STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS (UAW),
LOCAL 2600,
Labor Organization-Respondent,

Case No. CU09 F-018

-and-

DON STEWART,
An Individual-Charging Party.
_____/

APPEARANCES:

Georgi-Ann Bargamian, Deputy General Counsel, International UAW, for Respondent

Don Stewart, *In Propria Persona*

DECISION AND ORDER

On December 21, 2009, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that the unfair labor practice charge filed by Charging Party, Don Stewart, against Respondent, International Union, United Auto Workers, Local 2600 (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 and amended pleadings allege the Union breached its duty of fair representation by not adequately challenging Charging Party's employment discharge from Kent County (Employer) for insubordinate conduct. Following oral argument on the Union's motion for summary dismissal, the ALJ concluded that no material issue of fact existed and recommended summary dismissal of the charge. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. Charging Party filed exceptions to the ALJ's decision on January 8, 2010. After receiving an extension, Respondent Union filed its brief in support of the ALJ's conclusions on February 18, 2010.

In his exceptions, Charging Party contends that the ALJ erred in recommending summary dismissal of his charge. He alleges that the Union breached its duty by not thoroughly investigating and processing his discharge grievance. He also asserts that the Union's failure to better explain his grievance constitutes an "arbitrary act and . . . breach of its duty of representation". After having reviewed Charging Party's exceptions, we find them to be without merit.

Factual Summary:

We accept the factual summary set forth by the ALJ and will not repeat it here, except where necessary. We also accept as true, Charging Party's factual allegations for purposes of reviewing the appropriateness of the ALJ's recommendation for summary dismissal.

Charging Party was discharged as an employee at Kent County airport for refusing to comply with a workplace directive issued by his supervisor. Charging Party alleged the dismissal was improper because the directive was given prior to his work start time. He claimed that the collective bargaining agreement protected him from having to comply with any workplace directive made during non-working hours. Respondent Union filed and processed a grievance challenging the termination; however, the Union decided to withdraw the grievance prior to arbitration. Charging Party objected and filed a charge against Respondent Union alleging a breach of duty for "fail[ing] to exercise . . . good faith, honesty" and displaying "arbitrary conduct" in handling his "unjust and unlawful termination". He also alleged that the Union "failed to administer the collective bargaining agreement". In his pleadings, oral argument and exceptions, Charging Party asserts that the Union inadequately investigated and processed his discharge grievance. He did not provide specific factual allegations to support his claim against the Union.

Discussion and Conclusions of Law:

Charging Party contends that the Union breached its duty of fair representation by not properly challenging his employment discharge for insubordinate conduct. A union's duty is to the membership overall and 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)), so long as its decisions are not arbitrary, biased, discriminatory or in bad faith. *Silbert v Lakeview Ed Ass'n*, 187 Mich App 21; 466 NW2d 333 (1991). A member's mere dissatisfaction with a union's efforts or ultimate decision not to pursue a grievance, alone, is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131, 134. Even upon a showing that a union reached a "wrong" decision due to a factual misinterpretation, there would be insufficient basis to sustain an unfair labor practice charge. *City of Detroit*, 1997 MERC Lab Op 31.

In this matter, we agree with the ALJ that Charging Party's pleadings and exceptions do not allege sufficient facts to support a claim that the Union breached its duty of fair representation in its handling of his discharge grievance. At best, the record reflects Charging Party's discontent with the Union's efforts. To prevail on a breach of duty of fair representation complaint, the allegations in a complaint must contain more than conclusory statements of improper representation by a union. *Martin v Shiawassee Co Bd of Comm'rs*, 109 Mich App 32, 35 (1981). Charging Party alleges that the Union failed to represent him by not adequately processing his grievance. However, nothing in the record reasonably supports a finding that the Union's decisions in processing the grievance were arbitrary, biased, discriminatory, or made in bad faith. Conversely, Respondent Union's submissions indicate that Charging Party's grievance was processed up to the arbitration stage, and then withdrawn for reasons it believed were meritorious. As such, this Commission will not evaluate whether the Union reached the right conclusion in deciding not to arbitrate the grievance. *City of Flint*, 1996 MERC Lab Op 1, 11.

