STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C10 D-100

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 345,
Labor Organization-Respondent in Case No. CU10 D-017

-and-

ALONZO LEDBETTER,
An Individual- Charging Party.
_____/

APPEARANCES:

Daryl Adams and Kelly Johnson for Respondent Employer

Cassandra Harmon-Higgins for Respondent Labor Organization

Alonzo Ledbetter, *In Propria Persona*

DECISION AND ORDER

On May 3, 2011, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents 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
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C10 D-100,

-and-

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 25
LOCAL 345,
Respondent-Labor Organization in Case No. CU10 D-017,

-and-

ALONZO LEDBETTER,
An Individual Charging Party.
_____/

APPEARANCES:

Daryl Adams and Kelly Johnson for the Public Employer

Cassandra Harmon-Higgins for the Labor Organization

Alonzo Ledbetter appearing on his own behalf

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 Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission. Based on the pleadings and the transcript of the oral argument which commenced on August 27, 2010 and continued on February 23, 2011, I make the following findings of fact and conclusions of law.

This case arises from unfair labor practice charges filed on April 23, 2010 by Alonzo Ledbetter against his employer, Detroit Public Schools and his labor organization, American Federation of State, County and Municipal Employees, Council 25, Local 345 (hereinafter "AFSCME" or "the Union"). The charges allege that Ledbetter was wrongfully laid off from his

position as an assistant custodian with the school district on or about April 5, 2010, and that the Union failed to take appropriate action on his behalf to challenge the layoff. Ledbetter asserts that his seniority should have been calculated from when he was initially hired by the school district in 1979 as opposed to the date he was rehired by the Employer in 2006.

In an order issued on May 13, 2010, Ledbetter was directed to show cause why the charges should not be dismissed on summary disposition. Ledbetter filed a response to the order to show cause on June 4, 2010. The parties appeared for oral argument before the undersigned on August 27, 2010, at the conclusion of which I determined that the charge against the Employer in Case No. C10 D-100 failed to state a claim for which relief could be granted under PERA. Further proceedings pertaining to the charge against the Union were adjourned pending resolution of a related grievance. On July 23, 2010, the Union filed a motion to dismiss the charge in Case No. CU10 D-017. Ledbetter filed a response to the motion on July 26, 2010.

Oral argument was continued on February 23, 2011. After considering the extensive arguments made by the 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 as to either Respondent. The substantive portion of my findings of fact and conclusions of law are set forth below:

> The Charging Party, Mr. Ledbetter, was hired by the Detroit Public Schools in 1979 as an assistant custodian. He continued to work for the School District in that position until 1985, when he was promoted to a position outside of [the] Local 345 bargaining unit. [H]e remained in that . . . non-unit position until 2005, when he was laid off. The following year, in 2006, the Charging Party was rehired as an assistant custodian and he held this position until the layoff which is the subject matter of this dispute in April of 2010. At or around the same time that Mr. Ledbetter was laid off, there were some 30 others similarly situated who were also laid off at the time.
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> At the time of Mr. Ledbetter's layoff, the collective bargaining agreement between the District and AFSCME had expired, but continued to be in effect on a day-to-day basis. That contract had been dated January of 2000 to December 31st of 2003. And that contract included a provision, Article XX, which the Charging Party relies on in his charge [and which] reads:
>
> > If for any reason an employee is transferred or promoted to a position not included in the unit, and is therefore transferred back to a position within the bargaining unit, he/she, shall return to the bargaining unit with full seniority rights and full benefits, including the seniority he/she should have accumulated had he slash she not been transferred out of the bargaining unit.

* * *

After Charging Party was laid off, the parties reached a new contract, which was retroactive and covered the period January 1st of 2004 through December 31st, 2013. That new contract . . . did not include Article XX as [it] had been in the prior contract. There was no [longer any] such provision [in the agreement].

* * *

Charging Party requested of the Union president, Mr. Keith January, that he file a grievance concerning his layoff, relying on Article XX of the contract. Charging Party was told that [Article XX] did not apply, and [therefore] the Union did not file a grievance on that basis. However, there was a grievance filed in which the Union requested that the 31 custodians laid off in April be returned to work.

Charging Party remained on layoff through July 1st of 2010 when he retired. Subsequent to his retirement, there was a resolution of the grievance concerning the layoffs, however, that grievance resolution did not include any type of remedy [applicable to] Mr. Ledbetter specifically, by means of a return to work or backpay or anything of that nature.

