

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

In the Matter of:

DETROIT FEDERATION OF TEACHERS,
Public Employer - Respondent,

-and-

PATRICK EMEKA ANYANETU,
An Individual - Charging Party.

Case No. CU12 E-026

APPEARANCES:

Sachs Waldman, P.C., by James A. Britton, for the Respondent

Patrick Emeka Anyanetu, *In Propria Persona*

DECISION AND ORDER

On August 23, 2012, Administrative Law Judge David M. Peltz issued a 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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Robert S. LaBrant, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

DETROIT FEDERATION OF TEACHERS,
LOCAL 231, AFT,
Respondent-Labor Organization,

Case No. CU12 E-026
Docket No. 12-000933-MERC

-and-

PATRICK EMEKA ANYANETU,
An Individual Charging Party.

APPEARANCES:

Sachs Waldman, P.C., by James A. Britton, for Respondent

Patrick Emeka Anyanetu, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on May 31, 2012 by Patrick Emeka Anyanetu against the Detroit Federation of Teachers, Local 231, AFT. The charge asserts that the Union failed to represent Anyanetu fairly in connection with discipline imposed by Anyanetu's employer, the Detroit Public Schools, on or about December 17, 2011 and that the Union represented him in a negligent and "lackluster" manner at various disciplinary hearings. In addition, the charge alleges that Union representatives were not responsive to his complaints concerning harassment and ethnic intimidation by the school district.

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 charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC). On June 12, 2012, the undersigned issued a Complaint and Notice of Hearing which specified that an evidentiary hearing would be held on August 21, 2012 at 9:00 a.m. in Detroit. A copy of the Complaint and Notice of Hearing was sent to Anyanetu at the address specified in his charge.

On August 7, 2012, the Union filed a pretrial motion for summary disposition. Because the hearing date was rapidly approaching, the parties were notified by telephone that a written response to the motion by Anyanetu would not be required and that the matter would instead be

addressed prior to the start of the evidentiary hearing. On August 16, 2012, Anyanetu requested that the undersigned issue two witness subpoenas for the upcoming hearing.

On August 21, 2011, the Union timely appeared for the evidentiary hearing through counsel, with its witnesses, prepared to present its proofs. Charging Party did not appear. Rather, Anyanetu contacted the MAHS office by telephone that morning and indicated that he was running late and that he would arrive on or before 9:30 a.m. When Anyanetu failed to appear by 9:30 a.m., the Union moved for dismissal of Charging Party's claims for failure to prosecute.

A failure to appear for trial is, under Commission Rule 423.165(2)(g), grounds for dismissal. In any event, accepting all of the allegations in the charges as true, dismissal of the charge on summary disposition is warranted.

There is no factually supported allegation in the charge against Respondent which, if proven, would establish that the Union breached its duty of fair representation with respect to Anyanetu. 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). The union's actions will be held to be lawful as long as they are 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. 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. Because the union's ultimate duty is toward the membership as a whole, the union is not required to follow the dictates of the individual employee, but rather it may investigate and take the action it determines to be best. A labor organization has the legal discretion to make judgments about the general good of the membership and to proceed on such judgments, despite the fact that they may conflict with the desires or interests of certain employees. *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218, citing *Lowe v Hotel Employees*, 389 Mich 123 (1973).

In the instant case, the charge, as written, does not adequately explain how the actions of the Union constitute a violation of PERA. There is no factually supported allegation which would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to Anyanetu. In fact, Anyanetu concedes that the Union appeared on his behalf at the various disciplinary hearings, including the October 17, 2011 hearing which resulted in Anyanetu receiving a three-day suspension without pay. The Union decided not to appeal the suspension to a Step 2 grievance based upon its conclusion that the merits of the case did not warrant further action. The decision not to pursue a grievance was explained to Anyanetu in a letter from the Union's labor relations administrator dated January 20, 2012, and there has been no factually supported challenge to the legitimacy or neutrality of that decision making process. The facts alleged show only that the Union elected not to pursue a grievance on Charging Party's behalf. 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. See also *IUOE Local 324*, 23 MPER 17 (2010).

