

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

In the Matter of:

FLAT ROCK ESP ASSOCIATION, MEA,  
Labor Organization-Respondent in Case Nos. CU05 G-027 & CU05 G-028,

-and-

FRANCES BOWMAN,  
An Individual-Charging Party in Case No. CU05 G-027,

-and-

CAROL J. STEWART,  
An Individual-Charging Party in Case No. CU05 G-028.

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**APPEARANCES:**

The Firestone Law Firm, P.C., by Joseph H. Firestone, Esq., for the Respondent

Green, Green and Adams P.C., by Christine A. Green, Esq., for Charging Parties Bowman and Stewart

**DECISION AND ORDER**

On August 15, 2006, 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

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Christine A. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

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DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE  
ON MOTIONS FOR SUMMARY DISPOSITION

On July 6, 2005, Frances Bowman filed the charge in Case No. CU05 G-027 against her labor organization, the Flat Rock ESP Association, MEA (the Association or the local union), alleging that it violated its duty of fair representation toward her under Section 10(3) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(3). Bowman amended her charge on December 16, 2005. Bowman also filed a charge against her Employer, the Flat Rock Community Schools (the District) alleging that it retaliated against her for filing a grievance by eliminating her bus aid position in June 2005 and by refusing to hire her for a vacant bus driver position in August 2005.

On July 7, 2005, Carol J. Stewart filed the charge in Case No. CU05 G-028 against the Association alleging that it violated its duty of fair representation under Section 10(3) of PERA. Stewart amended her charge on December 15, 2005. Stewart also filed a charge against the District alleging that it failed to take action after she reported harassment by other employees because she had filed a grievance and asserting that her November 2005 resignation constituted a constructive

discharge for activities protected by the Act. The four charges were consolidated for hearing before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission.

On March 28, 2006, the Respondent Association filed motions for summary disposition pursuant to 2002 MR 1, R 423.165(2)(d) and (f). The motions asserted that both Bowman and Stewart failed to state claims upon which relief could be granted and that, except for the relief sought, there were no genuine issues of material fact. The motions were supported by documents and affidavits. On April 18, Stewart and Bowman filed briefs in opposition to the Association's motions to which they attached documents and affidavits. Bowman and Stewart submitted additional affidavits on April 24 and May 22, 2005. The Respondent District also filed motions for summary disposition on April 18, 2006. Stewart and Bowman filed briefs in opposition to the District's motions on May 5, 2006.

On May 22, 2006, I held oral argument on all four motions. At the end of the argument, I dismissed the District's motions for summary disposition. I informed the parties that I intended to recommend to the Commission that it grant the Association's motions. <sup>1</sup>

Frances Bowman

Facts:

Frances Bowman began working for the District as a substitute bus aide in 1999. The Association represents a unit of regular bus drivers, bus aides, secretaries, classroom assistants and other support employees of the District. In September 2000, Bowman became a regular bus aide and a member of the Association's bargaining unit.

Bus aides are paid less than bus drivers under the collective bargaining agreement between the Association and the District. Article VIII(A) of the contract, entitled "Vacancies and Newly Created Positions" includes the following language:

In the event no senior employee within the job classification applies for the vacancy, the senior employee in another job category with the bargaining unit making application shall be transferred to fill the vacancy or new position provided the employee has the necessary qualifications to perform the duties of the job involved. *For the purpose of this provision, bus aides shall have the first consideration for a bus driver position, after bus drivers applying for the position have been considered.* . . . Necessary qualifications shall be established *at the sole discretion of the employer,* and will *be related to the position* and include certification when appropriate. [Emphasis in original]

Denise Reeves is a bus driver, a steward for the Association, and a member of the Association's executive board. She has trained new drivers for the District since 1995. In the summer of 2003, Reeves trained Bowman and several other prospective drivers. During the course of this training, Reeves told Bowman that she was "too old," and "too dumb," to be a school bus driver. She also said that she did not know why Bowman was going through the training because she would never drive a school bus in the Flat Rock District. At the end of the training, Bowman passed her road test and written test with the State of Michigan and was certified to drive a school bus. After Bowman was certified, she asked Reeves to give her the opportunity to drive with her, but Reeves refused. Other trainees did drive with Reeves after they were certified.

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<sup>1</sup> The charges against the District have been severed and are being scheduled for hearing.

