STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TECHNICAL, PROFESSIONAL & OFFICE WORKERS ASSOCIATION OF MICHIGAN,
Public Employer - Respondent,

Case No. CU10 F-021

- and -

ALEX KRENTZIN,
An Individual Charging Party.
_____/

APPEARANCES:

Frank A. Guido, General Counsel, for Respondent

Pitt McGhee Palmer Rivers & Golden, by Joseph A. Golden, for Charging Party

DECISION AND ORDER

On February 11, 2011, Administrative Law Judge David M. Peltz issued a 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

_____
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:

Case No. CU10 F-021

TECHNICAL, PROFESSIONAL AND OFFICEWORKERS ASSOCIATION OF MICHIGAN,
Respondent-Labor Organization,

-and-

ALEX KRENTZIN,
An Individual Charging Party.
_____/

APPEARANCES:

Douglas M. Gutscher for Respondent

Maureen M. Crane for Charging Party

DECISION AND RECOMMENDED ORDER 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, acting on behalf of the Michigan Employment Relations Commission (MERC). Based on the pleadings and the transcript of the oral argument held on January 6, 2011, I make the following findings of fact and conclusions of law.

This case arises from unfair labor practice charges originally filed on June 16, 2010 by Alex Krentzin against his employer, the City of Madison Heights, and his labor organization, the Technical Professional and Officeworkers Association of Michigan (hereinafter "TPOAM" or "the Union"). The charges allege that the City acted unlawfully by eliminating Krentzin's position while, at the same time, retaining several part-time employees, and that the Union violated PERA by failing to take appropriate action on his behalf to remedy a purported breach of the collective bargaining agreement between the City and the TPOAM.

In an order issued on July 8, 2010, Krentzin was directed to show cause why the charges should not be dismissed for failure to state claims under PERA. Krentzin filed a response to the order to show cause on July 8, 2010, as well as an amended charge against the Union. At the same time, Krentzin withdrew his charge against the City of Madison Heights. On August 11, 2010, I

issued an order requiring the TPOAM to respond to the assertions set forth by Krentzin in the new pleadings. The Union filed its response on August 25, 2010. Thereafter, I issued an order setting the case for oral argument.

Oral argument was held on January 6, 2011. After considering the extensive arguments made by counsel for both parties on the record, I concluded that there were no legitimate issues of material fact and that a decision on summary disposition was appropriate pursuant to Commission Rule R 423.165 (1). See also *Detroit Public Schools*, 22 MPER 19 (2009) and *Oakland County and Oakland County Sheriff v Oakland County Deputy Sheriffs Assoc*, 282 Mich App 266 (2009). Accordingly, I rendered a bench decision, finding that Charging Party had failed to state a valid claim under PERA for breach of the duty of fair representation. The substantive portion of my findings of fact and conclusions of law are set forth below:

> JUDGE PELTZ: Now, for purposes of summary disposition, I am, as required, accepting all well-pled facts of the Charging Party as true, and that would include the factual assertions made by the Charging Party here today, but briefly I do want to go through the factual background in this case as asserted by the Charging Party. [T]he Union has indicated it does not believe there are any material facts in dispute in this matter.
>
> The case stems from a decision to layoff the Charging Party. Mr. Krentzin was a full-time youth services librarian and member of the Respondent's bargaining unit. The contract between the Union and the employer, the City of Madison Heights, contained a provision dealing with layoffs, . . . Article XIV-B of the contract. Specifically (h) of that article states, "Part-time, temporary and probationary employees of a given job classification or occupational group shall be laid off first before bargaining unit members in that same classification or group."
>
> On March 10th of 2010, Mr. Krentzin learned that his position was being targeted for elimination as part of budget reductions for the new fiscal year, while part-time positions in the library were to be retained. Upon learning of the city's intentions, Mr. Krentzin contacted the Union and sought to have them become involved to enforce the contract provision, which I previously mentioned, (h) of Article XIV-B. Specifically on March 10th, Mr. Krentzin asked the Union steward about that provision and why it should protect [his] job, and the Union responded by e-mail that it was prepared to take action to prevent the elimination of Mr. Krentzin's position before the elimination of the part-time positions. On April 14th of 2010 the steward conveyed to Charging Party that the union would be filing a grievance. Similar assertions were made by the . . . union steward the following week.
>
> On April 29th of 2010, Charging Party again wrote to the steward requesting that a grievance be filed. It appeared his layoff was imminent and that same day the Union informed . . . Charging Party that it could not file a grievance until the actual layoffs had occurred. There were additional communications between Charging Party and the Union.

[On] May 10th of 2010, the city voted to approve the budget, which included eliminating the Charging Party's position. The staffing plan . . . allowed for the [continued] employment of three part-time employees of the library. Those three positions were . . . community service librarian, adult reference librarian and youth service assistant. [Two] of the positions required a Master's Degree in Library Science.

The Charging Party has alleged, and I'm accepting as true, that . . . although there were some different duties, . . . many job functions [performed by the retained part-time employees] were essentially interchangeable [with those duties previously performed by Charging Party], including the handling of adult and children's books, opening and closing of the library, answering the phone, putting books on shelves, duties of that nature. . . .

On May 11th 2010, the Charging Party again went to the Union steward to ask about the filing of a grievance, and on May 14th, Charging Party received written notification of his layoff, effective June 30th of 2010. Charging Party then submitted his own grievance based on his understanding that one must be filed in order to be timely and the Union had not done so as of that point. The grievance asserted . . . a violation of Article XIV-B(h) of the Collective Bargaining Agreement.

