

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

WAYNE STATE UNIVERSITY,  
Respondent-Public Employer in Case Nos. C00 E-88, C00 F-111, and C00 G-135,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 177M,  
Respondent-Labor Organization in Case No. CU00 G-27,

-and-

DERRICK FIELDS,  
Individual Charging Party in Case Nos. C00 E-88, C00 G-135, and CU00 G-27,

-and-

LINDA L. FIELDS,  
Individual Charging Party in Case No. C00 F-111.

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**APPEARANCES:**

Bruce J. Gluski, Esq., for the Public Employer

Sachs Waldman, P.C., by Andrew Nickelhoff, Esq., for the Labor Organization

Derrick Fields in Pro Per

Linda L. Fields in Pro Per

**DECISION AND ORDER**

On September 28, 2001, Administrative Law Judge (hereafter "ALJ") Roy L. Roulhac issued his

Decision and Recommended Order in the above matter finding that Respondent Wayne State University (hereafter “University”) did not retaliate against Charging Parties Derrick and Linda L. Fields in violation of Section 10(1)(c) of the Public Employment Relations Act (hereafter “PERA”), 1965 PA 379, as amended, MCL 423.210 in Case Nos. C00 E-88, C00 F-111, and C00 G-135. The ALJ also found that in Case No. CU00 G-27 Respondent Service Employees International Union, Local 177M (hereafter “SEIU”) did not violate its duty to fairly represent Charging Party Derrick Fields under Section 10(3)(a)(i) of PERA. The ALJ recommended that the Commission dismiss the unfair labor practice charges and complaints. On November 13, 2001, Charging Parties filed timely exceptions to the Decision and Recommended Order of the ALJ. Respondent Union filed a timely brief in support of the ALJ’s decision on November 14, 2001.

Charging Party Derrick Fields was employed by the University as a housekeeper from 1997 until he was assigned to a temporary supervisor position in the custodial service department in June of 1999. During his tenure as a housekeeper, from 1997 until 1999, Mr. Fields served as union steward for Local 24 of the Hotel Restaurant Employees International Union wherein he processed many grievances, including complaints to his supervisor that an employee was experiencing problems with his paycheck. Mr. Fields held the temporary supervisor position until April 7, 2000, when, after all of his eighteen employees held two meetings with University management to complain about his supervision, he was demoted to his previous housekeeper position.

On April 10, 2000, Mr. Fields met with SEIU officials, including Charging Party and SEIU vice-president Linda Fields<sup>1</sup>, to discuss whether a grievance protesting his demotion would have merit. Despite the opinion of the SEIU chief steward that the demotion did not violate the terms of the contract, a grievance was filed on Mr. Fields’ behalf. The University denied the grievance at the combined third and fourth steps of the procedure in a meeting on June 1, 2000, during which Mr. Fields informed the University’s labor relations representative that Linda Fields had spoken with University management about whether he had been awarded the position of custodial supervisor, and that she would be a witness for him in that regard. The SEIU executive board decided to not pursue Mr. Fields’ grievance to arbitration, on the basis that no contract violation had occurred. Mr. Fields’ was informed as such by SEIU officials on July 15, 2000. On July 17, 2000, Mr. Fields received a five-day suspension for failing to follow his supervisor’s direct order of returning his parking pass to the University.

Charging Party Linda Fields has been employed by the University for the past 24 years, and has held the position of supervisor in the custodial services department for the last six years. She is also the vice-president of the SEIU. As noted above, Ms. Fields was present during the April 10, 2000 meeting regarding the viability of Mr. Fields’ aforementioned grievance. On June 14, 2000, a confrontation occurred between Ms. Fields and her supervisor, after which they were both directed to attend an anger management seminar. She believed that because of her involvement in processing Derrick Fields’ grievance, she was being overly supervised and had been falsely accused of coming into the office to pick up her paycheck while she was on sick leave.

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<sup>1</sup> Ms. Fields is Charging Party Derrick Fields’ mother. This fact does not have any bearing on our decision, nor do we believe that it had any effect on the ALJ’s decision, as alleged in Charging Parties’ exceptions.

On May 12, 2000, Charging Party Derrick Fields filed an unfair labor practice charge against Respondent University alleging that he was retaliated against for engaging in protected concerted activities while he was a member and steward of Local 24. On July 28, 2000, he filed another charge against Respondent University alleging that the suspension he received was in retaliation for the May 12, 2000 charge he filed with this agency. In recommending dismissal of the charges, the ALJ concluded that Charging Party failed to sustain his burden of proving that the protected activity in which he engaged during his membership in Local 24 was a motivating factor in his demotion. The ALJ also concluded that the credible record evidence shows that he was suspended because he disobeyed an order of his supervisor. Charging Party filed an unfair labor practice charge against Respondent SEIU on July 28, 2000 alleging that it failed to properly represent him by refusing to investigate the merits of his grievance and for failing to keep him timely informed of its disposition. In his recommended order, the ALJ concluded that this charge should also be dismissed because the SEIU did not violate its duty to fairly represent Charging Party.

