STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY COMMUNITY COLLEGE,
Public Employer-Respondent in Case No. C04 I-230,

-and-

AMERICAN FEDERATION OF TEACHERS, LOCAL 2000,
Labor Organization-Respondent in Case No. CU04 G-034,

-and-

MARTHA M. STURGEON,
Charging Party.
_____/

APPEARANCES:

Bellanca, Beattie & DeLisle, by James C. Zeman, Esq., for the Respondent Employer

Mark H. Cousens, Esq., for the Respondent Labor Organization

Martha M. Sturgeon, *in propria persona*

DECISION AND ORDER

On February 2, 2006, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

_____
Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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Mark H. Cousens, Esq., for the Respondent Labor Organization

Martha M. Sturgeon, *in propria persona*

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, this case was heard at Detroit, Michigan on August 1, 2005, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including testimony and exhibits presented and arguments made by the parties at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

Case No. CU04 G-034

Martha M. Sturgeon is a nursing instructor at Wayne County Community College (the Employer) and part of a bargaining unit represented by the American Federation of Teachers, Local 2000 (the Union). On July 1, 2004, Sturgeon filed her original charge in Case No. CU04 G-034

against the Union, alleging that it breached its duty of fair representation by withdrawing two grievances seeking additional compensation for classes Sturgeon taught dating back to 1998. Sturgeon also alleged that the Union violated its duty of fair representation by failing to file a "harassment" grievance against her supervisor after Sturgeon received a written warning for unprofessional conduct on March 15, 2004.

In December 2004, the Union asked the Employer to reinstate Sturgeon's grievances at step three of the grievance procedure. The Employer agreed to meet and discuss the grievances. In May 2005, the Union told Sturgeon that it had reviewed her records and did not believe that the grievances had merit. On May 13, 2005, Sturgeon amended her charge to allege that the Union colluded with the Employer to deny her compensation. She also alleged that the Union violated its duty of fair representation in early 2005 by failing to assist her in obtaining disability pay and a medical leave of absence and by failing to inform her of her rights to benefits under applicable laws. Her amended charge did not include the "harassment" grievance allegation.

Sturgeon filed a second amended charge on May 24, 2005. In the second amended charge, she alleged that the Union violated its duty of fair representation by failing to address one of the alleged contract violations during its meetings with the Employer in early 2005. She also alleged that after June 2004, the Union violated PERA and the Michigan Freedom of Information Act (FOIA), MCL 15.231 et. seq., by refusing to provide her with documents pertaining to the grievances and the Union's handling of them. Sturgeon filed a third amended charge on May 31, 2005 adding detail to the above allegations.

Case No. C04 I-230

On September 9, 2004, Sturgeon filed her original charge against the Employer in Case No. C04 I-230, alleging that the Employer's failure to pay her the compensation she sought in the grievances breached the Respondents' collective bargaining agreement. Sturgeon filed an amended charge on May 13, 2005 in which she alleged that the Employer violated Section 10(1)(a) of PERA and breached the contract by colluding with the Union to avoid paying her proper compensation. She also alleged that during the spring of 2005, the Employer unlawfully failed to process her disability claim and failed to provide her with information regarding this claim in a timely manner in violation of the contract. In a second amended charge filed on May 24, 2005, Sturgeon alleged that in the spring of 2005, the Employer insisted that she provide additional documentation to support her compensation grievances and then refused her request for the information she needed to comply with this demand. Sturgeon filed a third amended charge on May 31, 2005 adding detail to the above allegations.

At the beginning of the hearing on August 1, 2005, Sturgeon sought to amend her charge against the Employer to allege that it retaliated against her for filing the two grievances by: (1) issuing her a written warning on March 15, 2004; (2) encouraging a student to behave threateningly toward her during the spring 2004 semester; and (3) failing to take adequate steps to address the student's behavior. The Employer objected to the amendment. I denied Sturgeon's motion to amend on the grounds that it raised completely new claims against which the Employer could not, consistent with due process, be expected to defend. See 2002 MR 1, R 423.153(3). The Employer then moved to dismiss the charges against it for failure to state a claim under PERA, and I granted

the motion.

