STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

AFSCME COUNCIL 25 LOCAL 1583,
Labor Organization-Respondent,

-and-

FRED ZELANKA,
An Individual-Charging Party in Case No. CU13 C-011,

-and-

GLEN FORD,
An Individual-Charging Party in Case No. CU13 C-012,

-and-

JAMES YUNKMAN,
An Individual-Charging Party in Case No. CU13 C-013.

APPEARANCES:

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

Fred Zelanka, Glen Ford, and James Yunkman, appearing for themselves

DECISION AND ORDER

On March 27, 2014, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent AFSCME Local 1583 (Respondent) did not violate its duty of fair representation toward Charging Parties Fred Zelanka, Glen Ford and James Yunkman when it refused to allow them to vote in a contract ratification election because they were not union members on the date of the election. The ALJ recommended that the charges be dismissed as they did not state claims upon which relief can be granted under § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ's Decision and Recommended Order on Summary Disposition was served on the interested parties in accordance with § 16 of PERA.

Charging Parties requested and were granted an extension of time in which to file exceptions to the ALJ's Decision and Recommended Order. On May 19, 2014, Charging Parties filed their exceptions. Respondent filed a Motion Requesting a Retroactive Extension of Time to

file its response to Charging Parties' exceptions and subsequently filed a brief in support of the ALJ's Decision and Recommended Order. Respondent's filings were not timely. However, Respondent submitted evidence that it was not served with Charging Parties' exceptions. Accordingly, we grant Respondent's Motion Requesting a Retroactive Extension of Time and have considered Respondent's response to Charging Parties' exceptions in reaching our decision.

In their exceptions, Charging Parties do not allege any errors by the ALJ but merely restate claims they made at oral argument. They also restate arguments made in other unfair labor practice charges filed by them and decided by this Commission in February 2014. In its response to Charging Parties' exceptions, Respondent argues that Charging Parties' exceptions are untimely and even if timely, do not comply with MERC rules.

We have reviewed Charging Parties' exceptions and find them to be without merit.

Factual Summary:

We adopt the facts as found by the ALJ since this matter is being decided on Summary Disposition and repeat them here only as necessary. We agree with the ALJ that there are no material issues of fact.

Charging Parties were expelled from union membership on November 2, 2009. They filed unfair labor practice charges claiming that the expulsions violated PERA. We disagreed and earlier this year issued a Decision and Order holding that Respondent lawfully expelled Charging Parties from the union. *AFSCME Council 25, Local 1583,* 27 MPER 48 (2014).

In early March of 2013, Charging Parties learned that Respondent and the employer had reached an agreement on a new contract and had scheduled a contract ratification election to be held on March 25, 2013. Charging Parties attempted to vote in the election and were told by Respondent that they could not vote on the contract because they were no longer union members. They subsequently filed the current charges alleging that the refusal to permit them to vote violated PERA.

Discussion and Conclusions of Law:

Respondent argues, in its response to Charging Parties' exceptions, that the exceptions were not timely filed. Respondent is incorrect. Charging Parties requested, and were granted, an extension of time to file their exceptions and the order granting the extension states that the exceptions were due no later than May 21, 2014. The exceptions were filed on May 19, 2014.

Respondent also argues that the exceptions do not comply with Rule 176 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R423.176 and argues that the exceptions should be dismissed on that basis. While it is true that Charging Parties' exceptions do not strictly 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); *Gov't Administrators Assn,* 22 MPER 61 (2009). Because we are able to discern the issues raised by Charging Parties in their exceptions, we will not dismiss the exceptions on the ground that they are not in compliance with Rule 176.

While Charging Parties argue in their exceptions that Respondent violated PERA when it expelled them from the union, that issue was litigated and decided in *AFSCME Council 25, Local 1583, supra,* where, as noted above, the Commission determined that Respondent lawfully expelled Charging Parties from membership. The ALJ was correct in holding that Charging Parties are barred from re-litigating the issue under the doctrine of collateral estoppel. See *Leahy v Orion Twp,* 269 Mich App 527 (2006) The ALJ, therefore, correctly determined that the only issue before the Commission is whether Respondent violated its duty of fair representation by barring Charging Parties from voting in the contract ratification election held after they were expelled from membership.

In *Lansing Sch Dist,* 1989 MERC Lab Op 210 (supplemental decision and order on remand), the Commission held that barring non-members from a contract ratification election did not violate a union's duty of fair representation. The charging parties in *Lansing Sch Dist* had voluntarily chosen not to be members of the union. They filed a charge alleging that the union violated its duty of fair representation because it failed to allow them to participate in either the pre-negotiation process or the election held to ratify the contract. The administrative law judge held that the union did not violate its duty of fair representation by refusing to allow the non-member charging parties to participate in negotiating and ratifying the contract. He noted that the charging parties had chosen to be non-members and, therefore, had chosen to be excluded from participation in the union's internal affairs. The Commission affirmed, stating that:

> We have never held that a union is required to open up its contract ratification procedures or other decision making mechanisms to non-members. PERA does not set standards for internal union democracy or even mandate that a contract be submitted to the union's membership for ratification before becoming effective. Since the allegations here do not indicate that the Charging Parties were given less of an opportunity to participate in the Union's decision making than that usually granted to non-members, the charges do not state a claim of unlawful discrimination.

