

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

In the Matter of:

CITY OF LANSING,

Public Employer-Respondent in Case Nos. C07 G-166 & C07 G-170,

-and-

UAW LOCAL 2256,

Labor Organization-Respondent in Case Nos. CU07 G-035, CU07 G-040 & CU07 G-041,

-and-

GARY R. BODIFORD,

An Individual-Charging Party.

APPEARANCES:

George V. Warren, Esq., for the Charging Party

DECISION AND ORDER

On September 7, 2007, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter finding that none of the charges filed by Charging Party Gary R. Bodiford state a claim upon which relief can be granted under Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. In his claims against Respondent City of Lansing (the Employer), Charging Party complains that the Employer failed to comply with provisions of the collective bargaining agreement between the Employer and Respondent UAW Local 2256 (the Union) in certain disciplinary procedures involving him. Charging Party further asserts that the Employer caused the local union president to engage in a conflict of interest. In his claims filed against the Union in Case Nos. CU07 G-035 and CU07 G-041, he alleges that the Union waived timeliness requirements involving the disciplinary procedures without his consent and due to the Union's president's conflict of interest. In Case No. CU07 G-040, Charging Party alleges that the Union violated its own constitution by failing to establish certain committees.

The ALJ issued an Order to Show Cause to provide Charging Party with the opportunity to assert additional facts in support of his claims. Upon review of the charges and the response to the Order to Show Cause, the ALJ determined that the allegations did not

support a finding that the Employer interfered with, restrained, and/or coerced Charging Party with respect to his right to engage in protected concerted activities. The ALJ also found that the Charges in Case No. CU07 G-040, alleging that the Union violated its own constitution pertain to an internal union matter outside the Commission's jurisdiction. As to the Charges set forth in Case No. CU07 G-035 and CU07 G-041, the ALJ found that Charging Party failed to allege facts to support a finding that the Union acted arbitrarily, discriminatorily, or otherwise in breach of its duty of fair representation under PERA. The ALJ recommended that we dismiss the Charges against both Respondents.

The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA. On September 17, 2007, Charging Party filed exceptions to the ALJ's Decision and Recommended Order. Neither Respondent filed a response to the exceptions.

In his exceptions, Charging Party asserts that the ALJ erred in finding that his Charges do not state claims under PERA. He argues that his claims against the Union do not pertain solely to internal union matters. He contends that his allegations establish a prima facie case against each Respondent and that he is entitled to a hearing on the merits. We have reviewed Charging Party's exceptions and find them to be without merit.

Factual Summary

In C07 G-166, Charging Party complains that after the Employer obtained the Union's agreement to postpone a disciplinary hearing, it amended the disciplinary charges against him based upon an untimely and flawed investigation. In CU07 G-035, Charging Party claims that the Union violated PERA by agreeing to the request to postpone the disciplinary hearing without his consent. From attachments submitted by Charging Party, it appears that the hearing was postponed because he was on a leave of absence and, that at the conclusion of his leave, Charging Party was suspended with pay pending the outcome of the postponed disciplinary hearing.

In C07 G-170 and CU07 G-041, filed against the Employer and the Union, respectively, Charging Party complains that the local union's president is a subordinate of an official in the Employer's labor relations/personnel department. He asserts that this creates a conflict of interest affecting the Union's duty to fairly represent its members. In CU07 G-40, Charging Party alleges that the Union is in violation of its constitution because it does not have a civil and human rights committee, a veteran's committee, or a grievance committee, thus rendering his internal union remedies "inoperative."

In response to the ALJ's Show Cause Order, Charging Party offered no additional facts to support his charge. He instead asserted matters raised by unfair labor practice charges filed by another employee, Dale Abronowitz, in Case Nos. C07 G-163, C07 G-165, C07 H-173, CU07 G-034, CU07 G-036, CU07 G-037, CU07 G-038 and CU07 H-042.

Discussion and Conclusions of Law:

Charging Party's allegations do not suggest that the postponement of his disciplinary hearing implicated his PERA rights; further, his own submissions indicate that the postponement was a reasonable accommodation. He does not claim that his discipline violated PERA or that he was denied the right to grieve. We agree with the ALJ that neither the charges nor the response to the order to show cause support a finding that Charging Party was subjected to discrimination or retaliation for engaging in any protected concerted activity. Consequently, the charges filed in C07 G-166 and CU07 G-035 fail to state a valid PERA claim.

We also hold that the charges set forth in C07 G-170 and CU07 G-041 do not state a valid claim under PERA. That a union representative is also a subordinate of the employer representative with whom he or she must deal in labor-management matters may be unavoidable in public employment; in itself, this raises no presumption of impropriety. A breach of the duty of fair representation claim that is unsupported by factual allegations provides no basis upon which to order relief.