On June 19, 2000, Charging Party Linda Fields filed an unfair labor practice charge against Respondent University alleging that her supervisor retaliated against her because he learned that she planned to testify that she heard him say that Charging Party Derrick Fields would get the position that he did not receive. In recommending dismissal of the charge, the ALJ concluded that Charging Party Linda Fields failed to present any evidence of union animus or hostility toward her protected rights, or that her protected activity was a motivating factor in any adverse action taken against her.

On exception, Charging Party Derrick Fields argues that the ALJ erred when he found that the University and the SEIU are parties to a collective bargaining agreement that governs the terms and conditions of employment of certain supervisory employees, and that the SEIU and University can raise as a defense the issue of no contract violations without considering the collective bargaining agreement. We have long held that interpretation and enforcement of collective bargaining agreements are not per se functions of this Commission under PERA. We do, however, have jurisdiction to interpret a collective bargaining agreement where necessary to determine whether an unfair labor practice has been committed. See *University of Michigan*, 1971 MERC Lab Op 994. See also *NLRB v C&C Plywood*, 385 US 421 (1967). In this case, it was not necessary for the ALJ to construe the contract in order to determine whether the University demoted and/or suspended Charging Party in retaliation for his involvement in protected activities. The burden of proof was on Charging Party to establish a PERA violation, regardless of the terms of the collective bargaining agreement. See *City of Detroit Wastewater Treatment Plant*, 1993 MERC Lab Op 719; *MESPA v Ewart Public Schools*, 125 Mich App 71 (1983). Therefore, the ALJ did not err when he made his determination in this case without taking the contract and its provisions into account.

Charging Party Derrick Fields further contends on exception that the ALJ erred when he concluded that Charging Party failed to sustain his burden of proving that the protected activity in which he engaged was a motivating factor in both his demotion and suspension. We are of the opinion that the record testimony and evidence supports the ALJ's conclusion that Charging Party failed to sustain his burden of proof. Nothing in the record connects any of Charging Party's protected activities with the University's decisions to demote or suspend him. Moreover, even if the burden had shifted to the University, the University put forth legitimate, non-discriminatory reasons for its actions and showed that it would have

taken these same actions in the absence of the protected conduct. See *Evert Public Schools* at 74. That is, even if Charging Party met his initial burden, the University would have met its own burden of showing that Charging Party was demoted primarily because his employees complained about his supervision on more than one occasion, and that he was suspended because he refused to follow his supervisor's direct order of returning his parking pass. The University also produced evidence which demonstrated that whenever such instances occurred with other employees, the same or similar forms of discipline were given. Charging Party did not produce rebuttal evidence. In any event, the ultimate burden here remained with Charging Party. See *City of Saginaw*, 1997 MERC Lab Op 414. Thus, we agree with the ALJ that Charging Party failed to meet his aforementioned burden in this case.

Charging Party Derrick Fields also excepts to the ALJ's finding that the SEIU did not violate its duty to fairly represent him. In a fair representation case, the Charging Party has the burden of proving that the Union's conduct toward him was arbitrary, discriminatory, or in bad faith. See *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v City of Detroit*, 419 Mich 651 (1984); *Lowe v Hotel Employees Union*, 389 Mich 123 (1973). Here, the record testimony indicates that even prior to the filing of the grievance, the chief union steward informed both Charging Parties that the grievance lacked merit. Furthermore, it is clear from Charging Party's own evidence, specifically the July 17, 2000 letter to the SEIU, that the SEIU had kept him informed of the decision to not advance his grievance to arbitration. The fact that Charging Party's grievance was not taken to arbitration, contrary to his wishes, does not rise to the level of an unfair labor practice. An individual member does not have the right to demand that his grievance be pressed to arbitration, and the union "obviously" is not required to carry every grievance to the highest level, but must be permitted to assess each with a view to individual merit. See *South Redford School District*, 1989 MERC Lab Op 803, citing *Gunkel v Garvey*, 45 Misc 2d 435, 256 NYS2d 953 (1964). As discussed above, the SEIU's majority vote was to not pursue Charging Party's grievance beyond the fourth step of the grievance procedure due to lack of merit. We find, therefore, that the ALJ did not err in concluding that the SEIU did not violate its duty of fair representation to Charging Party Derrick Fields.

