

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

In the Matter of:

UNITED STEELWORKERS OF AMERICA,  
AFL-CIO, CLC, and its LOCAL 15157,  
Labor Organization-Respondent,

Case No. CU01 H-049

-and-

LAURA HEREK, et al,  
Individual Charging Parties,

\_\_\_\_\_ /

APPEARANCES:

Angela Pace, Esq., and Miles Cameron, Servicing Staff Representative, for the Respondent

Laura Herek, on behalf of herself and the other Charging Parties

**DECISION AND ORDER**

On March 15, 2002, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was 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

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

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

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**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE  
ON MOTION TO DISMISS**

On August 16, 2001, Laura Herek, Donna Hebert, Carrie Salogar, Sally Johnston, Peggy Nagy, Rose Lesperance, Lisa Kelly, Jodi Parsons, and Nancy Britke filed the above charge with the Michigan Employment Relations Commission against their bargaining representative, the United Steelworkers of America and its Local 15157. The charge was filed pursuant to Sections 10(3)(a)(i) and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Charging Parties served a copy of the charge on the Respondent on August 15, 2001. Charging Parties allege that Respondent violated its duty of fair representation on November 22, 2000, when Local 15157 Unit Chairman Rebecca Hayes, without conferring with the membership, agreed to add a position to the bargaining unit. Charging Parties also allege that Respondent violated its duty of fair representation by failing to promptly notify them of this agreement. Charging Parties assert that they first learned of the agreement on February 21, 2001.

On October 9, 2001, Respondent filed a motion for summary disposition asserting that the charge failed to state a claim under the Act. Charging Parties filed a response to the motion on October 31. On November 30, 2001, I heard oral argument on the motion at Lansing, Michigan. At the conclusion of argument, I granted the motion to dismiss for reasons stated on the record and restated below.

Facts:

The facts here are not in dispute. Charging Parties are employed by the 18<sup>th</sup> Judicial Circuit Court (hereinafter the Employer), and are members of a bargaining unit represented by Local 15157, United Steelworkers of America. In early November 2000, the unit ratified a collective bargaining agreement covering the term January 1, 2000 through December 31, 2002. The Employer and the Respondent signed this agreement on November 28, 2000. Section 8.7 of this contract, entitled "Promotional Advancements," states that vacant bargaining unit positions shall be posted. Under this section, a vacant position is to be awarded to the most senior qualified bargaining unit member if the training, qualifications, skills and ability and documented work records of two applicants are substantially equal.

On November 21, 2000, the Friend of the Court, Elizabeth A. Roszatycki, wrote to Hayes proposing that a position, medical support enforcement specialist, be added to the bargaining unit. Roszatycki noted that the position had been created as a temporary position outside the bargaining unit approximately three years before. Roszatycki stated that the Employer anticipated that federal grant funding for the position would continue, and that the Employer now believed that the position should be recognized as a full-time permanent position within the bargaining unit. Roszatycki set out certain conditions for including the position in the unit. These conditions included: (1) the position would not be considered a vacancy under Section 8.7 of the contract; (2) the individual filling the temporary position, Carrie Gonzales, would be accreted into the unit as a medical support specialist effective October 1, 2000; (3) Gonzales' position would be pay grade T-07 under the contract's wage schedule. Hayes indicated her agreement to these conditions by signing her name to the letter on November 22, 2000.

On February 21, 2001, Charging Parties learned that Gonzales' position had been brought into the unit. On February 22, Hayes distributed copies of the November 22, 2000 letter to members of the bargaining unit. Many members were upset that the position had not been posted for bid as a vacancy, and by the fact that the October 1 date gave Gonzales more seniority list than unit members hired in October and November 2000.

On February 23, the Employer called a meeting of employees. The Employer took the position that it had negotiated in good faith with the Respondent, and that it had been Respondent's obligation to notify its members of the agreement. Charging Parties met with Hayes and representatives of the Employer on March 1. The Employer refused to post the medical support position, stating again that it had reached an agreement with the Respondent. On March 2, Charging Parties met with Hayes and Miles Cameron, a representative of the Respondent's International Union. Cameron said that Respondent had simply forgotten to inform them about the letter of understanding. Cameron showed Charging Parties a letter from Respondent's attorney stating that Respondent had the legal authority to negotiate for and approve the new position without the consent of the membership.

