

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

In the Matter of:

ANN ARBOR PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C09 D-064

-and-

CHAI MONTGOMERY,
An Individual-Charging Party.

APPEARANCES:

Chai Montgomery, *In Propria Persona*

DECISION AND ORDER

On June 26, 2009, 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

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**

In the Matter of:

ANN ARBOR PUBLIC SCHOOLS,
Public Employer-Respondent,

Case No. C09 D-064

-and-

CHAI MONTGOMERY,
An Individual-Charging Party.

APPEARANCES:

Chai Montgomery, appearing for himself

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION**

On April 29, 2009, Chai Montgomery filed the above charge with the Michigan Employment Relations Commission against his employer, the Ann Arbor Public Schools, alleging that it violated Section 10(1)(a) of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. The charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules pursuant to Section 16 of the Act.

On May 11, 2009, pursuant to Rule 165 of the Commission's General Rules, 2002 AACS R 423.165, I issued an order to Montgomery to show cause why his charge should not be dismissed without a hearing because it failed to state a claim upon which relief could be granted under the Act. On June 7, 2009, Montgomery filed a timely response to my order.

The Unfair Labor Practice Charge:

Montgomery is a member of a bargaining unit represented by Teamsters Local 214 (the Union). He alleges that statements made by Respondent assistant superintendent David Comsa in a letter to Union business representative David Sutton dated April 13, 2009 interfered with, restrained and coerced Montgomery and his fellow unit members in the exercise of their rights under Section 9 of PERA, specifically, their right to concertedly speak out in opposition to the ratification of a tentative collective bargaining agreement.

Facts:

The facts as alleged by Montgomery are as follows. Montgomery, a school bus driver, is a Union steward and an elected member of the Union's bargaining team in its most recent contract negotiations with Respondent. Sometime before April 13, 2009, the Union and Respondent reached a tentative contract agreement after a majority of the Union's bargaining team voted to accept this agreement and present it to the Union's membership for ratification. Montgomery and another employee member of the bargaining team, Ted Ervin, voted against accepting the agreement. Thereafter, Montgomery and Ervin authored, signed with their own names, and distributed a leaflet urging employees to vote against the tentative agreement. In the leaflet, Montgomery and Ervin identified themselves as members of the Union's bargaining team and stated that they had opposed the agreement when the rest of the team voted to recommend it. The Union membership eventually voted to reject the agreement, and the parties returned to the bargaining table.

On April 13, 2009, Comsa sent the following letter to Sutton:

I have attached to this correspondence a copy of a flyer signed by Chai Montgomery and Ted Ervin, members of your negotiation team publicly opposing our tentative agreement. My team is frustrated and disappointed by this action. We have attempted to very patiently and professionally negotiate what we believe to be a tentative agreement representing a fair compromise of the issues and concerns of the Teamsters and the Ann Arbor Public Schools.

This action does not help maintain the collaborative and respectful bargaining relationship. In fact, it arguably is an unfair practice of the duty to bargain in good faith [sic]. It a logical extension of the duty to negotiate in good faith to require each negotiation team member to affirmatively support any tentative agreement.

I expect you to act expeditiously and decisively to support the tentative agreement that we agreed to at the bargaining table.

Discussion and Conclusions of Law:

Section 9 of PERA protects the rights of public employees to organize together, to form, join or assist in labor organizations, and to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid or protection. A public employer violates Section 10(1)(a) of PERA when it engages in conduct that interferes with, restrains, or coerces public employees in the exercise of their rights under Section 9. Montgomery asserts that he and Ervin engaged in concerted activity protected by the Act when they distributed the leaflet opposing the tentative agreement. I agree. However, Montgomery does not allege that Comsa, or any other Respondent agent, took or threatened to take any adverse action against him or Ervin because of their protected activities.

Montgomery argues that Comsa's statement that his and Ervin's activities were "arguably" an unfair labor practice by the Union constituted unlawful interference with unit employees' exercise of their Section 9 rights. He points out that Comsa, Respondent's assistant superintendent for human resources, has the authority to file an unfair labor practice charge against the Union. Montgomery asserts that Comsa's statement was effectively a threat to file a charge and force the Union to expend scarce resources and time to deal with the claim. He also asserts that Comsa's "instruction" to Sutton to require every member of the negotiation team to support the tentative agreement was coercive since these statements could have influenced union members not to vote against the tentative agreement. Montgomery maintains that Comsa's letter, in fact, intimidated Union members who feared legal action, and "disrupted and derailed the debate over ratification."

I find that that Comsa's statements to Sutton in his April 13 letter did not violate Section 10(1)(a) of PERA. The failure of members of a bargaining team to support a tentative agreement when it is presented for ratification may, depending on the circumstances, constitute bargaining in bad faith. See discussion in the administrative law judge's opinion in *Branch Co Bd of Comm*, 2002 MERC Lab Op 110, 123-125. However, whether or not Comsa was correct in asserting that the Union had a legal obligation to prevent members of its bargaining team from taking a position contrary to the majority in this case, he did not threaten to take any action because of the Union's supposed breach of its duty to bargain in good faith. A mere statement by a party that something is "arguably" an unfair labor practice is not a coercive, even if this statement convinces the other party to change its behavior. I conclude that Montgomery's charge does not state a claim upon which relief can be granted under PERA. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____