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. CU09 E-016
Docket No. 09-000011-MERC

-and-

JOANN BARNES,
An Individual-Charging Party.
_____/

APPEARANCES:

Law Offices of Mark Cousens by Mark H. Cousens and Gillian H. Talwar, for Respondent

Pitt McGehee Palmer Rivers & Golden, P.C., by Joseph A. Golden and Andrea J. Johnson, for Charging Party

DECISION AND ORDER

On September 26, 2013, Administrative Law Judge Doyle O'Connor 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

_____
Edward D. Callaghan, Commission Chair

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Robert S. LaBrant, Commission Member

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Natalie P. Yaw, Commission Member

Dated: _____

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

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

-and- Case No. CU09 E-016
Docket No.: 09-000011–MERC

JOANN BARNES,
Individual Charging Party.
_____/

APPEARANCES:

Joseph A. Golden and Andrea Johnson, on behalf of Charging Party

Gillian H. Talwar and Mark H. Cousens, on behalf of Respondent Labor Organization

DECISION AND RECOMMENDED ORDER

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 Doyle O'Connor, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission. This decision and recommended order is based upon the entire record, including the transcript of an evidentiary hearing and timely briefs filed by both parties:

The Unfair Labor Practice Charge and Proceedings:

A Charge was filed in this matter by Joann Barnes (the Charging Party) on May 13, 2009, asserting that the Detroit Association of Educational Office Employees, American Federation of Teachers, Local 4168 (the DAEOE or Union) had violated the Act by failing to pursue claims on behalf of Barnes. The Charge addressed various adverse employment actions taken by the employer, Detroit Public Schools, during 2007, including the termination of Barnes' employment in October 2007, which the Charge asserted was not disclosed until January 2008.[1] While the Charge acknowledged that the Union

[1] A prior Charge filed by Barnes against her employer on October 19, 2007 was dismissed. *Detroit Public Schools*, 20 MPER 117 (2007).

successfully pursued some claims on behalf of Barnes, the Charge also asserted that the Union advised Barnes by letter of November 21, 2008, that the Union would no longer represent her regarding her termination from employment. In fact, the letter, which is attached to the Charge, unequivocally advised Barnes that "*It is unlikely that a grievance would have any chance of prevailing. . . . No grievance will be pursued and we will make no further efforts on your behalf*".

The Charge was filed near the last day of the six month statute of limitations and without a proof of service upon the Respondent. The Charge and Complaint were served on the Respondent by the Commission on a date which appeared likely outside the statute of limitations. For that reason a preliminary order to show cause why the charge should not be dismissed as barred by the statute of limitations was issued. Barnes filed a response which asserted that she had timely served the Charge via mail upon Respondent. The response was accepted, and relied upon, even though inappropriately only filed via fax and at 11:29 PM on the last possible day.

On September 3, 2009, the Union filed a motion to dismiss, to which Barnes did not timely reply. Because she was at that point proceeding *in pro per*, and despite her obligation nonetheless to comply with the agency's published procedural rules, I *sua sponte* by letter of September 17, 2009, granted Barnes an additional several weeks in which to respond, with an expressly stated deadline of October 1, 2009. She was cautioned that the Union's motion would be decided without further hearings or other proceedings if she did not respond. Barnes never responded to the Union's motion to dismiss. Despite that failure, on October 19, 2009, I denied the Union's motion, based on the fact that the motion, while supported by substantial legal argument, was not supported by affidavit. I held that Barnes' earlier Charge and response to the order to show cause, taken as true for purposes of resolving the otherwise unopposed motion, created questions of fact.

The trial, which had been scheduled for November 24, 2009, was adjourned at the request of Charging Party to allow her time to attempt to secure legal counsel. On April 2, 2010, Respondent sought dismissal of the Charge as abandoned, in the absence of any further action by Barnes and with Barnes having failed to secure counsel. Following the date on that letter, Barnes secured counsel.[2] At the suggestion of Charging Party's counsel, a pre-trial conference was scheduled for May 20, 2010. That date was adjourned at the request of Charging Party. Repeated attempts to re-schedule the pre-trial conference were rebuffed by Charging Party and the matter was placed in adjourned without date status, and a notice sent, on February 16, 2011.