On March 5, 2001, Charging Parties filed a grievance with the Employer. The grievance stated that Charging Parties believed that Respondent had stepped outside the bounds of its authority

in signing a letter of understanding that conflicted with the contract. Respondent's representatives informed Charging Parties that they would not support the grievance, but would attempt to facilitate meetings with the Employer. They also showed Charging Parties a proposal to change Gonzales' seniority date. The parties met to discuss the grievance on April 25, 2001. The Employer denied the grievance in a letter signed by the chief judge dated May 16. The letter concluded that the Employer had the right to rely on the letter of understanding signed by Hayes. It also concluded, first, that Charging Parties had no right under the contract to file a group grievance, and, secondly, that the grievance was untimely. The Employer stated, however, that the letter of understanding did not specifically address Gonzales' seniority date. The letter concluded that her seniority date should be the date of the agreement, or November 22. Respondent and the Employer eventually agreed to a seniority date of November 15, 2000.

#### Discussion and Conclusions of Law:

Charging Parties claim that Respondent violated its duty of fair representation by entering into an agreement with the Employer that modified the terms of the contract without conferring with the membership.

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, 177; 87 S Ct 903; (1967) *Goolsby v Detroit*, 419 Mich 651,679 (1984). "Bad faith," under this standard, means an intentional act or omission undertaken dishonestly or fraudulently. *Goolsby, supra*, at 679. "Arbitrary conduct" includes impulsive irrational or unreasoned conduct, inept conduct undertaken with little care or with indifference to the interests of those affected, the failure to exercise discretion, and extreme recklessness or gross negligence. *Goolsby*, at 682.

Section 15(1) of PERA states, in pertinent part:

A public employer shall bargain collectively with the representatives of its employees as defined in Section 11, and is authorized to make and enter into collective bargaining agreement with such representatives . . . (Emphasis added)

PERA does not require a union to condition its agreements with an employer on the approval of the union's members. A union's failure to comply with ratification requirements set out in the union's constitution or bylaws constitutes an internal union matter not covered by Section 10 of the Act. *City of Detroit*, 1978 MERC Lab Op 519. In *City of Lansing*, 1987 MERC Lab Op 701, the Commission held that a union did not violate its duty of fair representation when the union and the employer agreed to delete a provision from the collective bargaining agreement after the agreement had been ratified by the union membership. The record indicated that the employer and union agreed at the bargaining table to delete language in their previous contract, but language was inadvertently included on the document ratified by the union membership. The Commission agreed with the Administrative Law Judge that the union acted within its legal authority, and that there was no

indication that the action of the union and the employer in executing the agreement was illegally motivated.

In the instant case, the medical support enforcement specialist position had been excluded from the bargaining unit as a temporary position. On November 21, 2000, the Friend of the Court presented Respondent's Unit Chairman Hayes with a proposed agreement to bring the position into the unit. By signing the agreement, Hayes increased the size, and therefore the bargaining power, of the unit. Moreover, members of the bargaining unit gained the right to bid on the position if Gonzales left it, a right they would not have had if the position had remained outside the unit. Charging Parties argue that Hayes should have refused to sign the agreement until she had discussed it with the membership, because the agreement eliminated their right to bid on the position under Section 8.7 of the contract. Charging Parties maintain, in essence, that Hayes could and should have negotiated a better deal for the membership. However, the facts as set forth by the Charging Parties do not suggest that Hayes acted in bad faith, or that her decision to sign the November 22 agreement was arbitrary. It is not the Commission's role under these circumstances to second-guess Respondent's judgment. I conclude that Charging Parties have failed to allege facts sufficient to support their claim that Hayes' decision to sign the November 22 agreement adding the medical support enforcement position to the unit constituted a breach of Respondent's duty of fair representation.

Charging Parties also assert that Respondent breached its duty of fair representation by failing to promptly notify them of the November 22 agreement, thus preventing them from filing a timely grievance. However, the facts establish that Charging Parties' grievance would not have succeeded even if it had been filed immediately after the agreement, because Respondent and the Employer had agreed that the medical support position would not be considered a vacancy under the contract.

For reasons set forth above, I conclude that Respondent's motion to dismiss the charge should be granted, and I recommend that the Commission issue the following order.

### **RECOMMENDED ORDER**

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

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