STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GENESEE COUNTY COMMUNITY MENTAL HEALTH,
Public Employer - Respondent in Case No. C07 C-061,

-and-

MICHIGAN AFSCME COUNCIL 25, AFL-CIO,
Labor Organization - Respondent in Case No. CU07 C-014,

-and-

ANNETTE PERKINS,
An Individual-Charging Party.
_____/

APPEARANCES:

Howard R. Grossman, P.C., by Howard R. Grossman, Esq., for the Public Employer

Kristen M. Clark, Esq., for the Labor Organization

Annette Perkins, *In Propria Persona*

DECISION AND ORDER

On June 25, 2007, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges. The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act. Pursuant to Rule 176, R423.176 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on July 18, 2007.

No exceptions were filed on or before the specified date. However, on July 19, 2007, one day after the exceptions were due, Charging Party requested an extension of time to file exceptions. Pursuant to Rule 176(8), R423.176(8), a request for extension of time in which to file exceptions must be filed in writing before the expiration of the time for filing the exceptions. Although the envelope in which the extension request was mailed was postmarked on July 17, it is well established that the date of filing is the date

the document is received at the Commission's office, not the date posted. See e.g. *Police Officers Association of Michigan*, 18 MPER 14 (2005); *City of Detroit* (*Dep't of Public Works*), 17 MPER 5 (2004); *Frenchtown Charter Twp*, 1998 MERC Lab Op 106, 110 aff'd sub nom *International Union v Frenchtown Charter Twp*, unpublished opinion per curiam of the Court of Appeals, issued November 2, 1999 (Docket No. 211639), 1999 WL 33432169. Therefore, Charging Party's request for an extension of time in which to file her exceptions to the ALJ's Decision and Recommended Order must be denied.

When the Administrative Law Judge's Decision and Recommended Order was served on the parties, the accompanying letter explicitly stated that the exceptions must be received at a Commission office by the close of business on the specified date. Since no timely exceptions have been filed, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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In the Matter of:

GENESEE COUNTY COMMUNITY MENTAL HEALTH,
Respondent-Public Employer in Case No. C07 C-061,

-and-

MICHIGAN AFSCME COUNCIL 25, AFL-CIO,
Respondent-Labor Organization in Case No. CU07 C-014,

-and-

ANNETTE PERKINS,
An Individual Charging Party.
_____/

APPEARANCES:

Howard R. Grossman, P.C., by Howard R. Grossman, for the Public Employer

Kristen M. Clark for the Labor Organization

Annette Perkins *in pro per*

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 David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. This matter comes before the Commission on unfair labor practice charges filed on March 22, 2007 by Annette Perkins against Genesee County Community Mental Health (the Employer) and Michigan AFSCME Council 25, AFL-CIO (the Union).

The charge in Case No. C07 C-061 alleges that the Employer acted unfairly in terminating Perkins' employment after her driver's license was suspended. In Case No. CU07 C-014, Perkins asserts that the Union failed to represent her fairly in connection with her discharge.

The Union filed an Answer to the charge in Case No. CU07 C-014 on April 25, 2007. In its Answer, the Union asserted that Perkins was a probationary employee at the time of her discharge because she had worked for the Employer for less than 1040 hours, and that the

collective bargaining agreement prohibits the Union from representing probationary employees who have been disciplined or discharged, unless said discipline or discharge was for Union activity. The Union attached to its Answer a copy of the relevant contract provisions, along with a letter from the Employer's Director of Human Resources indicating that Perkins had worked a total of 922 hours before her discharge.

On May 11, 2007, the Employer filed a Motion to Dismiss in Case No. C07 C-061, asserting that Perkins had failed to state a claim upon which relief could be granted. On May 18, 2007, I issued an order granting Charging Party fourteen days in which to show cause why both of the charges should not be dismissed for failure to state a claim under PERA. In the order, I specifically indicated that if the allegations in the Union's Answer regarding Perkins' probationary status were accurate, her charge against the Union would be subject to dismissal without a hearing.

Charging Party responded to the Order to Show Cause by letter dated June 18, 2007. In her response, Perkins merely repeated the allegations set forth in the charges in more detail without specifically setting forth the nature of the PERA violation alleged or explaining why the charges should not be dismissed for failure to state a claim under the Act.

Discussion and Conclusions of Law:

With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment. Rather, the Commission's jurisdiction with respect to public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in *union or other protected concerted activities*. Absent an allegation that the public employer interfered with, restrained, coerced or retaliated against the employee for engaging in such activities, the Commission is prohibited from making a judgment on the merits or fairness of the employer's action. Neither in her charges nor in her response to the Order to Show Cause has Perkins alleged any unlawful interference, restraint, coercion or retaliation in response to any claimed union or other protected concerted activities. Thus, no PERA claim has been stated as to the Employer and the charge in Case No. C07 C-061 must be dismissed on that basis.

With respect to Case No. CU07 C-014, 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). Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe*, *supra*. A union satisfies its duty of fair representation as long as its decision is within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. The fact that a member is dissatisfied with the union's efforts or ultimate decision is insufficient to constitute a proper claim 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.

Although a union has a duty to fairly represent probationary employees, it may lawfully enter into a collective bargaining agreement which provides that such employees will not have certain contractual rights, including the right to have a grievance filed on behalf of a probationary employee who has been discharged or subjected to disciplinary action. See e.g. *Michigan State University*, 17 MPER 75 (2004); *Police Officers Labor Council*, 1999 MERC Lab Op 196; *Genesee County Sheriff*, 1990 MERC Lab Op 467. In its Answer to the charge in Case No. CU07 C-014, the Union asserted that Perkins was a probationary employee at the time of her discharge and that the collective bargaining agreement prohibits the Union from representing "probationary employees who have been disciplined or discharged, unless said discipline or discharge was for Union Activity." Charging Party has not disputed that she was a probationary employee at the time of her termination. Thus, it appears that she is merely dissatisfied with the Union's interpretation of the collective bargaining agreement, an interpretation which the Employer apparently does not contest.

The Commission addressed a similar claim in *Saginaw Valley State University*, 19 MPER 36 (2006). In that case, an individual employee disagreed with the manner in which the employer and union were interpreting a term in the collective bargaining agreement. In dismissing the employee's charge, the Commission noted that where there is no dispute between the union and the employer as to the interpretation of the contract, that construction governs. *City of Detroit*, 17 MPER 47 (2004); *Detroit, Wastewater Treatment Plant*, 1993 MERC Lab Op 716; *Muskegon County*, 1992 MERC Lab Op 356.

I conclude that Charging Party has not asserted any facts from which it could be concluded that either the Employer or the Union violated PERA. Accordingly, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: _____