STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:
WAYNE COUNTY COMMUNITY COLLEGE DISTRICT,
Public Employer-Respondent in Case No. C04 K-295,

-and-

WAYNE COUNTY COMMUNITY COLLEGE FEDERATION
OF TEACHERS, LOCAL 2000,
Labor Organization-Respondent in Case No. CU04 K-062,

-and-

WILLIAM D. PARKMAN, JR.,
An Individual-Charging Party.
_____/

APPEARANCES:
Bellanca, Beattie & DeLisle, by James C. Zeman, Esq., for the Respondent Employer

Mark H. Cousens, Esq., for the Respondent Labor Organization

Denice Gleton and Dr. William Parkman, for the Charging Party

DECISION AND ORDER

On December 16, 2005, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were 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

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Nino E. Green, Commission Member

_____
Eugene Lumberg, 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, this case was heard at Detroit, Michigan on May 17, 2005, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the Charging Party and the Respondent Labor Organization on or before August 8, 2005, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On November 3, 2004, William D. Parkman, Jr. filed the charge in Case No. C04 K-295 against his employer, Wayne County Community College District (the Employer), and the charge in Case No. CU04 K-062 against his collective bargaining agent, the Wayne County Community College Federation of Teachers, Local 2000 (the Union). Parkman is a part-time instructor in the College's criminal justice department. Parkman alleged that on and after May 2002, the Employer repeatedly violated the class selection/assignment provisions of Respondents' collective bargaining agreement. He also alleged that on or about September 5, 2003, both Respondents unlawfully discriminated on the basis of age when they agreed that faculty members retired under the Michigan Public School Employees Retirement System (MPSERS) would have lower priority in selecting classes. Finally, Parkman asserted that he asked the Union to file grievances over the Employer's violations of the contract's class selections provisions on May 14, 2002, August 25 and October 21, 2003, and October 4 and 7, 2004. He alleged that the Union's failure or refusal to file grievances in these instances violated its duty of fair representation under PERA.

On April 22, 2005, the Union filed a motion for summary disposition under R 423.165(2)(c) and (d). The Union asserted that, except for his claim that the Union refused to file a grievance for him in October 2004, Parkman's allegations were untimely under Section 16(a) of PERA because his charge was filed more than six months after the alleged violations occurred. It also asserted that Parkman's claim that the Union unlawfully refused to file a grievance for him in October 2004 failed to state a claim upon which relief could be granted. On May 2, 2005, the Employer filed a motion for summary disposition asserting that Parkman had failed to state a claim against it under PERA. The Employer argued that PERA does not provide a cause of action for breach of contract, per se, and that PERA does not cover discrimination by employers on basis of age. At the beginning of the hearing on May 17, I granted the Employer's motion for summary dismissal of the entire charge against it for the reasons stated in its motion. I also dismissed as untimely Parkman's allegation that the Union breached its duty of fair representation by entering into an unlawful contract clause in September 2003, and his claims that the Union unlawfully refused or failed to file grievances for him in 2002 and 2003. The only issue litigated at the hearing was Parkman's allegation that the Union violated its duty of fair representation by refusing to file a class selection grievance for him in October 2004.

Facts:

Parkman has taught in the Employer's criminal justice department as a part-time instructor since 1972. Union president James Jackson is a full-time faculty member in this department. The Union's unit includes both full-time faculty members and part-time instructors. Under Respondents' collective bargaining agreement, seniority is measured by "contact hours." At the beginning of the 2004 fall semester, Parkman had between 600 and 650 contact hours.

Article XV of Respondents' contract sets out the parties' class selection procedures. Both full-time faculty members and part-time instructors select their classes each semester shortly before the semester begins. Under Article XV (F), all full-time faculty members have priority over, and select classes before, all part-time instructors. Part-time instructors with one hundred or more contact hours select classes before part-time instructors with less than one hundred hours. Class selection priority is based on numerous other

factors, including the number of classes a faculty member or instructor has already selected for that semester, whether a class is within or outside his discipline, whether in the previous semester his classes were cancelled or he was "bumped" by someone else whose class was cancelled, and whether he is currently receiving retirement benefits from MPSERS.

