

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

In the Matter of:

WAYNE COUNTY (WAYNE COUNTY COMMUNITY
MENTAL HEALTH AGENCY),

Public Employer-Respondent in Case Nos. C07 K-250 and C08 B-044,

-and-

AFSCME LOCAL 1659,

Labor Organization-Respondent in Case Nos. CU07 K-057 and CU08 B-007,

-and-

BENITA JACKSON,

Individual-Charging Party in Case Nos. C07 K-250 and CU07 K-057,

-and-

REGINA HARDGE,

Individual-Charging Party in Case Nos. C08 B-044 and CU08 B-007.

APPEARANCES:

Deborah K. Blair, Chief Labor Relations Analyst, for the Respondent Employer

Aina N. Watkins, Esq., for the Respondent Labor Organization

Benita Jackson and Regina Hardge, *In Propria Persona*.

DECISION AND ORDER

On August 11, 2008, 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION

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APPEARANCES:

Deborah K. Blair, Chief Labor Relations Analyst, for the Respondent Employer

Aina N. Watkins, Esq., for the Respondent Labor Organization

Benita Jackson and Regina Hardge, appearing for themselves.

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

On November 8, 2007, Benita Jackson, employed by Wayne County in its community mental health agency, filed charges with the Michigan Employment Relations Commission (the Commission) against her employer (the Employer), and her collective bargaining agent, AFSCME Local 1659 (the Union), pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. The charges were assigned to Julia C. Stern, Administrative Law Judge for the State Office of Administrative Hearings and Rules. Regina Hardge, Jackson's co-worker, filed charges against the same two Respondents on February 15, 2008. The four charges were consolidated.

On November 20, 2007, I issued an order to Jackson to show cause why the charges should not be dismissed as untimely filed under Section 16(a) of PERA and because they failed to state a claim upon which relief could be granted under PERA. On December 14, 2007, Jackson filed a lengthy response to the order to show cause. After Hardge filed her charges, I scheduled a pre-hearing conference for May 9, 2008.

On March 13, 2008, the Employer filed a motion for summary disposition of Jackson's and Hardge's charges on the grounds that they failed to state a claim upon which relief could be granted under PERA. The Union filed a motion for summary disposition of the charges against it on May 9, 2008, the day of the pre-hearing conference. Jackson and Hardge were given until June 6, 2008 to file written responses to these motions, but they did not do so. Based on the facts as set forth in the charges and in Jackson's December 14, 2007 response to my order to show cause, and the arguments made by the parties in the charges and motions, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charges:

Jackson's Charge Against the Employer

Jackson works as a social services specialist in the office of recipient rights at the Wayne County Community Mental Health Agency (CMH), a division of the Employer. Until late 2007 or early 2008, the office of recipient rights had three units - monitoring, intake, and investigations. Until about March 2007, each unit had social service specialists assigned only to that unit. Social service specialists with additional training, known as recipient rights specialists, worked in the investigations unit. Jackson worked in the monitoring unit. In early 2007, as part of a reorganization of the CMH, the office of recipient rights combined intake and monitoring into one unit and social service specialists in the new unit were assigned both jobs. Social service specialists without recipient rights training, including Jackson, were also sent to training so that they could begin doing investigations. In addition to combining jobs, during this same period the office of recipient rights reduced the total number of social service specialists.

In her charge against the Employer, Jackson asserts that the CMH failed to give social services specialists sufficient training to do their new jobs, failed to adequately define their new job duties, overloaded them with work, supervised them closely but ineffectively, ignored their complaints, and unfairly threatened them with discipline if they did not finish their allotted work by the end of the day. She also asserts that the Employer should have upgraded the pay status of the social service specialist position after employees were assigned to perform more duties. Jackson asserts that she repeatedly complained about all of the above and that "as a resolution to all my concerns that I have brought up to my employer I have been given more work to do." Jackson does not allege, however, that she has been given more work or otherwise singled out because of her complaints.

