STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1583,
Labor Organization-Respondent,

Case No. CU10 L-048

-and-

TYEISHA S. EDWARDS,
An Individual- Charging Party.
_____/

APPEARANCES:

Aina Watkins, Michigan AFSCME Council 25, for Respondent

Tyeisha S. Edwards, *In Propria Persona*

DECISION AND ORDER

On March 11, 2011, Administrative Law Judge Julia C. Stern 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
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

AFSCME LOCAL 1583,
Labor Organization-Respondent,

Case No. CU10 L-048

-and-

TYEISHA S. EDWARDS
An Individual-Charging Party.
_____/

APPEARANCES:

Tyeisha S. Edwards, appearing for herself

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On December 27, 2010, Tyeisha S. Edwards filed the above charge with the Michigan Employment Relations Commission (the Commission) against AFSCME Local 1583 pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. 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 January 13, 2011, I issued an order directing Edwards to show cause why her charge should not be dismissed without a hearing because it failed to allege facts stating a claim under PERA. On January 24, 2011, Edwards filed a timely response to my order. Based upon the facts set forth in Edwards' charge and response to the order to show cause, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Edwards was terminated by the University of Michigan (the Employer) from her custodial position on July 15, 2010. [1] The Employer's custodians are represented by Respondent. Edwards alleges that Respondent violated its duty of fair representation under PERA by failing to vigorously pursue a grievance to get her job back and by failing to keep her informed about the status of a grievance filed over her termination.

Facts:

[1] Edwards' surname at this time was Brown.

Edwards was hired by the Employer as a temporary custodian on April 5, 2010. Temporary employees are excluded from Respondent's bargaining unit. The collective bargaining agreement between the Employer and Respondent states that unless the employee is filling in for a permanent employee on approved leave, temporary employment is not to exceed 90 calendar days. When Edwards was hired, she was told that her position was strictly a 90-day temporary position and that she would be terminated after her 89th day.

Edwards was assigned to a custodial position recently vacated by a retiring employee. Sometime during the week of July 6, 2010, Edwards was told by a supervisor that the position she was filling should have been filled by a permanent employee and not given to a temporary worker. However, nothing was said to Edwards about her employment ending until she reported to work on July 15. That morning, Edwards was called into her supervisor's office and told that the supervisor had received an email stating that Edwards had worked over 90 days and was to be terminated immediately.

Edwards knew of other temporary employees who had become permanent after working over 90 days, and believed that since she had worked beyond the period of temporary employment she should be considered a permanent employee. She contacted Respondent for assistance in returning to work. On July 16, she left a voicemail for Angela Dameron, Respondent's local bargaining chairperson. Edwards explained the circumstances of her termination, including that she had worked more than 90 days. On July 23, Dameron phoned Edwards and told her that the Employer would not hire her as a permanent employee. Dameron also told Edwards that "the University did not owe her a job," and that the Employer was not required to make her a permanent employee just because she had worked more than 90 days. She also said that all the Employer was required to do was to pay Edwards for the personal leave time (PTO) she had accrued. Edwards was surprised by the latter statement because, as a temporary employee, she had not been accruing personal leave.

On July 29, Edwards received a check from the Employer compensating her for accrued personal leave time. Edwards questioned the amount. On August 10, she received an email from Employer representative Sabrina Owens explaining the Employer's calculations. The email had an attachment titled "PTO payout due to working over 90 days."

On August 18, Edwards was copied on an email from Owens to Dameron. The email stated that it was a formal response to the grievance Dameron had filed on Edwards' behalf. Owens said that it would be improper to address Edwards' issue in a grievance hearing since, as a temporary employee, she was not a member of Respondent's bargaining unit. Owens also stated that as Edwards had worked more than 90 days and was not filling in for an employee on leave, per the collective bargaining agreement she was entitled to be compensated for 46.5 hours of personal leave time. The email concluded with this paragraph:

> The Union's remedy is for the University to "place Tyeisha Brown in the bargaining unit and make her whole for all lost wages and benefits." Article 2, Management Rights gives the University the authority to determine the size and make-up of its workforce. Additionally, we have the right (among other things) to

> hire and release whomever we want, based on the individual needs of our departments. Ms. Brown was hired to fill a temporary need and her appointment ended. Due to the fact that it exceeded the 90 days allowed by the contract, she was appropriately compensated. We owe her no more than that.

