STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF WYOMING GENERAL EMPLOYEES UNION,
Labor Organization-Respondent,

Case No. CU08 L-062

-and-

LARRY STILLE,
An Individual-Charging Party.
_____/

APPEARANCES:

Danian Law Office, P.L.L.C. by John M. Danian, Esq., for Charging Party

DECISION AND ORDER

On December 30, 2008, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the unfair labor practice charge filed by Charging Party, Larry Stille, against Respondent City of Wyoming General Employees Union (Union) should be dismissed for failure to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. The charge alleged the Union breached its duty of fair representation by not pursuing grievances against his employer, the City of Wyoming (Employer). The grievances challenged the Employer's denial of Charging Party's bid to fill a job vacancy, and the Employer's subsequent elimination of his job. The ALJ found that the charge and Charging Party's response to an order to show cause why the charge should not be dismissed were deficient and contained only conclusory allegations that were not supported by any factual allegations. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On January 30, 2009, Charging Party filed exceptions to the ALJ's decision, to which Respondent did not file a response.

In his exceptions, Charging Party contends that the ALJ erred in recommending summary dismissal of his charge. He contends that the Union acted "arbitrarily, capriciously, discriminatorily, and in bad faith" by not adequately championing his grievances, in light of the apparent contract violations committed by the Employer. We have thoroughly reviewed Charging Party's exceptions and find them to be without merit.

Discussion and Conclusions of Law:

Charging Party alleges that the Employer's actions violated the grievance and promotional procedures outlined in the collective bargaining agreement. He contends that, therefore, the Union breached its duty of fair representation by not seeking arbitration and because the Union attorney was not able to do more to "remedy the situation." However, a union's duty of fair representation

under PERA consists of three elements: (1) to serve the interest of all members without hostility or discrimination; (2) exercise discretion in complete good faith and honesty; and (3) avoid arbitrary conduct. *American Ass'n of Univ Profs, Northern Michigan Univ Chapter*, 17 MPER 57 (2004). It is well settled that a member's dissatisfaction with their union's efforts or ultimate decision not to pursue a grievance, alone, is insufficient to constitute a breach of the duty of fair representation. *American Federation of Teachers, Local 2000*, 22 MPER 21 (2009). Since the Union's duty is to the membership overall, it has considerable discretion in deciding what action to undertake regarding a grievance. *Michigan State Univ Admin-Prof'l Ass'n, MEA/NEA*, 20 MPER 45 (2007).

In this matter, we agree with the ALJ, that Charging Party's pleadings and exceptions contain conclusory assertions that do not allege facts to indicate that the Union acted arbitrarily, discriminatorily, or in bad faith in deciding not to take further action on the alleged contract violations by the Employer. At best, the record reflects Charging Party's discontentment with the Union's efforts, which alone, does not establish grounds for an unfair labor practice charge against the Union. *Id.* Charging Party alleges that the Union caused prolonged delays in processing his grievances. However, a union does not breach its duty of fair representation merely by a delay in processing grievances, if the delay does not result in the denial of the grievances. *Teamsters Local 214*, 1995 MERC Lab Op 185, 189. Charging Party's pleadings indicate he was informed on the status of his grievances, including when the Union decided the claims merited no further action. As the ALJ correctly noted, this Commission will not attempt to evaluate whether the Union reached the right conclusion in deciding not to pursue the grievances. *City of Flint*, 1996 MERC Lab Op 1, 11. Since the charge fails to state a valid claim under PERA, it is subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165.

Finally, we have carefully examined the remaining issues raised by Charging Party and find that they would not change the results. Accordingly, we agree with the Administrative Law Judge's conclusion that the charge fails to state an actionable claim under PERA and must be summarily dismissed.

ORDER

The unfair labor practice charge is dismissed in its 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: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

John M. Danian, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON SUMMARY JUDGMENT

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) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission. Based upon the entire record, I make the following conclusions of law, and recommended order.

The Unfair Labor Practice Charge and the Response to the Order to Show Cause:

A Charge was filed on behalf of Charging Party (Larry Stille) on December 15, 2008, alleging that the City of Wyoming General Employees Union (the Union) had breached its duty to fairly represent Stille.

The Charge first alleged that a dispute arose over the filling of a job vacancy sought by Stille; that Stille sought to pursue a grievance over the matter; that several Union officials conferred with Stille concerning his complaint; that the Union advised Stille "at the end of June 2008" that it had concluded that the proposed grievance lacked merit; and that the Union declined to pursue the job vacancy dispute to arbitration. The Charge next asserted that Stille's employment was terminated; that the Union's lawyer investigated both the job vacancy dispute and the elimination of Stille's job; that the Union's lawyer conferred with Stille twice; that the attorney then advised Stille that "there was nothing he could do" for Stille.

