STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INGHAM COUNTY EMPLOYEES
ASSOCIATION/PUBLIC EMPLOYEES
REPRESENTATIVE ASSOCIATION,
Respondent-Labor Organization,

Case No. CU02 L-069

-and-

SUSAN PAULSON, KAREN JENNINGS
and SHERRI KING,
Individual Charging Parties.
_____/

APPEARANCES:

White, Schneider, Young & Chiodini, P.C., by Jeffrey S. Donahue, Esq., for the Labor Organization

Susan Paulson, Karen Jennings and Sherri King, *in propria persona*

DECISION AND ORDER

On July 30, 2004, 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 W. Bishop, Commission Member

_____
Nino E. Green, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

INGHAM COUNTY EMPLOYEES
ASSOCIATION/PUBLIC EMPLOYEES
REPRESENTATIVE ASSOCIATION,
Respondent-Labor Organization,

Case No. CU02 L-069

-and-

SUSAN PAULSON, KAREN JENNINGS
and SHERRI KING,
Individual Charging Parties.
_____/

APPEARANCES:

White, Schneider, Young & Chiodini, P.C., by Jeffrey S. Donahue, Esq., for the Labor Organization

Susan Paulson, Karen Jennings and Sherri King, *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 Lansing, Michigan on March 31, 2003, 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 June 19, 2003, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge:

On December 13, 2002, Susan Paulson, Karen Jennings and Sherri King, employees of Ingham County, filed this unfair labor practice charge against their collective bargaining agent, Ingham County Employees Association/Public Employees Representative Association (ICEA/PERA). Charging Parties allege that Respondent violated its duty of fair representation by its actions in connection with elections it conducted in 2002 concerning enhancements to the retirement benefit plan offered to members of ICEA/PERA Local 33.

Findings of Facts:

Respondent ICEA/PERA is the collective bargaining representative for professional employees of Ingham County. The Union is organized into ten separate locals and is governed by its executive president, Guy Sweet, and its board, which consists of the elected presidents of each of the locals. ICEA/PERA Local 33 consists of approximately 130 employees of the Ingham County Health Department, including Charging Parties Paulson, Jennings and King. Members of Local 33 work in various locations throughout the County.

Retirement Benefit Enhancement Elections

ICEA/PERA and the County are parties to a collective bargaining agreement in effect from January 1, 2001 to December 31, 2004. Under the contract, the County provides a retirement benefit plan through the Municipal Employees Retirement System (MERS) at no cost to its employees. Article 24, § 10 of the agreement gives the Union the option to upgrade the retirement benefits offered to its members at any time during the term of the contract. Specifically, the contract states, in pertinent part:

> [T]he ICEA may choose to select benefit program improvements offered by MERS with the full differential cost paid by the employees via payroll withholding. If selected, the County will implement, provided sixty (60) days' notice is given before the effective date. Notwithstanding the foregoing, the ICEA agrees to not select any benefit program improvement authorizing regular retirement prior to age fifty-five (55) during the term of this agreement.

In February of 2002, Randall Kamm, president of ICEA/PERA Local 33, proposed three enhancements to the current retirement benefits plan. The first suggested enhancement was to increase the pension multiplier from 2.25 percent (B-3) to 2.5 percent (B-4). The second enhancement would have modified the method by which retirement benefits are calculated by averaging the highest three years of an employee's compensation (FAC-3) instead of the highest five years (FAC-5). The final enhancement proposed by Kamm would have provided a cost-of-living supplement to the retiree's base pension in the amount of 2.5 percent each year for the remainder of his or her life (E-2).

Kamm notified the members of Local 33 by e-mail that they would be voting on the proposed retirement benefit enhancements at the conclusion of an informational meeting scheduled for February 21, 2002. At that meeting, a representative of MERS was present, along with Kamm, to answer questions concerning the enhancements. According to Jennings, Kamm strongly advocated passage of the proposals, telling the attendees that "he had been paying other people for a number of years, and now it was his turn for people to pay for him." Kamm denies making this statement.

