STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

LANSING SCHOOL EDUCATION ASSOCIATION,
Labor Organization-Respondent,

Case No. CU14 B-005
-and- Docket No. 14-002670-MERC

MARY P. DAVENPORT,
An Individual-Charging Party.
_____/

APPEARANCES:

White, Schneider, Young & Chiodini, P.C., by Erin M. Hopper, for Respondent

Mary P. Davenport, appearing on her own behalf

DECISION AND ORDER

On July 8, 2014, Administrative Law Judge Travis Calderwood 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

/s/
Edward D. Callaghan, Commission

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: August 15, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

LANSING SCHOOLS EDUCATION ASSOCIATION, Case No. CU14 B-005
Public Employer-Respondent Docket No.14-002670-MERC

-and-

MARY P. DAVENPORT,
An Individual-Charging Party.
_____/

APPEARANCES:

White, Schneider, Young & Chiodini, PC, by Erin M. Hopper, for the Respondent-Public Employer

Mary P. Davenport, appearing for herself

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 Administrative Law Judge, Julia C. Stern of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission). On April 3, 2014, the parties were provided notice that the case was reassigned to Administrative Law Judge Travis Calderwood, also of MAHS and acting on behalf of the Commission.

The Unfair Labor Practice Charge and Procedural History:

On February 14, 2014, Mary P. Davenport (Charging Party) filed the present unfair labor practice charge with the Commission against her collective bargaining representative, the Lansing Schools Education Association, MEA/NEA (Union or Respondent), pursuant to Sections 10 and 16 of PERA. In her Charge, Davenport alleged that the Union had violated its duty of fair representation when it failed to follow the grievance procedure with regard to timeline requirements as set forth in the applicable master agreement.[1] Specifically, Davenport claimed that the Union failed to comply with timeline requirements with regard to grievances

[1] A full copy of the applicable master agreement between the Lansing Schools Education Association and the school district was not provided by either party in its pleadings, nor was it provided at oral argument on June 13, 2014. Accordingly, for purposes of deciding Respondent's Motion for Summary Disposition, Charging Party's characterizations of the provisions of that agreement are accepted as true.

filed by her against her employer, thereby rendering her grievances "null and void." On February 21, 2014, ALJ Stern directed Respondent to file a position statement responding to Charging Party's claims. On March 3, 2014, Respondent filed its response wherein it explained that Davenport's claim regarding the Union's failure to follow contractual grievance procedure was based upon an incorrect reading of that procedure.

On April 3, 2014, the matter was transferred to the undersigned. On that same day, following review of Respondent's position statement, I issued an Order to Show Cause directing Charging Party to show cause in writing why her Charge against the Union should not be dismissed without hearing for failure to state a claim upon which relief can be granted under PERA. Charging Party responded on April 23, 2014, by filing an amended charge wherein she stated that she "would like to amend her complaint to include that the Lansing Schools Association is treating her in an arbitrary and discriminatory manner when reviewing her grievance for Level 3 complaint." Upon review of the amended complaint and given that Charging Party was acting on her own behalf, I set the matter for an evidentiary hearing to be held on June 13, 2014. An Order scheduling hearing was mailed to the parties on May 1, 2014.

On May 28, 2014, Respondent filed a Motion for Summary Disposition. In its motion, the Union asserted that the amended charge as filed did not adequately respond to my April 3, 2014 Order and that, regardless, the charge should be dismissed for failure to state a claim upon which relief can be granted under PERA. At that time, I concluded that given the filing date of the Motion in relation to the hearing date, there was not sufficient time for Charging Party to respond in writing. Accordingly, I issued an Order on June 6, 2014 indicating to the parties that Respondent's Motion to Dismiss would be addressed on the record at the start of the hearing on June 13, 2014 in order to provide Charging Party a fair and full opportunity to respond to the motion and to dispute the allegations set forth therein. The same day I issued that order, Charging Party filed an answer to Respondent's Motion for Summary Disposition.[2] In her response, Charging Party made it clear that she was no longer asserting that Respondent had failed to follow the timeline requirements of any applicable grievance procedure. Instead, Charging Party made the following allegation:

> The most outstanding violation of the Master Agreement from Ms. Davenport's perspective is that the chain of command was not implemented. I was directly told by Mrs. Truss, [the building] secretary that SHE was deducting time from my pay because of my late arrival to the building. She also informed me, without any hesitation, that she had ALREADY phoned human resources and gotten approval from Michael [omitted] that "she is to deduct my time from my PERSONAL TIME because she had to utilize the Building Substitute." [Emphasis in Original].