We also reject Charging Party's contention that the Union breached its duty by failing to offer a better explanation for its rationale in not arbitrating the grievance. This Commission has consistently held that a union's failure to communicate with a member about a grievance, in itself, is not a breach of its duty of fair representation. *Eaton Rapids Ed Ass'n,* 2001 MERC Lab Op 131, 134. Further, a union does not breach its statutory duty merely from a delay in communicating its decision to withdraw a grievance, or from a delay in processing a grievance, unless the delay causes harm to the employee's rights. *Detroit Police Officers Ass'n,* 1999 MERC Lab Op 227, 230. Charging Party has made no reasonable showing in the record before us that a lack of communication by the Union harmed his grievance or barred his pursuit of any other plausible actions against the Employer. 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 must be summarily dismissed.

ORDER

The unfair labor practice charge against the Union is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
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:

INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS (UAW),
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APPEARANCES:

Georgi-Ann Bargamian, Esq., Associate General Counsel, International UAW, for the Respondent

Don Stewart, *in propria persona*

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

On June 2, 2009, Don Stewart filed the above charges against his collective bargaining representative, the International Union, United Automobile Workers (UAW), Local 2600, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, MCL 423.216. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules.

On June 11, 2009, I issued an order to Stewart to show cause why his charge against the Respondent should not be dismissed. I found that Stewart's charge against Respondent did not allege facts sufficient to support his allegation that Respondent violated its duty of fair representation toward him. On June 25, 2009, Stewart amended his charge in response to my order. On August 10, 2009, Respondent filed a motion for summary disposition and a request for oral argument on its motion. Stewart filed a response to the motion on August 27, 2009. On September 18, 2009, I held oral argument on the motion. Based on the facts as set forth in Stewart's pleadings and documents whose authenticity is not in dispute, and the arguments set forth in the pleadings and at oral argument, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Stewart was terminated by his employer, Kent County (the Employer), on January 7, 2009. On June 2, 2009, Stewart filed the instant charge. He also filed a charge against the Employer (Case No. C09 F-080), which remains pending. In his charge against the Employer, Stewart alleged that he was unlawfully terminated for exercising rights guaranteed him by the collective bargaining agreement. Stewart's charge against Respondent alleges that Respondent breached its duty of fair representation under Section 10(3) (a) of PERA by failing to enforce/administer the terms of its collective bargaining agreement. He also alleges that before, during, and after his termination, Respondent failed to exercise its discretion in good faith and honesty and engaged in arbitrary conduct. This conduct includes refusing, on or about March 16, 2009, to take his grievance to arbitration.

Facts:

Respondent attached to its motion for summary disposition: (1) a copy of Stewart's January 7, 2009 termination letter; (2) the collective bargaining agreement in effect at the time of Stewart's termination; (3) the Employer's policies and procedures manual containing rules of conduct applicable to all its employees; (4) a grievance filed on January 14, 2009 over Stewart's termination; (5) the Employer's February 3, 2009 response to Respondent's request for information relative to Stewart's discharge; (6) the Employer's February 13, 2009 answer denying Stewart's grievance at the third step of the grievance procedure; (7) Respondent's March 16, 2009 letter to Stewart explaining why it would not proceed to arbitration on his grievance; and (8) Stewart's internal appeal of Respondent's decision not to arbitrate. The authenticity of these documents is not in dispute.

Prior to his discharge, Stewart was employed as an equipment operator II in the Employer's department of aeronautics. His position was part of a bargaining unit represented by Respondent. In 2008, Section 9.2 of the collective bargaining agreement between Respondent and the Employer stated that "the normal work day shall be 8 hours, not including meal periods unless regularly scheduled." The agreement also provided that modification of the work day required at least one hours notice, "excluding a natural disaster or emergency periling life or limb."

In December 2008, Stewart's shift began at 11:45 am and ended at 8:15 pm. His immediate supervisor was Eric VanderStel. Stewart and VanderStel had a history of conflict dating back to at least 2005, when Stewart was terminated and then reinstated by order of an arbitrator. In his decision, the arbitrator in that case suggested that Stewart find a way to get along with management, including VanderStel.

At 11:30 am on December 11, 2008, fifteen minutes before the start of Stewart's shift, VanderStel ordered Stewart to attend a training class later that day. Stewart told VanderStel that he had already attended the class along with the rest of the department and that unless everyone else in the department was going again he would not attend. He said that VanderStel's actions were discriminatory and harassment. Stewart also told VanderStel that he was abusing his authority by issuing an order before Stewart was "on the clock," and that he was within his rights

to ignore the order. Stewart punched in and began work as usual. VanderStel did not repeat his order to Stewart to attend the training class. In fact, the two men did not talk for the rest of Stewart's shift. Although the training session was held, Stewart did not attend.

