

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

In the Matter of:

MACOMB COMMUNITY COLLEGE
FACULTY ORGANIZATION,
Respondent-Labor Organization,

Case No. CU02 B-007

-and-

JOHN C. BONNELL,
An Individual Charging Party.

APPEARANCES:

Law Office of Mark H. Cousens, by Mark H. Cousens, Esq., for Respondent

John C. Bonnell, in pro per

DECISION AND ORDER

On September 29, 2003, Administrative Law Judge David M. Peltz issued his 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

Nora Lynch, Commission Chairman

Harry Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____

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Law Office of Mark H. Cousens, by Mark H. Cousens, Esq., for Respondent

John C. Bonnell, *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 and 423.216, this case was heard at Detroit, Michigan on May 22, 2002, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits and briefs filed by the parties on or before July 10, 2002, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge and Preliminary Matters:

On February 12, 2002, Charging Party John C. Bonnell filed an unfair labor practice charge against Macomb Community College Faculty Organization (MCCFO). The charge alleges that the MCCFO violated Section 10 of PERA by requiring him to pay full union dues for the period of time during which he was serving a disciplinary suspension from his employment with Macomb County Community College. In the charge, Bonnell contends that the Union's conduct was "unprecedented and extraordinary, as no teacher has heretofore been issued a 'disciplinary suspension' and still been required to pay dues for the time of suspension."

Respondent filed an answer to the unfair labor practice charge on March 13, 2002. On March 21, 2002, the MCCFO filed a motion to dismiss the charge, arguing that the Commission has no jurisdiction

over this matter because the allegations set forth within the charge relate to an internal union matter and there was no impact on Bonnell's employment. On March 26, 2002, I issued an order pursuant to Rule 165, R423.165, of the General Rules and Regulations of the Employment Relations Commission, requiring Charging Party to show cause why the charge should not be dismissed. Charging Party filed a response to the order on April 5, 2002. On May 22, 2002, at the start of the hearing in this matter, I indicated to the parties that Respondent's motion to dismiss would be taken under advisement.

Following the hearing, on July 8, 2002, Charging Party filed his post-hearing brief, along with six additional exhibits. On July 25, 2002, Respondent filed a motion to strike, arguing that the documents attached to Bonnell's brief were not received on the record and were neither identified nor authenticated by any witness at the hearing in this matter. Charging Party filed a response to the Union's motion on July 29, 2002.

Of the six documents attached to Charging Party's brief, only one, a letter from the College's human resources department dated October 9, 2001, was admitted into evidence at the hearing. The remaining five documents were not previously submitted in this matter, and there is no indication from the pleadings that this evidence was newly discovered or otherwise unavailable to Charging Party at the hearing. See Rule 166, R 423.166, of the General Rules and Regulations of the Employment Relations Commission. Accordingly, Respondent's motion to strike is granted with respect to those five exhibits.

Findings of Facts:

Charging Party has been employed as a teacher by Macomb County Community College for approximately thirty-five years and has been a dues paying member of a bargaining unit represented by the MCCFO throughout that entire period. The MCCFO and the College are parties to a collective bargaining agreement in effect from August 15, 2001 to August 15, 2004. The contract contains an agency shop provision which states, in pertinent part:

In the event a teacher shall not join MCCFO and execute an authorization for full dues deduction, such teacher shall, as a condition of continued employment by the Board, execute an authorization for the deduction of a sum representing that teacher's proportionate share of . . . negotiations and contract administration and maintenance expenses which shall be forwarded to the MCCFO treasurer. . . . In the event such authorization is not signed for in a period of thirty (30) days following the commencement of the contract of the teacher, the Board agrees that in order to effectuate the purposes of the Public Employment Relations Act and this agreement, the services of such teachers shall be discontinued as of the end of the current semester.

At the time that this cause of action accrued, Respondent calculated yearly dues at a rate of 1% of each member's base salary. Pursuant to MCCFO by-laws, members are required to pay dues by October 15th of each year.

In 1998, Charging Party was the subject of a student complaint which resulted in the College taking

disciplinary action against him. The discipline was not immediately implemented because of a lawsuit which Bonnell filed in federal court challenging the action. In June of 2001, after Charging Party's complaint had been dismissed, the College notified Bonnell by letter that he would be suspended without pay for the fall semester, beginning August 15, 2001 through January 1, 2002. The letter specified that Bonnell's fringe benefits were to "remain in place" during the suspension.