Charging Party also asserts that Respondent "cannot discriminate against one member or treat them in an arbitrary manner" and that the Union was aware of other individuals who were not treated in the same manner as Charging Party with regard to time deductions.

[2] Although Charging Party indicated that she mailed a copy of her response to Respondent, I was notified on July 13, 2014, that Respondent had not received a copy of the Response. Upon request, I provided Respondent with a copy and granted its request to review it prior to the hearing.

On June 13, 2014, the parties appeared for oral argument before the undersigned. After considering both the pleadings and arguments made by each party on the record and assuming all facts set forth by Charging Party were true, 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 decision from the bench, finding that Charging Party had failed to state a valid claim under PERA.

Findings of Fact:

The following findings of fact are either undisputed between the parties or based upon on the allegations set forth by Charging Party in her pleadings or in oral argument and accepted as true for purposes of this decision.

Charging Party has been employed by the Lansing School District since 1988 and is a member of the Lansing Schools Educational Association. On December 4, 2013, Charging Party's car would not start. Charging Party made several attempts to notify the building secretary that she would be late. Eventually, Charging Party left a message on a voice mail service. After arriving at work, Charging Party was informed by the building secretary that her time would be docked due to her being late. Charging Party had been late other times in the past and had not had her time deducted on those occasions. Davenport filed a grievance at "level 1" on December 5, 2014 regarding that deduction of time.[3] Also on December 5, 2013, Charging Party, in an email, provided the Union with information regarding several instances where she believed other employees of the District had either arrived late or left early and had not had their time deducted. On December 6, 2013, Union President, Chuck Alberts replied to Charging Party by email and stated:

> I understand you are strongly advocating for yourself through the grievance process and I commend you for that. However, it is a concern that through this process you are exposing other LSEA members and yourself to potential further disciplinary process.
>
> I know you might not agree with that position Mary. And I do respect your opinion. However, I strongly urge you to refrain from offering out other members for discipline.
>
> Your grievance steps will bring your concerns to light without exposing yourself and others.

On December 15, 2013, Davenport forwarded the grievance to the Union's Grievance Committee in order "to determine if the grievance [sic] meritorious for a Level 3." The Union's grievance committee scheduled the matter for consideration on February 19, 2014.

[3] Throughout her pleadings, Charging Party uses the terms "level" and "step" interchangeably when referring to the grievance procedure.

On January 21, 2014, Charging Party sent an email to Alberts and Daniel Zarimba, Michigan Educational Association UniServe Director, wherein she inquired if "a policy exists for deducting time from every teacher when an emergency occurs." In the email, Charging Party wrote, "[t]he union cannot make side deals with management singling me out for different treatment than from other employees." Charging Party concluded that email by asserting that if such a policy did not exist, it was the union's duty to advocate that every employee be treated fairly and that the time deducted from her should be credited back. That same day, Zarimba responded to Charging Party by email, the relevant parts of which stated:

> The "policy" is essentially the collective bargaining agreement. Under the circumstances, personal time was available to make you whole as opposed to an actual dock of your pay. Again, the issue will be presented to the grievance committee for consideration at the next committee meeting. In a District as large as Lansing with over 20 buildings and dozens of principals and assistant principals, there are undoubtedly occasions where teachers arrive late due to emergencies and their personal time is not docked for various reasons. However, that likely does not provide us with a sufficient basis to assert that LSEA members are entitled to arrive late due to emergencies and receive full pay without charge to their compensable leave. The only time that full pay occurs during an absence without charge to compensable leave is due to a work related injury under [Citations Omitted].

It was Charging Party's understanding of the contract that the grievance procedure required that the Union forward a grievance submitted for "Level 3" consideration to the District's Chief Administrator of Human Resources within fourteen (14) days of receipt. Because of that belief, Charging Party filed the initial unfair labor practice charge on February 14, 2014, claiming that Respondent had breached its duty of fair representation because it had not forwarded her "Level 3" grievance to the District, effectively rendering the matter "null and void."

The "Step 3" grievance procedure as offered by Charging Party states:

> If the grievance is not resolved at Step Two, the teacher shall within seven (7) days transmit the grievance to the Association. The Association will consider the merits of the grievance and in the event it is considered meritorious shall approve the written grievance and submit it to the Chief Administrator for Human Resources and/or designee.
>
> The Chief Administrator of Human Resources or a designee shall meet with the grievant and representative for the Association within fourteen (14) days of the receipt of the grievance. A written response shall be given within seven (7) days after the meeting.

According to Respondent, the Grievance Committee met and determined not to pursue Charging Party's grievance to Step 3, a fact not disputed by Charging Party. Respondent claimed its

decision was based upon the fact that Charging Party's claim that she should not be docked time for being late was not supported by the master agreement.