At the conclusion of the meeting, Kamm decided to postpone the vote in part due to concerns raised by Jennings and others that the membership of Local 33 had not been given enough time and sufficient information to properly consider the proposals. Following the meeting, Kamm disseminated an information packet which included actuarials and other documents prepared by MERS showing the cost to be incurred by members for each of the

proposed enhancements. Kamm also held three additional informational meetings for Local 33 members concerning the proposals.

A vote on the retirement enhancement proposals was conducted on March 25 and 27, 2002. Kamm notified members of Local 33 of the election by e-mail using information compiled from the Union's master list of members and the County's e-mail system. With respect to members for whom the County did not have an e-mail address on file, Kamm prepared a hard copy of the election notice and distributed it through the Employer's internal mail system. The election was conducted in-person. Kamm testified that he checked the names of voters against his master list of members before disseminating the ballots. After voting, members deposited their ballots in a cardboard box which Kamm kept locked in a utility closet between voting periods.

In total, 97 members of Local 33 voted in the March election, and all three of the retirement benefit enhancement proposals on the ballot passed. However, before the results could be made public, Kamm was approached by Jennings, who raised several issues concerning the manner in which the election had been conducted. Specifically, Jennings was concerned with the voter turnout, and she questioned whether members who worked off-site and were not on the Union's e-mail list received notice of the election. In addition, Jennings alleged that the ballot box had been left unattended for several minutes during the voting. In response to the issues raised by Jennings, Kamm declared the election null and void. Kamm notified the members of his decision in a letter dated March 28, 2002. However, he decided not to make the results of the vote public in order to avoid influencing any future elections.

After nullifying the election, Kamm had discussions with the Employer's human resources department, as well as the supervisors of individual County employees, in order to ensure that the Union had the correct contact information for all members of Local 33. Whenever he learned of a new or updated e-mail address, Kamm sent a message to that member requesting that he or she respond and confirm that the e-mail address was valid and working. Kamm also spent a great deal of time attempting to locate all of the members of Local 33 throughout the County who did not have e-mail and trying to confirm their physical addresses. With respect to those individuals, Kamm made telephone calls to ensure that notification could be properly effectuated via the County's internal mail system. Kamm also conducted additional informational meetings with members of Local 33 to discuss the enhancement proposals.

The next vote on the enhancement proposals was conducted on April 17, 2002. In an effort to increase security for this election, Kamm used a sign-in sheet to establish the identity of each voter. In addition, Kamm had the last voter of each session sign a piece of paper and then taped that paper over the slot on the ballot box to ensure that it would not be tampered with during the breaks. Jennings assisted the Union in counting the ballots. Neither Jennings nor any other Union member voiced any contemporaneous objections to the security measures instituted by Respondent.

Ninety-two ballots were cast in the April 17, 2002, election, which resulted in the passage of two of the three retirement benefit enhancements proposed by the Union (B-4 and E-2). Kamm notified members of the results in a memo dated April 18, 2002. He then took the appropriate paperwork to the Employer's human resources department which, in turn, notified MERS. However, MERS subsequently advised the Employer that the request to implement the

enhancements could not be accepted because the Union had obtained separate actuarials for the B-4 and E-2 programs. MERS indicated that when both benefits were being purchased simultaneously, a joint actuarial must be performed.

Upon receiving notification of the rejection, Kamm contacted MERS directly and complained that the Union had never been informed of the need for a joint actuarial. After some discussions with Kamm regarding the issue, MERS agreed to cover the cost of the new joint actuarial. The new actuarial revealed that the membership's total contribution for the enhancements would be 13.42 percent, 1.02 percent higher than the amount originally quoted to members. After the new actuarial was performed, the Employer's human resources department notified MERS that it would implement the improvements on October 1, 2002, at the rate of 13.42 percent.

