STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UTICA COMMUNITY SCHOOLS,
Respondent-Public Employer in Case No. C99 L-234,

-and-

UTICA EDUCATION ASSOCIATION,
Respondent-Labor Organization in Case No. CU99 L-49,

-and-

LAWANDA PARKER,
An Individual Charging Party.
_____/

APPEARANCES:

Pollard & Albertson, P.C., by William G. Albertson, Esq., for the Public Employer

Amberg, McNenly, Firestone & Lee, P.C., Michael K. Lee, Esq., for the Labor Organization

Lawanda Parker, in pro per

DECISION AND ORDER

On July 31, 2000, 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

_____
Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated: _____

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APPEARANCES:

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Amberg, McNenly, Firestone & Lee, P.C., by Michael K. Lee, for the Respondent Labor Organization

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DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), as amended, MCL 423.210 & 423.216; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on February 29, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before April 20, 2000, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The charge in Case No. C99 L-234 was filed on December 20, 1999, by Lawanda Parker against her employer, the Utica Community Schools. The charge alleges that the Respondent

Employer violated the collective bargaining agreement by refusing to post a vacant position for bid in August 1999. The charge in Case No. CU99 L-49 was also filed by Parker on December 20, 1999. This charge was filed against the Utica Education Association, Parker's collective bargaining representative. It alleged, first, that the Respondent Union violated its duty of fair representation when it decided not to take Parker's grievance to arbitration. The charge also alleged that the Union violated its duty of fair representation by failing to adequately prepare for and/or investigate this grievance. According to Parker, she repeatedly requested that the Union obtain and provide her with information was necessary to adequately prepare for meetings with the Employer on the grievance. Parker alleges that the Union improperly failed to gather the information or demand it from the Employer. Parker was permitted to amend her charge at the hearing to include the claim that the Union discriminated against her in handling her grievance because of previous disputes Parker had with Union officers.

On February 22, 2000, the Union filed a motion for partial summary disposition asking that Parker's allegation that the Union failed to provide her with information be dismissed. By letter dated February 22, I refused to grant the motion, on the grounds that Parker's actual claim appeared to be that the Union had refused to collect information necessary to adequately process her grievance.

Facts:

Parker is employed by the Utica Public Schools as a junior high school social studies teacher. She is a member of a bargaining unit of professional employees represented by the Utica Education Association. Parker has been a Union building representative since approximately 1994. In March 1998, Parker ran unsuccessfully against the Union's incumbent president, James Matrille. During and after her campaign, Parker accused Matrille of unfair campaign practices. During the negotiations for the most current contract between the Respondents, Parker was a member of a Union subcommittee. On March 2, 1999, Matrille sent Parker a three-page letter severely criticizing her conduct. Matrille accused Parker of attacking him behind his back and then refusing to confront him personally. Matrille also stated that Parker's "indiscriminate use of e-mail threatens everyone's limited personal use as well as the contractual use of it for official Association business." The letter also accused Parker of interfering with the bargaining process by failing to perform subcommittee duties she had taken on, writing "covert letters to administration," distributing misinformation to the members of the unit by e-mail, and disclosing confidential information to the administration by sending it through the e-mail system. Matrille sent copies of this letter to the Union's board of directors, representative assembly, and bargaining team.

The instant dispute arose from Parker's desire to transfer from her social studies position to a position as an instrumental music instructor. Transfers are addressed in Article XI (B) of the current collective bargaining agreement.

VACANCY:

1. For the purpose of this Article a vacancy will be defined as any position to which a teacher is not assigned.

2. Positions which become vacant between the beginning of the school year and the end of the first semester and are known to extend to the end of the school year will be posted and made available to voluntary transfers, EXCEPT:

a. Where the position is to be eliminated.
b. Where the position will be filled by a teacher returning from leave or recalled from layoff.
c. Where the position is being held for a person on a compensable leave of absence.

3. Decisions to eliminate a vacant position or offer a position to a laid off teacher will be determined within five (5) working days of the position becoming vacant.

4. Positions offered for potential voluntary transfers will be posted in all buildings and the Utica Education Association Office. The vacancy will be posted for five (5) working days from the date of the posting. The vacancy will be awarded withing fifteen (15) working days of the expiration of the posting.

