

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

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent,

Case No. CU09 G-020

-and-

DAMIAN C. ANDRIACCHI,
An Individual-Charging Party.

APPEARANCES:

Damian C. Andriacchi, *In Propria Persona*

DECISION AND ORDER

On August 4, 2009, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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:

Case No. CU09 G-020

MICHIGAN EDUCATION ASSOCIATION,
Respondent-Labor Organization,

-and-

DAMIAN C. ANDRIACCHI,
An Individual Charging Party.

APPEARANCES:

Damian C. Andriacchi, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

On July 2, 2009, Damian C. Andriacchi filed an unfair labor practice charge against his Union, Michigan Education Association (hereinafter "MEA"). 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 (ALJ) for the State Office of Administrative Hearings & Rules, acting on behalf of the Michigan Employment Relations Commission.

The charge alleges that the MEA violated PERA by withdrawing a grievance pertaining to Andriacchi without notifying him of its decision. In an order issued on July 16, 2009, I directed Charging Party to show cause why the charge should not be dismissed for failure to state a claim under PERA. Charging Party filed a timely response to the order on July 28, 2009.

In his response to the order to show cause, Charging Party asserts that he filed a grievance in September of 2007 pertaining to an alleged denial of prep time. According to Charging Party, the Ishpeming Education Association (hereinafter "IEA") advanced the grievance to the third step of the contractual grievance procedure before deciding to put the matter on hold following Andriacchi's suspension and subsequent termination from employment in early 2008. Charging Party contends that the IEA withdrew the grievance in February of 2008, but that the Union failed to notify him of its decision or respond to his requests for information. Charging Party further contends that the employer discriminated against him in

violation of Section 10(1)(d) of PERA because he filed a grievance and that the superintendent “denied payment for unused sick days.”¹

Discussion and Conclusions of Law:

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*, 2001 MERC Lab Op 1. Because the union’s ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe, supra*. To this end, a union is not required to follow the dictates of the individual grievant, but rather it may investigate and present the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. The fact that an individual member is dissatisfied with the union’s efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131. A union does not breach its duty of fair representation merely by delay in the processing of a grievance if that delay does not result in the denial of the grievance. *Teamsters State, County and Municipal Workers, Local 214*, 1995 MERC Lab Op 185, 189.

Although public employers and labor organizations have a duty under the Act to supply relevant information to each other in a timely manner, see e.g. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Pub Schs*, 1995 MERC Lab Op 384, 387, there is no corresponding duty on the part of a union to provide individual members with specific information pertaining to their employment, nor does the union have any legal obligation to disclose the existence of such information to its members. Rather, the union’s sole obligation is to carry out its bargaining responsibilities in good faith and without hostility or discrimination toward any individual member and to avoid arbitrary conduct. *Vaca v Sipes, supra*; *Goolsby, supra*.

In the instant case, there is no factually supported allegation which, if true, would establish that the MEA acted arbitrarily, discriminatorily or in bad faith with respect to Charging Party. At best, the charge suggests that representatives of the local union, the IEA, did a poor job of communicating with Andriacchi with respect to the status of the grievance. However, the Commission has repeatedly held that a lack of communication alone is insufficient to establish a breach of the duty of fair representation. See e.g. *Detroit Ass’n of Educational Office Employees, AFT Local 4168*, 1997 MERC Lab Op 475; *Technical, Professional and Officeworkers Ass’n of Michigan*, 1993 MERC Lab Op 117; *Southfield Schools Employees Ass’n*, 1981 MERC Lab Op 710. In the instant case, there is no suggestion that either the MEA or the IEA failed to properly investigate or handle the grievance, nor is there any contention that Charging Party suffered any loss as a result of the delay in notification. Charging Party does not contend that representatives

¹ Because Andriacchi did not file a charge against Ishpeming School District, any allegations pertaining to the conduct of the employer are not properly before the Commission.

of either the MEA or the IEA exhibited bias or hostility against him. Under such circumstances, I conclude that Charging Party's allegations fail to state a claim upon which relief can be granted under PERA for breach of the duty of fair representation.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: August 4, 2009