On July 31, 2002, Kamm formally notified the members of Local 33 that the cost of the benefit enhancements would be higher than first expected. In response, Jennings sent an e-mail to Kamm objecting to implementation of the enhancements. She also contacted ICEA/PERA executive director Sweet and expressed an interest in challenging the election based upon the change in cost. After finding nothing in the ICEA/PERA by-laws addressing the situation, Sweet discussed the matter with legal counsel. On the advice of the Union's attorney, Sweet informed Jennings that if she were to provide a petition signed by at least thirty percent of the members of Local 33, he would review the situation.

On September 5, 2002, Kamm held an informational meeting at which he distributed a paper to the attendees explaining in detail the events which had transpired following the April 17 election. Kamm also disseminated a copy of the new joint actuarial prepared by MERS. The following week, Jennings submitted to Sweet a petition signed by 67 members of Local 33 requesting that the results of the April election be overturned. After confirming that all of the signatures on the petition were valid, Sweet reviewed the substance of the allegations. Based upon the differential between the actual cost of the enhancements versus the amount voted upon by the members, Sweet decided to declare the April election invalid. Sweet did not consult with the ICEA/PERA board of presidents in making this decision.

The next election on the enhancement proposals was conducted by mail ballot. In September of 2002, the Union's business agent prepared a ballot and distributed copies to members of the Local, with instructions to return the ballot by September 26, 2002 at 4:00 p.m. According to Kamm, the business agent decided to take over responsibility for handling the election as a result of all of the problems which Kamm had encountered in connection with the prior elections. Members were not notified that a new vote would be taking place by mail prior to the actual distribution of the ballot. Shortly thereafter, some members began complaining to Kamm that they never received the ballot in the mail. In addition, many members who had received the ballot complained that it was too confusing. Kamm reviewed the ballot himself and agreed that it was difficult to understand. As a result, he went to the ICEA/PERA board and requested that the election be declared invalid. The board agreed with Kamm and canceled the election immediately. At that time, the deadline for submission of votes had not yet passed and only a portion of the ballots had been returned to the Union. Kamm informed the members of the board's decision in a memorandum dated September 25, 2002. In addition, Kamm notified the Employer's human resources department that implementation of the enhancements would have to be postponed.

An in-person election was scheduled for October 22, 2002. Kamm notified the membership of Local 33 about the election in a memo dated October 5, 2002. Although the memo was silent with respect to the issue of absentee voting, Kamm testified that he allowed any member who requested an absentee ballot to participate in the October election. At the polling place, all members were provided with a sample ballot and information about the proposed benefit enhancements, including the cost of the various proposals. When the afternoon session began, Kamm had the first voter who entered the room observe him breaking the seal on the top of the box. As in the previous election, a sign-in sheet was used for all voters. In addition, Kamm instructed the vice president of Local 33 to request identification from voters if he did not recognize them by sight or was unable to read their signatures. Charging Party Jennings was not asked for her identification. Following the vote, Kamm compared the number of signatures on the sign-in sheet to the number of votes cast in order to ensure that he had accounted for all of the ballots.

One hundred and two members of Local 33 voted in the October election, with both of the enhancement proposals passing by a vote of 54 to 48. Jennings, who once again assisted in the counting of ballots, made no contemporaneous objection to the conduct of the election. After the results were announced, however, Jennings once again contacted Sweet and indicated that she wanted to challenge the election. Sweet advised her that she would have to submit another petition signed by thirty percent of the members and setting forth a valid basis for the objections. On November 26, 2002, Jennings submitted a petition to Sweet with the requisite number of signatures. The petition sought to overturn the election on the basis of "gross irregularities" in the process, including: (1) not allowing probationary employees the right to vote; (2) procedural inconsistencies between the October vote and prior elections; and (3) Kamm's "refusal" to announce the availability of absentee ballots in the notice of election. Upon receipt of the petition, Sweet brought the matter to the attention of the ICEA/PERA board of presidents. The board reviewed the petition and unanimously determined that none of the allegations had merit. Jennings was notified of the board's decision by memorandum dated December 2, 2002.

