STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AFSCME COUNCIL 25, LOCAL 1583,
Labor Organization-Respondent,

-and-

JAMES YUNKMAN,
An Individual-Charging Party in Case No. CU10 G-032,

-and-

GLEN FORD,
An Individual-Charging Party in Case No. CU10 G-033,

-and-

FRED ZELANKA,
An Individual-Charging Party in Case No. CU10 G-034.
_____/

APPEARANCES:

James Yunkman, Glen Ford, and Fred Zelanka, appearing on their own behalf

Miller Cohen PLC, by Bruce A. Miller and Kenneth J. Bailey, for Respondent

DECISION AND ORDER

On June 25 2012, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order on Summary Disposition in the above matter, recommending that the unfair labor practice charges be dismissed in their entirety. The ALJ held that Respondent AFSCME Council 25, Local 1583 (Union) did not violate the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217, when it suspended Charging Parties James Yunkman, Glen Ford, and Fred Zelanka (Charging Parties) from union privileges and fined them for allegedly violating a provision of the AFSCME constitution. The ALJ found that Charging Parties failed to allege facts which would establish that the Union acted arbitrarily, discriminatorily, or in bad faith. Concluding that the cases involve an internal union matter over

which the Commission lacks jurisdiction, the ALJ found that the charges failed to state a claim upon which relief can be granted.

The ALJ's Decision and Recommended Order was served on the parties in accordance with § 16 of PERA. Charging Parties filed exceptions to the ALJ's Decision and Recommended Order on July 12, 2012. Respondent filed a Motion to Dismiss Unsigned Exceptions on July 20, 2012.

In their exceptions, Charging Parties cite federal statutes and federal case law which they believe support their allegations that Respondent unlawfully expelled them from union membership and union activities. Charging Parties also seem to contend, for the first time, that their desire to participate in AFSCME union activities and get information about AFSCME financial matters was a religious practice from which Respondent excluded them, citing the Elliot-Larsen Civil Rights Act, MCLA 37.2101 – 37.2804 (Civil Rights Act). After careful review of the exceptions, we find them to be without merit.

Respondent's Motion to Dismiss Unsigned Exceptions:

Respondent's Motion to Dismiss Unsigned Exceptions is denied. While Respondent is correct that Charging Parties' exceptions do not strictly comply with Rule 176 of the Commission's General Rules, 2002 AACS, R 423.176 (R 423.176), Respondent cites no authority in support of its contention that the exceptions require a signature. R 423.176 does not explicitly state that a signature is required.

Respondent's motion also argues that it is not possible to discern what it is that Charging Parties object to in the ALJ's Decision and Recommended Order. R 423.176(2)(b) requires a party filing exceptions to "identify that part of the administrative law judge's decision and recommended order to which objection is made." Rule 423.176(5) provides that "[a]n exception that fails to comply with this rule may be disregarded." While Charging Parties' exceptions fail to comply with the requirements of Rule 176, we will consider them to the extent that we are able to discern the issues on which Charging Parties are requesting our review.[1] *City of Detroit*, 21 MPER 39 (2008); *Govt Administrators Assn*, 22 MPER 61 (2009).

In the summary to the exceptions, Charging Parties assert that "the Michigan Employment Relations Commission is apparently overlooking the facts that [Respondent] decided to …strip the rights away from the above charged parties correlation to the rights contained in PERA Section 423.210(3)… which evidently allows the labor unions to pick and choose who may fall under the constitutions and protection of the rights contained in the constitutions." It is apparent that Charging Parties are arguing that they were wrongfully expelled from the Union and are objecting to the ALJ's finding that Respondent's actions in expelling them was an internal union matter. Because we are able to discern the issue on which Charging Parties have requested review, Respondent's Motion to Dismiss Unsigned Exceptions is denied.

[1] That these submissions were not rejected for failure to comply with our Rules should not be viewed as an indication that we will accept such submissions in the future.

Factual Summary:

We adopt the facts as found by the ALJ and repeat them here only as necessary. Charging Parties allege that Respondent committed unfair labor practices when it expelled them from membership in the union, denied them union privileges, prohibited them from participating in union activities and fined them for allegedly violating a provision of the AFSCME constitution which prohibits members from assisting, or intending to assist, a competing labor organization. Charging Parties also allege that Respondent unlawfully continued to deduct union dues from their paychecks and refused to disclose financial statements to them upon request. However, at oral argument, Charging Parties informed the ALJ that they no longer wished to proceed on the allegations involving deduction of union dues or non-disclosure of financial information. They responded to the ALJ's questions concerning narrowing the issues by agreeing that the only remaining issue was whether Respondent acted unlawfully in expelling them from Union membership.