When the current contract was being negotiated in the spring of 1999, the Union proposed language which would have required the Employer to post all vacancies. This proposal was dropped before the Respondents settled their contract.

Every year from 1995 through 1998, Parker filled out a request for a transfer to an instrumental music position. In 1998 a vacant elementary school music position was posted. Parker interviewed for the position, but she did not get the job. On or about October 1, 1999, Parker heard that an elementary school instrumental music position had become vacant and that position had been filled without being posted. From the Employer's personnel office she learned that the position had become vacant on about August 17, 1999. She was told that the Employer had hired an individual who had been a student teacher the previous semester. She was also told that the Employer had been in a hurry to fill the position and had forgotten about her interest. Parker asked Emalee Baldwin, the Union's executive director, to file a grievance. On October 12, 1999, the Union filed a grievance protesting the filling of the instrumental music position without a posting. The grievance cited Article XI (B)(4) of the contract and two sections of the contract prohibiting discrimination.

Parker initially asked Baldwin to ask the Employer whom it had hired for instrumental music positions over the last ten years and how it had hired them. Parker subsequently asked Baldwin to get information from the MEA on how vacancies were handled in other districts. On October 15, 19 and 21, Parker sent Baldwin e-mails asking whether Baldwin had gotten the information and asking her what she was doing to prepare for the step two grievance meeting. On October 21 Baldwin told Parker that she had conferred with MEA attorneys who had told her that postings were a matter of contract, not law. Baldwin told Parker that the Union could not get the hiring information Parker wanted because the Freedom of Information Act (FOIA) does not require a school district to create a document that does not already exist in the form requested. Baldwin also said that this information had no connection to the posting language cited in the grievance. In a subsequent communication, Baldwin told Parker that the MEA did not have a database of contract language from other districts.

The second step meeting on Parker's grievance was held on October 26, 1999. Parker was permitted to attend this meeting. At the meeting, Glen Patterson, an Employer personnel representative, said that there was long-standing precedent that the Employer didn't post all jobs. He said that there hadn't been time to post the job Parker wanted. In addition, he told Parker that her 1998 interview had been terrible, that she was "anti-administration," and that principals did not want her in their buildings. Baldwin then asked Patterson about Parker's personnel record, and Patterson admitted that there was nothing bad in her record. Patterson denied the grievance orally and a written denial was issued the following day.

On October 27, Parker e-mailed Baldwin asking for a copy of Baldwin's notes from the meeting and discussing what she termed the Employer's reliance on a "last ditch personal attack." Parker said that "since this is going to level 3, let's make sure we get everything entered according to the correct time lines." Baldwin sent Parker an e-mail stating that she would submit the grievance to the Union's grievance committee for consideration of whether to take the grievance to the third step, and would notify Parker of the committee's decision. Baldwin declined to give Parker a copy of her personal notes. Baldwin also told Parker:

> I do not believe that any of the personal information about their inability to find you a position in another building will be part of any of their arguments at succeeding steps. They will base statements on their position that posting is permissive and that there is ample prior precedent to show how the language has operated.

The Union's grievance committee agreed to take the grievance to the third step. A third step meeting was held on November 4, 1999. On November 16, the Employer issued its written denial. The Employer stated that Article XI(B)(4) only required the Employer to post positions which were being offered for potential voluntary transfers. It stated again that it had a long history of not posting vacancies. It said that the vacancy in question had arisen only days before the opening of school and had not been offered for voluntary transfer. The Employer also noted that the issue of postings had been raised and then dropped by the Union during the last contract negotiations.

On November 19, the Union's grievance committee met to decide whether to take Parker's grievance to arbitration. Matrille was not present at this meeting and did not take any part in the grievance committee's deliberations. Parker was permitted to attend the meeting and to make a statement explaining why she felt the grievance should be arbitrated. During the meeting Baldwin gave the committee the opinion of the MEA legal department, which was that the grievance would likely be denied by an arbitrator because the arbitrator would take into account the past practice and that fact that the Union had unsuccessfully tried to bargain stronger language during the previous contract negotiations. The grievance committee told Parker that the contract language was weak and that they were worried that if they took the grievance to arbitration they might end up in a worse position.