Motions to Reopen the Record:

On August 2, 2005, Sturgeon asked to have admitted into the record a packet of documents purporting to be the final grade rosters and class selection forms for the classes for which she had sought additional compensation. Sturgeon subpoenaed these documents from the Employer and had them in her possession on the day of the hearing. However, according to Sturgeon, under the stress of presenting her case she forgot to ask for their admission. On August 3, Sturgeon requested that the document subpoena issued to the Union prior to the hearing also be admitted into the record. On August 5 and 15, the Union filed objections to the admission of these documents. By letter dated August 31, 2005, I denied Sturgeon's motion to reopen. I concluded that the motion could not be granted under 2002 MR 1, R 423.166 because Sturgeon had not demonstrated that the evidence was newly discovered or that it could not have been produced at the hearing.

Facts:

Sturgeon's "Over the Head Count" Grievances

Under Article XVII, Sections A and C of Respondents' collective bargaining agreement, the Employer is required to pay additional compensation per student per semester for each student assigned to an instructor's class in excess of the "regular obligation headcount maximum" without the instructor's approval. For most classes, including those in the nursing department, the headcount maximum is thirty-six. Article XVII, Section C states that class size shall be computed on the basis of students officially listed on the computer-produced final grade roster, and that faculty members are to request compensation by submitting a form along with their final grades at the end of the semester.

Sturgeon did not submit requests for "over the head count" compensation until the fall semester of 2002 because her dean told her that these provisions did not apply to the nursing department. On August 6, 2002, the Union filed grievance #019-02 seeking "over the head count" compensation for Sturgeon for classes dating back to the fall of 1998. Attached to this grievance was a memo from Sturgeon to her dean, dated April 23, 2002, listing eight classes she taught from the fall of 1998 through the spring of 2002, the number of students in each class, and the number of "over the head count" students in each class. Sturgeon used the enrollment lists from the beginning of the semester, not the final grade rosters, to determine the number of students in the classes. According to the number of students she listed in each class, Sturgeon had thirty "over the head count" students." However, she calculated the number as thirty-two in the memo.

During its first meeting with the Employer on this grievance, the Union requested copies of the final grade rosters for the classes listed in Sturgeon's memo. Although the Union made several subsequent requests, the Employer never provided the Union with a complete set of Sturgeon's grade rosters. On April 24, 2003, the Union moved grievance #019-02 to the arbitration step of the grievance procedure. The grievance remained there, apparently waiting for the Employer to supply the grade rosters.

In the meantime, on September 13, 2002, Sturgeon submitted a request form to her dean to be paid for eight "over the head count students" in four of the classes she listed in the memo attached to her grievance. It is not clear where Sturgeon obtained the class size numbers on this form. For some of the classes, Sturgeon listed fewer students on the request form than she listed in the memo attached to the grievance. On December 13, 2002, she submitted another request form for compensation for three students, apparently for the fall semester of 2002. Sturgeon's dean approved both requests, and, in December 2002, Sturgeon was paid "over the head count" compensation for eleven students. Sturgeon did not tell the Union that she had received this money. Beginning with the fall semester of 2002, Sturgeon submitted payment requests to her dean at the end of each semester whenever she had "over the head count" students and the Employer paid her properly for these students.

In the fall of 2003, the Employer faxed the Union some of Sturgeon's grade rosters. Union grievance chairperson Courtney Atlas testified without contradiction that she phoned Sturgeon and asked her what she wanted Atlas to do with them. Sturgeon told her, "Well, I have all these sections I haven't been paid for, and I have all of these students I haven't been paid for." On October 3, 2003, Atlas filed grievance #016-03 on Sturgeon's behalf. The grievance stated that Sturgeon had requested on several occasions to be compensated for "over the head count" students, but had not been paid. As indicated above, Sturgeon had not told Atlas that the Employer had paid her some of the "over the head count" compensation she had requested in the first grievance. Atlas attached to the grievance copies of Sturgeon's grade rosters for the fall semester of 2002 and the spring semester of 2003. She also attached a class list for the fall semester of 2003. Atlas was apparently not aware when she filed this grievance that the Employer had paid Sturgeon for all her "over the head count" students after the spring/winter semester of 2002.