I am also going to assume as true for purposes of the motion, or order to show cause, that if Article XX still applied, and was still in effect, assuming it is still in effect, and even assuming that it means what Charging Party says it means, that Charging Party would, in fact, have some approximately 30 years seniority with the District. I'm not finding that that's what those provisions mean. I'm saying that if I were to agree with Charging Party's interpretation of that provision and its effectiveness, then, in fact, Charging Party would have some 30 years of seniority with the District. And that concludes the findings of facts.

Now, with respect to the discussion and conclusions of law. First, let's start with the School District. As I indicated last time, accepting all of Charging Party's allegations as true, dismissal of the charge against the School District is warranted for failure to state a claim under PERA.

The Act does not prohibit all types of discrimination or unfair treatment by a Public Employer, nor does PERA provide a remedy for an Employer's breach of a collective bargaining agreement. Rather, the Commission's jurisdiction with respect to public employers is limited to determining whether the Employer interfered with, restrained and/or coerced a public employee with respect to his or the right to engage in Union or other protected, concerted activities.

[B]ased on the charge and Charging Party's [oral] argument, there . . . is no factual basis which would support a finding that Mr. Ledbetter engaged in

Union activities for which he was subject to discrimination or retaliation in violation of the Act. Absent such an allegation, the Commission is foreclosed from making a judgment on the merits or fairness of the Employer's action. [T]herefore, dismissal of the charge against the Employer in Case No. C10 D-100 is warranted.

Similarly, the charge against the Union must also be dismissed for failure to state a claim under the act. 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 towards any; (2) to exercise its discretion in complete good faith and honesty; and (3) to avoid arbitrary conduct. *Vaca v Sites*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). [W]ithin these boundaries, the Union has considerable discretion on 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 duty] is ultimately 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.* To this end, the Union is not required to follow the dictates of the individual grievant, but rather it may investigate or present the case in a manner that it determines [to be best]. *Detroit Police Lieutenants and Sergeants Assn*, 1993 MERC Lab Op 729. The fact that an individual member is dissatisfied with the Union's efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Education Assn*, 2001 Mich Lab Op 131.

[W]ith respect to the Union, there has been no factually supported allegation which would establish that the Union acted arbitrarily discriminatorily or in bad faith in connection with this matter. [B]ased on the facts as alleged by Charging Party and the undisputed facts which were set forth on the record, it appears there was a disagreement between Mr. Ledbetter and the Union over whether Article XX covers this situation, whether it would protect Mr. Ledbetter from layoff, and also whether, in fact, Article XX was even in effect, given that a new contract, which was made retroactive to [the] period prior to [his] layoff, did not contain that same provision . . . .

[T]he language of Article XX refers to [a situation in which an employee is] "transferred back" [to a bargaining unit position]. The Union contends that Mr. Ledbetter was, in fact, rehired [and not "transferred back" into the unit] and, therefore, the provision doesn't apply. [The Union further contends] that the provision is no longer in effect. Neither of [these arguments] would, on their face, be considered unreasonable or irrational decisions or interpretations, nor would perhaps Mr. Ledbetter's interpretation of those provisions as well.

There appears to simply be a good faith disagreement over what that provision means and whether it should apply here. [The contract] is between the

> Union and the Employer. The Union is entitled and has the discretion to both interpret the language of that contract, and to make decisions on how to proceed with grievances based on its interpretation. MERC will not question or second guess the Union in its determination, absent some showing that the Union essentially acted in bad faith, or arbitrarily or discriminatorily in making that decision.
>
> Now, there was no allegation in the charge or your other written responses, Mr. Ledbetter, which . . . asserted that the Union was acting in bad faith or had bias or anything of that nature. The first [such reference to bad faith by the Union came] when you hypothesized that the . . . elimination of Article XX [from the new contract] was aimed at you . . . . But it was stated as -- just as that, a hypothesis. And you did not follow-up on that [assertion] or make any new allegations based on that.
>
> Today you have made what is [another] new allegation that the Union president, Mr. January, harbored some animus towards you and perhaps your fellow custodians who at one time were promoted to a supervisory position over Mr. January. However, again, those claims were never raised until today, and I don't think it would be fair to allow you to proceed on such claims, given that the Union would not have had notice of that until today. [Y]ou have [also] indicated that you don't have any proof other than your assumption or belief that Mr. January might have harbored some type of animus towards you.
>
> Now, given that there are no [factually supported] allegations which would [establish] a claim of arbitrary, discriminatory conduct or bad faith, there can then be no viable PERA claim against the Union.[1]

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

[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.

ORDER

The unfair labor practice charges in Case Nos. C10 D-100 and CU10 D-017 are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: May 3, 2011