On January 14, 2005, the District posted a vacant bus driver position. The posting listed previous bus driving experience as a qualification for the job. Bowman had a copy of a previous posting that did not include driving experience as a qualification for the job and did not look carefully at the January 2005 posting. Bowman applied for the position. The District notified Bowman that she would not be interviewed because she did not have bus driving experience. Elizabeth Hoover, a substitute driver for the District since September 2003, was hired to fill the vacancy.

On February 2, 2005 Bowman filed a grievance asserting that she should have been hired to fill the vacant position. On March 3, District superintendent Charlene Coulson denied the grievance at the third step of the grievance procedure. Coulson's denial stated:

It is the right of the School district to hire the person believed to be the most qualified per the requirements of the posting. The posting of School Bus Driver to which you refer requires school bus driving experience. You have not had such experience and therefore were not considered for the position.

According to the transportation seniority list for the 2005-2006 school year, all the regular bus drivers the District hired after 2002 first worked as substitute drivers for the District. However, no District bus aides applied for those positions. As noted above, Bowman had a copy of an old posting that did not list bus driving experience as a qualification for the job. She pointed out to the Association that not all the current drivers had driving experience before they were hired. She also complained that she should have been given the opportunity to drive with a regular driver while she was an aide. Around this time, several bus drivers said to Bowman that she would never drive a bus. Nancy Papineau, a bus aide and the Association's vice-president, told Bowman that she would see to it that Bowman never drove.

In the spring of 2005, the Association's executive board consisted of Papineau, Association president MaryAnn LaPlante, secretary Ramona Davidson, treasurer Elenore Nieman, and Reeves. The Association's board scheduled a meeting for March 16, 2005 to consider whether to submit Bowman's grievance to arbitration. On March 13, Bowman wrote to LaPlante complaining that the Association had not held a meeting with Coulson at the third step and insisting that it take the grievance to arbitration.

After Bowman's March 13 letter, the Association adjourned the March 16 meeting to April 26 and notified Michigan Education Association (MEA) Uniserv Director Gay Shaw. On April 11, Bowman wrote to Shaw demanding that she set a date for arbitrating Bowman's grievance. Shaw offered to set up a meeting with Coulson and Bowman to discuss the grievance. She told Bowman that she needed the approval of the Association for the grievance to go to arbitration, and suggested that Bowman attend the April 26 meeting of the executive board.

On May 6, LaPlante sent Bowman a letter explaining that the Association would not support taking her grievance to arbitration and informing her of her rights to appeal the Association's decision. LaPlante's letter states:

We did meet with you and the superintendent on April 21 at which time you argued that you should be hired as a bus driver from your aide position at least when you are available. The contract does give first consideration to bargaining unit members for positions, but the problem remains that, unfortunately, you do not have school bus driving experience which is a posted qualification of the job. Every time there is a vacancy such as the one you applied for, the qualifications include "Must have school bus driving experience." The District has been consistent with this requirement and we do not feel we have the right to insist that this qualification be waived.

In meetings with the administration of transportation [sic] and the superintendent, we have been told that you may apply to be a substitute driver and thereby gain the required experience to become a driver in the bargaining unit. You have stated repeatedly that you will not leave your position as a bus aide to become a sub driver. We certainly understand your right to make that choice, but without the qualifications of the posting we are unable to support your claim to the job at the arbitration level.

On June 2, Bowman wrote to Shaw again demanding that her grievance be taken to arbitration. Shaw replied on June 10, reiterating that the grievance would not be considered for arbitration unless the local association decided that it should be arbitrated.

On June 14, 2005, the District notified Bowman that it was eliminating her aide position for the 2005-2006 school year. In August 2005, Bowman applied for another vacant bus driver position. The District hired Connie Edmunds, who had worked for the District as a substitute driver since August 2004. Bowman was laid off in August 2005.

#### 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 also *Vaca v Sipes*, 386 US 171, 177 (1967). In the area of grievances, a union has considerable latitude to determine which grievances should be pressed and which should be settled, and an individual member does not have the right to demand that the union take her grievance to arbitration. In exercising its discretion, the union may consider the burden upon contractual grievance machinery, the amount at stake, and the likelihood of success. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-147 (1973); *Huron Valley Sch Dist*, 18 MPER 69 (2005).