Charging Party Linda Fields argues on exception that the ALJ erred when he found that the University did not discriminate against her due to her efforts in assisting Charging Party Derrick Fields with his grievance. As noted above, the ultimate burden is on the Charging Party to not only make a prima facie case of discrimination, but to also rebut as pretextual Respondent's proffered legitimate, nondiscriminatory reasons for its actions, if any. See *City of Saginaw* at 419-20. We have carefully reviewed the record in light of this charge and agree with the ALJ's conclusion that there is simply no evidence of union animus or hostility by the University toward Charging Party's protected rights, and that her protected activity was not a motivating factor in any perceived adverse action against her. Therefore, we hold that the ALJ correctly concluded that Charging Party Linda Fields was not discriminated or retaliated against because of her union activities.

All other arguments raised by Charging Parties have been carefully considered and do not warrant a change in the outcome of this case.

**ORDER**

For the reasons set forth above, we hereby adopt the recommended order of the ALJ as our order in this case. The unfair labor practice charges are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Chair

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Harry W. Bishop, Member

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C. Barry Ott, Member

DATED: \_\_\_\_\_

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APPEARANCES:

Bruce J. Gluski, Attorney, for the Public Employer

Sachs Waldman, P.C., by Andrew Nickelhoff, Attorney, for the Labor Organization

Lance W. Mason, P.C., by Lance W. Mason, Attorney, for the Charging Parties

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, MSA 17.455(10) *et seq.*, this case was heard in Detroit, Michigan on December 2, 2000 and March 13, 2001, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. These consolidated proceedings were based upon unfair labor practice charges filed against Respondent Wayne State University (hereafter, "WSU") by Charging Party Derrick Fields and

Charging Party Linda Fields and against Respondent Service Employees International Union, Local 177M (hereafter, "Local 177M") by Charging Party Derrick Fields. Based upon the record and briefs filed by June 15, 2001, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charges:

In a May 12, 2000, charge against Respondent WSU in Case No. C00 E-88, Charging Party Derrick Fields alleged that in retaliation for his protected union activities he was demoted from a supervisor of housekeeping position that he successfully held for ten months. In Case No. C00 G-135, filed July 28, 2000, Charging Party Derrick Fields alleged that a five-day suspension he received for alleged insubordination was in retaliation for a charge he filed with appropriate agencies. In his July 28, 2000, charge against Respondent Local 177M, Case No. CU00 G-27, Derrick Fields claimed that the Local 177M failed to properly represent him by refusing to investigate the merits of his grievance and for failing to keep him timely informed of its disposition. In Linda Fields' June 19, 2000 charge, Case No. C00 F-111, she claimed that her supervisor, Lloyd Garcia, retaliated against her because he learned in a grievance meeting that she would be able to testify that she had heard him say that her son, Charging Party Derrick Fields, would get the job that he did not get.

Findings of Fact:

Respondents WSU and Local 177M are parties to a collective bargaining agreement that governs the terms and conditions of employment of certain supervisory employees. The agreement contains a five-step grievance procedure that ends in binding arbitration. Charging Party Linda Fields, the vice-president of Local 177M, has been employed as a supervisor in the custodial services department for the last six of the twenty-four years she has been employed by WSU. Derrick Fields, Linda Fields' son, was employed as a temporary supervisor in the custodial services department from July 1999 until April 7, 2000, when he was demoted and returned to his position as a housekeeper, a job he held from 1997 until his promotion to temporary supervisor. He was demoted after all eighteen employees that he supervised held two meetings to complain about his supervision. As a housekeeper, Derrick Fields was a member of the Hotel Restaurant Employees International Union, Local 24. During his tenure as steward, he filed over fifty grievances and complained to his supervisor that a co-worker was experiencing problems with his paycheck.

On April 10, three days after Derrick Fields' demotion, Randall Hudgins, Local 177M's chief steward, met with Charging Parties Linda and Derrick Fields to review the collective bargaining agreement to determine whether Derrick Fields' demotion violated the contract. Hudgins testified that after their 1½ to 2 hour meeting, he explained to Derrick and Linda Fields that the contract provisions they identified did not violate the contract but he agreed, nevertheless, to file a grievance on Derrick Fields' behalf. A grievance was filed and Local 177M representatives represented Derrick Fields during each step of the grievance procedure. The grievance was denied by WSU on June 1, 2000, after a combined step 3 and 4 meeting. Derrick Fields testified that during that meeting, he told Denise Bryant, WSU's labor relations representative, that Linda Fields had spoken to Lloyd Garcia about whether he had been awarded the supervisory position.

Subsequently, Local 177M's executive board voted unanimously not to advance Derrick Fields' grievance to arbitration. Hudgins testified "it was pretty unanimous that we did not have any Article violations or any evidence that we could really take forward and even have hopes of winning in a case on Mr. Fields' behalf." In a July 17, 2000, letter to Local 177M inquiring about the status of his grievance, Derrick Field wrote that on July 15, he was told by Hudgins and Local 177M president Jim Inglehart that Local 177M had no intention of pursuing his grievance beyond step 4.

