

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

GOVERNMENT ADMINISTRATORS ASSOCIATION,
Labor Organization-Respondent,

Case No. CU06 J-046

-and-

LANCE A. SIMMONS,
An Individual-Charging Party.

_____ /

APPEARANCES:

Gregory, Moore, Jeakle, Heinen & Brooks, PC, by Gordon A. Gregory, Esq., for Respondent

Lance A. Simmons, *In Propria Persona*

DECISION AND ORDER

On May 8, 2008, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent Government Administrators Association (the Union) did not violate its duty of fair representation by refusing to process grievances filed by Charging Party Lance A. Simmons against his employer, Wayne County (the County). Concluding that Charging Party did not establish that the Union violated Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, the ALJ recommended that the charge be dismissed. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. After requesting and receiving an extension of time to file exceptions to the ALJ's decision, Simmons filed exceptions on July 9, 2008. The Union filed a Memorandum in Support of the ALJ's Decision and Recommended Order on July 25, 2008.

In his exceptions, Simmons argues that the ALJ erred in finding that the Union did not violate its duty of fair representation by refusing to process his grievances. He claims that although the Union was aware that his transfer was a "displacement" and a violation of the collective bargaining agreement, it dismissed his grievances. He asserts that the refusal to process his "well-reasoned" grievance constitutes a breach of the Union's duty of fair representation. Simmons also claims that the Union's executive director refused to process his grievances because he was upset with Simmons' grievance filing.

In its memorandum in support of the ALJ's decision, the Union argues that the ALJ properly applied Commission and judicial precedent when she concluded that the refusal to proceed on the grievances was not done in bad faith or for reasons unrelated to their merits. Respondent argues further that Simmons' exceptions fail to identify any part of the ALJ's decision to which objection is made and, instead, serve only to express his disagreement with the outcome.

Addressing Respondent's latter argument first, we refer to Rule 176 of the Commission's General Rules, 2002 AACRS, R 423.176, which states in pertinent part:

- (3) Exceptions shall be in compliance with all of the following provisions:
 - (a) Set forth specifically the question of procedure, fact, law, or policy to which exceptions are taken.
 - (b) Identify that part of the administrative law judge's decision and recommended order to which objection is made.
 - (c) Designate, by precise citation of page, the portions of the record relied on.
 - (d) State the grounds for the exceptions and include the citation of authorities, if any, unless set forth in a supporting brief.

* * *

- (5) An exception to a ruling, finding, conclusion, or recommendation that is not specifically urged is waived. An exception that fails to comply with this rule may be disregarded.

While Charging Party's exceptions fail to comply with the requirements of Rule 176 for such filings, we chose to consider them to the extent that we were able to discern the issues on which Charging Party has requested our review. *City of Detroit*, 21 MPER 39 (2008). Nevertheless, upon review of Charging Party's exceptions, we find them to be without merit.

Factual Summary:

We adopt the factual findings of the ALJ and repeat them here only as necessary. Charging Party was employed by Wayne County and, at the time he filed his charge, worked in the Department of the Environment (DOE) in the Henry Ruff Field Office (Ruff) as a foreman, a position that included the duties of a first line supervisor. The DOE was in the process of reorganizing via a plan referred to as the Comprehensive Assessment and Master Plan Project (CAMPP) that included the elimination of various positions. Respondent represents a bargaining unit of supervisory positions employed by the County, including Charging Party's position of foreman.

In March 2006, the DOE issued a memo announcing organizational changes, effective May 8, 2006. The changes included a temporary transfer of Charging Party and another foreman, Harold Hulkkonen, to the DOE's Downriver Wastewater Treatment Facility (DRWTF). Both employees maintained their foreman titles but were assigned different responsibilities. A less senior foreman and supervisor remained at Ruff.

Prior to filing a grievance, Charging Party and Hulkkonen spoke with the Union's executive director, Larry Verbiest, about their concerns that the reassignment constituted a displacement in violation of the contract. They argued that they had more seniority than the supervisor and foreman remaining at Ruff and that they should not have been transferred. In April 2006, shortly after the conversation with Verbiest, Charging Party acting in his capacity as area representative submitted two policy grievances to the Union on behalf of the entire unit. One grievance asserted that the job reassignment was a displacement and that it did not take place in accordance with the collective bargaining agreement. The second grievance claimed that the employer had improperly removed Simmons, the area representative at Ruff, from his assignment at that location. Both grievances were denied by the employer later that month.