Jackson does allege in her charge that the CMH discriminated against her by refusing to assign her to work as a monitor while she was pregnant; offering a preferred job assignment, hospital discharge, to a less senior male employee in violation of the union contract; discriminating against younger workers by assigning all field inspections to these employees in addition to their other

duties; and giving some employees preferential treatment by allowing them to engage in activities not related to county work while they were being paid by the County.

Jackson also complains in her charge that the Employer's promotion practices are unfair and that they violate the Wayne County Civil Service rules and the union contract. She asserts that position postings and examination announcements in the CMH are routinely tailored to the qualifications of particular persons and that the CMH posts positions requiring specific training without allowing employees equal opportunities to obtain this training. Jackson alleges that in April 2005, October 2007, and November 2007, the CMH promoted employees without considering more qualified employees in the same classification. She also alleges that the CMH violated Wayne County Civil Service rules with respect to posting position examination announcements in October 2006 and again in October 2007. Jackson asserts that in October, November and December 2007, the CMH promised certain individuals that they would receive promotions before these positions were posted.

Finally, Jackson complains that the Employer has refused to ratify a new contract with the Union, that the CMH has repeatedly ignored grievances until further changes occurred that made the grievances moot, and that in April 2005, April 2007, and September 2007, the CMH failed to process grievances filed on behalf of employees in the intake and monitoring unit.

Jackson's Charge Against the Union

Jackson's charges against the Employer and the Union were combined in the same document. The charges filed on November 7, 2008 included only one sentence addressing the Union's conduct:

Also, several grievances have been filed with the local union office, AFSCME 1659 and no resolution has been met and some grievances have been lost, not filed, or just not answered.

In her response to my November 20, 2007 order to show cause, Jackson alleged that the Union: (1) failed to bargain job standards; (2) allowed the changing of positions and titles of employment without consideration for those employees already doing the job after the changes had been brought to its attention in April 2004, May 2005, and October and November 2007; and (3) failed to act to address bias between personnel and the director of the office of recipient rights.

In its motion for summary disposition, the Union asserts that it filed a grievance for Jackson on May 10, 2007 addressing the Employer's treatment of her after her job duties were changed and, on July 25, 2007, it filed a policy grievance over job postings in the office of recipient rights. According to the Union, these grievances were combined, special conferences were held regarding these grievances in December 2007 and January 2008, and the grievances were still pending at the time the Union's motion was filed.

Hardge's Charges Against the Employer and Union

Hardge's charges against the Employer and the Union were also combined in one document. According to her charges, Hardge was employed as a recipient rights representative at the Wayne

County Jail until March 2007, when she was transferred to the office of recipient rights at the CMH as a social services specialist/recipient rights representative. As a recipient rights representative, Hardge was assigned to the investigative unit to complete investigations of code protection rights violations and to make recommendations to correct violations and prevent reoccurrence. Sometimes between March and October 2007, the office of recipient rights began assigning monitoring duties to the social service specialists/recipient rights representatives along with their investigative work. In October 2007, Hardge was temporarily assigned to work in the intake unit in addition to handling investigations. In January 2008, all the recipient rights representatives were told that the intake unit was being abolished and that henceforth they would be regularly assigned to intake work along with their other duties. Hardge complains of the changes in her job duties and asserts that she and other social service specialists should have received an increase in wages to compensate for their expanded job responsibilities and increased workload. She also complains that the Employer “tailored job descriptions and placed stipulations on job duties” in a way that eliminated possibilities for promotion.

Hardge’s charges include no specific allegations of improper conduct by Union representatives. The only mention of the Union in Hardge’s statement of her charges is a question: “How can administration make these changes without involving the Union that represents the recipient rights representatives?”