[2] An appearance was filed by counsel on April 8, 2010 indicating he had just been retained, although Barnes in her email of August 2008 asserted to the Union that the same attorney already represented her at that point.

The pre-trial conference was ultimately rescheduled and held on February 2, 2012 and a trial was scheduled and held on June 7, 2012. Charging Party requested, and the Union acquiesced, in bifurcating the matter and trying only the question of liability, leaving any possible damages for a possible further proceeding. Both parties filed timely post-hearing briefs.

Findings of Fact:

Barnes complained during the summer of 2007 that her manager was harassing her and had engaged in fraudulent padding of the District payroll. In response to Barnes' complaint of harassment, the Union sought to facilitate a transfer for Barnes in August of 2007; however, Barnes refused to consider moving to a different work location. She filed a charge of harassment with the District, which was later dismissed. She also filed an unfair labor practice charge against the Employer, which was dismissed in November of 2007.

Barnes simply did not return to work on the start of the new school year. On September 12, 2007, Barnes was sent a letter by the District advising her that her absence was unauthorized and that she faced termination. Barnes had in fact submitted an equivocal doctor's slip, indicating that she had been seen for elevated blood pressure and had a follow up appointment scheduled. Barnes had not applied for a medical leave. The Union had offered to work with Barnes in an effort to get her transferred to another school, a proposal Barnes rejected even though she was unwilling to return to her assigned school and work under the person she felt was unlawfully harassing her.

The September 12, 2007, letter from the Employer directed Barnes to return to work with substantiation of her absence, in the form of a doctor's slip, or to apply for a medical leave. Despite Barnes' insistence all the way through the dispute and at trial that she had never been told she needed to file a particular leave request form, the letter advised her that she must "*Complete a Request for Leave of Absence or Extension of Leave of Absence Form 4143 that must be approved by the Department of Recruitment and Retention*" or resign or immediately return to work. (Emphasis in original). That letter also advised Barnes that the maximum leave which any employee could be granted was three years.

Barnes did not comply with the Employer's demand. Instead, she had her doctor repeatedly fax the same return to work notice, first indicating that she would return in two weeks and then indicating that her treatment would be of indefinite duration. The box on the form was checked for a Family Medical Leave (FMLA).

Despite the failure to provide the demanded paperwork, the Employer apparently treated the doctor's note as a request for an FMLA leave, which by

statute are of maximum 12 weeks duration. On September 26, 2007, the Employer sent Barnes a letter granting her leave retroactive to September 4, 2007 and through October 2, 2007. The letter cautioned that it was Barnes' responsibility to seek an extension of the leave if one was needed.

Barnes did not return to work after the October 2 expiration of her leave, nor did she seek an extension of the leave. Barnes did contact the Union vice-president in November of 2007, regarding her concern with having not been paid for sick leave while off work. On investigation with the Employer's medical office, the Union vice-president discovered that Barnes had improperly not been paid but had also not requested an extension of her then-expired leave. The Union president and the vice-president both called and advised Barnes to either request an extension or return to work.[3] Following the contact with the Union, the Employer did correct the payroll failure and Barnes received sick pay for the approved leave time of September 4, 2007 through October 2, 2007.

Barnes did not follow the advice from the two Union officials, seemingly based on her insistent belief that the fact that her doctor had earlier indicated that the duration of her treatment was indefinite meant that her Employer was obliged to or would grant her an indefinite leave of absence. Consistent with her refusal to seek a leave extension, Barnes had filled out and emailed to the Union a grievance form which complained of the earlier harassment, described her 'whistleblower' claim, and sought as relief that she be paid for sick days used, but which did not seek a leave extension or to return to work. Barnes had told Union president Newbold that under no circumstances would Barnes be willing to return to work at her former school. Newbold insisted that, based on her experience, even though Barnes had missed the deadline for requesting an extension, the Employer might have entertained a late submission.