Classes selected by faculty members or instructors are frequently cancelled before or at the beginning of the semester due to low enrollment. Article XV(C) reads as follows:

> ASSIGNMENT AFTER CANCELLATION AND LIMITED BUMPING
>
> 1. If a full-time faculty member loses a class (base load or overload) through cancellation, then he/she may either bump any part-time faculty member who is assigned to a class which the full-time member is qualified to teach, or, at her/his option, replace the class lost through cancellation with a class from the unselected classes.
>
> 2. If a part-time faculty member who has taught more than one hundred (100) hours loses a class through cancellation or as a result of being bumped by a full-time faculty member, he/she may do one of the following: (a) bump any part-time faculty member who has taught fewer than one-hundred (100) hours and is assigned to a class which the bumping faculty member is qualified to teach; or (b) at her/his option replace the lost class from the unselected classes.
>
> Both part-time and full-time faculty replacing cancelled classes may select any unselected classes for which they are qualified and which do not conflict with their college teaching schedule. Full-time faculty members shall have the first option to select from the unselected classes to replace classes lost through cancellation. Part-time faculty members who have taught more than one hundred (100) hours shall then have the option to select from the remainder of these classes to replace classes lost through cancellation. Part-time faculty members who have taught fewer than one hundred (100) hours shall then be entitled to select from the remainder of unselected classes to replace those lost through cancellation.

The Employer also sometimes adds classes after the faculty have selected their classes for the semester. Under Article XV (I), full-time and or part-time faculty members with more than one hundred hours may select these classes to replace classes lost through cancellation or bumping and may bump part-time faculty members with fewer than one hundred hours who have selected such classes.

During any given semester, at least a dozen of the approximately 650 instructors and full-time faculty members in the Union's bargaining unit give up an assigned class or classes for health or other reasons after the semester begins. Jackson testified that Respondents' practice has been to allow the Employer to assign a class that becomes vacant to any qualified instructor, without regard to seniority or full-time versus part-time status.

During the spring semester of 2001, one of Parkman's classes cancelled and he did not receive another assignment. At that time, instructors were required to sign in. Parkman noticed that Helga Winkler, a part-time criminal justice instructor with less than one hundred contact hours, was signing in every day as the instructor of a class assigned to Jackson. According Jackson, he left the state when his father became ill and the Employer hired Winkler, on Jackson's recommendation, as a substitute to teach Jackson's class while he was gone.1 In March 2001, the Union filed a grievance over the Employer's failure to give Parkman the opportunity to select the class. Jackson was not the Union representative who filed the grievance and did not participate in the processing of the grievance. The Employer responded that the class had not been reassigned to Winkler, and that she was merely substituting for Jackson in his absence. According to Parkman, the grievance was settled when it was determined that Winkler had taught the class every week for the entire semester. On August 30, 2001, Parkman was paid the sum he would have earned teaching one additional class.

In the fall of 2004, Parkman selected two criminal justice classes. One of his classes was cancelled before school began. Each semester before school begins, the Employer holds a meeting for faculty and instructors with a hundred or more contact hours whose classes have been cancelled in order to give them the opportunity to bump if they have the seniority to do so. Parkman attended that meeting in August 2004, but did not receive another assignment. Parkman testified that on the first day of school, August 30, 2004, he looked in a classroom as he was passing by and saw Winkler with a class of students. Parkman did not see Jackson in the room with Winkler. Parkman knew that this class was law enforcement administration (LEA) 225, a class that he was qualified to teach. He also knew that, according to the semester schedule, Jackson was the faculty member assigned to the class.

Jackson testified that he taught LEA 225 on the first day of class, although he was not sure what date that was, and for some time thereafter. Jackson testified that he decided to drop the class for personal reasons. He informed Tony Arminiak, an Employer administrator, and recommended that Winkler replace him. Winkler was not teaching a class for the Employer that semester. Arminiak contacted Winkler, and the schedule was later changed to reflect Winkler as the instructor of record. Jackson was uncertain how long Winkler taught the class. He first testified that it was about two weeks and then admitted that it might have been four weeks. Jackson testified that his circumstances changed and, sometime in October, he took the class back. Jackson taught the class for the rest of the semester and issued the final grades. According to Jackson, after he took the class back he invited Winkler to teach along with him as a guest lecturer on several occasions. He paid her himself for this work.

Parkman did not ask the Union to file a grievance when he saw Winkler in the classroom on August 30. Parkman contended that, until late September, he was not sure that Winkler was actually teaching the class.2 On October 4, Parkman sent a letter to Courtney Atlas, the Union's first vice-president and grievance chairperson. The letter stated that it had come to Parkmans's attention that Winkler was teaching LEA 225, which had been originally assigned to Jackson. Parkman stated that he should have been offered

1 Substitutes are assigned to a class when the instructor expects to be absent for one or two weeks.

2 Parkman testified that he learned that Winkler had been teaching the class from an Employer administrator. I ruled at the hearing that Parkman's testimony regarding these statements were inadmissible hearsay, and Parkman did not subsequently attempt to call this individual as a witness.

the class since he was teaching only one class and had more seniority than Winkler. On October 7, Parkman requested again that the Union file a grievance. He attached a copy of a revised Employer schedule showing Winkler as the instructor for that class.