Special meetings were held concerning the grievances in May 2006. That month, Charging Party sent a letter to the Union's executive board alleging that certain unit members involved in making the decisions about the reorganization had violated the Union's constitution by causing the loss of Union positions. In June, Charging Party and Hulkkonen met with a member of Respondent's executive board to discuss the grievances. A few months later, after Charging Party sent a letter to the Union inquiring about the status of his grievances, he received a written response from Verbiest confirming that his grievances had been denied. In this letter, Verbiest discussed at length each of the contract provisions referred to in the grievances and explained why he believed that no violation had occurred. In September, Simmons appealed the refusal to pursue his grievances to the Union's grievance screening committee. His appeal, however, was denied as untimely. Simmons later received a letter from a Union attorney concluding that there were no facts to support his grievances. In October, he filed his charge against the Union asserting that it violated its duty of fair representation.

Discussion and Conclusions:

Charging Party alleges in his exceptions that the Union's decision not to proceed with his grievances was neither honest nor made in good faith. He asserts that the decision was arbitrary and was made because Verbiest was upset with his grievance filing. Finally, he alleges that the Union's refusal to process a "good merit and well reasoned grievance" constitutes a breach of its duty of fair representation.

The elements of a union's duty of fair representation include: (1) serving the interests of all members without hostility or discrimination; (2) exercising its discretion with complete good faith and honesty; and (3) avoiding arbitrary conduct. *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004). Although it is well established that a union has considerable discretion to decide how or whether to proceed with a grievance, it must exercise its discretion in full good faith and honesty toward each union member. *City of Lansing*, 21 MPER 8 (2008). Speaking of a union's duties to its membership, the Michigan Supreme Court stated in *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146; 205 NW2d 167, 177 (1973), that:

It must be faithful to each member, to be sure, but it must be faithful to all of the members at one and the same time. The union must be concerned for the common

good of the entire membership. This is its first duty. That duty of concern for the good of the total membership may sometimes conflict with the needs, the desires, even the rights of an individual member. When the general good conflicts with the needs or desires of an individual member, the discretion of the union to choose the former is paramount.

We agree with the ALJ that Simmons failed to establish that the Union's decision was made in bad faith or that it was unreasonable. Simmons' dissatisfaction with the Union's efforts or its ultimate decision not to proceed with his grievances is not sufficient to constitute a breach of the duty of fair representation charge. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131. As noted above, the union's ultimate duty is to the membership as a whole, and a union has considerable discretion to decide how and whether or not to pursue and present a particular grievance. *City of Lansing*, 21 MPER 8 (2008). The decision not to proceed with a grievance is not unlawful so 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.

In this case, the Union decided not to move forward with Charging Party's grievance and provided him, at multiple levels, with an explanation for its decision, citing a lack of merit. The Union gave his grievance ample consideration and after reviewing the contract language, it determined that Simmons had not been displaced because he had not been moved from his job classification as a foreman. We agree with the ALJ that it is not within our authority to judge the relative merits of the parties' positions. Based on the record, we conclude that there is insufficient evidence to suggest that the Union's decision not to move forward on Charging Party's grievances was so outside the range of reasonableness as to be arbitrary and a violation of its duty of fair representation.

In his exceptions, Charging Party accuses Respondent's executive director, Verbiest, of having personal animosity toward him that allegedly affected the processing of his grievances. We, however, agree with the ALJ that even if any animosity existed, the decision to not move forward on Charging Party's grievances was made with others, including the Union's executive board. It does not appear that the Union's executive board bore any hostility toward Simmons. Rather, the Union exercised its discretion and determined that the grievances lacked merit and did not warrant pursuit. Again, absent evidence that this decision was made arbitrarily or in bad faith, we cannot conclude that the Union violated its duty of fair representation.