Participation of Probationary Employees in Union Elections

The ICEA/PERA bylaws provide that all "regular members" shall have the right to vote for the election of officers, the ratification of collective bargaining agreements, and Union "business." The term "regular members" is defined by the Union's constitution as all members in good standing who have worked in an ICEA/PERA bargaining unit for more than one continuous year. However, Sweet testified that the constitution is out of date, and that employees are considered "regular members" for voting purposes once they have completed the six-month probationary period set forth in the collective bargaining agreement. At the time of the October retirement benefit enhancement election, there were approximately six to eight probationary employees working in positions within Local 33.

The ICEA/PERA did not permit probationary employees to vote in any of the aforementioned retirement benefit enhancement elections, nor have probationary employees ever been allowed to vote for the election of Union officers. With respect to the ratification of collective bargaining agreements, there has been one instance in which a probationary employee was permitted to vote. In January of 2002, Local 33 president Kamm allowed an employee who had worked for the County for only five months to vote on ratification of a new contract because,

in Kamm's words, that individual was "so close" to completing his probationary period. At the hearing in this matter, the Union conceded that it should not have allowed that individual to participate in the ratification election.

Notwithstanding the general prohibition on probationary employee voting, all of the ICEA/PERA locals routinely allow probationary employees to participate in elections concerning recommendations made by the "health care coalition," a joint labor-management committee established to deal with issues relating to medical insurance for all County employees, from probationary employees to members of management. The coalition reviews information prepared by a private consultant and then makes recommendations concerning which insurance plans to make available to employees. Those plans are then voted on by the membership of each local.

The Union's rationale for allowing probationary employees to vote on the recommendations of the health care coalition is that those individuals and their families have an immediate and compelling interest in the level of health insurance benefits offered and the costs associated with those benefits. Health insurance is a benefit which is available to all County employees immediately upon hire, and money taken from the paychecks of probationary employees to pay the health insurance premium and can never be returned. In contrast, employee contributions toward retirement vest immediately; i.e. the money deducted goes into an account in the name of the employee, and those funds belong to that individual even if his or her probationary period is never completed.

Arguments of the Parties:

Charging Parties contend that Respondent ICEA/PERA breached its duty of fair representation by: denying probationary employees the right to vote in the September and October retirement benefit enhancement elections; failing to conduct Union elections in a consistent manner; ignoring issues raised by members concerning the security of Union elections; failing to provide all members of Local 33 with timely and proper notice of elections; and ignoring a petition to nullify the results of the October 2002 benefit enhancement election. In addition, Charging Parties argue that the president of Local 33 acted unlawfully by openly and actively campaigning for passage of the retirement enhancement proposals. Charging Parties argue that these actions all had a direct effect on their employment with the County and, therefore, fall within the jurisdiction of the Commission. As a remedy, Charging Parties request that the Commission nullify the results of the October election and order Respondent to schedule a new vote on the retirement benefit enhancement proposals.

Respondent argues that the unfair labor practice charge should be dismissed because most, if not all, of the allegations set forth therein pertain to internal union matters which do not state a claim under PERA. Even if the Commission has jurisdiction over some of the allegations, the Union contends that Charging Parties have failed to establish that it denied any ICEA/PERA member meaningful input into the collective bargaining process or otherwise violated its duty of fair representation in connection with the elections. Finally, Respondent contends that the remedy requested by Charging Parties is inappropriate and wholly unsupported by Commission precedent.

Discussion and Conclusions of Law:

Charging Parties raise numerous issues concerning Respondent's actions in connection with the retirement benefit enhancement elections of March and April 2002. Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. Under PERA, a cause of action accrues when the charging party knows, or has reason to know, of facts which provide notice of an alleged breach. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. See also *Washtenaw County*, 1992 MERC Lab Op 471, and cases cited therein. The instant charge was filed on December 13, 2002, more than six months after the March and April retirement benefit enhancement elections. Accordingly, I find that allegations pertaining to Respondent's handling of those elections are untimely.

