

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

In the Matter of:

LAPEER INTERMEDIATE SCHOOL DISTRICT,
Public Employer-Respondent in Case No. C08 B-050,

-and-

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU08 C-011,

-and-

CANDY WESTON,
An Individual-Charging Party.

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APPEARANCES:

Kotz, Sangster, Wysocki & Berg, P.C., by Matthew S. Derby, Esq., for the Public Employer

White, Schneider, Young & Chiodini, P.C., by William F. Young, Esq., for the Labor Organization

Candy Weston, *In Propria Persona*

DECISION AND ORDER

On December 30, 2008, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondents 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: _____

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MICHIGAN EDUCATION ASSOCIATION,
Labor Organization- Respondent in Case No. CU08 C-011,

-and-

CANDY WESTON,
Individual Charging Party.

APPEARANCES:

Candy Weston, Charging Party appearing on her own behalf

William F. Young, for the Respondent Union

Matthew S. Derby, for the Respondent Public Employer

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE 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 Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission.

On February 29, 2008, Candy Weston filed a Charge in this matter asserting that the Lapeer Intermediate School District (the Employer) had treated Charging Party improperly or unfairly, ultimately resulting in her resignation. On March 3, 2008, a related Charge was filed asserting that the Respondent Michigan Education Association (the Union), "did not do enough" for Weston regarding the allegedly unfair treatment by her Employer.

On March 14, 2008, the Charging Party was ordered to show cause, pursuant to R 423.165(2)(d), why the charge against the Employer should not be dismissed for failure to state a claim upon which relief could be granted. On March 18, 2008, the Charging Party was ordered to show cause, pursuant to R 423.165(2)(d), why the charge against the Union should not be dismissed for failure to state a claim upon which relief could be granted. Weston filed timely responses.

Pre-trial conferences with the parties were held on June 13 and August 8, 2008. A motion for summary dismissal of both charges was filed on September 26, 2008. When no timely response was filed, the undersigned *sua sponte* granted Weston an extension. On October 20, 2008, Weston timely sought, and was given, an additional extension of time in which to respond to the motion to dismiss. On November 21, November 23, and December 9, Weston filed responses to the motion to dismiss, reiterating her belief that she had been treated unfairly.

The Charge Against the Employer:

The February 29, 2008, charge against the Employer asserts that Weston was treated unfairly and unreasonably by her newly appointed immediate supervisor. It is additionally asserted that the adverse treatment was motivated by age and gender considerations.

Discussion and Conclusions of Law Regarding the Charge Against the Employer:

The Public Employment Relations Act (PERA) does not prohibit all types of discrimination or unfair treatment. Absent a factually supported allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there are no factual allegations suggesting that the Employer was motivated by union or other activity protected by PERA, the charge against the Employer fails to state a claim upon which relief can be granted.

Furthermore, the allegations of age and sex based discrimination are outside the scope of PERA and such allegations fail to state a claim on which relief can be granted by this agency. *City of Battle Creek*, 18 MPER 59 (2005); *City of Highland Park (Fire Department)*, 1985 MERC Lab Op 1266.

Taking each factual allegation in the charge and in the responses to the order and the motion in the light most favorable to Charging Party, the allegations in C08 B-050 do not state a claim against the Employer under PERA, the statute that this agency enforces, and the charge therefore must be dismissed.

The Charge Against the Union:

Weston, in her charge and in her multiple filings, acknowledges that the Union, and its officials at multiple levels, met with her and with her Employer and attempted to resolve her concerns with her deteriorating relationship with her new supervisor. The only articulated complaint is that the Union did not do enough, that is, it was not successful in resolving Weston's difficulties.

The order to show cause advised Charging Party that to avoid dismissal of the Charge, her response must provide a factual basis to establish the existence of alleged improper conduct by the Union in violation of PERA occurring within six-months of filing the charge. The response to the order, and to the later motion to dismiss, did not provide any further information or allegations regarding the claim against the Union.

Discussion and Conclusions of Law Regarding the Charge Against the Union:

Weston alleges no facts indicating malice or improper motive on the part of the Union officials. The facts alleged show only that there is a dispute between Weston and the Union over the extent or nature of the Union's efforts to attempt to address Weston's concerns. The elected officials of a union have the right, and the obligation, to reach a good faith conclusion as to the proper interpretation of the collective bargaining agreement in a particular situation, and are expected, and entitled, to act on behalf of the greater good of the bargaining unit, even to the disadvantage of certain employees. *City of Flint*, 1996 MERC Lab Op 1.

The fact that Weston is dissatisfied with her union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the Union's duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Because a union's ultimate duty is to the membership as a whole, the Respondent Union has considerable discretion to decide how, or as here whether or not, to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973). The Union's decision on how to proceed in a grievance case is not unlawful as long as it is not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35.

Taking each factual allegation in the charge and in the responses to the order and the motion in the light most favorable to Charging Party, the allegations in CU08 C-011 do not state a claim against the Union under PERA.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____