At the time the discipline was implemented, Charging Party was an elected member of the MCCFO faculty senate. The faculty senate serves as Respondent's executive board and constitutes its governing body. Faculty senate meetings are held on a monthly basis. At the September 14, 2001 meeting, one of the senators introduced a motion to remove Bonnell from the senate for the duration of his suspension. According to the minutes of the September meeting, the following issues were discussed relative to that motion:

[The Union president] noted that the Senate faces an unprecedented situation in that one of the Senators, Bonnell, has been suspended for the fall semester. Neither the MCCFO Constitution nor the by-laws address such a situation. Both, however, state that Senate eligibility is determined by the Senate. [The Union president] also noted that one component to be considered in the question of eligibility is whether or not the member is paying dues. The Senate debated various issues concerning the eligibility of a suspended Senator, including access of constituents, what constitutes fully paid dues, and the ability of a suspended faculty member to engage in governance.

The motion to remove Charging Party from the senate was ultimately tabled before a vote could be taken on it.

At the next faculty senate meeting on October 4, 2001, the question of whether to remove Charging Party from the senate during the period of his suspension was reintroduced. The minutes of that meeting summarize the discussion which ensued regarding the issue:

1. [The Union president] noted that in considering Bonnell's Senate membership eligibility, Bonnell's MCCFO membership eligibility must first be considered. In order to be a member of MCCFO, one must pay dues. The referendum of May 1972 set MCCFO dues at 1% of each faculty member's base salary. [The Union president's] opinion is that this indicates 1% of a faculty member's scheduled base salary, not a reduced amount resulting from disciplinary action. [The Union president] noted that temporary suspension does not disqualify a faculty member from retaining MCCFO membership but that the faculty member must still pay dues.
2. [The Union president] noted that there could be three possible outcomes to this situation:
 - By October 15, 2001, Bonnell will pay or authorize payment of MCCFO dues for the full year.
 - Bonnell will not take action to pay dues for this semester and the Senate will have to

decide on what action it will take in terms of Bonnell's MCCFO membership.

- The Senate could decide not to collect dues for the fall semester from Bonnell because of his financial hardship.

3. Once the MCCFO membership question is decided, the next question is one of Bonnell's eligibility to serve as a Senator during his suspension. [The Union president] reminded the Senate that at the previous meeting, some Senators raised concerns about Bonnell's ability to adequately represent his constituents and perform governance functions.

Before a vote could be taken on the motion, an MCCFO member stood up and told the senate that some of Charging Party's constituents had agreed to pay his full Union dues for the semester based on their conviction that Bonnell was properly representing the interests of his constituents. Based upon that representation, the motion to remove Charging Party was withdrawn.

Following the October faculty senate meeting, Charging Party's dues were paid in full by other members of the MCCFO prior to the October 15 deadline. Thereafter, and for the entire duration of his suspension, Charging Party remained a member of the faculty senate. Charging Party attended each of the monthly senate meetings, and he was an active participant in those proceedings. Bonnell also ran for reelection to the faculty senate while he was suspended.

At the hearing in this matter, Charging Party testified that the Union had never previously required its members to pay dues during uncompensated leaves, and that he believed this waiver policy had been extended to disciplinary suspensions. However, Bonnell admitted that he had no evidence that Respondent had waived dues obligations for members who were serving disciplinary suspensions "in recent years."

Two current MCCFO members testified on Charging Party's behalf. Leslie Beecher testified that he once took a voluntary one-year leave of absence from his employment as an English instructor with the College. While on leave, Beecher received no salary or benefits, accrued no seniority and, as a functional matter, was not an employee of the College. Beecher testified that "as far as [he] knew" he maintained his Union membership during that period, but he does not recall ever being told by Respondent that he had an obligation to pay dues. Beecher testified that he did not attempt to participate in any Union activities while on leave from the College.

Paula Drewek has been employed as a professor in the College's humanities department since 1966. In 1990 and 1993, she took unpaid leaves of absence so that she could work on her doctorate. Drewek testified that she does not recall paying any Union dues while on the 1993 personal leave. Drewek also took paid sabbatical leaves in 1986 and 2000, during which she continued to pay dues to the MCCFO. Drewek testified that she did not seek to exercise her rights as a Union member during any of her leaves of absence from the College.

The Union president testified that the MCCFO has a longstanding practice of waiving dues requirements for members who are on long-term disability leaves. However, he was unaware of any other circumstance in which Respondent routinely waives the obligation to pay dues. According to the Union

president, Respondent has always collected dues from MCCFO members who have been suspended for disciplinary reasons.