Charging Parties have also made several allegations concerning Respondent's conduct in connection with the September 2002 mail ballot election. I find that no PERA violation can be established on this basis. The record indicates that Respondent cancelled the September election before all of the mail ballots had been returned and prior to the deadline for the submission of votes. Thereafter, Respondent notified members that the vote had been called off and subsequently conducted a new election concerning the enhancement proposals. Given these facts, I conclude that Respondent's actions in connection with the September election could not have resulted in prejudice to Charging Parties or any other ICEA/PERA members.

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(1984). "Arbitrary conduct," includes (a) impulsive, irrational, or unseasoned conduct, (b) inept conduct undertaken with little care or with indifference to the interests of those affected, (c) the failure to exercise discretion, and (d) extreme recklessness or gross negligence. *Goolsby, supra* at 679. See also *Detroit Fire Fighters Assn*, 1995 MERC Lab Op 633, 637-638. A union satisfies the duty of fair representation as long as its decision was within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67; 136 LRRM 2721 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35.

It is well-established that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations. *Service Employees Int'l Union, Local 517*, 2002 MERC Lab Op 104; *Service Employees International Union, Local 586*, 1986 MERC Lab Op 149. This principle is derived from Section 10(3)(a)(i) of the act, which states 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 Int'l Union, Local 586, supra*. With respect to otherwise internal decision-making procedures such as contract ratification elections, the Commission has held that the duty of fair representation applies only to those policies and procedures having a direct effect on terms and conditions of employment. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *Service Employees Int'l Union, Local 586, supra*.

As discussed by the ALJ in *Registered Nurses and Registered Pharmacists of Hurley Hospital*, 2002 MERC Lab Op 394 (no exceptions), the Commission has found a labor organization to have violated its duty of fair representation with respect to intra-union elections in only two cases, *Wayne County Community College*, 1976 MERC Lab Op 347 and *Service Employees Int'l Union, Local 586, supra*:

> In *Wayne County Community College*, the union's bylaws provided that the votes of part-time faculty could not count for more than 20 % of the votes cast in a contract ratification election. The union adopted a "weighted" voting system under which votes cast by part-time faculty members were not counted as full votes. That is, in an election in which 111 full-time and 121 part-time members voted, the number of votes cast by part-time faculty was calculated to be 30. The Commission noted that full-time employees presumably had a greater vested interest in the contract, since the part-timers usually also held full-time jobs elsewhere. It emphasized that it was not holding that the union was required to treat part-time employees exactly the same as full-time employees. The Commission also found that at the time the bylaw was originally passed, the union had attempted in good faith to balance the rights of full-time and part-time employees. The Commission noted, however, that as the ratio of part-time to full-time employees increased, the disparity between the votes cast and the votes counted by part-time employees also increased. The Commission held that the union violated its duty of fair representation by continuing to follow the bylaw, because, by the time the charge was filed, the disparity was so great that the union's continued enforcement of the bylaw constituted arbitrary conduct.
>
> In *SEIU Local 586*, the Commission found that the Union violated its duty of fair representation when it refused to allow three employees to vote in a contract ratification election on the grounds that the union's records did not list them as members of the union. The union's constitution restricted the right to vote in contract ratification elections to members of the union in good standing. However, the union had not enforced this provision for many years, no regular check was done of individual membership status, and the union did not notify or give employees an opportunity before the election to confirm that they were listed on the union's records as members in good standing. The union also refused to look at old membership cards the employees produced at the polls to show that they were, in fact, members. The Commission held that taken as a whole the Union's conduct was irrational or unreasonable, and constituted "inept conduct undertaken with little care or indifference to the interests of the employee."

Registered Nurses and Registered Pharmacists of Hurley Hospital, supra at 398-399.

