

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

In the Matter of:

KALAMAZOO MUNICIPAL EMPLOYEES ASSOCIATION,
Labor Organization – Respondent,

Case No. CU03 A-006

-and-

TINA PARKER,
An Individual - Charging Party.

_____ /

APPEARANCES:

Dennis S. McCune, Esq., for the Respondent

Dr. Henry Cohen and Tina Parker, for the Charging Party

DECISION AND ORDER

On February 27, 2004, 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

Nora Lynch, Commission Chairman

Harry Bishop, Commission Member

Maris Stella Swift, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard at Lansing, Michigan on August 15, 2003, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before September 18, 2003, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On January 28, 2003, Tina Parker, an employee of the City of Kalamazoo, filed this charge against her collective bargaining representative, the Kalamazoo Municipal Employees Association. Parker alleges that on December 11, 2002, Respondent violated its duty of fair representation, according to Parker, Respondent's agents deliberately attempted to cause her to be disciplined for falsifying her time records because of these agents' personal animosity toward her.

Parker amended her charge on June 18, 2003 to allege that Respondent acted in bad faith by refusing to file a grievance for her in January 2003. Parker withdrew this allegation at the beginning of the hearing.

Facts:

Parker is employed as a property appraiser in the assessor's office of the City of Kalamazoo (the Employer). Rebecca Gnatuk is also a property appraiser in the assessor's office. Gnatuk is Respondent's grievance chairperson. Parker testified without contradiction that she and Gnatuk do not get along well.

The property appraisers normally begin work at 7 a.m. When the appraisers arrive, they log on to their computers. The Employer uses their log on and off times for timekeeping purposes. Sometime in 2000, several employees in the assessor's office complained to their supervisor, Valerie Purcell Lippincott, that Gnatuk was falsifying her time records by manipulating her computer's clock to make it appear that she was at work when she was not. For a time, Lippincott regularly checked the computers' clocks. In the fall of 2002, several employees, including Parker, again complained to Lippincott about Gnatuk's manipulation of the computer clock. Lippincott asked Parker to pull information from the computer system to document her allegations. The computer system in the assessor's office logs the changes the appraisers make in the system's databases and, therefore, provides a rough record, or "audit trail" of the work they do each day. The documents Parker produced appeared to show that Gnatuk was not working during periods when she was logged in.

On the evening of December 10, 2002, Respondent's President Lee Larson and Gnatuk met with Employer representatives, including Labor Relations Representative Jerome Post, to discuss several disciplinary actions that Gnatuk had received. During this meeting, Lippincott said that someone in the office had given her reports from the computer suggesting that Gnatuk was coming to work later than her time records indicated. Larson and Gnatuk told the employer representatives that anyone could change the computer clock, and that the computer reports were not reliable. After listening to Larson and Gnatuk, Post decided not to discipline Gnatuk for falsifying her time records. However, Post directed Gnatuk to begin e-mailing her department head when she came in and again when she left each day.

Gnatuk testified that she decided to prepare a false audit trail to demonstrate to the Employer "how easily anybody could make the reports show whatever they wanted them to show." Between 7:00 a.m. and 7:30 a.m. on the morning of December 11, Gnatuk ran audit reports from the computer every ten minutes. By blocking out Parker's name on some of these reports, Gnatuk was able to produce documents which, when looked at together, suggested that Parker had logged on at 7 a.m., but had not done any work until 7:30. Gnatuk and Winterowd took these reports to Larson. Gnatuk explained that they were an example of how easily the audit trail could be manipulated. According to Gnatuk and Larson, they did not discuss what Larson was to do with the documents.

Larson immediately took Gnatuk's reports to Post. Post was on his way to a negotiations session, and Larson and Post's discussion was very brief. Post admitted that he did not listen carefully to what Larson told him. However, Post testified that Larson left him with the impression that these documents showed that "there was other wrongdoing going on among the appraisers." According to Post, he asked Larson if Larson was saying that Parker was doing the same thing that they had accused Gnatuk of doing, and Larson nodded his head affirmatively. Larson testified that Post asked him if he was claiming that

Parker was late. Larson did not recall his answer to this question, or whether he answered it. However, Larson maintained that he told Post that these documents were an example of how the computer records could be manipulated.

Because Post was in a hurry, he did not examine the documents carefully. Instead, he gave them to Parker's department head and told him to talk to Parker about them. Parker's department head turned over Gnatuk's documents to Lippincott. Lippincott summoned Parker to her office, showed her the documents, and told her that she was being investigated for falsifying her time report. Parker was shocked. She quickly ran a report from the personal property database in the assessor's office. This report showed that Parker had been working in that database between 7 a.m. and 7:30 a.m. She gave it to Lippincott, who agreed this proved that Parker had been at work. Parker was not disciplined.

During the afternoon of December 10 or the morning of December 11, after Larson heard that the Employer had investigated Parker for falsifying her time records, he returned to Post's office. Post asked Larson why he had brought Post the documents. Larson told Post that that he wanted to show him that the integrity of the computer system was in doubt because anybody had the ability to change the time on the computer to reflect what time work was done.

Discussion and Conclusions of Law:

A union's duty of fair representation under PERA 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. *Goolsby v Detroit*, 419 Mich 651,679(1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131,134. See *Vaca v Sipes*, 386 US 171, 177; 87 S Ct 903; (1967). Bad faith indicates an intentional act or omission undertaken dishonestly or fraudulently. *Goolsby*, at 679.

Parker alleges that Larson and Gnatuk violated Respondent's duty of fair representation because they intentionally tried to cause her to be disciplined. Parker testified that she and Gnatuk do not get along. Parker also suggests that Larson and Gnatuk suspected that she had reported Gnatuk's falsification of her time records, and that they sought to retaliate against her for that action. However, I conclude that the evidence is insufficient to find that either Gnatuk or Larson acted in bad faith. Gnatuk had good reason, after the December 10 meeting, to try to demonstrate to the Employer that audit trails could be manipulated and were not reliable proof that she had deliberately falsified her time records. I agree with Parker that there were a number of other ways Gnatuk could have made her point. However, the fact that Gnatuk chose this method does not establish that she intended Parker to be disciplined. I also conclude that the record does not establish that Larson intentionally misled Post about the nature of the documents Larson gave him on the morning of December 11. The discussion between the two men was brief. Post admitted that Larson said little, and that Post was in a hurry and preoccupied. Post could not recall anything that Larson actually said which caused Post to believe that Parker had falsified her time records. I find it more likely that Post simply misinterpreted Larson's purpose in giving him Gnatuk's documents. I conclude that Parker did not demonstrate that on the morning of December 11, 2002, Larson and Gnatuk acted in bad faith by deliberately seeking to cause her to be falsely disciplined.

In accord with the findings of fact and discussion and conclusions of law above, I conclude that Respondent did not violate its duty of fair representation toward her under Section 10(1)(a)(i) of PERA. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____