Bowman alleges that the Association violated its duty to act in good faith by refusing to arbitrate her grievance because certain executive board members, specifically Reeves and Papineau, did not like her personally. The Association maintains that it refused to arbitrate Bowman's grievance because it determined that it lacked merit. The motive for the Association's decision is, of course, a question of fact.

Article VIII(A) of the contract, which Bowman asserts was violated by the District when it refused to hire her for a driving position, states that bus aides are to be given "first consideration" for bus driver vacancies. It also gives the District the "sole discretion" to determine the qualifications for the position. The District determined that bus driving experience was a qualification. To succeed with Bowman's grievance the Association would have had to persuade an arbitrator that under Article VIII(A) the District could not require Bowman to have bus driving experience because she was a bus aide.

Commission Rule 423.165 (2)(f) is analogous to MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. The court must consider the pleadings, affidavits, depositions and other documentary evidence available to it in

the light most favorable to the party opposing the motion. The moving party has the initial burden of supporting its position by affidavits, depositions, admissions or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Quinto v Cross and Peters Co*, 451 Mich. 358, 362-363, (1996). See also *Teamsters Local 214*, 16 MPER 74 (2003) (no exceptions).

In her charge and pleadings, Bowman sets forth facts which, if taken as true, establish that certain members of the Association's executive board did not like her and did not want her to obtain a position as a bus driver. I find, however, that these facts are not sufficient to support a finding that the executive board's decision to reject Bowman's grievance was made in bad faith. The evidence submitted by the Association demonstrates that Bowman's contractual argument was very weak. In addition, not all members of the executive board had expressed hostility to Bowman. I conclude that there are no genuine issues of material fact in this case and that, therefore, the Association's motion for summary disposition of Bowman's charge should be granted.

#### Carol Stewart

#### Facts:

Carol Stewart was employed by the District as a bus driver from January 2001 until her resignation on November 14, 2005. In November 2002 she was hired as a regular driver and became a member of the Association's bargaining unit.

Under the Article XXIV of the collective bargaining agreement, bus drivers select their runs for the upcoming school year at a meeting held no later than the third Monday of August. Drivers bid on am/pm run combinations by seniority. Those who have selected am/pm run combinations are eligible to bid on a third run if it does not conflict with their am/pm run combination. If the District changes a run after the start of the school year, a second bid meeting is held shortly after the fourth Friday of the school year. The contract provides that runs will be put up for rebid after this second meeting only if a run becomes vacant or the District reduces a driver's run by at least one-half hour per day. Per the contract, drivers who indicate an interest in driving field trips in addition to their regular runs are placed on a list according to their seniority date. Available trips are rotated among the drivers on this list.

At the beginning of the 1999-2000 school year, the District created a new position, bus dispatcher. In September 1999, the District and Association entered into a letter of agreement to include the new position in the Association's bargaining unit. The agreement provided that the dispatcher position would be a permanent position and would not be put up for bid each year. The agreement included this provision, "The dispatcher shall not be regularly scheduled to drive except in emergency situations." The hours of the dispatcher position were 7:00 to 9:00 am and 2:00 to 5:00 pm every school day. Under the contract, only employees regularly scheduled to work six or more hours per day, or thirty hours per week, are eligible for health insurance benefits or reimbursement. Drivers with enough seniority to select a kindergarten run in addition to their morning and afternoon runs work six or more hours per day, and as a result are entitled to health benefits. Because of the dispatcher's hours, the District had trouble recruiting and retaining qualified dispatchers.

Denise Reeves has a seniority date as a regular driver of December 13, 1994. For the 2003-2004 school year, Reeves selected an am/pm run combination whose hours were 6:30 am to 8:45 am and 2:00 pm to 4:15 pm. Reeves also bid on and was awarded a third run, a kindergarten run from 11:15 am to 12:45 pm. Sometime in October 2003, the District and the Association made an oral agreement to waive the provision in their 1999 letter of understanding prohibiting the dispatcher

from being assigned a regular run, with the understanding that they would later reduce their agreement to writing and incorporate it into the collective bargaining agreement. Reeves, the only driver who had expressed interest, was assigned to the dispatcher position on a temporary basis for the 2003-2004 school year. Reeves was permitted to keep her kindergarten run and was also allowed to remain on the field trip list. Since all the other drivers already had am/pm runs, Reeves' am/pm run was assigned to a substitute driver.

