STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INTERNATIONAL UNION, UNITED
AUTO WORKERS REGION 1,
Labor Organization-Respondent,

MERC Case No. CU16 B-009
-and- Hearing Docket No. 16-005073

SENNA FARMER,
An Individual Charging Party.
_____/

APPEARANCES:

Ava R. Barbour, Associate General Counsel, for Respondent

Senna Farmer, appearing on her own behalf

DECISION AND ORDER

On July 27, 2016, Administrative Law Judge David M. Peltz issued his 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 either 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 Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: September 20, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

This case arises from an unfair labor practice charge filed on February 29, 2016, by Senna Farmer against International Union, United Auto Workers (UAW) Region 1. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC). Based upon the entire record, including the pleadings and the transcript of oral argument held on May 17, 2016, in Detroit, Michigan, I make the following findings of fact, conclusions of law and recommended order.

Background and Findings of Fact:

The following facts are derived from the pleadings and the assertions of the parties at oral argument, as well as the collective bargaining agreement which the parties agreed to submit as an exhibit, with all factual allegations set forth by Charging Party accepted as true for purposes of this decision. In addition, I have relied for background information on the findings of facts set forth in *Wayne State University*, 29 MPER 22 (2015), a prior case which arose from an unfair labor practice charge filed by the UAW on Farmer's behalf.

Charging Party Senna Farmer was employed by Wayne State University as an Administrative Assistant I and was a member of a bargaining unit represented by UAW Local 1979. Sometime in 2014, Farmer requested that the employer conduct an audit of her position because she

believed that there were conflicts between the duties she was being asked to perform and the Administrative Assistant I position description created by the University.

On September 11, 2014, Farmer's supervisor received notice that the employer's Classification and Compensation Team had determined that the work being performed by Farmer should be reclassified to Senior Accounting Clerk, a position which is represented for purposes of collective bargaining by UAW Local 2071. As a result of the reclassification, Farmer's salary was significantly reduced and, because of the transfer to a different bargaining unit, she lost all of her seniority. Farmer was not permitted to exercise her contractual right to bump into another administrative position within Local 1979.

On March 13, 2015, the UAW filed an unfair labor practice charge against Wayne State University on Farmer's behalf.[1] The charge, Case No. C15 B-037; Docket No. 15-021096-MERC, alleged that the employer violated PERA by unilaterally reclassifying Farmer's position and by refusing to allow her to exercise her contractual bumping rights. The charge was assigned to me and, in an order issued on April 28, 2015, I directed the UAW to show cause why the charge should not be dismissed for failure to state a claim upon which relief could be granted under PERA. The UAW filed its response to the order to show cause on June 19, 2015.

On June 29, 2015, I issued an order recommending that the Commission dismiss the charge in Case No. C15 B-037 based upon the fact that the Union's response to the order to show cause was not timely filed. Alternatively, I held that dismissal of the charge was warranted because the Union failed to make any cognizable claim as to how the reclassification of Farmer's position was unlawful. With respect to the University's alleged refusal to allow Farmer to bump into another bargaining unit position, I concluded that there was nothing in either the charge or the response to the order to show cause which would indicate that the employer's action presented anything other than a contract interpretation issue outside the scope of the Commission's jurisdiction.

The UAW filed exceptions to my recommended order on August 7, 2015. In a Decision and Order issued on September 24, 2015, the Commission held that dismissal of the exceptions was warranted due to various procedural deficiencies in the Union's filing, including the UAW's failure to specifically state the question of procedure, fact, law or policy to which exceptions were taken. Turning to the substantive merits of the allegations set forth in the charge, the Commission concluded that the UAW had failed to set forth any cognizable claim under PERA. With respect to the Union's assertion that Wayne State University repudiated the agreement by reclassifying Farmer's position, the Commission held that "such a conclusory allegation, without more, fails to establish a violation of PERA."