Finally, Charging Party challenges the credibility findings made by the ALJ concerning the alleged threats by Verbiest to see to it that Simmons would be displaced. The Commission, however, will not disturb the credibility findings of an ALJ in the absence of clear evidence to the contrary. *Bellaire Pub Sch*, 19 MPER 17 (2006); *Zeeland Ed Ass'n*, 1996 MERC Lab Op 499, 507; *Michigan State Univ*, 1993 MERC Lab Op 52, 54.

We have considered all other arguments and exceptions and conclude that they would not change the outcome of this case.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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Gregory, Moore, Jeakle, Heinen & Brooks, PC, by Gordon A. Gregory, Esq., for Respondent

Lance A. Simmons, appearing for himself.

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, this case was heard at Detroit, Michigan on November 26, 2007 before Julia C. Stern, administrative law judge with the State Office of Administrative Hearing and Rules (SOAHR), for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by the Charging Party on December 6, 2007, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Lance A. Simmons, an employee of Wayne County (the Employer), filed this charge against his collective bargaining representative, the Government Administrators Association (Respondent or the Union), on October 18, 2006.¹ The charge as originally filed alleged that Respondent improperly refused to process two grievances Simmons filed on or about April 20, 2006 regarding a job reassignment. Simmons asserted that he did not learn that the grievances had been dropped until August 25, 2006. Simmons set out his allegations in more detail in a response he filed on December 1, 2006 to Respondent's motion for summary disposition. In this response, Simmons asserts that Respondent's decision not to process his grievances was arbitrary and unreasonable, and also that Union executive director Larry Verbiest refused to process his grievances because he had filed internal union charges against other union members.

¹ Simmons also filed a charge against his employer (Case No. C06 J-262). This charge was dismissed on a motion for summary disposition for failure to state a claim. *Wayne Co*, 20 MPER 27 (2007).

Findings of Fact:

Respondent represents a bargaining unit consisting of certain supervisory classifications, including foremen, employed by the Employer. At the time he filed the charge, Simmons was a foreman in the Employer's Department of the Environment (DOE). The foreman job description describes it as a first line supervisory position, with responsibility for supervising work crews, training new employees, monitoring the performance of subordinates, and issuing discipline. Until March 2006, Simmons and two other foremen, Eric Dunstan and Ish Ledesama, supervised sewer, meter, and drain inspection and maintenance crews from the DOE's Henry Ruff Field Office (Ruff). Simmons was also Respondent's area representative at Ruff.

Each of the foremen at Ruff had field operations leaders reporting to them. Field operations leader, also known as crew leader, is a position in a nonsupervisory bargaining unit represented by the American Federation of State, County and Municipal Employees (AFSCME). In March 2006, field operations leaders were basically crew members who were responsible for supervising the crew on days that the foreman was not at work. According to the position's job description, the field operations leader does not have the authority to discipline.

The Collective Bargaining Agreement

At the time of the events involved in this charge, the collective bargaining agreement between Respondent and the Employer included the following provisions:

Article 2.02

. . . Bargaining unit positions shall not be retitled or reclassified in order to remove them from the bargaining unit.

Article 20.2

Should management find it necessary to institute a reorganization which causes substantial changes either in work location or job assignments, employees who are affected may bid on such changes according to seniority.

Article 24 – Layoff, Displacement and Recall

24.01 Layoff and Displacement Defined:

A. A layoff shall be defined as the separation of an employee from the County service for lack of work or lack of funds. Upon request, the Association shall assist management in all matters pertaining to layoff and recall.

B. Displacement shall be defined as the reassignment, transfer or demotion of an employee.

24.02.

Notice of layoff or displacement shall be delivered to any employee to be laid off not later than ten (10) working days before the effective date thereof and a copy of the notice and a list of affected Association members shall be sent to the Association no later than five (5) working days before the layoff.

* * *

24.07

A. Displacements and layoffs shall be made by total seniority and in accordance with the following order:

1. To positions in the employee's classification for which the employee is qualified within the department.
2. To vacant positions within the classification for which the employee is qualified outside of the department.
3. To positions in equal or lower classifications for which the employee is qualified within the department.
4. To positions in equal or lower classifications for which the employee is qualified outside of the department.

"Qualified" shall mean having the minimum requisites as specified in the most recent job announcement or job specifications.

B. In the event no positions are available for displacement under this Section, the employee shall be laid off.

24.08

In the event of a scheduled layoff, notwithstanding their position on the seniority list, the Association President, if an employee of the Employer, and the Chapter President and Area Representatives shall be retained in any job they are qualified to perform.