At 11:35 am on December 12, ten minutes before the start of Stewart's shift, VanderStel ordered Stewart not to leave the building unless he gave him permission. Stewart responded that VanderStel was harassing him and that he had rights and would use them as he saw fit. It is not clear whether Stewart in fact left the building on that day.

On December 15, Stewart showed up for work at his normal time. Before he punched in, he received a phone call from his wife stating that she was having car trouble. Stewart telephoned Respondent chief steward Mike Gatens. He told Gatens that VanderStel had been giving him orders before the start of his shift, and that this violated the contract provision dealing with the length of the workday. Gatens made no comment. He also asked Gatens what the contract restrictions were regarding taking a personal leave day. Gatens told him that the contract had no restrictions on how this day could be used. Gatens said that the Employer had taken the position that an employee had to get approval to use a personal day, but that Respondent did not agree. By the time Stewart got off the phone with Gatens, his shift had started but he had still not punched in. Stewart concluded that since he had not punched in, he did not need permission to leave the building. He told VanderStel he was leaving and left for home.

On December 16, Stewart was ordered to attend an investigatory interview conducted by facilities management director Thomas Eckland. Gatens accompanied Stewart to this interview. Stewart was asked about the events of December 11, including whether he had attended the training class and/or entered the training room, whether he had told VanderStel that he could not give Stewart an order, and whether he had pointed his finger at VanderStel during the conversation. Gatens remained largely silent throughout the interview. He did not ask Ecklands whether VanderStel had given Stewart an order before he punched in or say anything about Section 9.2 of the collective bargaining agreement.

At 11:41 am on December 17, VanderStel told Stewart to attend the same training class to be held later that day. About a half hour later, another employee told Stewart that VanderStel wanted to see him outside. When Stewart arrived, VanderStel told Stewart that he had to respect him and follow his orders. Stewart replied that VanderStel could not demand respect, that it had to be earned, and that VanderStel would never earn Stewart's respect. Stewart also told VanderStel that if he had not repeated his order to attend class on "county time," Stewart would not have gone. Stewart, however, said that he would now comply with the order. After this conversation, Stewart went to the class.

On January 7, 2009, Stewart was told to report to the office of department executive director James Koslosky. In the presence of Eckland and Gatens, Koslosky read out a series of charges against Stewart. The charges did not mention that VanderStel had given Stewart orders before Stewart's shift began. Stewart attempted to speak but was not allowed to, and Gatens did not speak. Gatens and Stewart were told to leave the room. Fifteen minutes later they were called back, and Stewart was told that his employment was terminated.

Koslosky sent Stewart, by certified mail, a five page letter dated January 7 detailing the charges against him and the Employer's findings. The letter stated that Stewart had been terminated for the following violations of the Employer's rules of conduct: (1) insubordination; (2) actions which might jeopardize the safety of employees or members of the public; (3) failure to follow safety rules and regulations; (4) failure to report an accident, injury to person, or damages to equipment facilities, fixtures or furnishings; (5) leaving the assigned work area before the end of the shift without prior permission of a supervisor; and (6) failure to properly and satisfactorily perform job functions. The letter asserted that the Employer's investigation had disclosed the following:

