STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C04 J-275,

-and-

GREATER DETROIT BUILDING TRADES COUNCIL,
Labor Organization-Respondent in Case No. CU04 J-058,

-and-

MARGARET A. TURNER-EPPERSON,
An Individual Charging Party.
____/

APPEARANCES:

Lionel C. Sims, Jr., Esq., Assistant General Counsel, for the Respondent Employer

J. Douglas Korney, Esq., for the Respondent Labor Organization

Margaret A. Turner-Epperson, *In Propria Persona*

DECISION AND ORDER

On August 24, 2005, 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

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Nora Lynch, Commission Chairman

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Nino E. Green, Commission Member

Dated: ____________

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J. Douglas Korney, Esq., for the Respondent Labor Organization

Margaret A. Turner-Epperson, 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 in Detroit, Michigan on April 28, 2005, by Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including exhibits submitted at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

Margaret A. Turner-Epperson filed these charges against her employer, the Detroit Public Schools (the Employer), and her collective bargaining representative, the Greater Detroit Build Trades Council (the Union), on October 18, 2004. Turner-Epperson was laid off from her employment as a journeyman plumber for the Employer on July 1, 2004. Turner-Epperson alleges that the Employer breached the collective bargaining agreement when it laid her off out

of seniority order. She also alleges that the Union violated its duty of fair representation by refusing to process her grievance over her layoff.

Findings of Fact:

The Union represents a bargaining unit of carpenters, painters, sheet metal workers, pipe fitters, plumbers and other skilled tradesmen employed by the Employer. Separate seniority lists are maintained for each trade group. On or about June 14, 2004, the Employer notified thirteen of its twenty-five journeymen plumbers that they would be laid off effective July 1, 2004. Turner-Epperson was the most senior plumber to receive a layoff notice.

Respondents' collective bargaining agreement states:

> In the event of layoff and recall, following such layoff, seniority shall be observed consistent with an employee's special skills to do the available work, and such laws both State and Federal to which the District might be subjected. Any deviations from the strict application of seniority will require a conference with the Union representative of the involved trade and the department head at which time the representative will be advised as to the reasons for such deviation.

When the layoffs were announced, the Employer was preparing to begin testing backflow prevention devices in all its schools. In 2003, after receiving a series of fines related to the failure of these devices, the Employer decided that it needed to test backflow prevention devices every year. Backflow device testing must be performed by a plumber specifically certified to perform this work. In the summer of 2003, journeyman plumbers Truett Coleman and Julius Ward tested all the district's backflow prevention devices. Larry Redfearn, the Employer's lead general foreman, believed at that time that Coleman and Ward were the only plumbers with backflow certifications. According to Redfearn, if he had known that any other plumbers had this certification he would also have assigned them to the job.

Shortly after the layoff announcement, Malcolm Grayson, acting general trades foreman, told the plumbers that since Coleman was being laid off Ward would be doing all the backflow testing in 2004. After the meeting, Frank Collins reminded Grayson that he also had a backflow certification. Grayson seemed surprised, even though Collins had told him the previous year that he had obtained this certification.

Redfearn was concerned that without Coleman, the Employer would not be able to complete the backflow testing. When a plumber who had not received a layoff notice notified the Employer that he planned to retire, Redfearn decided that Coleman, because of his backflow certification, should replace him. On or about June 24, 2004, Redfearn called Edward Coffey, the Union's business agent, and explained the situation. He asked the Union to permit the Employer to retain Coleman despite his low seniority. Redfearn formalized his request in a letter to Coffey dated June 24, and Coffey forwarded Redfearn's request to Plumbers Local 98. On June 28, Local 98 indicated its approval. Coffey sent a copy of the Local's letter to Redfearn. The Employer then notified Coleman that it was rescinding his layoff notice.

On July 9, Turner-Epperson filed a grievance asserting that the Employer had violated the contract by laying her off while retaining a plumber with less seniority. In the grievance, Turner-Epperson asserted that the number of plumbers with special skills exceeded what was needed. She believed that Redfearn's personal relationship with Coleman, and not Coleman's backflow certification, was the reason Redfearn wanted Coleman to remain on the job.[1] On July 12, Turner-Epperson went to the Union office and spoke to Coffey. Turner-Epperson told Coffey that she knew that there were a number of plumbers with more seniority than her who had backflow certifications but had never been asked to use them. However, she did not give him any names.[2] Later that day, Coffey sent Turner-Epperson a letter in which he stated that she had supplied "no germane documents to sustain [her] allegations," and had "not identified the contract provision that references the special skills violations." In his letter, Coffey made a sarcastic comment about Turner-Epperson's spelling ability. Coffey and Turner-Epperson subsequently exchanged unfriendly letters about the Union's finances and its duties toward its members. The Union did not take any action to pursue Turner-Epperson's grievance.