DOE Reorganization in 2006

Since 2003, the DOE has been gradually implementing a reorganization plan known as the Comprehensive Assessment and Master Plan Project (CAMPP). As a part of this reorganization, the DOE has eliminated positions both in Respondent's supervisory unit and in

the AFSCME nonsupervisory unit. Both unions have formally acknowledged the DOE's right to unilaterally eliminate positions pursuant to CAMPP.

In early March 2006, the DOE eliminated a foreman position held by Harold Hulkkonen at its DOE's Downriver Wastewater Treatment Facility (DRWTF). Hulkkonen came to Ruff, displacing the lower seniority foreman Dunstan who was demoted to a lower paid supervisory position at the Wayne County Jail. Dunstan was eventually laid off from that position.

On March 16, 2006, Terry Galloway, superintendent of the DOE's field operations staff, issued a memo to all field operations staff announcing another series of organizational changes to take effect on May 8, 2006. Among these changes was the creation of a new work team, "Team 4," at the DRWTF. Team 4 was to be responsible for all pumping stations, basins, and meters in the collections systems, as well as the inspection, maintenance and repair of interceptors. The work crews performing sewer and meter inspection and maintenance were reassigned to the new Team 4 and moved to the DRWTF, while crews doing drain inspection and maintenance remained at Ruff. These crews, however, were no longer to be headed by foremen. Instead, day-to-day supervision of these crews became the responsibility of the field leaders. Both Simmons and Hulkkonen, although retaining the title foreman, were transferred to the DRWTF and assigned to gather information for a new database. This was to be a temporary assignment until October 1, 2006. It was unclear what was to happen to Simmons and Hulkkonen after that date. The third foreman, Ledesama, remained at Ruff and was assigned to assist Mackey Howell, a department supervisor 6, in gathering information for a drain system database.

Simmons' Grievances and Internal Union Charge

On April 19 or 20, Simmons and Hulkkonen went to Respondent's office and discussed filing grievances over their reassignments with Larry Verbiest, Respondent's executive director. Simmons and Hulkkonen told Verbiest that the DOE should be transferring Howell and Ledesama to the DRWTF instead of them because Howell and Ledesama had less seniority. They argued that their reassignment to the DRWTF was a "displacement" under Article 24.01(B) of the contract and that they should also be remaining at Ruff under Article 20.02. Verbiest did not agree that the two men had been displaced. The meeting between the three men lasted more than two hours. Simmons testified that Verbiest did not seem to understand their arguments. However, Hulkkonen testified that he believed that by the end of the meeting he and Simmons had persuaded Verbiest that their claims had merit. Verbiest told Simmons and Hulkkonen that he would contact Mary McClendon and get back to them. McClendon is the member of the Respondent's executive board representing general fund employees and the board member generally responsible for grievances filed in the DOE.

Shortly after his conversation with Verbiest, Simmons filed two "policy" grievances on behalf of the entire unit in his capacity as area representative. One grievance alleged that the Employer was attempting to displace the foreman position with the field leader, a position in another bargaining unit. The other asserted that the Employer had violated the contract by displacing employees without giving them a notice of layoff or displacement, and by not allowing affected employees "the opportunity to bid by total county seniority for positions brought about by the reorganization." The second grievance also asserted that the Employer had

improperly removed the area representative at Ruff, i.e. Simmons, from his assignment at Ruff. In addition to Article 2.02, Article 20.02, and Article 24, Simmons also cited Article 1.03 of the contract, the nondiscrimination clause; Article 3.03, a provision prohibiting the Employer from aiding any other labor organization or entering into any agreement for the purpose of undermining the Union; and Article 12.10, defining seniority as continuous employment from the last day of hire with the Employer and the Wayne County Road Commission.

Verbiest was annoyed that Simmons had filed the grievances without waiting for authorization from him or McClendon. Verbiest testified that on about April 26, he telephoned Simmons and explained why he felt that the grievances had no merit. Simmons denied having this telephone conversation or any conversation with Verbiest about his grievances until they met for a special conference on the grievances May 5.