We also agree with the ALJ that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations. *E.g., Service Employees Int'l Union, Local 517*, 2002 MERC Lab Op 104. Whether the Union violated its own constitution by failing to institute a civil and human rights committee, a veterans committee, or a grievance committee are matters outside the scope of PERA and are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Sch Unit)*, 1981 MERC Lab Op 149, 154.

We have considered all other arguments raised by Charging Party and conclude that they would not change the result in this case.¹ For the above reasons, we agree with the ALJ that none of these charges state a valid claim under PERA.

ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

¹ We have similarly dismissed the Charges filed by employee, Dale Abronowitz, in a decision issued today in MERC Case Nos. C07 G-163, C07 G-165, C07 H-173, CU07 G-034, CU07 G-036, CU07 G-037, CU07 G-038 and CU07 H-042.

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UAW LOCAL 2256,
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& CU07 G-041,

-and-

GARY R. BODIFORD,
An Individual Charging Party.

APPEARANCES:

George V. Warren, for the Individual Charging Party

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

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 assigned to David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. This matter comes before the Commission on unfair labor practice charges filed on July 25, 2007, July 27, 2007 and July 30, 2007 by Gary R. Bodiford against Respondents City of Lansing (the Employer) and UAW Local 2256 (the Union).

In an order issued on August 13, 2007, Charging Party was granted fourteen days in which to show cause why the charges should not be dismissed for failure to state a claim upon which relief can be granted. Bodiford filed a response to the order to show cause on August 24, 2007.

Discussion and Conclusions of Law:

With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide a remedy for an employer's breach of a collective

bargaining agreement. Rather, the Commission's jurisdiction is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in *union or other protected concerted activities*. Absent an allegation that the public employer interfered with, restrained, coerced or retaliated against the employee for engaging in such activities, the Commission is foreclosed from making a judgment on the merits or fairness of the employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524. In the instant case, neither the charges nor the response to the order to show cause provide a factual basis which would support a finding that Bodiford engaged in any protected concerted activity for which he was subject to discrimination or retaliation. Accordingly, I conclude that the charges in Case Nos. C07 G-166 & C07 G-170 must be dismissed for failure to state claims under PERA.

The charge against Respondent UAW Local 2256 in Case No. CU07 G-040 similarly fails to state a claim under the Act. In that charge, Bodiford asserts that the Union violated its own constitution by failing to institute a civil and human rights committee, a veterans committee or a grievance committee. 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. Internal union matters are outside the scope of PERA and are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. I conclude that the allegations against Respondent in Case No. CU07 G-040, even if true, pertain to an internal union matter outside the Commission's jurisdiction and must be dismissed on that basis.²

In Case No. CU07 G-035, Bodiford contends that the Union violated its duty of fair representation by agreeing to the Employer's request to waive the contractual timelines for holding a disciplinary hearing without first seeking Charging Party's consent. 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 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 1001 MERC Lab Op 1.

In the instant case, neither the charge nor the response to the order to show cause provide a factual basis which would support a finding that the Union acted arbitrarily, discriminatorily or in bad faith with respect to its representation of Charging Party. Rather, it appears that Charging Party is merely dissatisfied with the Union's decision to consent to the Employer's request with respect to a waiver of the contractual timelines. A union is not required to follow the dictates of

² In his response to the order to show cause, Bodiford asserts that that the local president acted unlawfully by unilaterally canceling membership meetings, and that the Union violated PERA by failing to provide members with a printed copy of the collective bargaining agreement. These allegations were not set forth in any of the charges filed by Bodiford, nor has Charging Party sought leave to amend the charges in this matter. Nevertheless, I find that these allegations similarly relate to internal union matters outside the jurisdiction of the Commission.

an individual member, but instead it may investigate and make decisions in the manner it determines to be in the best interest of the membership as a whole. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. The fact that an individual member is dissatisfied with his union's efforts or ultimate decision is, in and of itself, insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855.

Finally, in Case No. CU07 G-041, Charging Party asserts that a conflict of interest exists by virtue of the fact that the local president is an employee of the City's human resources department and a subordinate of a management representative with whom he must negotiate on behalf of the bargaining unit. Bodiford asserts that the local president has allowed management to use this authority to influence which Union officials participate in negotiations with the City. Such an allegation does not state a claim under PERA. The mere fact that a union representative or official is supervised by a member of the Employer's bargaining team is not *per se* unlawful. To the contrary, such a situation is commonplace in public sector employment. If, as Charging Party contends, the City is attempting to pressure the local president with respect to the selection of representatives, that is a matter for the Union to raise by way of a grievance or unfair labor practice charge.

For the above reasons, I find that none of the instant charges state a valid claim under PERA. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____