STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT ASSOCIATION OF EDUCATIONAL OFFICE EMPLOYEES, LOCAL 4168,
Labor Organization-Respondent,

Case No. CU10 C-010

-and-

MARIETTA VASILIJE,
An Individual-Charging Party.
_____/

APPEARANCES:

Law Offices of Mark H. Cousens, by John E. Eaton, for Respondent

Marietta Vasilije, *In Propria Persona*

DECISION AND ORDER

On July 12, 2010, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

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DETROIT ASSOCIATION OF EDUCATIONAL
OFFICE EMPLOYEES, AFT, AFL-CIO, LOCAL 4168,
Labor Organization-Respondent,

-and-

MARIETTA VASILIJE,
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_____/

APPEARANCES:

Law Offices of Mark H. Cousens, by John E. Eaton, for Respondent

Marietta Vasilije, appearing on her own behalf

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge and Procedural Background:

Marietta Vasilije is an employee of the Detroit Public Schools and a member of a bargaining unit represented by the Detroit Association of Educational Office Employees, AFT, AFL-CIO), Local 4168 (hereinafter "DAEOE" or "the Union"). On March 12, 2010, Vasilije filed an unfair labor practice charge alleging that the DAEOE violated PERA by failing or refusing to file a grievance challenging the employer's decision to rescind her transfer to a new position, and by failing to communicate with her regarding the situation. Vasilije contends that these actions constitute a violation of a "Code of Ethics" and that they were taken in retaliation for her having written a letter critical of the Union president, Ruby Newbold.

On May 25, 2010, the Union moved for dismissal of the charge. The Union asserts that the charge is untimely because it was not filed within six months of the date Vasilije knew or should have known that a grievance would not be filed on her behalf. In addition, the DAEOE contends that the charge fails to allege facts establishing a PERA violation. The Union contends that its decision not to file a grievance on Charging Party's behalf was reasonable based upon the language of the contract, which requires the employer to fill vacancies with employees who have been displaced by a school closing. According to the Union, Vasilije's transfer request should never have been entertained, since she was not one of the 60-plus DAEOE members laid off during the 2009-2010 school year.

In an order issued on June 4, 2010, I directed Vasilije to show cause why the charge should not be dismissed as untimely and for failure to state a claim upon which relief can be granted under PERA. Charging Party was specifically directed to address the following questions in numbered sections corresponding to the paragraphs below:

1. Did the employer breach the terms of the collective bargaining agreement in rescinding Charging Party's transfer? If so, what provision of the contract did the employer breach? In responding to these questions, bear in mind the Union's assertion that Article X, Section A(2)(a) of the contract requires the employer to fill any vacancies in the bargaining unit with employees who have been displaced.
2. Was Charging Party on layoff status prior to the transfer?
3. When did Charging Party first become aware that the Union would not file a grievance on her behalf? Did Charging Party receive letters from the Union dated July 28, 2009 and August 31, 2009 indicating that a grievance would not be filed?
4. How, if at all, was Charging Party harmed by the alleged failure of the Union to communicate with her concerning the transfer situation.
5. Upon what facts does Charging Party intend to rely in support of her contention that the Union's decision not to file a grievance was in retaliation for Charging Party having written a letter critical of the Union president? Specify the date the letter was mailed and identify the intended recipient(s) of the letter.

Charging Party was further directed to provide a concise and specific description of the remedy requested for each claimed violation of the Act.

On June 15, 2010, Charging Party filed a response to the Order to Show Cause, along with supporting documentation. According to the allegations set forth in the response, Charging Party was selected for a position at Heilmann Park Elementary School after her former job at Murphy Middle School was eliminated due to the scheduled closing or "reconstitution" of that school. She was scheduled to begin work at the elementary school on August 24, 2009. However, on August 21, 2009, Charging Party was notified by the school district that the transfer to Heilmann Park had been rescinded. According to Vasilije, the district blamed the Union for the rescission of her transfer. Vasilije was ordered to return to work at Murphy Middle School for the start of the following school year after the decision to close or "reconstitute" that school

was apparently reversed by the employer. On August 21, 2009, Vasilije wrote a letter to the Union criticizing its handling of the situation. Thereafter, Charging Party was hospitalized and placed on medical leave, allegedly due to the stress caused by the rescission of the job transfer. The Union notified her on August 31, 2009 that there were no grounds for filing a grievance. However, on September 9, 2009, Vasilije received an email in which the Union president purportedly indicated that she would "handle" the situation. Charging Party contends that she did not know for certain that the Union would not take action on her behalf until on or after November 9, 2009.

Discussion and Conclusions of Law:

Accepting all of the allegations set forth by Charging Party as true, dismissal of the charge on summary disposition is warranted. A union's duty of fair representation is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. The union's ultimate duty is toward the membership as a whole, rather than solely to any individual. The union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729.

The Commission has "steadfastly refused to interject itself in judgments" over grievances and other decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab Op 1, 11. The Union's decision on how to proceed 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. To prevail on a claim of unfair representation, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public School District*, 201 Mich App 480, 488 (1993).

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation which, if true, would establish that the DAEOE acted arbitrarily, discriminatorily or in bad faith in connection with this matter. Although Vasilije repeatedly insinuates that the school district violated its "code of ethics" by rescinding the job transfer, she does not allege that the rescission constituted a breach of any provision of the collective bargaining agreement between the employer and the DAEOE. Dismissal of the charge is proper based solely upon Charging Party's failure to assert that a breach of contract occurred which, as noted, is an essential element of a case of this nature. Moreover, beyond the conclusory assertion that the Union's decision not to file a grievance was the result of the letter which Vasilije wrote criticizing the DAEOE, there is no factually supported allegation which, if

true, would establish that the Union was hostile to Charging Party or that it treated her differently than other bargaining unit members. In fact, Vasilije asserts that the Union itself was responsible for the employer's decision to rescind the transfer. That action occurred prior to the date that Charging Party sent the letter. Thus, the Union's position regarding the appropriateness of the rescission did not change as a result of the letter. Given these facts, it would be inappropriate to infer that the Union's decision not to file a grievance was the result of animus or hostility toward Vasilije as a result of her criticism of the Union. Accordingly, I conclude that the charge must be dismissed for failure to state a claim upon which relief can be granted under PERA.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: July 12, 2010