On February 2, 2016, Farmer filed the instant charge against the UAW. The charge asserts that the Union "demonstrated gross negligence, arbitrary conduct and total disregard for established guidelines in their representation of Senna Farmer in MERC Case No. C15 C-037, violating Section 10 of PERA." In addition to complaining about the representation she received in the prior case,

[1] UAW Local 1979 also filed a grievance challenging the reclassification. According to the Union, the Employer refused to hear the grievance on the basis that Local 1979 does not represent senior accounting clerks. Although Farmer disagrees with that assertion and contends that the grievance was instead rejected as untimely, she clarified at hearing that she is not asserting a PERA violation based upon the Union's handling of the grievance.

Farmer also alleges that the Union acted unlawfully by failing to conduct an investigation after her former position was once again reclassified and assigned the same duties she had previously performed.

The parties appeared for hearing before the undersigned on May 17, 2016. Rather than conducting a full evidentiary hearing, I held oral argument on the issue of whether the allegations set forth by Charging Party in the instant case stated a valid claim under PERA. Charging Party asserted that the Union breached its duty of fair representation by failing to make the appropriate legal arguments on her behalf in the prior case. According to Charging Party, the Union should have relied upon Article 14 of the collective bargaining agreement to establish that the reclassification of her position and subsequent "demotion" was unlawful. Article 14 of the contract, which is entitled "Reduction of Work Force and Recall" sets forth the rights of employees "[i]n the event it should become necessary to reduce the number of Employees in the bargaining unit, or to formally discontinue a University position to which a [unit] member is assigned." According to Farmer, that provision, as well as the past practice of the parties, obligated the University to transfer her to another similarly situated position within the bargaining unit, rather than forcing her to remain in the lower paid Senior Accounting Clerk position. In addition, Farmer asserted that the Union violated PERA by failing to file a grievance on her behalf after the University restored her former Administrative Assistant position in December of 2015. As a remedy, Charging Party requests an order requiring the University to reinstate her as an Administrative Assistant or, in the alternative, an opportunity to argue her case to the employer.

Respondent asserts that the charge should be dismissed because Farmer failed to state a cognizable claim against the Union under PERA. According to Respondent, none of the allegations set forth by Farmer establish that the UAW was deficient in its handling of the prior unfair labor practice case.

Discussion and Conclusions of Law:

Commission Rule 423.165 allows for a pre-hearing dismissal of a charge, or for a ruling in favor of the charging party. Having carefully reviewed the pleadings, as well as the arguments set forth by Farmer at oral argument, I conclude that there are no genuine issues of material dispute and that dismissal of the charge without a hearing is warranted.

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. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries, a 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); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. The union's ultimate duty is toward the membership as a whole, rather than solely to any individual. The union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729.

The Commission has "steadfastly refused to interject itself in judgment" over grievances and other decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab Op 1, 11. The Union's good faith decision on how to proceed is not unlawful 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 mere fact that a bargaining unit member is dissatisfied with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Moreover, to prevail on a claim of unfair representation, a 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, 223 (1995); *Knoke v East Jackson Public Sch Dist*, 201 Mich App 480, 488 (1993).

In the instant case, Farmer contends that the UAW breached its duty of fair representation by failing to make the appropriate arguments on her behalf in the prior unfair labor practice proceeding. Even *assuming arguendo* that the duty of fair representation applies to a union's handling of a case before the Commission, I conclude that dismissal of the charge is nonetheless warranted. Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation which would establish a breach of the duty of fair representation by the UAW.

After the University made the decision to reclassify Farmer's position, the UAW filed an unfair labor practice charge on her behalf. That charge was later dismissed on summary disposition on the basis that no allegation had been set forth which would give rise to a valid claim under PERA. Farmer now asserts that the Union did not properly represent her in the prior matter because it failed to argue that the University breached a specific provision of the collective bargaining agreement. However, even if the UAW had established a breach of contract, that showing would not have resulted in a judgment in the Union's favor. Rather, to have prevailed in the prior matter, the Union would have had to have established a repudiation of the contract by the University.