In *Registered Nurses and Registered Pharmacists of Hurley Hospital*, the ALJ found no violation of the duty of fair representation where the union failed to comply with its by laws and past practice in conducting a contract ratification election. The bylaws required the union to notify members of such elections by mail. Instead, the union posted election notices on bulletin boards throughout the hospital and faxed notices to other locations where members of the unit worked. In addition, the union did not, as it had done in previous contract ratification elections, provide instructions on how to file an absentee ballot, nor did it take ballot boxes to satellite

locations of the employer. Distinguishing *Wayne County Community College, supra,* and *Service Employees Int'l Union, Local 586, supra,* the ALJ held that the union's failure to take certain additional steps to ensure that its members knew about the contract ratification vote was not unlawful since no employee was directly prevented from voting in the election. In recommending dismissal of the charge, the ALJ also noted that there was no evidence that the union had deliberately attempted to affect the outcome of the election or that it otherwise acted in bad faith. *Registered Nurses and Registered Pharmacists of Hurley Hospital, supra* at 399.

In the instant case, the gravamen of the unfair labor practice charge is that Respondent's actions in connection with the retirement benefit enhancement elections constituted a deliberate attempt by the Union to manipulate the outcome of the vote in order to ensure the passage of proposals favorable to its president, Randall Kamm, who was nearing retirement age when this dispute arose. As in *Registered Nurses and Registered Pharmacists of Hurley Hospital, supra,* however, the record does not support a finding that the ICEA/PERA acted in bad faith in connection with its handling of the retirement benefit enhancement elections, or that Charging Parties were in any way denied meaningful input into the collective bargaining process. To the contrary, the evidence overwhelmingly establishes that the Union, and Kamm in particular, went to great lengths to ensure that eligible voters would have the opportunity to thoroughly consider each of the retirement enhancement proposals and participate in a fair and impartial election.

The record indicates that the Union responded to each and every issue raised by its members concerning the enhancement proposals. For example, when Jennings complained to Kamm that the initial election scheduled for February 21, 2002 was premature, Kamm rescheduled the vote to a later date and disseminated information about the proposals to members. Kamm also held informational meetings prior to several of the elections. Upon learning that some members may not have been notified of the March election, Kamm responded by updating his membership lists, a process which involved personally contacting individual employees, as well communicating with the County's human resources department and even some supervisors. Kamm also increased security for each of the elections in response to concerns raised by Jennings. Although Charging Parties now contend that the Union never fully addressed these concerns, there is no allegation that Kamm or anyone else actually tampered with the ballot box or otherwise breached the security measures which were in place. Nor is there any requirement under PERA that internal union elections be conducted pursuant to the same laboratory standards which this Commission applies to its own representation elections. Finally, any suggestion that the Union was acting contrary to the will of its members in connection with the retirement benefit enhancement elections is belied by the fact that the Union took the extraordinary measure of nullifying three successive elections in direct response to issues raised by Jennings and others. I can find no PERA violation on these facts.

Nor is there any merit to Charging Parties' contention that Respondent breached its duty of fair representation by denying probationary employees the right to vote on the retirement benefit enhancement proposals. According to Charging Parties, the Union's conduct in this regard was arbitrary and capricious, since probationary employees were allowed to vote on the recommendations of the health care coalition. A union is not required to accord all bargaining unit members equal voting rights. See e.g. *Village of Chesaning,* 1974 MERC Lab Op 580; *Wayne County Community College,* 1976 MERC Lab Op 347, 356 (Ellmann, concurring). In the instant case, Respondent's bylaws provide that only "regular members" shall have the right to vote for the election of officers, the ratification of collective bargaining agreements, and

Union business. Although Respondent's constitution defines "regular members" as those individuals have worked in an ICEA/PERA bargaining unit for more than one continuous year," Sweet testified credibly that members are allowed to vote as soon as they have completed their six-month probationary period. The record indicates that the Union has deviated from this policy in only two instances.