In early October 2003, Stewart went on an extended leave of absence for medical reasons. When Stewart left, Reeves had not yet taken the dispatcher job. Stewart returned to work on May 10, 2004. Stewart learned that Reeves had assumed the dispatcher position. She also discovered that Reeves' kindergarten run had not been posted for bid as a vacant run and that Reeves was still on the field trip list. On May 28, 2004, Stewart filed a grievance asserting that Reeves' kindergarten run should have been posted for bid under Article XXIV of the contract and that she should not be allowed to drive field trips because they were not emergencies.

On June 9, District transportation director Mark Przybylo denied the grievance at step two of the grievance procedure. Przybylo's response stated that the District had made an agreement with the Association for a temporary dispatch position in October, and that if there was a violation of the contract it should have been discussed at that time. Step one of the grievance procedure requires a grievant to discuss the grievance with his or her supervisor within ten days of "its occurrence or knowledge of its occurrence."

District superintendent Charlene Coulson denied Stewart's grievance at step three on August 27, 2004. In her denial, Coulson stated that there was an oral agreement between the District and Association that the dispatcher could drive a run that did not conflict with her dispatcher duties. Step four of the grievance procedure is arbitration. Under the contract the Association has forty calendar days after receipt of the superintendent's decision at step three to submit a grievance to arbitration. Stewart asked Association president Maryann LaPlante to ask the District to extend the time limits for demanding arbitration under the contract. LaPlante did not respond to Stewart's request and the Association did not demand arbitration of Stewart's grievance under the contract. Around this time, Papineau, the Association's vice-president, told Stewart that "the union would never let [her] grievance go through."

Reeves continued to serve as dispatcher during the 2004-2005 school year. She was again permitted to drive a kindergarten run, and she remained on the field trip list. Stewart continued to assert that this was improper. In the fall of 2004, Reeves made the following statements to Stewart in the context of discussing this issue: "Carol, what are you trying to do, be piggish?" ; "You need to retire."; "You are trying to bankrupt the district."; "I will get you and I will win." During this period, Renee Boyer, also an Association steward, said over her bus radio as she was following behind Stewart, "I wish I had a bazooka." Boyer also called Stewart "a m---- f----." Because of these and other statements, Stewart complained to Przybylo and to District business manager Nancy Hadley that other drivers were harassing her. Przybylo told her that he could not control what adults said, and Hadley told her to ignore the remarks and do her job.

On January 13, 2005, Stewart filed a new grievance that was a duplicate of her May 28, 2004 grievance. At about the same time, Stewart complained to Coulson about the harassment. She presented Coulson with notes of statements made to her by Reeves, Boyer, and a third driver between September and December 2004. On January 14, Coulson wrote to Stewart stating that the issues in her grievance had already been addressed. She informed Stewart that she would be scheduling a meeting with the people involved to discuss her harassment claims. She also told Stewart to immediately report all future incidents to Przybylo by phone and to follow up with a written report.

On January 27, Przybylo issued a written denial of Stewart's January 13 grievance, citing the agreement with the Association regarding the temporary dispatch position. Around this time, Stewart



asked LaPlante for a copy of the Association's bylaws and a copy of the agreement between the District and Association over the dispatcher position. Stewart did not receive either document. At a union meeting where Stewart's grievance was discussed, Boyer demanded that Stewart tell her why she had filed the grievance, since the drivers needed a dispatcher. Sometime thereafter, Boyer threw a packet of documents at Stewart and told her that she could not file harassment charges against other drivers. Boyer also said to Stewart that she was too old and that she should retire.

On March 2, Coulson held a meeting to discuss Stewart's harassment allegations. Present were Stewart, LaPlante, Papineau, Uniserv Director Gay Shaw, and Przybylo. Przybylo stated that he did not agree that Stewart had been harassed. Coulson declined to take any immediate action to discipline the accused drivers. Stewart was again instructed to report all future incidents to Przybylo immediately. During this meeting, Stewart attempted to speak about her January grievance but was not permitted to do so. Between March 18 and April 12, Stewart submitted three additional written complaints of harassment.