Both Respondents understood that grievance #016-03 incorporated grievance #019-02. The Employer denied the grievance on the basis that it was untimely filed. On December 5, 2003, Atlas sent the Employer notice that the Union was moving the grievance to the arbitration step. What happened with the grievance after December 5, 2003 is not entirely clear. In late June 2004, the Union told Sturgeon that her grievances had been withdrawn because she had been paid correctly. It provided Sturgeon with a copy of a memo from Atlas to her, dated February 9, 2004, stating that the Union had reviewed her payroll history and had determined she had been paid correctly. Atlas testified, however, that she withdrew the grievance after the Employer promised to pay Sturgeon some compensation. Atlas did not testify that she actually reviewed Sturgeon's records in early 2004 to determine that Sturgeon had been paid correctly.

Sturgeon maintained that she was not told by the Union in February 2004 that it had withdrawn the grievances. Sturgeon testified without contradiction that between December 2003 and early June 2004, she sent a number of e-mails to the Union and to Atlas personally asking about the status of her grievances, but did not receive a response. On June 21, 2004, Sturgeon phoned the Union office to inquire about the status of her grievance and was told by the office manager that both grievances had been withdrawn. On June 23, 2004, a telephone conference was held at Sturgeon's request. Several Union officials, including Local 2000 President James Jackson, told Sturgeon that she had been paid correctly. After this conference, the Union mailed Sturgeon a copy of Atlas' February 9, 2004 memo. It also sent her a memo from Atlas to Sturgeon dated March 26, 2004 stating that the Union "had reviewed [Sturgeon's] concerns with the administration in [her]

presence" on March 8. Sturgeon testified, without contradiction, that she had not previously seen either of these memos and had not attended any meeting with the Employer or the Union concerning the grievances in March 2004.

Sturgeon filed the unfair labor practice charge in Case No. CU04 G-034 after she received these documents from the Union. She also wrote the Union a series of letters demanding that it provide her with minutes of the alleged meeting on March 8, the supporting data used to determine that she had been paid correctly before the Union withdrew her grievances, and other documents. Sturgeon cited the FOIA as authority for her right to receive these documents. The Union provided Sturgeon with a copy of its bylaws, but did not send her the other documents she sought.

In September 2004, pursuant to Sturgeon's FOIA request, the Employer sent her printouts showing the classes Sturgeon had taught from the fall 1998 through the 2004 spring semesters, the amount the Employer had paid her each semester, and how it had calculated her pay. On November 30, 2004, Atlas wrote the Employer requesting information concerning "the calculations used to resolve the grievances filed on behalf of Martha Sturgeon." On December 6, the Union's counsel notified Sturgeon that the Union had resubmitted both her grievances at level three, the step before arbitration. His letter stated that the Union was not promising that it would proceed to arbitration with these grievances, but that since the Employer had not kept "certain promises" it made during the grievance process, the Union was resubmitting the grievances in order to compel the Employer to provide certain information. The letter said that the Union would reevaluate the merits of the grievances after it received this information.

The Employer responded to Atlas' November 30 request for information on December 17, 2004, attaching the documents it had provided to Sturgeon in September 2004. In its letter, the Employer maintained that it had paid Sturgeon for her "over the head count" students, and that Sturgeon had, in fact, been overpaid. However, the Employer agreed to meet with the Union again to discuss Sturgeon's grievances. On or about March 17, 2005, the Union asked the Employer for a written position statement on the grievances. The Employer provided this on April 21. In its position statement, the Employer again maintained that, according to the final grade rosters for the classes named in the attachment to the grievance, Sturgeon had only seven "over the head count" students for the classes listed in the attachment to grievance #019-02, and that it had paid her for all of them. Attached to the Employer's response was a chart listing the number of students on the final grade roster for each of the classes listed in grievance #019-02. The Employer also pointed out that it had paid Sturgeon for her three "over the head count" students" in the fall of 2002, and that, according to the grade roster the Union attached to grievance #016-03, Sturgeon had fewer than thirty-six students in the spring semester of 2002. The Employer noted that the Union had not submitted a final grade roster for the fall semester of 2003.

On May 16, 2005, Atlas wrote Sturgeon stating that she had reviewed all Sturgeon's grade rosters and did not find any other final grade roster showing a student headcount over thirty-six. Atlas attached the Employer's April 21 position statement to her letter. Atlas told Sturgeon that if she had any additional information to support her request for additional "over the head count" students, she should submit it to the Union immediately.