In the meantime, on July 14, 2000, interim housekeeping director Eugene Carter and housekeeping manager Lloyd Garcia saw Charging Party Derrick Fields' truck, with an emergency parking pass displayed on the dashboard, illegally parked on campus. The pass had been issued to Derrick Fields for his use during his tenure as a temporary supervisor. When Derrick Fields' supervisor asked him to relinquish the pass, Derrick Fields denied having it and told him that he left the pass in his office when his supervisory position ended in April 2000. On July 17, Respondent Employer suspended Charging Party Derrick Fields for five days for failing to follow a direct order.

In June 14 and June 29, 2000, letters to Carter and WSU's equal employment opportunity officer, respectively, Charging Party Linda Fields complained that after attempting to assist Charging Party Derrick Fields in arbitrating his grievance, Garcia began to overly supervise her. Among others things, she complained that he walked by her building every day looking to find something wrong and that she was the only supervisor that he directed to pick up mail at 5 a.m. She also complained about the Garcia's conduct during a confrontation between them on June 14, 2000.<sup>2</sup> Linda Fields testified that the Employer was aware of her protected activity because during Derrick Fields' grievance meeting on June 1, he told Denise Bryant that she (Linda Fields) was going to be a witness for him. Bryant denied knowledge of any plans by Linda Fields to testify for Derrick Fields. In any event, Linda Fields did not attend the June 1 meeting.

#### Conclusions of Law:

Charging Party Derrick Fields claims that he was demoted in retaliation for his involvement in protected activity while he was a steward in Local 24, and that he was suspended for five days for filing an unfair labor practice charge on May 12, 2000. To sustain a charge that an employer's discharge or other discriminatory action violated PERA, the charging party must establish: that the employee engaged in union or other protected activity; employer knowledge of that activity; union animus or hostility towards the employee's protected rights; and suspicious timing or other evidence that protected activity was a motivating cause of the employer's action. See *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, *enfd*, CA Case No. 214734 (11/30/98); *Olivieri/Cencare Foster Care Homes*, 1992 MERC Lab Op 6; *MESPA v Ewart Public Schools*, 125 Mich App 71, 74 (1983).

I find that Charging Party Derrick Fields has failed to sustain his burden of proving that protected activity that he engaged in during his membership in Local 24 was a motivating factor in his demotion. There

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<sup>2</sup> Both Garcia and Linda Fields were directed to attend an anger management seminar as a result of their confrontation.

is nothing on the record that connects any of the complaints or fifty grievances that Derrick Fields filed while he was a Local 24 steward to WSU's decision to demote him. His protected activity as a steward did not interfere with his promotion to a temporary supervisor position in July 1999, and his promotion runs counter to his claim that his protected activity was a factor in his demotion in April, 2000, nine months later. Further, I find no merit to Derrick Fields' argument that the charge he filed on May 12, 2000, was a motivating factor in his five-day suspension on July 17, 2000. Although he was suspended two months after he filed the unfair labor practice charge, the credible evidence on the record supports the conclusion that Charging Party Derrick Fields was suspended because he disobeyed an order to return his parking pass.

I also conclude that Local 177M did not violate its duty to fairly represent Derrick Fields. A union's duty of fair representation under PERA consists of three 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). I find that Local 177M did not abuse its discretion or act arbitrarily by not advancing Derrick Fields' grievance to arbitration. Before the grievance was filed, Local 177M's vice president told him that it lacked merit. Nevertheless, Local 177M represented Derrick Fields during each step of the grievance procedure. Moreover, I find no support to his assertion that Local 177M did not keep him informed of the status of his grievance. His own evidence - the July 17, 2000 letter to Local 177M - establishes that on July 15, Local 177M's chief steward and vice president told him that his grievance would not be arbitrated. A union is not obligated to pursue every grievance to arbitration, but may consider the likelihood of success, the costs, and the burden on the contractual machinery. *East Jackson Schools*, 1991 MERC Lab Op 132.

I also find no merit to Charging Party Linda Fields' contention that she was discriminated against because of her efforts to advance Derrick Fields' grievance to arbitration. First, the only protected activity engaged in by Linda Fields was the 1½ to 2 hour meeting she attended with Derrick Fields and chief steward Hudgins to look for contract provisions that WSU might have violated by demoting Derrick Fields. However, Linda Fields presented no evidence of union animus or hostility toward her protected rights by WSU or that her protected activity was a motivating factor in any adverse action taken against her.

I have carefully considered all other arguments raised by the parties and conclude that they do not warrant a change in the result. Therefore, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac  
Administrative Law Judge

Dated: \_\_\_\_\_