On November 23, 1999, Baldwin sent Parker a memo notifying her that the grievance committee had decided not to take the grievance to arbitration. The memo noted that the committee

realized that the posting of vacancies for transfer was an important issue for many members, and that they had decided to refer the issue to the Union president with a recommendation that the issue be raised again at the bargaining table.

Discussion and Conclusions of Law:

A Union's duty of fair representation under PERA consists 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; 87 S Ct. 903; (1967)*; Goolsby v Detroit,* 419 Mich 651,679(1984).

Parker asserts that the Union discriminated against her in the handling of her grievance because of her previous disputes with Union officers. In 1998 Parker was defeated in an election for Union president by the current president, Jim Matrille. Parker also served on a Union subcommittee during contract negotiations in the winter of 1998-99. As evidenced by a letter Matrille wrote her in March 1999, Matrille was extremely angry at Parker for actions allegedly taken by her during the election campaign and also during the contract negotiations. There is, however, no evidence that Matrille participated in the processing of Parker's grievance or that he had any influence on the Union's decision not to take her grievance to arbitration. There is also no evidence that Union Executive Director Baldwin or any member of the Union's grievance committee was influenced by considerations outside of the grievance process itself. I conclude that Parker did not establish that the Union discriminated against her or that it acted in bad faith.

A union has considerable discretion to decide which grievances should be pressed and which should be settled or dropped. *Lowe* v *Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-147 (1973). An individual employee does not have an absolute right to have his or her grievance taken to arbitration. *Goolsby*, *supra,* 661. As long as its decision is not arbitrary,[1] discriminatory, or in bad faith, a union may legitimately decide not to proceed further with a grievance. *Silbert v Lakeview Education Assoc,* 187 Mich App 21 (1991). In short, a union does not violate its duty of fair representation when it makes a reasoned, good faith, nondiscriminatory decision not to take a grievance to arbitration.

In this case, even though the definition of "vacancy" in Article XI(B)(1) of the contract was clear, the use of the phrase "positions offered" in Article XI(B)(4) created an ambiguity as to whether the contract required the Employer to post all vacancies. The Employer had undisputedly filled many vacancies without the Union's objecting to its failure to post, implying that the Respondents had agreed on the meaning of this contract language. Moreover, the Union had previously proposed less ambiguous language, and had dropped its proposal after the Employer refused to agree. All these facts were raised by the Employer during the processing of the grievance, noted by the MEA's legal department who advised Baldwin that the grievance would probably not be successful, and considered

[1] Arbitrary has been defined as "impulsive, irrational, or unreasoned," "undertaken with little care or with indifference to the interests of those affected," or "extreme recklessness or gross negligence." *Goolsby*, 679,682.

by the Union's grievance committee when it decided not to take Parker's grievance to arbitration. I find that the Union made a reasoned, good faith decision not to take Parker's grievance to arbitration based on these facts.

Parker argued that the Union failed to properly prepare for and/or investigate her grievance. However, as Baldwin told Parker on October 21, 1999, the hiring history information Parker believes the Union should have obtained from the Employer was irrelevant to this grievance because the Employer's position was that the contract language gave it the right, except in certain circumstances not applicable to Parker's case, to decide whether vacancies would be posted. Parker also argues that the Union should have gathered information on how vacancies were handled under other MEA contracts. Parker's grievance, however, concerned the meaning of language in Respondents' contract. Practices in other school districts would have no relevance unless another district could be found with identical contract language, an identical past practice, and an identical bargaining history. I find no indication that the Union acted arbitrarily, as that term as been defined in the case law, when it decided not to seek out the information that Parker thought was necessary. I conclude that the Union did not breach its duty of fair representation in its investigation of Parker's grievance.

For the reasons set forth above, I conclude that the Union did not violate its duty of fair representation in either its investigation of or preparation for Parker's grievance or in its decision not to take this grievance to arbitration.

In her charge against the Employer, Parker claims only that it violated PERA by violating her contractual rights. An individual does not state a cause of action under PERA merely by alleging that his or her contractual rights were violated. *City of Detroit*, 1997 MERC Lab Op 11; *Detroit Bd of Education*, 1995 MERC Lab Op 75.

In accord with the findings of fact, discussion and conclusions of law above, I find that neither Respondent Utica Community Schools nor Respondent Utica Education Association committed an unfair labor practice under PERA. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges in this case are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____