After receiving Atlas' letter, Sturgeon requested copies of all her final grade rosters from the Employer's records department. On May 19, 2005, Sturgeon complained to the Union's counsel that the Union had never told her that final grade rosters were necessary to support her grievances. On June 8, when Sturgeon had not received the final grade rosters from the Employer, she asked the Union's counsel to intervene and obtain them for her. Sturgeon did not receive the grade rosters until shortly before the hearing, when the Employer produced them pursuant to a subpoena.

The Union did not take any further action on the grievances. On July 26, 2005, the Union wrote Sturgeon stating that it had decided not to go forward with the grievances. It explained that it appeared that Sturgeon had originally calculated the number of her students using the entry roster from the beginning of the semester instead of the final grade roster and that her actual "over the head count" was substantially less than she had calculated. The letter also stated that the Union had recently learned that Sturgeon had been paid "over the head count" compensation in 2002, and that the Union had concluded that Sturgeon had been paid all of the "over the head count" compensation for which it had evidence.

Sturgeon's "Pay Per Section Number" Grievance

In the fall of 1998, Sturgeon began teaching a class, Nursing 101, which was divided into multiple sections. Sturgeon met with students in all the sections together twice a week for lectures. Some or all of the sections also spent time at local hospitals each week receiving clinical training. Each semester, Sturgeon supervised one or more "clinical" sections in addition to teaching the lecture. When signing up to teach this class, Sturgeon listed all the "theory" sections on one line and each clinical section she supervised on a separate line. In calculating Sturgeon's course load, the Employer considered the "theory" sections as one five-credit-hour class and each clinical section as a separate nine-credit-hour class.

In the fall of 2003, Sturgeon was told by two other nursing faculty members that Atlas had said at a union meeting that if employees taught multiple sections of a course, they should be paid by section number and had mentioned something about filing a class action grievance on behalf of nursing faculty. Atlas denied making these statements, although she agreed that an instructor is supposed to be paid separately for each section of a course if the instructor meets separately at a different time with each section. After hearing from her co-workers what Atlas had allegedly said, Sturgeon concluded that each theory section of Nursing 101 should have been treated as a separate class and that the Employer had been calculating her course load incorrectly. This had monetary implications, since faculty who teach more than 15 credit hours per semester are contractually entitled to "overload" pay based on the number of overload hours they teach. Since Sturgeon often had up to eleven "theory" sections in her lecture, treating each of these sections as a separate class would have entitled her to a substantial amount of overload pay.

As noted above, Atlas testified without contradiction that in the fall of 2003, Sturgeon told her, "I have all these sections I haven't been paid for, and I have all of these students I haven't been paid for." When Atlas filed grievance #016-02 in October 2003, she also asserted that Sturgeon had not been paid correctly because she should have been paid according to section. Insofar as the record discloses, Atlas did not discuss with Sturgeon how Sturgeon taught her theory sections or how she had been paid for them before Atlas filed the grievance.

The history of grievance #016-02 is set out above. It is not clear whether the Union and the Employer ever discussed the "pay per section" aspect of this grievance. This aspect of the grievance is not mentioned in either the Employer's April 21, 2005 position statement or Atlas' May 16, 2005 letter to Sturgeon. On May 19, 2005, when Sturgeon complained to the Union's counsel that the Union had never told her that final grade rosters were necessary to support her grievance, she also asked why the Union had not addressed her claim that she should be paid for each section. On the record at the hearing, and in its July 26, 2005 letter to Sturgeon, the Union explained that instructors are entitled to be paid separately for each class section only if they meet separately with that section. According to the Union, Sturgeon was not entitled to be paid separately for each "theory" section of Nursing 101 because she taught them together. The record does not indicate when the Union first realized that Sturgeon had taught all her theory sections together, although the class times on the final grade rosters that the Union attached to grievance # 016-03 show this to be the case.