On November 8, 2007, the Employer's human resources staff member, Kathey Majid-Smith, wrote to Barnes to advise her that her leave had expired on October 2 and that she needed to return, resign, or request a leave extension. The letter further advised that a failure to return by November 15, 2007 would result in a recommendation that she be terminated. Barnes did not return to work by November 15, 2007, nor did she ever submit a written request to extend her leave. Barnes never submitted the standard Leave Request Form 4143 which the Employer had insisted on from the outset. Instead Barnes wrote to the Employer asking "*Is it possible that the October 2, 2007 date was a communication error*". On the same day, Barnes' doctor re-sent the exact same form, unchanged, as had been earlier submitted. Majid-Smith had instructed Barnes to contact the employee health services office.

[3] Both parties indicated that they had made, but did not retain, contemporaneous notes. The Charging Party asks for an adverse inference from the Union's failure to maintain its notes. I will not grant such an inference both because the failure to maintain notes was mutual and because the multi-year delay in this matter being heard was occasioned by accommodating Barnes.

Barnes in essence refused to do so, feigning confusion about which office she was to contact. Observing her testimony on the issue, I was persuaded that Barnes had willfully refused to contact the proper office regarding a possible extension of her leave and instead, Barnes contacted multiple other offices and staff.

Even at trial, Barnes persisted in her insistence that it was impossible for the District to have not extended her medical leave indefinitely. When asked about the October 2, 2007, limit on her medical leave and when asked specifically "*Did you understand that it was for your employer to approve a period of leave and not for your doctor to approve i*t?" Barnes insisted: "*I understood that my doctor would determine the length of my illness, not my employer".*

Barnes first testified that she called Majid-Smith and received no response. Later, Barnes testified that she had talked to Majid-Smith, following the November 8, 2007, letter threatening termination, and that Majid-Smith had assured her that "all of my paperwork was in order". The claim is implausible, as it is contrary to the Employer's practice as Barnes had in fact not followed Majid-Smith's directive, and as it is inconsistent with the Employer later terminating Barnes. I do not credit Barnes' testimony on this issue. Regardless, Barnes never received a letter from the District extending her leave beyond the original deadline of October 2, 2007, or rescinding the threat to terminate her for failing to return to work.

Barnes next received a letter dated January 30, 2008, from the carrier Ceridian advising her of her COBRA rights following her termination. Barnes claims she received no other notice of her termination from employment. Consistent with the Ceridian letter, a District standard personnel action form was generated in January 2008 showing Barnes as terminated for "job abandonment" effective in October 2007 upon expiration of the only leave ever granted. Barnes responded to the COBRA notice by contacting the Employer's human resources department to insist that this communication too must have been sent "in error". Regardless of Barnes' unflagging belief that any written denial of her leave had been sent in error, by January of 2008, any FMLA entitlement would have expired.

Barnes also contacted the Union in response to receiving the COBRA notice. Newbold contacted the Employer and learned that the Employer insisted that Barnes had never requested a leave extension. Newbold then contacted Barnes and instructed Barnes to provide the Union any documentation of any request by Barnes to extend her originally approved leave which expired in October 2007. Barnes did not provide the Union any documentation.

Despite her familiarity with the process from the previous November, Barnes did not submit any written request that the Union grieve her termination from employment. In March 2008, Barnes did apparently attempt to forward some documents to the Union, but was advised that they were not attached. Barnes apparently made no effort to re-send the documents.

In April 2008, apparently in response to an inquiry from Barnes, the Union sent her a form letter indicating that they were working on her "grievance". The letter was a standard form letter used by the Union and was admittedly misleading, or at best sloppy in its wording, regarding Barnes' circumstances, as no formal grievance had ever been filed. While the letter referred to the Union awaiting a "hearing date", Newbold testified credibly that this was a reference to a meeting she had proposed to hold with the District officials and Barnes. Newbold again testified credibly that even though it had been several months since Barnes' termination, Newbold believed, based on prior experience with the District, that the Union could still have intervened successfully with the District if Barnes had ever applied for an extension. Newbold further testified that the Union had not, at that point, made any decision on whether to file a grievance or not.