After his October 7 request, Parkman saw Jackson teaching LEA 225 and Atlas told him that Jackson had taken the class back. On October 21, Atlas sent Parkman a letter stating that Jackson had reviewed his letters and concluded that a grievance was not warranted. Jackson testified that he based his decision that there was no contract violation on the Respondents' past practice. He also believed that the grievance would not have been timely since more than a month had elapsed since the start of the semester.

Discussion and Conclusions of Law:

The duty of fair representation under PERA requires a union to: 1) serve the interest of all members without hostility or discrimination; 2) exercise its discretion with complete good faith and honesty; and 3) avoid arbitrary conduct. *Goolsby v Detroit,* 419 Mich 651,679 (1984), *citing Vaca v. Sipes,* 386 US 171, 177 (1967); *Wayne State Univ,* 18 MPER 32 (2005). An individual unit member cannot compel a union to advance a grievance to arbitration or even process it through the initial stages of the grievance procedure. *Lowe v Hotel & Restaurant Employees Union, Local 705,* 389 Mich. 123, 146 (1973); *International Union of Theatrical and Stage Employees,* 2001 MERC Lab Op 1. A union has latitude to investigate claimed grievances by members against their employers and has the power to abandon frivolous claims. *Lowe,* at 146; *Vaca.* It satisfies its duty of fair representation as long as its decision not to pursue a grievance is within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill,* 499 US 65, 67 (1991); *Ann Arbor Pub Schs,* 16 MPER 15 (2003); *City of Detroit (Fire Dep't),* 1997 MERC Lab Op 31, 34-35.

In this case, Parkman appears to contend that under either Article XV(C) or XV (I), a part-time instructor with more than one hundred contact hours whose class is cancelled has the right to a class vacated by a faculty member in the middle of a semester. He contends that even if Jackson gave up LEA 225 after the semester started, the Employer violated the contract by assigning the class to Winkler, a part-time instructor with less than one hundred contact hours, instead of offering it to him. Union president Jackson disagrees with Parkman's interpretation of the contract. He contends that there is no provision in the collective bargaining agreement covering how classes vacated by faculty members in the middle of a semester are to be reassigned. According to Jackson, in the absence of contract language, Respondents have recognized the Employer's right to fill a vacancy mid-semester with any qualified instructor. I note that neither Article XV(C) nor Article XV (I) refer specifically to a class becoming vacant after the semester has begun. Moreover, the references in Article XV(C) to selecting unselected classes suggest that Respondents intended in that section to describe the rights of faculty members between the date of their class selection and the beginning of classes. I find that while Article XV(C) could be read as Parkman interprets it, the Union's interpretation is well within the range of reasonableness.

In support of his claim that Respondents have recognized the contractual right of part-time instructors to be assigned vacant classes by seniority, Parkman points to Respondents' settlement of his 2001 grievance. According to Parkman, the essential facts in that grievance and this case are the same.

According to him, in both instances, Jackson selected a class, removing it from the selection process. Jackson then announced that he was unavailable to teach the class, and exerted his influence to have the class assigned to Winkler, who did not have the seniority to select it in the regular selection process. Parkman argues that, as in the 2001 case, the Union should have recognized in this case that he had a valid grievance and he should have been paid for the class that he was not allowed to teach. As the Union points out, however, parties to a collective bargaining agreement may settle grievances for a variety of reasons. The mere fact that Parkman received the relief he sought in the 2001 grievance does not mean that Respondents agreed with Parkman's interpretation of the contract. Moreover, according to Parkman's own testimony, the grievance was settled only after the Employer discovered that Winkler had taught every single session of Jackson's class in the spring 2001 semester. This was not the case in 2004. Although Parkman contends that Winkler taught LEA 225 from the first class session through at least September, Jackson testified otherwise. The only admissible evidence Parkman produced to rebut Jackson's testimony was Parkman's own observation of Winkler in the classroom, without Jackson, for part of the class hour on one day. Moreover, there is no dispute that Jackson taught the class after October 2004 and that he issued the final grades.

In sum, I conclude that Jackson's refusal to file a grievance for Parkman in October 2004 was not arbitrary or done in bad faith, but was based on an interpretation of the contract that was within the range of reasonableness and supported by Respondents' existing practice. I find that Parkman did not establish that the Union violated its duty of fair representation in this case, and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges in this case are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

Dated: _____