> 1. On December 9, 2008, Stewart cursed at VanderStel after VanderStel told him to stop using profanity on an open radio frequency. Stewart then ignored VanderStel's order to calm down before going out on the airfield, and immediately began plowing snow.
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> 2. On December 10, 2008, Stewart, while driving his plow, hit a parked, loaded, sanding truck with enough force to move the sander several feet. This was Stewart's third accident/injury incident in three months. In September 2008, Stewart was injured when he failed to follow safety procedures when working near a front-end loader. On December 4, 2008, Stewart parked his truck in the path of a moving bulldozer, resulting in damage to his vehicle.
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> 3. On December 11, VanderStel questioned Stewart about the December 10 accident. Stewart denied hitting the sander; he said, in a sarcastic tone, that he might have been operating the plow when it hit the sander, but that he did not hit it. VanderStel then told Stewart to prepare an accident report relating to the incident. Stewart refused, stating that there was no accident because there was no damage, and threw the blank report form on the ground.
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> 4. On December 11, VanderStel assigned Stewart to attend a group safety training session scheduled for that afternoon. Stewart told VanderStel that he was not going to go since he had previously attended a training session. VanderStel then told Stewart that he was giving him a "direct order" to attend the training, whereupon Stewart replied that VanderStel could not give him a direct order because "this ain't the military."
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> 5. Stewart briefly entered the training room on December 11, but did not remain. At his December 16 investigatory interview, Stewart denied entering the training room and also falsely maintained that the instructor had told him that he did not have to attend.
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> 6. On December 12, VanderStel told Stewart that he could not return to working on the airport runway since he had not attended the safety training. He ordered him to assist another employee working in the garage. Stewart replied that he had "free will" and "rights" and that VanderStel could not order him to remain inside the building.

> 7. On the morning of December 15, VanderStel told Stewart to attend the group safety training session scheduled for that day. Stewart initially argued with VanderStel, but finally said that he would attend the session but use the time to sleep. Sometime after 12:00 pm, VanderStel told Stewart to wash his truck before the training session began at 1:30. Stewart refused, stating that the last person who had used the truck should clean it. Stewart pointed his finger in VanderStel's face and walked away. Shortly thereafter, Stewart returned and told VanderStel that he had an issue at home and was taking a personal day. VanderStel stated that Stewart did not have permission to leave, and told him to attend the training session. Stewart left, although he returned and punched in again at approximately 7:30 pm that evening. A separate training session for Stewart was then set up for December 17. Stewart attended that session.

Koslosky's letter terminating Stewart included the following paragraph:

> I have concluded that each of your insubordinate acts, as well as the totality of your abusive, disrespectful and defiant remarks to your supervisor, warrant your termination. While this result might logically apply to any employment setting, this conclusion is particularly warranted in light of your position at the Airport and your shared responsibility for ensuring the safety of the thousands who daily fly in and our of our facility. Inappropriate actions motivated by anger, defiance or negligence can clearly result in a level of extreme and unacceptable tragedy. It is apparent, particularly in light of your long history of disciplinary action which has failed to correct your defiant failure to accept the authority of your management that you refuse to consistently comport yourself appropriately and cannot be trusted to follow legitimate orders, even when they relate to safety concerns.

On January 9, 2009, Stewart spoke briefly to Respondent steward Melanie Allen about filing a grievance asserting that VanderStel had violated the contract by attempting to give Stewart orders outside of the normal workday. Stewart also left voice messages for International UAW Region 1-D representative Brian Bosak, but Bosak did not return his call. On January 14, Stewart, with Allen's assistance, filed a grievance over his termination. In the grievance,Stewart denied that he had refused to carry out any lawful directives, had committed any safety violations, failed to report any accident, or left his assigned work area.

At Respondent's regular January membership meeting, Stewart asked Virginia Smith, Respondent's unit chairperson, about his grievance. Smith admitted that she had not read his grievance or taken any action. However, in late January, Respondent asked the Employer for some information related to Stewart's grievance, including Stewart's time cards for the period December 8 through December 22. The grievance was processed through the grievance procedure and denied by the Employer at the third step on February 13.

On March 3, 2009, Stewart met with Gatens, Smith, Bosak and Local 2600 president Pat Dejong. Stewart described the meeting as follows:

> From the outset I knew that these people had their heads in the sand and did not have a clue where to begin. In fact, Bosak admitted he had not read the termination letter. There were no comments about the grievance Allen and I had put together. A grand total of 91 days had lapsed since I made the union aware of my effort to enforce the contract's eight hour work day clause and .. [they had] done nothing. Despite the proof and evidence I gave the union in support of my position and mitigate the county's [sic], Bosak declared my material was of no merit, that there was no violation of the contract.