Positions of the Parties:

Charging Party contends that Respondent breached its duty of fair representation by requiring him to pay full union dues for the period during which his employment with the College was suspended. While conceding that MCCFO members are required to pay dues in the amount of 1% of their base salary, Charging Party contends that past practice, as well as common sense, dictates that this figure should be calculated based upon the salary *actually earned* by the Union member, as opposed to that individual's *annualized* base salary as calculated by Respondent. In addition, Charging Party asserts that the MCCFO treated him differently than other members of the Union by requiring him to pay dues while he was suspended. Charging Party requests that this Commission order the Union to return \$360.28 to those individuals who paid dues on his behalf.

Respondent argues that the unfair labor practice charge fails to state a claim under PERA upon which relief can be granted. Respondent contends that the allegations set forth in the charge are moot because the dues which the MCCFO sought from Bonnell were paid on his behalf by another individual before any change in membership status occurred and without any prejudice to Bonnell himself. Respondent further contends that the charge should be dismissed because the Union's assessment of dues for the period in which Charging Party was suspended is an internal union matter over which this Commission lacks jurisdiction. Finally, Respondent asserts that Charging Party failed to establish that the MCCFO acted arbitrarily, discriminatorily or in bad faith with respect to the collection of dues so as to constitute a breach of its duty of fair representation under PERA.

Discussion and Conclusions of Law:

I find that the unfair labor practice charge in this matter raises no justiciable controversy warranting review by this Commission. The record indicates that Respondent never actually demanded that Charging Party pay full Union dues for the period of time during which he was suspended. Although the Union president expressed his opinion at the October 5, 2001, faculty senate meeting that Charging Party's dues should not be reduced as a result of the disciplinary action taken against him, the Union's governing body did not reach any agreement on what action might be taken if Bonnell had refused to pay his dues in full. Requiring Charging Party to pay full Union dues while on suspension was only one option under consideration by the faculty senate at that time. The Union president also suggested to the senators that the MCCFO could decide to waive the dues requirement for the semester out of compassion for Bonnell. However, before any vote could be taken by the senate, other MCCFO members intervened on Charging Party's behalf and the issue was withdrawn from consideration by the senate. Thus, Respondent never actually took any adverse action against Charging Party or even decided what steps it might take should Bonnell refuse to pay his dues in full. I see no reason for the Commission to entangle itself in an abstract controversy of this nature.

Even assuming, *arguendo*, that Respondent's conduct in this matter could be interpreted as a

demand by the MCCFO that Charging Party pay full dues while on suspension, the charge must still be dismissed for failure to state a claim under PERA. The duty of fair representation is limited to those actions having a direct effect on terms and conditions of employment; internal union matters are outside the scope of PERA. This principle is derived from Section 10(3)(a)(i) of PERA, which provides that a union may prescribe its own rules with respect to the acquisition or retention of membership. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *Service Employees International Union, Local 585*, 1986 MERC Lab Op 149. In the instant case, Respondent's decision to compute dues in the amount of 1 % of the annualized base salary of its members, irrespective of the amount actually earned, had no discernable impact on the employment relationship between Bonnell and the College. I conclude that the amount of union dues and the method by which they are calculated are internal union matters left to Respondent's members to determine and regulate. See e.g. *Detroit Fire Fighters Assn*, 1992 MERC Lab Op 645 (no exceptions); *AFSCME, Local 118*, 1991 MERC Lab Op 617 (no exceptions); *Warren Police Officers Assn*, 1977 MERC Lab Op 408 (no exceptions).

I also find that there is nothing in the record to suggest that Respondent acted arbitrarily, discriminatorily or in bad faith in connection with this matter. Charging Party offered no competent evidence to support his assertion that Respondent deviated from past practice with respect to its calculation of dues. Although two faculty members testified that they paid no dues while on leave from the College, there is no evidence establishing that the MCCFO ever formally excused them from that obligation. More importantly, it is undisputed that neither individual was off work as the result of a disciplinary suspension. Drewek took two unpaid leaves of absence to work on her doctorate, while Beecher was on a voluntary leave of absence which the College apparently treated as a break in employment. Because these individuals were off work for different reasons and under different circumstances than Charging Party, I see no relevance to their testimony in this case. For the same reason, I attach no legal significance to the Union president's admission that the MCCFO has a policy of waiving its dues requirement for members who are off work due to a long-term disability.

In accord with the above discussion, I find that Charging Party has failed to establish that Respondent breached its duty of fair representation under Section 10(3)(a) or (b) of PERA and recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____