The Union, whose entire staff consisted of the president and vice-president, apparently gave up on waiting for Barnes to provide documentation of any effort to apply for an extension. The Union took no further action, concluding that there was nothing that could be done without Barnes' cooperation. The Union did not expressly tell Barnes that they were not taking any further action. In August, when Barnes had again contacted the Union, Newbold responded: "*We believe we have addressed all your concerns".* After an exchange of communication between counsel, the Union sent its letter of November 21, 2008, in which it finally told Barnes in no uncertain terms that the Union concurred with the Employer's assessment that Barnes had abandoned her job, noting that Barnes had been advised of the need to apply for a leave extension and that she had failed to do so. The letter advised that the Union would not pursue a grievance as it had concluded that none would be viable, finding "you had an opportunity to protect your job and did not".

Newbold also testified regarding the normal handling of employee medical leaves, extensions, and disputes. Employees are supposed to submit both medical documentation on a District Form 431 and a Form 4043 request for leave or extension of leave. When the District grants, or denies, a leave request or request for an extension, that fact is communicated in writing to the employee, like the one received by Barnes granting her a leave until October 2, 2007. Requests for leave are not automatically granted. If a leave is denied on medical grounds, there is a specific contractual method, on which the Union can assist members, for obtaining an opinion from an appropriate medical specialist. Barnes never requested or received a leave extension beyond the initial leave which expired on October 2, 2007.

Newbold additionally explained the Union's normal procedures for handling member complaints. Such complaints may be initiated by phone, mail, or email or the member may complete a formal grievance form, as did Barnes. The Union uses a form to make notes of calls from members in order to track the member's problem or complaint. The Union's first step is to attempt to determine if the complaint is grievable, and if so, the Union attempts to resolve the matter informally, with Barnes indicating that 50-60% of all complaints are resolved informally. In a termination case or a denial of medical leave dispute, the first issue is whether the employee has submitted all of the necessary paperwork.

Routinely, in a medical leave case, the Employer's medical office is contacted by the Union to verify that the employee has submitted proper documentation. If the documentation is not in order, the Union informs the member that the member needs to file additional documentation. It is not the Union's practice to followup with members to make sure that the member follows the Union's advice.

The collective bargaining agreement has a ten day period for filing grievances; however, Newbold testified that the time limits were not strictly applied by the parties. Even as of April 2008, Newbold believed that the Union could have assisted Barnes, if Barnes had filed a request for an extension of her then long expired leave.

At no time during 2007 or 2008 did Barnes advise the Union or the Employer that she was physically able to return to work. At no time did she actually submit the leave application or leave extension form. The maximum possible FMLA leave was twelve weeks, which Barnes exceeded. The maximum contractually permitted duration of a medical leave was three years. Barnes delayed the trial in this matter beyond that three year maximum. Even at trial, Barnes did not claim to have recovered sufficiently to return to work nor assert that had she been released to work by her treating physician.

Discussion and Conclusions of Law:

There is no dispute as to the controlling law. The Union, as exclusive bargaining agent, had a duty to fairly represent the members of its unit. The Union's ultimate duty is toward the membership as a whole rather than solely to any individual, and therefore, the Union has the legal discretion to decide to present particular cases in a particular manner even though their decisions may conflict with the desires and interests of certain employees, and a union has considerable discretion to decide how, and even whether or not, to pursue and present particular grievances or disputes. *Lowe v Hotel & Restaurant Employees Union, Local 705,* 389 Mich 123, 145-146 (1973). To pursue a charge against a union, a charging party must allege and be prepared to prove

that the union's conduct toward them was arbitrary, discriminatory or done in bad faith and not merely a disputed tactical choice, or even merely negligent. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit and AFSCME*, 419 Mich 651, 679 (1984); *Detroit Federation of Teachers (Steward)* 21 MPER 15 (2008) (no exceptions). As the Commission recently held in *DPOA (Boroski),* 25 MPER 6 (2012), a union is not expected to always make the right or best decisions, so long as it acts in good faith and avoids being arbitrary. Citing, *City of Detroit*, 1997 MERC Lab Op 31.