On March 16, 2009, Stewart received a certified letter from Bosak stating that Respondent would not proceed further with his grievance. Bosak stated that under the collective bargaining agreement, the Employer had the right to establish rules of conduct. He said the Employer also had the right to discharge for just cause, including moving immediately to discharge without progressive discipline if warranted. Bosak noted that although the Employer had accused Stewart of six rule violations, the majority of the incidents related to alleged insubordination. Bosak explained to Stewart that the "obey now, grieve later" rule generally governed arbitral decisions involving insubordination. He said that the exceptions to this rule were orders involving illegal, unethical or immoral conduct; orders that would place the employee or others in imminent danger of harm; and orders causing the employee to suffer immediate, substantial and irremediable harm. Bosak stated that VanderStel's directive to attend a training session did not fall into this category. He said that Stewart's refusal to attend the training session, even if he had attended one before, could clearly be construed as insubordination. He also said that Stewart's admitted refusal to fill out an accident form when directed to do so could be considered insubordination even if employees were not required to fill out accident forms when there was no vehicle damage. Answering Stewart's argument about the length of the workday, Bosak told Stewart that a supervisor has a legitimate expectation that an employee will follow his directives, even if they are given just prior to the employee clocking in. Bosak also stated that other actions by Stewart which could be construed as disrespectful might also be held by an arbitrator to constitute insubordination. Bosak said that Stewart's remark about not hitting the sander, which Stewart had admitted making, might fall into this category.

Discussion and Conclusions of Law:

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 its discretion in complete good faith and honesty; and (3) avoid arbitrary conduct. *Goolsby v Detroit*, 419 Mich 651, 661(1984); *American Ass'n of Univ Profs, Northern Michigan Univ Chapter*, 17 MPER 57 (2004). The *Goolsby* Court, at 679, defined "bad faith" conduct as "an intentional act or omission undertaken dishonestly or fraudulently," and "arbitrary" conduct as "impulsive, irrational or unreasoned conduct, or inept conduct undertaken with little care or with indifference to the interests of those affected." See also *Grand Haven Bd of Light and Power,* 18 MPER 80 (2005).

Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and is 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; *Michigan State Univ. Admin-Professional Ass'n, MEA/NEA*, 20 MPER 45 (2007); *City of Lansing*, 21 MPER 8 (2008) It is well settled that an individual union member does not have the right to demand that the union pursue his grievance to arbitration. *Michigan State Univ Administrative Professional Ass'n, supra.* Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe*, supra. A union's decision not to proceed with a grievance is not arbitrary 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. A member's dissatisfaction with his union's efforts or ultimate decision not to pursue a grievance does not constitute a breach of the duty of fair representation. *AFSCME Council 25*, 22 MPER 87 (2009).

Here, Stewart alleges that Respondent chief steward Mike Gatens breached Respondent's duty of fair representation by failing to put a stop to VanderStel's allegedly illegitimate directives before Stewart was terminated. He also complains that Gatens failed to defend his conduct during his December 16 investigatory interview. Stewart alleges that Respondent acted in bad faith. However, he did not assert any facts which would support a finding that Gatens acted dishonestly, fraudulently, or from motives unrelated to his opinion of the merits of Stewart's claim. Stewart did not ask Gatens to file a grievance over VanderStel's allegedly unlawful directives. He also did not ask Gatens for advice on the question of whether he had a contractual right to refuse to obey an order issued before the start of his shift. Gatens never told Stewart that he agreed with Stewart's interpretation of the contract or that he believed that Stewart acted justifiably. A union's duty of fair representation does not compel its representatives to agree with an individual member's interpretation of the contract or actions or to argue positions with which they do not agree

After Stewart was terminated, Respondent's representatives assisted him in filing a grievance, requested and received information relating to the facts, and processed the grievance through the third step of the grievance procedure. On March 16, 2009, Respondent sent Stewart a letter explaining in great detail its reasons for concluding that Stewart's grievance was not likely to be successful before an arbitrator. Stewart disagrees with many of the "facts" stated in his termination letter. However, in concluding that Stewart's grievance would not be successful, Respondent relied only on statements which Stewart admitted making. I find that Respondent did not handle Stewart's grievance in a manner demonstrating indifference to his interests. Stewart does not agree with the reasons Respondent gave for refusing to arbitrate his grievance. However, I find that Respondent's exercised its discretion as required by its duty of fair representation and that its decision was not so far outside the range of reasonableness as to be considered irrational. I also find no evidence of bad faith in Respondent's processing of Stewart's grievance or in its decision not to proceed to arbitration. I conclude that there is no material issue of fact in this case and that Respondent is entitled to dismissal of the charge as a matter of law. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
State Office of Administrative Hearings and Rules
Administrative Law Judge

Dated: _____