On March 13, Stewart wrote to Shaw demanding that her January 13 grievance be taken to arbitration. Stewart told Shaw:

I asked you [at the March 2 meeting] where is it written in the current contract that dispatchers can bid on am/pm runs, kindergarten runs, field trips, extra work? You wouldn't look at the letter of agreement, you didn't have time.

On April 26, the Association's executive committee voted not to take Stewart's grievance to arbitration. LaPlante informed Stewart of the executive committee's decision and of her right to appeal the Association's decision not to proceed to arbitration. Stewart wrote to LaPlante on May 13 and to Shaw on June 2 again requesting arbitration of her grievance. In a letter dated June 10, 2005, Shaw told Stewart that the Association would not arbitrate Stewart's grievance because it had negotiated a change in the 1999 agreement allowing the dispatcher to drive bus runs. Shaw explained to Stewart that she had the right to petition the MEA for an internal review hearing of the Association's decision not to proceed to arbitration. Stewart did not file an appeal. On November 14, 2005, Stewart resigned her position with the District, citing continued harassment by her fellow drivers.

#### Discussion and Conclusions of Law:

Stewart alleges that the Association violated its duty of fair representation by refusing to arbitrate her May 28, 2004 and January 13, 2005 grievances because of personal spite and ill will; by denying her the opportunity to speak on her own behalf at the third step of the latter grievance; and by failing to provide her with notices of union meetings, a copy of the Association's by-laws, and a copy of its 2003 agreement with the District concerning the dispatcher position. As with Bowman's grievance, the Association maintains that its decision not to arbitrate her grievances was based on their lack of merit.

PERA does not require a union to submit the terms of a contract to its membership for ratification or approval. A union's failure to comply with bylaws requiring ratification is purely an internal union matter and not a violation of PERA. Similarly, the union's duty of fair representation does not impose upon it the duty to obtain the approval of its membership to an agreement to modify the language of an existing collective bargaining agreement. *City of Lansing*, 1987 MERC Lab Op 701, 708; *United Steelworkers Ass'n*, 2002 MERC Lab Op 163, 166 (no exceptions). In 1999, the Association entered into a letter of agreement with the District that provided that the bus dispatcher would not be regularly assigned to drive a bus. Because of this provision, the District had trouble filling the position with an experienced driver. To remedy this problem, in the fall of 2003 the District and Association agreed orally to modify their 1999 agreement and permit the dispatcher to drive a regular run. As a result of this oral agreement, Denise Reeves, the only driver who expressed interest in the dispatcher position, was allowed to keep the kindergarten run she had

selected for the 2003-2004 school year and to select a kindergarten run for the 2004-2005 school year while filling the dispatcher position.

The facts set forth in Stewart's charge and pleadings, if taken as true, establish that Reeves, a member of the Association's executive board, was angry at Stewart for filing a grievance over Reeves' assignment and that Renee Boyer, an Association steward, also personally disliked Stewart. I find, however, that these facts are not sufficient to support a finding that the Association acted in bad faith when it decided not to arbitrate either of Stewart's grievances. The Association submitted evidence which established that Stewart's grievances lacked merit because the Association and the District had agreed to modify the contractual provision on which they were based. The Association's decision not to arbitrate was made by its executive board as a whole, including members who had not demonstrated any personal hostility toward Stewart, and Uniserve Director Gay Shaw agreed that there was no merit to Stewart's grievances. I conclude that there is no genuine issue of material fact as to the Association's motive for refusing to arbitrate.

Stewart also alleges that the Association breached its duty of fair representation by denying her the opportunity to speak about her grievance at the meeting held with District superintendent Coulson on March 2, 2005. However, the meeting was not a grievance meeting, but a meeting to discuss Stewart's harassment allegations. Moreover, since the Association's decision not to arbitrate Stewart's grievance was based on the fact that it had agreed to modify the provision on which the grievance was based, Stewart suffered no actual harm from the Association's refusal to let Stewart speak about her grievance at this meeting or from the Association's failure to provide her with notices of union meetings, copies of its bylaws, or a copy of the agreement covering the dispatcher position. For the reasons set forth above, I conclude that the Association's motion for summary disposition of Stewart's charge should be granted. I recommend, therefore, that the Commission issue the following order.

#### RECOMMENDED ORDER

The charge filed by Frances Bowman in Case No. CU05 G-027 and the charge filed by Carol J. Stewart in Case No. CU05 G-028 are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

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