It appeared that the allegations initially filed in the above matter did not properly state a claim under the Public Employment Relations Act (PERA), the statute that this agency enforces, and might therefore be subject to dismissal. Therefore, pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, Charging Party was ordered to file a written response explaining why the charges should not be dismissed.

Additionally, the order noted that as to the failure to pursue a grievance over the job vacancy dispute, the Charge alleged that the Union advised Stille "at the end of June 2008" that it had concluded that the proposed grievance lacked merit. The order explained that under PERA, there is a strict six-month statute of limitations and a charge alleging an unfair labor practice occurring more than six months prior to the filing and service of the charge would be untimely. Charging Party was advised that any response to the order must indicate the date on which Charging Party was advised by the Union that it would not pursue a grievance over the job vacancy dispute and the date, and mechanism, of service on the Union of the unfair labor practice charge.

Charging Party was expressly cautioned that a failure to file a "timely and substantive" response to the order would result in dismissal of the charge without further proceedings. While a timely response was filed, it failed to substantively address many of the defects in the original charge.

Stille's response to the order to show cause why the charge should not be dismissed is, primarily, a mere verbatim recitation of the original allegations of the charge, onto which are tacked additional conclusory assertions, and which therefore does no more to state a claim under the Act than did the original charge. The charge and the response to the order assert that Stille was upset over the handling of a disputed job vacancy and over his later termination from employment. He does not allege in either the original charge or in the response to the order that that there is an existing and controlling collective bargaining agreement, nor does he assert that either the filling of the job vacancy or his later departure from employment were violations of any collective bargaining agreement. Rather, he complains that the Union should have done more to "support him". Notably, he fails to assert even that the Respondent Union is the exclusive bargaining agent of a unit of employees that includes Stille. Finally, Stille failed, seemingly willfully, to respond to the specific statute of limitations related inquiry as to the date and mechanism of service of the charge on the Union.

Discussion and Conclusions of Law:

The charge in this matter suggests that the Union had, and that it breached, a statutory duty of fair representation. To establish a violation of the duty of fair representation, a charging party must allege facts which if found would demonstrate that a respondent is the exclusive bargaining agent and that the union's conduct toward him was arbitrary, discriminatory or done in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). To prevail on such a claim, a charging party must allege and establish not only a breach of the duty of fair representation, but

also the existence and a breach of a collective bargaining agreement. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992). Allegations in a complaint for a breach of the Union's duty of fair representation must contain a factual explanation of what the Union did, or failed to do, and factually how that conduct was improper and not just conclusory statements alleging improper representation. *Martin v Shiawassee County Bd of Com*mrs, 109 Mich App 32 (1981); *Wayne County Dept Public Health*, 1998 MERC Lab Op 590, 600 (no exceptions); *Lansing School District*, 1998 MERC Lab Op 403.

The charge in this matter fails to make any factual allegation that, if proved, would establish the existence or a breach of the Union's obligations to Stille. There is no allegation that the Union acted out of improper motive. Likewise, there are no factual assertions which, if proved, would establish that the Union's decisions were arbitrary or the result of gross negligence. There is no allegation that a collective bargaining agreement existed or that the employer violated that contract. The crux of this dispute is Stille's allegation that the Union investigated, but decided against pursuing, a grievance.

The mere allegation that Stille is dissatisfied with his Union's efforts or ultimate decision is insufficient to constitute a legally cognizable claim of a breach of the duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. A union has considerable discretion to decide which grievances to pursue and which to settle. A union's ultimate duty is toward the membership as a whole, rather than solely to any individual. Therefore, a union has the legal discretion to decide to pursue, or not pursue, particular grievances based on the general good of the membership, even though that decision may conflict with the desires and interests of certain employees. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973); *Lansing Sch Dist*, 1989 MERC Lab OP 210, 218, aff'd Mich App No. 116345 (March 26, 1991), lv app den 439 Mich 955 (1992).

A union's decision not to pursue a grievance is not arbitrary 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. A union representative or attorney need not follow the dictates of the grievant but may investigate and handle the case in the manner he or she determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. The fact that a Court or the Commission might conclude that the Union reached the wrong conclusion as to whether or not a grievance should have been taken to arbitration does not mean that the Union acted arbitrarily or in bad faith, or that it breached its duty of fair representation. *White v Detroit Edison*, 472 F3rd 420, 427 (2006). The Commission has "steadfastly refused to interject itself in judgment" over grievance decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab OP 1, 11. Here, based on Charging Party's own acknowledgement that the Union, and its legal counsel, repeatedly conferred with him regarding the merits of his claims, it is impossible to infer that the ultimate decision by the Union not to pursue a grievance was irrational.

The conclusory allegations in the charge in this matter, even if proved, do not state a claim of a breach of the Union's duty of fair representation, and are, therefore, subject to dismissal, under R 423.165 (2)(d), for failure to state a claim upon which relief could be granted.

I. RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated:_____