On August 21, Edwards sent Dameron an email asking about Owens' grievance response. She told Dameron that she had not been aware that Dameron had filed a grievance. Edwards again asked Dameron to help get her job back. Edwards pointed out that Owens had admitted in her email that Edwards had worked more than 90 days and that she was not filling in for an employee on a leave of absence.

Dameron replied to Edwards in an email on August 22. She told Edwards that the collective bargaining agreement said that if the Employer worked a temporary employee more than 90 days, it was only obligated to pay them accrued personal leave time. She explained that some departments brought temporary employees who worked more than 90 days into the bargaining unit, but that the contract did not give the Union the right to demand that this be done. Dameron confirmed that she had filed a grievance on Edwards' behalf and told Edwards that if AFSCME's arbitration department decided to take her case she would be notified.

On September 9, Edwards contacted AFSCME's arbitration department about her grievance, but was told that it had not arrived there. Eventually, Edwards spoke to AFSCME staff representative Sarah George about the grievance. George told her, "Keep trucking because we cannot help you get your job back." Edwards made several subsequent calls to the arbitration department ask about the grievance, but was told each time that there was no update on its status.

Discussion and Conclusions of Law:

A union representing public employees in Michigan owes these employees a duty of fair representation under Section 10(3) (a) (i) of PERA. The union's legal duty 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. *Goolsby v Detroit*, 419 Mich 651, 679 (1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131,134. A union breaches its duty of fair representation when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. *Silbert v Lakeview Ed Ass'n*, 187 Mich App 21, 25 (1991); *Vaca v Sipes*, 386 US 171, 177 (1967).

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); *Int'l Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. An individual employee does not have the right to have a grievance taken to arbitration, even when the grievance may have arguable merit under the terms of the applicable collective bargaining agreement. *Silbert*, at 25-26. Because the union's ultimate duty is toward the membership as a whole, in deciding how far to press a grievance, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe*, at 146-147.

In *Goolsby,* at 679, the Michigan Supreme Court described "arbitrary" conduct as conduct by a union "which is impulsive, irrational, or unreasoned, or inept conduct undertaken with little care or with indifference to the interests of those affected." In *Goolsby,* a union violated its duty to avoid arbitrary conduct when, after deciding that several grievances had merit, it failed to process them to the next step because it had lost track of them. However, a union's decision not to proceed to arbitration with 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. The fact that an individual member is dissatisfied with the union's efforts or its ultimate decision is insufficient to demonstrate a breach of the duty of fair representation. *Eaton Rapids,* at 137.

Edwards asserts that Dameron violated Respondent's duty of fair representation because she "did not do all she could do to avoid arbitrary conduct," "did not fight for me in good faith and honesty," "did not make an effort to try to get my job that the U of M owed me," and "immediately took the U of M side." Edwards also alleges that Dameron was hostile to her. However, she does not assert that Dameron had reasons unrelated to the grievance's merits for failing to argue it more vigorously. As discussed above, a union's duty of fair representation does not require it to pursue every grievance. A union does not violate its duty to avoid arbitrary conduct by failing to pursue a grievance vigorously after making a reasoned decision that the grievance is not likely to be successful. In this case, Dameron told Edwards, during their first conversation, that the collective bargaining agreement did not require the Employer to make her a permanent employee because she had worked more than 90 days. On August 22, after the Employer had denied the grievance, Dameron told Edwards that she would forward the grievance to AFSCME's arbitration department, but explained again why she believed that Respondent could not force the Employer to make her a permanent employee. The facts as asserted by Edwards indicate that Dameron made a reasoned decision, based on her interpretation of the contract provision(s) governing temporary employment, that Edwards' grievance did not have merit. Although Edwards disagrees with Dameron's reading of the contract, the facts do not support a finding that Dameron violated Respondent's duty of fair representation by her handling of Edwards' grievance.

Edwards also complains that Respondent told her hardly anything about her case, did not provide her with a copy of the grievance, and refuses to give her any information about the current status of her grievance. However, the Commission has held that a union's failure or delay in communicating to a member that his or her grievance is no longer being processed is not a breach of the duty of fair representation unless that delay or failure results in some actual harm to the member. *Detroit Police Officers Assoc*, 1999 MERC Lab Op 227,230. See also *Wayne Co Sheriff Dept*, 1998 MERC Lab Op 101 (no exceptions), and *Detroit Assoc of Educational Office Employees*, 1997 MERC Lab Op 475 (no exceptions).

I find that Edwards has not alleged facts to support her claim that Respondent violated its duty of fair representation. I conclude, therefore, that her charge fails to state a claim upon which relief can be granted under PERA and I recommend that the Commission issue the following order

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Date: _____