When the Employer began backflow testing in August 2004, Collins was assigned to work with Ward and Coleman. For two months, Collins, Ward and Coleman spent about half their time testing backflow devices. The rest of the time they were assigned to other plumbing duties. Redfearn testified that with only twelve plumbers, he could not assign them exclusively backflow work. After completing the testing, the three returned to their regular work.

Discussion and Conclusions of Law:

A union's duty of fair representation requires it to (1) serve the interest of all members without hostility or discrimination; (2) exercise its discretion with complete good faith and honesty; and (3) avoid arbitrary conduct. *Goolsby v Detroit,* 419 Mich 651 (1984), citing *Vaca v Sipes*, 386 US 171 (1967). *Goolsby,* at 679, defined "arbitrary conduct" as conduct that is impulsive, irrational, or unreasoned, or inept conduct undertaken with little care or with indifference to the interests of those affected. A union has considerable discretion to decide which grievances to press and which to settle. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-46 (1973); *Wayne State Univ,* 18 MPER 32 at 110 (2005). A union does not violate its duty of fair representation by refusing to process a grievance as long as it exercises its discretion in good faith and without hostility or discrimination, and its actions are not arbitrary as *Goolsby* defined this term.

The record does not indicate that Coffey arbitrarily refused to process Turner-Epperson's grievance. Before the effective date of the layoffs, Redfearn told Coffey that the Employer wanted to retain Coleman to do backflow device testing. Under Respondents' collective bargaining agreement, the Employer can lay off or recall out of seniority order "consistent with an employee's special skills to do the available work." Backflow prevention device testing was clearly "available work" requiring a "special skill," since it required a specific certification. Coffey approved Redfearn's request based on what Redfearn told him. After Turner-Epperson

[1] Coleman worked for Redfearn when Redfearn had his own plumbing company, and the Employer hired Coleman on Redfearn's recommendation.
[2] Turner-Epperson never presented any evidence that plumbers other than Collins, Ward and Coleman had backflow certifications.

filed a grievance protesting her layoff, she told Coffey that the Employer did not need Coleman to do backflow testing, but did not provide him with any evidence to support her claim or contradict what Redfearn had told him. The fact that Coffey was not persuaded by her assertion of Redfearn's favoritism does not establish that his decision was arbitrary.

I also find no indication that Coffey was motivated by personal hostility. After their July 12, 2004 conversation, Coffey sent Turner-Epperson two letters. The letters contained sarcasm that Turner-Epperson found disrespectful. It appears that Coffey was angered by Turner-Epperson's attack on his decision to allow Redfearn to keep Coleman on the job. There was no evidence, however, that Coffey bore any animosity toward Turner-Epperson at the time he approved Redfearn's request. I find that Coffey did not refuse to process Turner-Epperson's grievance because he was angry with her, but because she had not given him any concrete evidence that Redfearn's request was not legitimate. I conclude that Turner-Epperson did not establish that the Union violated its duty of fair representation when it refused to process the grievance over her layoff, and that her charge against the Union should therefore be dismissed.

Turner-Epperson's charge against the Employer alleges that it violated Respondents' collective bargaining agreement by laying her off out of seniority. At the hearing, she argued that Redfearn kept Coleman on the job simply because the two men were friends, and that this was unfair to her. Section 9 of PERA gives public employees the right to organize, form, or join labor organizations; to engage in concerted activities for mutual aid and protection; and to collectively bargain. 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. *MERC v Reeths-Puffer School Dist,* 391 Mich 253, 259, (1974). An individual also does not state a cause of action under PERA merely by alleging that his or her contractual rights were violated. *Ann Arbor Pub Schs,* 16 MPER 15 at 37 (2003); *Detroit Bd of Ed*, 1995 MERC Lab Op 75,78. I conclude that Turner-Epperson's charge against the Employer should be dismissed because she did not allege any conduct by the Employer that would violate PERA.

In accord with the findings of fact and conclusions of law above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _______________