On April 27, the Employer denied both grievances. With respect to the grievance alleging that foreman had been displaced by field leaders, the Employer stated that "grievant's actions were performed at a different and higher level." The Employer's answer also stated, "The displacement alleged in the grievance had not yet taken place."

Also on April 27, Verbiest sent McClendon a memo titled "Lance Simmons Unauthorized Grievances." Copies of Simmons' grievances were attached. In the memo, Verbiest told McClendon that he had told Simmons and Hulkkonen to submit to him in writing the contract violations he wanted to allege, but that Simmons had gone ahead and filed without authorization. Verbiest said, "I cannot agree with almost all of his charges in both grievances," and asked McClendon how she wanted him to proceed. There is no indication in the record of McClendon's response.

On May 5, Respondent and the Employer held a special conference to discuss Simmons' grievances. McClendon, Verbiest and Simmons attended the conference for Respondent. Before the conference, Simmons and Verbiest met privately. Simmons informed Verbiest that the DOE's deputy director had told him that he should go to the County's personnel office and look for another position, because the DOE was eliminating all the foremen positions after October 1. Verbiest said that Simmons did not have to do that because the Employer would give him a position. Verbiest also said that he did not think that Simmons' grievances had any merit. Simmons testified that Verbiest told him "that I was going to be displaced, and that he was going to see to it." According to Simmons, he replied that if Verbiest felt that way, he should be quiet in the meeting and let Simmons and McClendon do the talking. Verbiest denied making this statement. McClendon and Simmons discussed the grievances with the Employer's representative, but the grievances were not resolved. Simmons testified that it was agreed at the end of this meeting that Verbiest would arrange for a second special conference.

I do not credit Simmons' testimony that Verbiest threatened to "see to it" that Simmons was displaced. As Verbiest and Simmons had just discussed, Simmons was already scheduled to be displaced, as Verbiest interpreted that term, when his foreman position was eliminated on October 1. Moreover, Verbiest had just assured Simmons that the Employer would find him another position after he was displaced. It does not make sense that Verbiest would threaten to see to it that Simmons was displaced in the context of this conversation.

On May 9, Simmons sent a letter to the Union's executive board. In this letter, Simmons identified certain members of the unit, including Galloway and Howell, as involved in making decisions about the reorganization. Simmons asserted that these union members had violated the Union's constitution by helping bring about the loss of Union positions.

On May 12, Verbiest sent these charges to Respondent's president Jimmie Bettis. In an accompanying memo entitled "Actions of Area Representative, Lance Simmons," Verbiest wrote as follows:

[The charges are] the culmination of a series of actions taken by Mr. Simmons. In addition, Mr. Simmons has used his position to file or caused to be filed four grievances against Wayne County which in my review are not justifiable. He filed the grievances without our review, approval or authorization. His position of Foreman has been eliminated from the budget effective October 1, 2006. None of the persons mentioned [in the charges] have been displaced yet. The entire work unit was transferred from its operational work site [at] the Henry Ruff Road facility to the Wyandotte Waste Water Treatment Plant. Nothing in our contract prohibits management from establishing its base for operations.

Verbiest also told Bettis that none of the members named in Simmons' charge had the authority to make decisions to eliminate jobs. Verbiest also said "these charges are the culmination of a series of actions taken by Mr. Simmons." Verbiest told Bettis that Simmons had filed grievances that Verbiest thought were not justifiable without his approval. He said that Simmons' foreman position had been eliminated from the budget effective October 1, 2006, but that he and his work unit had only been transferred from Ruff to the DRWTF and had not yet been displaced. Verbiest asked Bettis to set up a meeting with McClendon and the Union's attorney, Gordon Gregory, to discuss issues raised by Simmons' grievances.

The meeting with Gregory was held on May 26. Verbiest provided Gregory with a copy of the current job descriptions for the foreman and field operations leader positions and other information about the actual duties of the field operations leader, and Gregory agreed to draft an opinion letter addressing the legality of the DOE's elimination of the foreman position.