Discussion and Conclusions of Law:

Section 9 of PERA protects the right of public employees to form, join or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, and to engage in other lawful concerted activities for mutual aid or protection. Section 10 of PERA prohibits an employer from interfering with the Section 9 rights of its employees and from discriminating against employees because of their union activities or because they engaged in concerted protected activity, such as complaining jointly with other employees about working conditions. PERA does not prohibit all types of discrimination or all unfair, unreasonable, or improper treatment of employees. Moreover, PERA does not provide an independent cause of action for an employer’s violation of the terms of a collective bargaining agreement or its own civil service rules. In addition, an individual employee cannot assert that an employer has violated its duty to bargain in good faith with the employee’s bargaining representative because the obligation to bargain runs between the employer and the exclusive bargaining representative. An individual employee cannot assert the claims of his or her union. *Detroit Pub Schs*, 1985 MERC Lab Op 789; *City of Hazel Park*, 1979 MERC Lab Op 177; *Old Mills Tavern Hotel, Inc.* 1975 MERC Lab Op 171. The Commission’s jurisdiction is limited to determining whether the employer engaged in conduct violating PERA. Absent an allegation that the employer interfered with, restrained, or coerced an employee in the exercise of the rights set forth in Section 9, or retaliated against the employee for engaging in union or other activities protected by that statute, the Commission has no jurisdiction to make a judgment on the fairness of the employer’s actions. 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.

Jackson alleges numerous violations by the Employer of civil service rules, the union contract and general principals of fairness. She asserts that that the Employer has violated the grievance procedure of the existing contract by not responding to grievances. She also alleges that

the Employer discriminated against her because she was pregnant, because she was female, and because she is a younger worker. However, Jackson does not allege that the Employer interfered with her exercise of rights protected by Section 9 or discriminated against her or treated her adversely because of her union activities, because she and other employees complained about working conditions, or for any other reason falling within the scope of PERA. Although Jackson complains about the Employer's failure to enter into a new collective bargaining agreement with the Union, Jackson does not have standing to assert that the Employer has bargained in bad faith over the terms of the new agreement. I conclude that Jackson has failed to state a claim against the Employer upon which relief can be granted under PERA, and that her charge against the Employer should be dismissed in its entirety.

Like Jackson, Hardge complains that the Employer has unfairly given her additional job duties and more work without additional pay, and that Employer job posting and promotion policies unfairly restricted promotional opportunities. Hardge does not allege that the Employer interfered with her exercise of rights protected by Section 9 or discriminated against her or treated her adversely because of her union activities or for any other reason falling within the scope of PERA. I conclude that Hardge has also failed to state a claim against the Employer upon which relief can be granted under PERA, and that her charge against the Employer should be dismissed.

A union representing public employees in Michigan owes those employees a duty of fair representation under Section 10(3) (a) (i) of PERA. To establish a violation of the Union's duty of fair representation under PERA, Jackson must demonstrate that that the Union's conduct toward her was arbitrary, discriminatory, or in bad faith. *Goolsby v Detroit*, 419 Mich 651, 679 (1984). A union has considerable discretion in deciding how to handle a grievance and how far the grievance should be pressed. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-147 (1973). A union satisfies the duty of fair representation as long as its decision is within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67 (1991).

In her original charge, Jackson appeared to allege that the Union had lost or otherwise negligently handled grievances. However, despite being directed to provide a clear and complete statement of the facts supporting this allegation, including the dates of the occurrences, in her response to the order to show cause Jackson alleged only that that the Union failed to act on alleged contract violations even though it knew about them. As noted above, a union has considerable discretion in deciding how to handle a grievance. The charge in this case sets forth no facts to support a claim that that the Union's failure to remedy these alleged violations was arbitrary, discriminatory or in bad faith. I conclude that Jackson has failed to state a claim upon which relief could be granted under PERA against the Union, and that her charge against the Union should be dismissed. Hardge's charge against the Union includes no specific claims, and I conclude that her charge also fails to state a claim.

I find, for reasons set out above, that the unfair labor practice charges filed by Benita Jackson and Regina Hardge against their employer, Wayne County, and their collective bargaining representative, AFSCME Local 1659, do not state claims upon which relief could be granted under PERA. I recommend, therefore, that the Commission adopt the following order.

RECOMMENDED ORDER

The charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____