On May 21st of 2010, the Union's business agent sent a letter to the city opposing the budget plans and the city's intent to terminate the employment of the full-time bargaining unit employees before part-time employees were released. On May 26th of 2010, the city denied the Charging Party's grievance. The city asserted that [one of the retained part-time positions]. . . the youth services assistant . . . is not in the same job classification or occupational group as Mr. Krentzin's position because that position did not require a Master's Degree. The city also asserted that [the positions were different] because of U.S. Census Bureau and EEOC guidelines.

On June 3rd, 2010 Charging Party requested that the Union submit a demand for arbitration of his grievance and thereafter the Union notified Charging Party that it would not arbitrate the layoff grievance. Its rationale was that the city's . . . response [to the Krentzin grievance] was consistent with the contract. Charging Party then submitted a demand to arbitrate [the grievance] himself on June 4th. Thereafter, both the city and the Union took the position that an individual employee had no standing to submit a demand for arbitration. Charging Party then filed the unfair labor practice charge which is the subject of today's hearing.

That concludes the facts which I take to be true for purposes of the Order to Show Cause. I'll now continue with the discussion and conclusions of law.

* * *

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. See *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries the 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).

Because the union's ultimate duty is toward the membership as a whole, the union may consider such factors as the burden on the contractual machinery, the cost and the likelihood of success in arbitration. *Lowe*. To this end a union is not required to follow the dictates of the individual grievant, but rather it may investigate and present the case in the manner it determines to be best. See for example *Detroit Police Lieutenants and Sergeants*, 1993 MERC Lab Op 729. The fact that an individual member is dissatisfied with the union's efforts or the ultimate decision is insufficient to constitute a breach of the duty of fair representation. See for example *Eaton Rapids Education Association*, 2000 MERC Lab Op 131. The Commission has steadfastly refused to interject itself in judgment over agreements made by employers and collective bargaining representatives despite frequent challenge by disgruntled employees. *City of Flint*, 1996 MERC Lab Op 1.

To prevail on a claim of unfair representation, the 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 (1995) and *Knoke v East Jackson School District*, 201 Mich App 480 (1993).

Now, in the instant case, Charging Party does not allege the Union acted in bad faith or for discriminatory purposes or out of a discriminatory intent or with any improper motive. Thus, this case solely turns on the third factor, whether the union's conduct was arbitrary. Arbitrary conduct has been held to include: (a) impulsive, irrational or unreasoned conduct; (b) inept conduct undertaken with little care or with indifference to the interest of those affected; (c) the failure to exercise discretion; [or] (d) extreme recklessness or gross negligence. See for example *Goolsby* at 679; *Detroit Firefighters Association*, 1995 MERC Lab Op 633. [T]he union satisfies its duty of fair representation . . . as long as its decision was within the range of reasonableness. *Airline Pilots Ass'n Int'l v O'Neill*, 499 US 65 (1991) and *City of Detroit Fire Department*, 1997 MERC Lab Op 31.

In the instant case, the Union made the determination . . . that the contract clause in question, namely Article XIV-B (h), did not apply in this situation or . . . it agreed with the employer's interpretation on that point based on the fact that the provision . . . [by its own terms applies] only when the [part-time] employees were in the same classification and group [as the full-time employees]. [T]he Union determined it would not take . . . additional action in this matter or any action in this matter because Mr. Krentzin was in a different classification or group than the part-time employees. [A]lthough Charging Party disagrees with the Union's refusal to

process this grievance to arbitration, he has asserted no facts which would establish [that] the Union acted unlawfully in making that determination.

First, on its face, [Krentzin's former position and the jobs held by the part-time employees] have different titles. While I accept as true for purposes of today's hearing that there is [some] overlap in duties, even in describing that overlap today and in making . . . his assertion, the Charging Party has acknowledged that the . . . positions were not, in fact, identical. The Charging Party . . . admitted that the duties are, and this is a quote, "somewhat" different than the others" . . . Charging Party also indicated that the duties were "somewhat interchangeable", and again, that there are different levels of compensation, different hourly pay for the positions, and Charging Party has conceded that there is, with respect to at least one of the part-time positions, a different educational requirement. Given all of that, I can see no basis upon which to conclude that the Union's decision in this case would constitute arbitrary conduct under the Commission's definition of that term.

While it's certainly possible that, as Charging Party has asserted vehemently today, that it is unfair to draw that narrow of a line or boundary in determining what is a classification or group, clearly there is some question as to that point. How do you define [the contractual phrase] "classification and group." [W]hile the Charging Party's position is reasonable in that you could interpret that clause broadly, I think it is just as reasonable that the provision would be interpreted in a more narrow sense by job title, by compensation, and by an overall comparison of duties.

I don't think Charging Party has established or set forth any facts which, if true, would establish that there was, in fact, a breach of contract here. This is the type of question that an arbitrator could come out either way on, and it's not the role of the commission to stand in the shoes of the Union and to second-guess its determination as to whether to take such an issue [to arbitration] under these circumstances.

I've carefully considered the other arguments made by the Charging Party in this case, including [his] reference to what [he] characterizes as contradictory positions taken by the Union. [T]here is not, based on the facts as asserted, any viable PERA claim based on the fact that the Union initially indicated to Charging Party that it would file a grievance or take action based on that contract provision. Both parties agree that Charging Party was, under the contract, able to file his own grievance, and he did so. He got an answer from the employer and the case ultimately boils down to the Union's decision not to proceed to arbitration based on that answer, and again, there is no indication that [the Union's] decision was arbitrary, impulsive, irrational, inept, grossly negligent [or] reckless. . . s.1

1 The transcript excerpt reproduced herein contains typographical corrections and other minor edits for clarity purposes. The completed unedited transcript is maintained within the Commission case file.

Based on the findings of fact and conclusions of law set forth above, I issue the following recommended order:

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: _____