On May 31, Verbiest wrote a letter to the entire Union executive board about Simmons' internal union charges. Verbiest stated that the elimination of certain AFSCME and GAA positions at the DOE was mandated by CAMPP, and that "the displacements/layoffs" that had occurred had been done in accordance with both the AFSCME and GAA contracts. Verbiest reiterated that none of the Union members mentioned in Simmons' May 9 letter had the authority to eliminate any positions. In his letter to the executive board, Verbiest said, "Simmons' May 9 letter is a continuation of actions taken by Simmons which include filing grievances without authorization." Sometime after this letter was written, the Union's executive board concluded that Simmons' charges lacked merit. Simmons was notified of their decision on June 15.

Sometime in June, Simmons and Hulkkonen met with McClendon to discuss their April grievances. Hulkkonen had also recently been refused a promotion to team leader, and he also

discussed this with her. At the end of the meeting, Simmons believed he had convinced McClendon that the contract had been violated. However, Simmons did not hear anything more about his grievances. On August 15, Simmons sent Verbiest a letter inquiring about the status of the grievances.

Verbiest replied to Simmons' August 15 letter in a letter dated August 25. Verbiest went through each of the contract articles cited in the grievances and explained why he believed that the Employer had not violated them. Verbiest said that no new positions had been added to the bargaining unit and no bargaining unit positions had been retitled or reclassified. Instead, according to Verbiest, certain positions, including foreman, had been eliminated from the budget. Verbiest added that the Union had been notified of the pending elimination of those positions. With respect to the alleged violation of various sections of Article 24, Verbiest said that Simmons' grievance did not reference any specific layoffs or displacements, and that all the displacements that had occurred had been in compliance with the contract. Verbiest also told Simmons that he understood that Simmons' foreman job at the DRWTF would be eliminated on October 1, and that when that occurred the Employer would be required to "displace him by seniority" in accord with the collective bargaining agreement. Verbiest told Simmons that under Article 20.02, he was entitled to exercise job preference by seniority within his classification and could request to do so now. Verbiest also said that since Simmons was now an area representative at the DRWTF, he had not been removed as the Union's area representative. He told Simmons his letter "concluded the matter."

On September 1, Simmons appealed Verbiest's refusal to go forward with his grievances to the Union's grievance screening committee. On September 11, Bettis denied Simmons' appeal to the grievance screening committee as untimely, stating that the decision not to proceed with his grievances had been made in April.

On September 9, Gregory sent Verbiest the opinion letter he had agreed to draft on May 26. The letter addressed two questions: whether the employer could eliminate the foreman positions held by Simmons and Hulkkonen, and whether the Employer had improperly transferred work performed by the foreman to the field operations leader position. Gregory stated that under the contract, the Employer had a clear right to eliminate jobs and transfer employees. He stated that the job descriptions for the foreman and leader positions disclosed a substantial overlap between their job duties, but that the leaders did not perform traditional supervisory duties such as hiring, firing or disciplining employees. He noted, in addition, that since the two positions had co-existed, there could be no claim that the leader position was created to assume the duties of the foreman. Gregory concluded that there were no facts to support a grievance alleging that the foreman positions had been improperly eliminated and their duties reassigned to members of another bargaining unit.

By the end of 2006, the DOE had eliminated the foreman classification. Simmons continued to work as a foreman at the DRWTF until December 2006, when he was reclassified as a departmental supervisor 6. His job duties, pay, and work location did not change. Hulkkonen's job title was also changed to departmental supervisor 6. Ledesama, the foreman who had remained at Ruff, retired after he was informed that he would have to accept a demotion. One foreman in the department was promoted, and the remaining foremen retired.

Discussion and Conclusions of Law:

A union's duty of fair representation requires a union to: (1) serve the interests of all members without hostility or discrimination; (2) exercise its discretion with complete good faith and honesty; and (3) avoid arbitrary conduct. *Wayne State Univ*, 18 MPER 32 (2005); *Ann Arbor Pub Schs*, 16 MPER 15 (2003), citing *Goolsby v Detroit*, 419 Mich 651 (1984) and *Vaca v Sipes*, 386 US 171 (1967). However, it is well established that an individual unit member cannot compel a union to pursue a grievance. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich. 123, 146 (1973). In the interests of the membership as a whole, a union has the discretion to assess each grievance with a view to its individual merit. In deciding which grievances to take to arbitration, a union may take into account the burden upon the contractual machinery, the amount at stake, and the likelihood of success. *Lowe, supra*; *East Jackson Pub Sch Dist*, 1991 MERC Lab Op 132, aff'd, 201 Mich App 480 (1993); *Huron Valley Sch Dist*, 18 MPER 69 (2005).