Union's Alleged Failure to Assist Sturgeon with her Disability Claims

On about March 26, 2004, Sturgeon went on an extended medical leave. When she sought to return to work in September 2004, the Employer refused to accept her doctor's restrictions. Respondents' contract provides both short-term and long-term disability insurance benefits to eligible faculty members. By early 2005, Sturgeon was close to using up her accumulated sick time, and she sought to make a claim for short-term disability benefits. When Sturgeon had trouble finding out from the Employer how much sick time she had left and when she should apply for disability benefits, she called and spoke to Liz Duhn, a representative of the American Federation of Teachers assigned to assist Local 2000. Sturgeon and Duhn spoke on February 2. After they spoke, Sturgeon sent Duhn several e-mails seeking help with her disability claim. On February 5, Duhn e-mailed Sturgeon stating that Duhn had confirmed that Sturgeon had been credited with sick leave for the 2004 fall semester, and that Duhn was still trying to find out when Sturgeon's sick leave ran out. Duhn instructed Sturgeon to send a letter to the Employer indicating that she wanted to apply for short-term disability benefits when her sick leave ran out, and asked Sturgeon to send her a copy of this letter along with copies of the paperwork supporting her disability claim. It is not clear whether Duhn provided Sturgeon with any more assistance with these issues. Sturgeon did not specifically ask the Union to file a grievance over her failure to be awarded disability benefits.

Discussion and Conclusions of Law:

To prevail against a union on a claim of unfair representation based on the union's handling of a grievance, the charging party must demonstrate both that the union breached its duty of fair representation and also that the collective bargaining agreement was breached. *Goolsby v City of Detroit,* 211 Mich App 214 (1995); *Knoke v East Jackson Pub Sch Dist,* 201 Mich App 480, 488 (1993).

A union's duty of fair representation, under both state and federal law, 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, 177 (1967); *Goolsby v Detroit,* 419 Mich 651, 679 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to

proceed with a grievance, and has the latitude to investigate claimed grievances by members against their employers and the power to abandon frivolous claims. *Vaca v Sipes*; *Lowe v Hotel Employees*, 389 Mich 123, 146 (1973). In *Goolsby,* at 679, the Court defined "bad faith" by a union as an intentional act or omission undertaken dishonestly or fraudulently. The Court, at 680, also stated that arbitrary conduct by a union includes (a) impulsive, irrational or unreasoned conduct; (b) inept conduct undertaken with little care or with indifference to the interests of those affected; (c) the failure to exercise discretion; and (d) extreme recklessness or gross negligence.

In February 2004, the Union withdrew both of Sturgeon's pay grievances. As noted above, it is unclear whether the Union actually reviewed Sturgeon's records and determined that she was not entitled to the "over the head count" compensation she sought before it withdrew the grievances. Even if it did not, however, it is clear that the "over the head count" provisions of the collective bargaining agreement were not breached. Prior to the fall of 2002, Sturgeon was not paid "over the head count" compensation because she did not submit requests to her dean at the end of the semester as the contract required. In Sturgeon's August 2002 grievance, she calculated the amount of "over the head count" compensation the Employer owed her by using her class rosters from the beginning of the semester, although the contract clearly stated that these calculations were to be based on the final grade rosters. In December 2002, the Employer paid Sturgeon compensation for eight "over the head count" students from classes she taught between the fall of 1998 and the spring/winter semester of 2002. The records the Employer provided to the Union with its April 21, 2005 grievance position statement demonstrate that it paid Sturgeon all the compensation to which Sturgeon was entitled based on the number of students listed on the final grade rosters for these classes. As Sturgeon admitted, beginning with the fall of 2002, she submitted requests for compensation to her dean at the end of the semester whenever she had "over the head count" students and was paid for these students. I conclude that Sturgeon failed to establish that the Employer breached the collective bargaining agreement by failing to compensate for "over the head count" students in her classes.

The "pay per section" number claim appears to have been included in grievance # 016-03 due to a series of misunderstandings. In the fall of 2003, Sturgeon heard, second-hand, that Atlas had said that faculty members were entitled to be paid by section number. In fact, Sturgeon had been paid separately for the clinical sections of Nursing 101 that she taught. However, Sturgeon interpreted Atlas' alleged remark to mean that she was entitled to be paid separately for every section number, whatever the circumstances. There is no indication in the record that when Atlas filed grievance #016-03, she understood that Sturgeon taught a lecture that incorporated many sections and that Sturgeon was seeking to be paid separately for all these sections even though she met with them all at the same time. It is unclear whether the Union even discussed this claim with the Employer after the grievance was filed. Again, however, it is clear that the Employer did not breach the contract by the way it calculated Sturgeon's course load. Sturgeon's lecture was a five credit-hour class that met twice a week, and the Employer counted this class as five credit hours when determining Sturgeon's course load. Since this class sometimes incorporated as many as eight section numbers, under Sturgeon's theory she should have been paid for up to forty credit hours for teaching this lecture, or over twice a full-time faculty member's normal credit load, in addition to any "over the head count" pay she was entitled to under Article XVII. There is nothing in the contract to support Sturgeon's claim and, as Atlas testified, there is no evidence that the Employer has ever paid faculty separately for sections taught together. I conclude that Sturgeon failed to establish that the contract was breached by the Employer's refusal to pay her separately for each

section of her lecture.