The Commission's role in disputes involving alleged contract breaches is limited. *Genesee Twp*, 23 MPER 90 (2010) (no exceptions). Where there is a collective bargaining agreement covering the subject matter of the dispute which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the contract controls and no PERA issue is present. *Macomb County v AFSCME Council 25, Locals 411 and 893*, 494 Mich 65 (2013). An alleged breach of contract will constitute a violation of PERA only if a repudiation can be demonstrated. See e.g., *City of Detroit (Transp Dept)*, 1984 MERC Lab Op 937, aff'd 150 Mich App 605 (1985); *Jonesville Bd of Ed*, 1980 MERC Lab Op 891, 900-901. A finding of repudiation cannot be based on an insubstantial or isolated breach of contract. *Oakland Cnty Sheriff*, 1983 MERC Lab Op 538, 542. Repudiation exists when: (1) the contract breach is substantial, and (2) no bona fide dispute over interpretation of the contract is involved. *Plymouth-Canton Comm Sch*, 1984 MERC Lab Op 894, 897. The Commission will find a repudiation only when the actions of a party amount to a rewriting of the contract or a complete disregard for the contract as written. *Central Michigan Univ*, 1997 MERC Lab Op 501, 507; *Cass City Pub Sch*, 1980 MERC Lab Op 956, 960.

In the instant case, Charging Party asserts that the Union should have relied on Article 14 of the contract to establish that the decision to reclassify her position was unlawful. However, Article 14 does not speak directly to the issue of reclassification studies or the impact thereof on bargaining unit members. Rather, that provision, by its terms, appears to cover situations in which there has been a reduction in the work force or a decision by the University to formally discontinue a position. Article 14 of the contract, which is entitled "Reduction of Work Force and Recall" sets forth the rights of employees "[i]n the event it should become necessary to reduce the number of Employees in the bargaining unit, or to formally discontinue a University position to which a [unit] member is assigned." Although the Union could conceivably have made an argument to a grievance arbitrator that Article 14 should be interpreted to cover a situation involving the reclassification of a bargaining unit position, the language of the contract is, at best, ambiguous and would not support a claim that the University's actions constituted a wholesale disregard of the contract as written. Thus, the Union would not have prevailed on a repudiation claim in the prior Commission proceeding based upon the language of Article 14. The Union's decision not to make this argument, therefore, was not "irrational."

In addition to citing Article 14 of the contract, Charging Party asserts that the reclassification of her position was contrary to the past practice of the parties and that the UAW failed to bring that practice to the Commission's attention in the prior case. Farmer asserts that when a reclassification occurred in the past, the University attempted to ensure that the individual holding that position was not negatively impacted. Based upon this purported past practice, Farmer asserts that the University should have transferred her to a different position with comparable salary and benefits. At oral argument, however, Farmer was unable to identify any specific employee who was treated differently by the University under similar circumstances. Accordingly, there is no basis upon which to conclude that the UAW breached its duty of fair representation by failing to assert the existence of a binding past practice which would have required the University to allow Farmer to transfer to a different position.

Finally, Charging Party argues that Respondent breached its duty of fair representation by failing or refusing to take action on her behalf when, in December of 2015, the University restored the Administrative Assistant position to the bargaining unit represented by Local 1979 with the same duties that Famer had once performed. Farmer argues that the UAW should have filed a grievance on her behalf once it learned that the position had been placed back in the unit. When pressed for details during the oral argument, however, Farmer conceded that she had no witnesses or admissible evidence in her possession to establish that any individual is currently performing her old duties as an Administrative Assistant. Rather, Charging Party conceded that the basis for her claim was an "assumption" grounded upon a job posting on the Employer's website and conversations with other University employees, none of whom were present to testify on Farmer's behalf on the scheduled hearing date. Even assuming, however, that the University did fully restore Charging Party's former position to the bargaining unit, Farmer was unable to identify any specific contract provision which the Union could have relied upon to compel the University to transfer her to that position. Accordingly, Charging Party has failed to establish that the UAW breached its duty of fair representation in connection with this matter.

For the reasons stated above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Senna Farmer against International Union, UAW Region 1 in Case No. CU16 B-009; Docket No. 16-005073-MERC, is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: July 27, 2016