At oral argument, held on June 13, 2014, both Respondent and Charging Party appeared to argue their respective positions regarding Respondent's motion. Following Respondent's initial comments, Charging Party was given the opportunity to clarify her position. Davenport began by referencing an anti-discrimination policy contained within the master agreement between the District and Respondent. Charging Party next alleged the master agreement had been violated because she was routinely given her directives from administrators and not clerical workers, but in this case she had been informed by the building secretary informing her that her time was to be deducted. Charging Party then returned to the issue of the anti-discrimination policy and alleged that she was being treated differently by the District because while she was held accountable for being late others were not. Charging Party stated that she felt her Union, upon being notified by her that others had not been held to the same standard as she was with regard to time and late arrivals, treated her arbitrarily and discriminatorily by not investigating said claims. Upon direct question, Charging Party confirmed on the record that she was no longer pursuing a claim that the Union failed to satisfy timeliness requirement for the processing of grievances. I then asked her to clarify whether she was claiming that the Union violated its duty of fair representation by not processing the grievance further or because the Union was not investigating others who may have left late and were not docked. Charging Party simply stated that she was being treated in an arbitrary and discriminatory manner and referenced Mr. Zarimba's email as proof thereof.

Discussion and Conclusions of Law:

On the record, following oral argument on June 13, 2014, I made the determination that Charging Party had failed to state a claim under PERA upon which relief could be granted. I informed the parties that I would be issuing a Decision and Recommended Order to that effect.

Under well-established Commission law, a union's duty of fair representation is comprised of three responsibilities: (1) to serve the interest of all members without hostility or discrimination toward any; (2) to exercise its discretion and complete good faith and honesty; and (3) to avoid arbitrary conduct. *Vaca v Sipes* at 386 US 171 (1967), also *Goolsby v City of Detroit*, 419 Michigan 651 (1984).

A union's actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Association v O'Neill*, 499 US 65, 67 (1991). Moreover, and of significance to the present matter, in order for an individual charging party to pursue such a claim, the charging party must not only allege and be prepared to prove a breach of the duty of fair representation by the union, but also a breach of the collective bargaining agreement by the employer. *Knoke v East Jackson Schools*, 201 Mich App 480, 485 (1993).

In order to survive a motion for summary disposition predicated on the premise that Charging Party has failed to state a claim of a breach of the duty of fair representation, Charging Party's allegations "must contain more than conclusory statements alleging improper representation." *AFSCME, Local 2074*, 22 MPER 83 (2009), *citing Martin v Shiawassee County*

Bd of Commrs, 109 Mich App 166, 181; 310 NW2d 896 (1981). An individual's dissatisfaction with the union's efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Education Association*, 2001 MERC Labor Op 131. A union's ultimate duty is towards its membership as a whole, and as such, a union is not required to follow the dictates or wishes of an individual employee. Instead, a union may investigate and take action it determines to be best. It is well established that a labor organization possesses the legal discretion to make judgments about the general good of its membership, and to proceed on such judgments despite the fact that they may be in conflict with the desires or interests of certain employees. *Lansing School District*, 1989 MERC Labor Op 210.

In the instant case, Ms. Davenport's charges initially arose under a claim that her Union had failed to process a grievance in accordance with the procedures set forth in the master agreement. She later withdrew that charge and instead claimed that Respondent acted in a discriminatory and arbitrary manner when considering her grievance for advancement to Step 3. Finally, at oral argument Charging Party stated that the District was discriminating against her when it deducted time from her but not from others and that the District violated the master agreement when a secretary informed her that her time would be deducted instead of an administrator. Charging Party also claimed that the Union and Dan Zarimba, the UniServ Director, had treated her in a discriminatory and arbitrary manner by not investigating her claims that other employees, herself included, had not had their time deducted following other late arrivals or early departures known or unknown to the District. Despite being given ample opportunity, in both pleadings and at oral argument, Charging Party has not offered anything past conclusory statements that, if this matter went to hearing, would establish that the Union's decision to not pursue her grievance any further or the decision not to investigate her claims that others, including herself, had come to work late without a dock in time, was done discriminatorily, arbitrarily or in bad faith. When considering the emails sent by Mr. Alberts and Mr. Zarimba, which were offered by Charging Party as the only support to her claim, in the light most favorable to Charging Party, there is no indication of bad faith actions, discrimination or arbitrary conduct. Furthermore, even if Charging Party did allege facts to support a claim that her Union acted in a manner that violated its duty of fair representation, no supportable allegation has been made that the master agreement was breached in any way.

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

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: July 8, 2014