The Commission has steadfastly refused to interject itself in judgments over grievance handling decisions by unions where arguable tactical choices are made by the union. See, for example, *City of Flint*, 1996 MERC Labor Opinions 1. See also, *Detroit Federation of Teachers (Steward)* 21 MPER 15 (2008), holding that a reasonable good faith tactical choice by a Union is not a breach of the duty of fair representation.

In analyzing the National Labor Relations Act (NLRA), on which PERA was premised, the United States Supreme Court held in *Airline Pilots v O'Neill,* 499 US 65 (1991), that:

> Congress did not intend judicial review of a union's performance to permit the court to substitute its own view of the proper bargain for that reached by the union. Rather, Congress envisioned the relationship between the courts and labor unions as similar to that between the courts and the legislature. Any substantive examination of a union's performance, therefore, must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities. For that reason, the final product of the bargaining process may constitute evidence of a breach of duty only if it can be fairly characterized as so far outside a "wide range of reasonableness," that it is wholly "irrational" or "arbitrary".

(Citations omitted*).* See also, *City of Detroit (Fire Dep't),* 1997 MERC Lab Op 31, 34-35.

The case law is also clear that the fact that a member or members are dissatisfied with their union's effort, with the union's ultimate decision or with the outcome of those decisions, is insufficient to constitute a proper charge of a breach of the duty of fair representation. An individual member does not have the right to demand that his grievance be pressed to arbitration, and a union obviously is not required to carry every grievance to the highest level, but must be permitted to assess each with a view to individual merit. See, *Eaton Rapids Education Association*, 2001 MERC Lab Op 131.

Barnes does not assert any hostility or animus toward her, or discriminatory motive or treatment, by the Union officials involved. No evidence of ill-motive was offered. In November 2007, the Union intervened as requested by Barnes to secure her sick leave pay for the time she had been off. The Union gave her advice in early 2008 in response to the COBRA notice. That advice by the Union was given in apparent good faith, was seemingly accurate advice, and was not followed by Barnes.

The core issue in Barnes' termination, and in this litigation, is Barnes' adamant insistence on believing that what she wants to have happen did happen; in particular, her belief that simply because her doctor had described her course of treatment as "indefinite" she was automatically entitled to and would be given an indefinite medical leave of absence by her Employer. Her belief in that proposition was unshaken by the fact that the Employer sent her a letter giving her a leave only for a limited period, then sent a letter threatening termination for having not returned by the deadline, and then terminated her. In response to each, Barnes concluded and insisted that the notices must have been sent in error. Her response to her Union representatives was the same. When they told her that she had to apply for an extension, and later told her that she had to establish that she had applied, she concluded that they too were in error.

Barnes asked "*Is it possible the October 2, 2007 date was a communication error*"— the answer which Barnes could not bring herself to accept was, no, it was not possible that it was a communication error. Her medical leave was only approved through October 2, 2007.

When the Employer demanded that Barnes return to work or properly apply for an extension, she refused. When her Union representatives repeatedly told her to apply for an extension, she concluded their advice was mistaken. When the Union representatives told her they would not proceed on a grievance unless she could establish that she had applied for an extension of her leave, she again concluded they were obliged to proceed regardless. When the Union representatives told her that even though she had already been terminated, if she would just apply for an extension of her leave they might be able to help her, she concluded that doing so was unnecessary. When confronted by a motion to dismiss her Charge in this case, she ignored it. When instructed by the judge hearing the case that she must respond to the motion to dismiss, she ignored that directive as well. The Union was entitled to conclude, as it did, that Barnes had been given the opportunity to protect her own job and had refused to follow the directives of the Employer or the advice of the Union. The Union was further entitled to conclude, as it did, that there was no viable claim of a breach of contract in the termination of Barnes, where Barnes had failed to take the minimal steps necessary to preserve her own employment.