Likewise, there is no factual allegation that the Union's decision-making was motivated by racial or other individual prejudice or personal dislike, or that Respondent treated Anyanetu differently than other bargaining unit members. Although the charge speculates that Union president Keith Johnson may have been hostile to Anyanetu because he thought that Anyanetu was "opposed to his regime", Charging Party failed to set forth any facts which would support that hypothesis. At best, the charge suggests that representatives of the Union did a poor job of communicating with Anyanetu 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.

As noted above, a union has the legal discretion to make judgments about the general good of the membership and to proceed on such judgments, despite the fact that they may conflict with the desires or interests of certain employees. To this end, the Michigan Supreme Court has held, "When the general good conflicts with the needs or desires of an individual member, the discretion of the union to choose the former is paramount." *Lowe, supra* at 146. Under such circumstances, I recommend dismissal of the charge against the Union for failure to state a claim under PERA, as well as based upon Charging Party's failure to appear for hearing as described above.

In so holding, I note that this is not the first charge filed by Anyanetu alleging a breach of fair representation by his labor organization, nor is this the first time that Anyanetu has failed to appear and present evidence at a properly scheduled MERC hearing. On February 16, 2006, Anyanetu filed a charge against his collective bargaining representative which, at the time, was the Wayne County Community College Federation of Teachers. Despite having requested and received an earlier hearing date, Anyanetu did not appear for the scheduled evidentiary hearing and, therefore, ALJ Julia C. Stern issued a Decision and Recommended Order dismissing the charge. Anyanetu filed exceptions to that decision. In an order issued on August 9, 2007, the Commission affirmed ALJ Stern's decision. *Wayne County Comm Coll Fed of Teachers*, 20 MPER 65 (2007). A decision denying Anyanetu's motion for reconsideration was issued by the Commission on September 25, 2007. *Wayne County Comm Coll Fed of Teachers*, 20 MPER 97 (2007).

On October 24, 2006, Anyanetu filed another charge against Wayne County Community College Federation of Teachers, as well as a charge against his employer at the time, Wayne County Community College. The ALJ issued an order requiring Anyanetu to show cause why the charges should not be dismissed on summary disposition. In her order, ALJ Stern pointed out that Anyanetu's charge against the union appeared to be identical to the previous charge against the same party, which she had earlier dismissed based upon Anyanetu's failure to appear for hearing. Anyanetu did not file a response to that order or in any way attempt to explain how the allegations in the new charge differed from those which Anyanetu had previously asserted.

For that reason, ALJ Stern issued a Decision and Recommended Order dismissing the charges. Anyanetu's exceptions to that decision were not timely filed and the Commission issued a Decision and Order adopting ALJ Stern's findings of fact and conclusions of law on February 7, 2007. *Wayne County Comm Coll*, 20 MPER 7 (2007).

Charging Party's conduct in the prior MERC proceedings, coupled with his failure to appear for hearing in the instant case, suggest that Anyanetu's actual intent in bringing and pursuing these charges was merely to improperly harass the collective bargaining agents who represented him. I find that Anyanetu's conduct constitutes a clear abuse of process and would, but for *Goolsby v Detroit*, 211 Mich App 214, 224 (1995), follow the Commission's earlier decision in *Wayne-Westland Community Sch Dist*, 1987 MERC Lab Op 381, aff'd sub nom *Hunter v Wayne-Westland Community Sch Dist*, 174 Mich App 330 (1989) and award attorney fees and costs incurred in this unfair labor practice proceeding to Respondent as compensatory damages.¹

RECOMMENDED ORDER

The unfair labor practice charge filed by Patrick Emeka Anyanetu against Detroit Federation of Teachers, Local 231, AFT, in Case No. CU12 E-026; Docket No. 12-000933 is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 23, 2012

¹ In *City of Detroit*, Case No. C09 I-166, issued June 2, 2011, ALJ Doyle O'Connor distinguished the *Goolsby* decision and proposed that the Commission assess sanctions against the charging parties for engaging in conduct abusive to the process. That decision is currently pending on exceptions before the Commission. If the Commission adopts ALJ O'Connor's recommended remedy in *City of Detroit*, I would recommend that it consider similar remedies in this matter.