Discussion and Conclusions of Law:

Charging Parties take issue with the ALJ's finding that Respondent did not violate PERA when it expelled them from the Union. However, union members may be suspended or expelled from the union, prohibited from attending union meetings or voting in internal union elections, and otherwise be restricted by the union so long as the union's actions do not have a direct effect on the union members' terms and conditions of employment. We have not considered such conduct to be an unfair labor practice. *Lansing Sch Dist*, 1989 MERC Lab Op 210; *Teamsters Local 214*, 26 MPER 43 (2013).

We have previously dismissed a charge involving the application of the same or substantially similar language in the AFSCME by-laws. In *AFSCME, Local 1585*, 1981 MERC Lab Op 160, charging party union members were accused of violating a provision in the AFSCME by-laws which made it improper for members to engage in activities which would undermine the union's representation or lead to substitution of another bargaining representative. The union brought internal charges against more than thirty members based upon their involvement in a campaign to replace AFSCME Local 1585 as their bargaining agent. Several union members filed an unfair labor practice charge alleging that AFSCME was attempting to cause the employer to discriminate against them for supporting a rival union. While one verbal threat was made against one of the charging parties, no actions of any kind were taken and there were no attempts to influence the employer to take any action against the union members. The Commission dismissed the charge, finding no evidence that AFSCME's actions in any way impacted the charging parties' terms and conditions of employment. See also *AFSCME Council 25, Local 226.8*, 26 MPER 46 (2013) (no exceptions).

Similarly, the ALJ here found that Charging Parties did not allege facts to support the allegation that Respondent engaged in conduct which had an impact on the employment relationship. Charging Parties remain employed by the University of Michigan and there have been no allegations that Charging Parties were ever threatened with discipline by the employer as a result of their expulsion from the Union. We, thus, agree with the ALJ that Charging Parties failed to set forth any facts which would establish that Respondent acted arbitrarily,

discriminatorily or in bad faith, and further agree that these cases involve internal union matters which are outside the scope of PERA. *AFSCME Council 25, Local 226.8*. The ALJ was correct in finding that Charging Parties failed to state a claim upon which relief can be granted.

Charging Parties also assert that we should enforce the provisions of the federal Labor Management Reporting and Disclosure Act, 29 U.S.C.A. § 401 – 531 (LMRDA) because MERC "follows the rulings of the NLRB." This Commission lacks jurisdiction over the LMRDA. Charging Parties have thus failed to state a valid claim under a law within our jurisdiction and the LMRDA claim is accordingly subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165 (R 423.165). In addition, by invoking the LMRDA, Charging Parties are essentially asking us to decide whether Respondent unlawfully failed to disclose financial statements upon request. However, Charging Parties waived this issue at oral argument before the ALJ. They agreed with the ALJ that the only issue left to be decided was whether their expulsion from the union violated PERA.

Charging Parties' exceptions state that Respondent removed Charging Parties "from their books to block them from expressing their religious expressions of requesting the finance records and from obtaining copies of the finance books" and assert that by so doing Respondent violated the Civil Rights Act. However, the Commission does not have jurisdiction over claims brought under the Civil Rights Act. Since the religious practices claim does not state a valid claim under any law within our jurisdiction, it is subject to dismissal under R 423.165. In addition, this argument was not raised in the charges or at the hearing on oral argument. A party may not raise issues in exceptions that were neither stated in the charge nor raised at the hearing. *American Fed'n of Teachers, Local 2000*, 22 MPER 21 (2009); *Detroit Pub Sch*, 22 MPER 19 (2009).

Summary:

For all the reasons stated above, we agree with the ALJ that the charges fail to state a claim upon which relief may be granted. We have carefully examined all other issues raised by Charging Parties in their exceptions and find they would not change the result. We, therefore, affirm the ALJ's recommended dismissal of Charging Parties' unfair labor practice charges.