The Union could have been more forceful in its communications with Barnes and could have earlier put in writing to Barnes that Barnes must apply for an extension of her leave. However, while the Union could have done such things, it was not obliged to do them. The Commission has consistently held that a union's failure to adequately communicate with a member, or a steward, about his or her grievance is not in itself a breach of its duty of fair representation. See, e.g., *Suburban Mobility Authority for Regional Transportation (SMART)* 19 PER 39 (2006)*; Wayne Co (Sheriff's Dep't),* 1998 MERC Lab Op 101, 105 (no exceptions); *Southeastern Michigan Transportation Authority,* 1988 MERC Lab Op 191, 196 (no exceptions); *AFSCME Local 1600,* 1981 MERC Lab Op 522, 527 (no exceptions). Moreover, it does not appear that any additional or clearer communication from the Union would have altered Barnes' adamant belief that she did not have to comply with the ordinary obligations in securing a leave of absence, even in the face of a very straightforward letter from the Employer advising her that she would be fired if she didn't either return to work or submit a leave extension request form. I was firmly persuaded by my observations of Barnes that nothing the Union might have said would have changed Barnes' adamant belief that she did not have to actually apply for a leave or an extension of the initial leave and that the Employer was simply obliged to regardless keep her on medical leave permanently.

While Barnes, in essence, believes the Union could have or should have done more than it did, the failure to pursue every possible avenue to secure relief for the member is not required by the duty of fair representation, particularly where the member actively sabotages the Union's efforts, as occurred here. See also, *DPOA (Boroski),* 25 MPER 6 (2012), holding *"[A] union is not expected to always make the right or best decisions, so long as it acts in good faith and avoids being arbitrary*". Here the Union attempted to assist Barnes, including by successfully securing her disputed sick pay. There is no indication that the Union acted in a discriminatory, perfunctory, or recklessly indifferent manner, contrary to the minimum standards set in *Goolsby,* supra.

Moreover, to prevail on a duty of fair representation claim regarding disputed grievance handling claim, a charging party must allege and prove not only a breach of the duty of fair representation by the Union, but also allege and prove the second prong of the claim, that is that there was an underlying breach of the collective bargaining agreement by the Employer. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992). Here, Barnes made no effort to establish that the Employer had violated the contract or had acted unreasonably or in a discriminatory manner in failing to grant a medical leave extension, which Barnes in fact never requested. Moreover, based on the proofs and on my observations of Barnes, I am not persuaded that Barnes was entitled to a medical leave or an extension of the initial leave. Barnes was embroiled in a

feud with her immediate supervisor. The Union offered assistance with getting her transferred to a new work location, which Barnes rejected. Instead, Barnes simply refused to return to work at the outset of the new school year. Barnes initial medical slip did not even indicate that she was unable to work, rather that she had been seen regarding a blood pressure issue and would be seen again in one week. When the Employer sent its letter of September 12, 2007, advising Barnes that her failure to report for work was unauthorized, Barnes went and got a medical slip for a two week absence regarding a still ill-defined high blood pressure issue. When pressed further, Barnes had the same doctor submit a slip indicating that Barnes' treatment would be indefinite. Even at the trial in this matter, Barnes made no attempt to support the implicit assertion that she had in fact been unable to work. Barnes instead seemed uninterested in her claimed medical problems, but still very much focused on her dispute with her former supervisor on which she was convinced she had not received justice. Based on her conduct at the time of the dispute, and the evidence offered at trial, it appeared that Barnes was persisting in refusing to return to work primarily because of her feud with her immediate supervisor, rather than because of a legitimately disabling medical condition. With no underlying contractual violation established, Barnes has failed to meet her burden of establishing the second prong of this duty of fair representation claim. Therefore, even had she prevailed here as to the first prong, related to the Union decision to not pursue a grievance over her termination, Barnes has not established any harm and, therefore, there would be no relief that could be awarded.

I have carefully considered all other arguments asserted by the parties in this matter and have determined that they do not warrant a change in the result. Based on the findings of facts and conclusions of law set forth above, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Doyle O'Connor
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 26, 2013