In January of 2002, Kamm permitted an employee who had worked for the County for five months to vote on the ratification of a new contract. However, the Union now acknowledges that it made a mistake in allowing that individual to participate in the election, and this appears to have been an isolated incident. With respect to health insurance, the evidence establishes that all of the ICEA/PERA locals, including Local 33, routinely allow probationary employees to vote on the recommendations of the health insurance coalition. At the hearing, the Union representatives testified that health insurance is a unique situation since such benefits are immediately available to all employees, and because the money taken from the paychecks of probationary employees to pay the health insurance premiums cannot be returned to them should they fail to complete their probationary period. There is nothing in the record to indicate that the Union acted in bad faith in making such a distinction, nor is it possible to conclude based upon these facts that Respondent's decision constitutes "impulsive, irrational or unreasonable conduct" or "inept conduct undertaking with little care or indifference to the interests of the employee . . . ." *Goolsby*, *supra*.

Next, Charging Parties contend that the ICEA/PERA acted unlawfully in refusing to grant their petition to nullify the results of the October 2002 election. Charging Parties argue that the Union reviewed that petition using different standards than those which were utilized in assessing the earlier petition which resulted in the nullification of the April 2002 election, and that this inconsistency constituted arbitrary conduct in violation of PERA. It is true that the first petition was handled solely by the ICEA/PERA executive director, while the later petition was brought before the Union's board of presidents for evaluation and decision. However, there is nothing in the record to support Charging Parties' assertion that Respondent used different standards in reviewing the petition, nor is there any evidence to suggest that the board acted in bad faith in denying the second petition. To the contrary, it appears that the merits of both petitions were fully considered. With respect to the second petition, the board reviewed the allegations and unanimously voted to deny the request to overturn the election. The board's findings as to each allegation were communicated to Jennings in a detailed memo dated December 2, 2002. Charging Parties fail to offer any convincing explanation as to how they were prejudiced as a result of this process.

Charging Parties next contend that a breach of the duty of fair representation is demonstrated by the fact that Kamm had a personal interest in seeing the benefit enhancements implemented, and that he openly campaigned for passage of the proposals. In support of this argument, Charging Parties cite the testimony of Karen Jennings, who claims that Kamm told ICEA/PERA members that "he had been paying other people for a number of years, and now it was his turn for people to pay for him." Although Kamm denies ever making this remark, I find it unnecessary to resolve the conflict between his testimony and that of Jennings. The statement, even if true, merely constitutes an expression of support for the enhancements, and the Commission has never held that a union official is prohibited from stating his or her own opinion concerning matters to be voted upon by membership.

The mere fact that Kamm may have personally stood to benefit from passage of the benefit enhancements also does not establish a breach of the duty of fair representation. It is not unlawful for a union or its elected officials to take positions which may benefit those officials or the union as an institution, even if those decisions conflict with the desires or interests of certain employees. See e.g. *City of Flint*, 1996 MERC Lab Op 1, 12; *Lansing School District*, 1989 MERC Lab Op 210, 218. As noted, there is nothing in the record to suggest that Kamm took any action which was contrary to the best interests of membership as a whole, or that he allowed his personal views concerning the enhancement proposals to impact his conduct as Union president. In fact, Kamm nullified the results of elections which, if allowed to stand, would have resulted in the passage of two of the proposals which he favored.

Finally, I decline to consider any argument concerning whether Respondent violated PERA by intimidating its members concerning utilization of the County's e-mail system. Charging Parties raised this issue for the first time during their opening statement at the start of the hearing in this matter, and Respondent objected to the introduction of any evidence concerning this allegation on the ground the argument was not set forth in the unfair labor practice charge. I took the objection under advisement pending a motion by Charging Parties to amend their charge to conform to the evidence. However, Charging Parties did not seek to amend their charge during the course of the hearing, nor did they address this issue in their post-hearing brief. Accordingly, I conclude that any allegation concerning unlawful intimidation by the ICEA/PERA has been abandoned. See e.g. *Midland v Helger Construction Co*, 157 Mich App 736, 745 (1987); *County of Wayne*, 1995 MERC Lab Op 239, 244 (no exceptions).

I have carefully considered all other arguments raised by Charging Parties and have determined that they do not warrant a change in the result. In accord with the above discussion, I find that Charging Parties have 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: _____