Accordingly, we issue the following Order:

ORDER

The unfair labor practice charges are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____/s/_____
Edward D. Callaghan, Commission Chair

_____/s/_____
Robert S. LaBrant, Commission Member

_____ /s/_____
Natalie P. Yaw, Commission Member

Dated: February 12, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25, LOCAL 1583,
Respondent-Labor Organization,

-and-

JAMES YUNKMAN,
An Individual Charging Party in Case No. CU10 G-032,

-and-

GLEN FORD,
An Individual Charging Party in Case No. CU10 G-033,

-and-

FRED ZELANKA,
An Individual Charging Party in Case No. CU10 G-034.
_____/

APPEARANCES:

James Yunkman, Glen Ford and Fred Zelanka, appearing on their own behalf

Miller Cohen PLC, by Bruce A. Miller, for Respondent

DECISION AND RECOMMEND 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 David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charges and Procedural Background:

James Yunkman, Glen Ford and Fred Zelanka are employees of the University of Michigan and are members of a bargaining unit represented by the American Federation of State,

County and Municipal Employees (AFSCME) Council 25, Local 1583. On July 20, 2010, Charging Parties filed separate unfair labor practice charges, each alleging that the Union violated PERA by suspending them from union privileges and activities and fining them for allegedly violating a provision of the AFSCME constitution which purportedly prohibits members from assisting, or intending to assist, a competing labor organization.

In an order issued on August 13, 2010, I directed Yunkman, Ford and Zelanka to show cause why the charges should not be dismissed on the ground that the actions complained of involve internal union matters over which the Commission lacks jurisdiction. On September 14, 2010, attorney Richard Corriveau filed a response to the order to show cause on behalf of the Charging Parties. In the response, Corriveau asserted that AFSCME was impacting Charging Parties' relationship with the University by continuing to deduct full Union dues from their paychecks and by refusing to disclose "financial statements" to Yunkman, Ford and Zelanka.

On September 23, 2010, I issued a supplemental pretrial order in which I held that the only potentially cognizable claim asserted by Charging Parties was the allegation that the Union violated PERA by refusing to disclose financial statements, but that Yunkman, Ford and Zelanka had not set forth sufficient information concerning that allegation to comply with Rule 151(2) of the General Rules and Regulations of the Employment Relations Commission. Charging Parties were directed to file an amended charge if they wished to pursue a claim against the Union concerning its method of disclosing financial information to nonmembers. With respect to the remaining allegations, I concluded that dismissal of the charges on summary disposition was appropriate given that there had been no factually supported allegation which, if true, would establish that Respondent acted in a manner which impacted the terms and conditions of Charging Parties' employment so as to raise an issue under Section 10(3) of PERA.

Charging Parties filed a response to the supplemental pretrial order on June 29, 2011. Thereafter, several seemingly productive settlement conferences were held, with Kenneth Bailey appearing for Respondent AFSCME Council 25 and Gregory J. Stempien appearing for Charging Parties in Corriveau's place. However, disposition of the case was delayed due to issues involving the representatives for both parties.[2]

Oral argument was finally held on March 27, 2012 with Charging Parties appearing without counsel. At the hearing, Charging Parties clarified that they were no longer proceeding on allegations involving the deduction of Union dues or the alleged non-disclosure of financial information. According to Charging Parties, the sole issue in this matter is whether Respondent acted unlawfully in expelling them from membership in the Union, denying them Union privileges, prohibiting them from participating in Union activities and fining them for allegedly violating a provision of the AFSCME constitution which prohibits members from assisting, or intending to assist, a competing labor organization.

[2] Following one of the pretrial conferences, I received a letter from Ford asserting that the Charging Parties were "working to source new legal aid." Around that same time, the Union's in-house attorney, Bailey, became unavailable for personal reasons and was replaced by attorneys from Miller Cohen, PLC.

Findings of Fact:

The following facts are derived from the allegations set forth within the unfair labor practice charges, Charging Parties' responses to the various pretrial orders and the representations of the parties which were not disputed during the oral argument, and are accepted as true for purposes of determining whether dismissal of the charges on summary disposition is appropriate.

On November 2, 2009, Charging Parties were suspended from membership in AFSCME Council 25, Local 1583 as a result of allegations that Yunkman, Ford and Zelanka had violated Union by-laws by supporting a rival labor organization. Charging Parties appealed the expulsion and, in a decision issued on or about January 6, 2010, the International Union affirmed the decision of the Local and made the suspensions permanent. Throughout the proceedings, Yunkman, Ford and Zelanka repeatedly requested information from the Union concerning the allegations which had been brought against them, but the Union did not provide documentation or any other information to Charging Parties.

