance Committee. The Union's legal counsel was also apparently contacted.

In response to the order to show cause, Polidori cites to several alleged events as evidence to support her assertion that the Union acted in bad faith, discriminatorily or arbitrarily. However, each such assertion by Polidori relates not to the Union's decision not to pursue her grievance, but to how the Union handled Polidori's after-the-fact opposition to the Union's decision. She asserts that the Union discussed this supposedly private matter with others after the decision was made; that the Union accurately counseled her that she could be disciplined by the Employer if she did not properly report to work on the new assignment; and that the Union published an article in its internal newsletter explaining its handling of this contractual dispute. She additionally asserts that the Union declined to allow her retained attorney to participate in a Union meeting where her grievance was discussed.

The Charge and Findings of Fact Regarding the Employer:

The charge filed against the Employer merely reiterates the claims brought against the Union. Such allegations against the Employer fail to meet the minimum pleading requirements set forth in R 423.151(2). In response to the order to show cause, Polidori asserts that certain, lower-ranked, members of management agree with her interpretation of the requirements of the collective bargaining agreement. She further asserts, upon information and belief, that the district Superintendent met with and agreed with the Union on the proper course for handling the reassignment.

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

Polidori alleges no facts indicating malice or improper motive on the part of the several Union officials and entities in reaching the conclusion that the contract language did not offer Polidori the option she sought. The facts alleged show only that there is a dispute between Polidori and the Union over the meaning of a specific clause of the collective bargaining agreement. The elected officials of a union have the right, and the obligation, to reach a good faith conclusion as to the proper interpretation of the collective bargaining agreement in a particular situation, and are expected, and entitled, to act on behalf of the greater good of the bargaining unit, even to the disadvantage of certain employees. *City of Flint,* 1996 MERC Lab Op 1.

At most what has been alleged is a dispute over the proper interpretation of the collective bargaining agreement. Despite the allegation that at least one lower level managerial employee agrees with Polidori's interpretation of the collective bargaining agreement, it is apparent that the Employer and the Union agree as to the proper application of the contract language to the particular situation in dispute. The Employer initiated the transfer of Polidori, and the Union concurred that the transfer was contractually appropriate, even if unwelcome. The decision in *Saginaw Valley State University –and- Rodney Chappel*, 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, and 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. *City of Detroit*, 17 MPER 47 (2004); *Detroit, Wastewater Treatment Plant*, 1993 MERC Lab Op 716; *Muskegon Co*, 1992 MERC Lab Op 356, 363.

The fact that Polidori is dissatisfied with her union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Because a union's ultimate duty is to the membership as a whole, the Respondent Union has considerable discretion to decide how, or as here whether or not, to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146. The Union's decision on how to proceed in a grievance case is not unlawful as long as it is not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. Here, as acknowledged by Polidori, the Union president met with the district superintendent, and the Union and the Employer agreed on how the contract was to be applied.

Polidori's other factual assertions do not challenge the legitimacy of the decision made by the Union. Rather, they criticize how the Union dealt with Polidori after she opposed their decision to not pursue the grievance relief she sought. The complained of exclusion of a non-member attorney from a union meeting is routine, and is regardless an internal Union matter over which the Commission lacks jurisdiction. See, *United Steelworkers*, 2002 MERC Lab Op 162; *Schoolcraft Community Schools*, 1996 MERC Lab Op 492.

Taking each factual allegation in the charge and in the response to the order in the light most favorable to Charging Party, the allegations in CU07 C-013 do not state a claim against the Union under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

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

Polidori asserts no unlawful conduct or motive on the part of the Employer. Rather, she asserts that the district Superintendent met with and agreed with the Union on the proper course for handling the reassignment. While Polidori makes the conclusory assertion that such agreement constitutes somehow objectionable collusion, no facts are asserted which could support a conclusion other than that the Employer carried out its obligation to meet with the Union and resolve, in good faith, a potential dispute over interpretation of the collective bargaining agreement. There is nothing

improper in the Union and the Employer carrying out their mutual obligation to meet in good faith to resolve potential disputes. 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 reasonableness of the actions of the Employer. 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 in the light most favorable to Charging Party, the allegations in C07 C-050 do not state a claim against the Employer under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated:_____