Sturgeon also alleges that the Union violated PERA by failing to provide her with certain documents. The Union concedes that its communication with Sturgeon left something to be desired. According to the record, the Union apparently did not tell Sturgeon that her grievances had been withdrawn in February 2004 until late June 2004, when she heard this from the Union's office manager. It did not provide her with copies of the records it told her it had reviewed to determine that her grievances lacked merit or tell her what these records were.1 In May 2005, the Union decided for the second time not to proceed with Sturgeon's "over the head count" grievance, but did not clearly explain the basis for its decision to Sturgeon until late July 2005. There is no indication that the Union explained to Sturgeon why her "pay per section" claim had no merit before its July 25, 2005 letter. However, a union does not breach its duty of fair representation by a delay in communicating its decision to withdraw a grievance, or by a delay in processing the grievance, unless the delay causes harm to the employee's rights. *Detroit Police Officers Ass'n*, 1999 MERC Lab Op 227, 230; *Ass'n of City of Detroit Engineers*, 2000 MERC Lab Op 205, 209 (no exceptions); *Detroit Ass'n of Educational Office Employees*, 1997 MERC Lab Op 475 (no exceptions). In this case, the Union's failure to communicate with Sturgeon about her grievances, while undoubtedly aggravating to her, did not ultimately harm her since she did not establish that the Employer breached the collective bargaining agreement.

In her May 13, 2005 amended charge, Sturgeon alleged that the Union violated its duty of fair representation by failing to assist her in obtaining disability pay and a medical leave of absence in early 2005, and by failing to inform her of her rights to benefits under applicable laws.2 The evidence with respect to this allegation is scant. The record indicates that in February 2005, Sturgeon asked American Federation of Teachers representative Liz Duhn for help in obtaining short-term disability benefits. Duhn told Sturgeon to write a letter to the Employer, and determined from the Employer that Sturgeon had been credited for sick leave for the fall semester of 2004. The record does not indicate whether Sturgeon asked Duhn or any other union representative for further assistance with her disability claim or if any was provided. Sturgeon apparently did not ask the Union to file a grievance over this issue. Assuming that the Union owed Sturgeon any duty to assist her with her disability claim, the evidence on record does not establish that the Union breached its duty.

As discussed above, at the beginning of the hearing I granted the Employer's motion to dismiss Sturgeon's charge against it for failure to state a claim under PERA. Sturgeon did not allege that the Employer's actions were motivated by hostility toward her for her union or other protected activities. Rather, she alleged that the Employer treated her unfairly and/or that its actions violated Respondents' collective bargaining agreement. PERA does not prohibit an employer from engaging in actions that are "unfair," unless these actions interfere with an employee's exercise of the specific rights set forth in Section 9 of PERA. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). Moreover, an employee's allegation that the employer violated the collective bargaining agreement

1 Sturgeon's charge included the claim that the Union violated FOIA by failing to provide her with certain documents. The Commission does not enforce FOIA, which in any case applies only to "public bodies." MCL 15. 233.

2 Sturgeon also alleged in this charge that the Union unlawfully colluded with the Employer to deny her compensation. A union does not violate PERA simply by agreeing with an employer's interpretation of their collective bargaining agreement. *City of Detroit*, 17 MPER 47 (2004).

does not, by itself, state a claim under PERA. *Ann Arbor Pub Schs*, 16 MPER 15 at 37 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75. For the reasons stated above, I conclude that Sturgeon failed to state a claim against the Employer under PERA.

In accord with the findings of fact and discussion above, I conclude that Sturgeon's charge against the Union based on its handling of her pay grievances should be dismissed because Sturgeon did not show that the collective bargaining agreement was breached. I also conclude that Sturgeon failed to establish that the Union breached its duty of fair representation by failing to assist her in resolving her disability pay and related issues with the Employer. I conclude that Sturgeon's charge against the Employer failed to state a claim under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charges are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____