At the time of their expulsion, Yunkman was an agency service fee payer, while Ford and Zelanka were paying full Union dues to Respondent. After suspending Charging Parties from membership in AFSCME Local 1583, Respondent attempted to get the University to stop deducting dues from the paychecks of Ford and Zelanka. When these attempts proved unsuccessful, Respondent sent checks to Ford and Zelanka to reimburse them for the money collected by the University. Ultimately, AFSCME and the University reached an agreement on or about October 5, 2011 pursuant to which the employer was to discontinue collecting any dues or service fees from Charging Parties. Despite that agreement, the University was continuing to deduct agency service fees from Yunkman's paycheck at the time of the oral argument in this matter.

At no point has the Union sought to have the University terminate Charging Parties for failure to pay service fees or dues, nor has the University disciplined Ford, Yunkman or Zelanka in connection with their expulsion from the Union.

Discussion and Conclusions of Law:

The gravamen of this dispute is Charging Parties' contention that Respondent violated PERA by expelling them from membership in AFSCME Council 25, denying them Union privileges, prohibiting them from participating in Union activities and fining them for allegedly violating a provision of the AFSCME constitution which prohibits members from assisting, or intending to assist, a competing labor organization. Charging Parties assert that the expulsion was unlawful on its face and that Respondent failed to follow the requirements set forth in the Union constitution and by-laws during the course of the investigation and proceedings which ultimately resulted in their dismissal from the Union. Accepting all of the allegations set forth by Charging Parties as true, dismissal of the charges on summary disposition is warranted.

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 duty extends to union conduct in representing employees in their relationship with their employer, such as negotiating a collective bargaining agreement or resolving a grievance, and in related decision-making procedures, but does not embrace matters involving the internal structure and affairs of labor organizations which do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Education Ass'n*, 17 MPER 25 (2004); *SEIU, Local 586*, 1986 MERC Lab Op 149. Internal union matters are outside the scope of PERA, but are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. This principle is derived from Section 10(3)(a)(i) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. With respect to otherwise internal decision-making procedures, including contract ratification elections, the Commission has held that the duty of fair representation applies only to those policies and procedures having a direct effect on terms and conditions of employment. See e.g. *Organization of Classified Custodians*, 1993 MERC Lab Op 170; *SEIU, Local 586*, supra.

It is well established that a labor organization may lawfully suspend or expel members from the union, restrict attendance at union meetings to members, prohibit nonmembers from voting in internal union elections and enforce other restrictions against nonmembers, as long as those requirements do not have a direct effect on terms and conditions of employment. See e.g. *AFSCME Local 118*, 1991 MERC Lab Op 617 (no exceptions); *Lansing Sch Dist*, 1989 MERC Lab Op 210; *City of Lansing*, 1987 MERC Lab Op 701. In fact, the Commission has previously rejected a charge involving the application of what appears to be the same or substantially similar language in the AFSCME by-laws. In *AFSCME, Local 1585*, 1981 Mich Lab Op 160, internal union charges were brought against more than 30 employees of Michigan State University based upon their involvement in a campaign to replace AFSCME Local 1585 as their bargaining representative. The employees were accused of violating a provision in the AFSCME by-laws which made it improper for a member to engage in activities which would undermine the union's representative status or which would lead to substitution of another bargaining representative. Several of the employees filed an unfair labor practice charge alleging that AFSCME was attempting to cause the employer to discriminate against them for supporting a rival union. Finding no evidence that AFSCME in any way attempted to impact the charging parties' employment status, the Commission dismissed the charge. See also *Organization of Classified Custodians*, 1996 MERC Lab Op 181 (expulsion of custodian from union membership was an internal union matter because it did not directly impact his relationship with the school district).

With respect to the instant charges, there is likewise no factually supported allegation which, if true, would establish that the Union engaged in conduct which had any discernable impact on the employment relationship between Charging Parties and their employer. Charging Parties remain employed by the University of Michigan and there has not been any allegation that either Yunkman, Ford or Zelanka were ever threatened with discipline by their employer as a result of their expulsion from membership in the Union. In fact, Respondent could not lawfully seek the discharge of Yunkman, Ford and Zelanka pursuant to Section 10(1)(c) of PERA given that the Union has released Charging Parties from any dues or agency service fee obligations.

Despite having been given a full and fair opportunity to do so, Charging Parties have failed to set forth any factually supported allegation which, if true, would establish that Respondent acted arbitrarily, discriminatorily or in bad faith in connection with this matter. This case involves an internal union matter over which the Commission lacks jurisdiction. Accordingly, I conclude that the charges must be dismissed for failure to state a claim upon which relief can be granted under PERA.

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

RECOMMENDED ORDER

The unfair labor practice charges are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 22, 2012