In *Goolsby*, at 679, the Michigan Supreme Court defined arbitrary conduct as "impulsive, irrational or unreasoned conduct, or inept conduct undertaken with little care or with indifference to the interests of those affected." The Commission has held that a union's decision not to proceed with a grievance is not arbitrary if it falls within a broad range of reasonableness. *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35, citing *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991). That is, as long as the union's decision satisfies that standard, the Commission does not have the authority to second-guess the Union or determine whether the grievant's interpretation of the contract is more reasonable than that adopted by the Union.

On August 25, 2006, Verbiest sent Simmons a letter answering the arguments raised by Simmons in his grievances. In its motion for summary disposition and at the hearing in this case, Respondent provided further explanation of the reasoning behind its decision not to go forward with these grievances. Simmons argues that the foreman position was retitled and removed from the bargaining unit, in violation of Article 2.02 of the contract, when the DOE assigned its former job duties to field leaders in the AFSCME unit. However, the Union concluded that the field leader position was not merely the foreman position with a different title, and that Simmons' supervisory position had been eliminated, not retitled. While Simmons argued that he had been "displaced" within the meaning of Article 24 when he was sent to the DRWTF in May 2008, the Union asserted that he was not displaced because he was not transferred out of or reassigned from his job classification. Under Respondent's interpretation of Article 24, Simmons had not been displaced at the time the grievance was filed and would not be displaced until the foreman classification was eliminated. The Union agreed with Simmons that his transfer to a new location gave him the right under Article 20.2 of the contract to "exercise job preference by seniority within classification," i.e. to bump a lower seniority foreman. However, the Union's position is that Simmons and Hulkkonen had to notify the DOE that they wanted Ledesema's position before Article 20.2 gave them any rights, and that at the time the grievances were filed they had not done this.

As Respondent's attorney concluded in his September 9 opinion letter, the duties of the field leader position, as they now exist, are similar to the duties of the eliminated foreman

position. However, the field leader is not a foreman with a different title because the foreman had formal supervisory, i.e. disciplinary, authority while the field leader does not.² While Article 24.01 (B) of the contract defined "displacement" as including a reassignment or a transfer, Verbiest noted in his testimony that unit members are routinely given new job assignments within their classification without triggering the notice or bumping requirements of Article 24. As the Union points out, Article 20.2 states that affected employees "may bid" according to seniority and thus could be interpreted as requiring an employee affected by a reorganization to make a specific request to bump another employee. As noted above, it is not within the Commission's authority to judge the relative merits of the parties' contractual arguments. I conclude that Simmons did not establish that Respondent's decision not to process his grievances was so outside the range of reasonableness as to constitute an arbitrary action.

Simmons also alleged that the Union's decision not to process his grievances was based on Verbiest's personal hostility toward him. Verbiest's April 27 memo to McClendon makes it clear that Verbiest was annoyed at Simmons for filing grievances when Verbiest had told him to wait until Verbiest could speak to McClendon. As indicated in his May 9 letter to the Union's executive board, Verbiest also thought that Simmons' internal union charges were baseless and unfair. However, the record establishes that Verbiest was not convinced of the merit of Simmons' contractual arguments when Simmons, Hulkkonen and Verbiest first discussed them on April 19 or 20, before Simmons filed the grievances or made his internal union charges. Moreover, decision not to proceed with Simmons' grievances was made jointly by Verbiest and the Union's executive board, none of whose members apparently had any personal hostility toward Simmons. I conclude that Simmons failed to establish that the Union's decision not to process his grievances was made in bad faith or for reasons unrelated to their merits.

In accord with the findings of fact and conclusions of law above, I find that Simmons did not establish that the Union violated its duty of fair representation by refusing to process grievances filed by him in April 2006. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____

² Moreover, under Section 9e of the Labor Mediation Act, MCL 423.9e, and Section 13 of PERA, positions with supervisory authority cannot lawfully be included in the same bargaining unit with nonsupervisory employees. A position without supervisory authority, therefore, is not appropriately included in Respondent's unit.