Charging Parties argue that, unlike the charging parties in *Lansing Sch Dist,* they did not voluntarily choose to relinquish union membership and, therefore, that case is inapplicable here. While the ALJ in *Lansing Sch Dist* explicitly stated that the charging parties there had chosen to be non-members, the ALJ here concluded, and we agree, that this fact did not form the basis of either the ALJ's ruling or the Commission decision in *Lansing Sch Dist.* Accordingly, there is no merit to Charging Parties' contention that *Lansing Sch Dist* is not controlling. The ALJ correctly determined that *Lansing Sch Dist* governs this case and that Respondent did not violate PERA by barring Charging Parties from voting in the contract ratification election.

[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.

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 and issue the following Order:

ORDER

The unfair labor practice charge is 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: October 8, 2014

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

AFSCME COUNCIL 25 AND IT'S AFFILIATED LOCAL 1583,
Labor Organization-Respondent,

-and-

FRED ZELANKA,
An Individual-Charging Party in Case No. CU13 C-011/Docket No. 13-000448-MERC,

-and-

GLEN FORD,
An Individual-Charging Party in Case No. CU13 C-012/Docket No. 13-000451-MERC,

-and-

JAMES YUNKMAN,
An Individual-Charging Party in Case No. CU13 C-013/Docket No. 13-000452-MERC
_____/

APPEARANCES:

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

Fred Zelanka, Glen Ford, and James Yunkman, appearing for themselves

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

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 heard in Detroit, Michigan on May 22, 2013 before Administrative Law Judge (ALJ) Julia C. Stern of the Michigan Administrative Hearing System (MAHS) for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before July 15, 2013, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

Fred Zelanka, Glen Ford, and James Yunkman filed these charges on March 26, 2013 against their collective bargaining representative, AFSCME Council 25 and its affiliated Local 1583. The three Charging Parties are employed by the University of Michigan (the Employer) at its medical center. The charges allege that the Respondent Union violated its duty of fair

representation toward them by prohibiting them from voting in a contract ratification election held on March 25, 2013.

Background and Findings of Fact:

In 2009, Respondent brought internal union charges against the Charging Parties for violating a provision in the AFSCME International Constitution prohibiting activity which assists or is intended to assist a competing organization. The Charging Parties were accused of attempting to replace the Respondent as the bargaining agent for their unit with a rival labor organization. On November 2, 2009, they were expelled from membership by Respondent, a penalty permitted by Article X of the International Constitution. On or about January 6, 2010, Charging Parties' appeal to the AFSCME International Judicial Panel was denied, and the expulsion was made permanent. For a period after their expulsion, the Employer continued to deduct dues from their paychecks, despite direction from Respondent to stop doing so. During this period, Yunkman resigned his membership and attempted to become an agency fee payer. Eventually, Respondent agreed to release the three Charging Parties from any obligation to pay either union dues or agency fees as a condition of employment and to refund the dues that had been collected from them after November 2, 2009. By the beginning of 2013, Charging Parties were not paying either dues or fees to the Union.

On July 20, 2010, Charging Parties filed unfair labor practice charges against Respondent alleging that Respondent violated PERA by expelling them from membership, fining them, denying them Union privileges, and prohibiting them from participating in Union activities. These charges, Case Nos. CU10 G-032, CU10 G-033, and CU10 G-034, were assigned to MAHS ALJ David Peltz. On June 25, 2012, ALJ Peltz issued a Decision and Recommended Order on Summary Disposition dismissing the charges on the ground that Charging Parties had not alleged any facts which, if true, would establish that the Union's conduct had any impact on their employment status or their employment relationship. He concluded that Charging Parties' expulsion from membership involved a purely internal union matter over which the Commission lacked jurisdiction, and that their charges failed to state a claim upon which relief could be granted. Charging Parties filed exceptions to ALJ Peltz's decision. On February 12, 2014, the Commission affirmed the ALJ's decision, stating that it agreed with him that Charging Parties had not alleged facts to support an allegation that the Union's conduct had an impact on their employment. In this decision, *AFSCME Council 25, Local 1583*____MPER _____ , the Commission, citing *Lansing Sch Dist,* 1989 MERC Lab Op 210 (on remand), and *Teamsters Local 214,* 26 MPER 43 (2013), noted that it had previously held that 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.

The record in the instant case includes the transcript of the oral argument held before ALJ Peltz on March 27, 2012 in Case Nos. CU10 G-032, CU10 G-033, and CU10 G-034. During the oral argument, ALJ Peltz asked Charging Parties about the effect upon them of their expulsions. Ford said that he had been prohibited from voting in an election for union officers, but that no contract ratification election had taken place since his expulsion. As part of this discussion, the ALJ made a comment about the right to vote in contract ratification elections, and Respondent's

counsel stated that he agreed with the ALJ about the state of the law. Charging Parties offered the transcript as evidence in the instant case, and Respondent did not object to its admission. However, I find that what the ALJ said during oral argument in the case has no bearing on the decision to be made here. I also find that the statement made by Respondent's counsel did not waive Respondent's right to argue in the instant case that it lawfully prohibited Charging Parties from voting on the contract because they were nonmembers when its counsel agreed.

The parties also agreed to admit copies of the constitutions of the AFSCME International Union, Council 25, and Local 1583. Local 1583's Constitution provides, in Article IX, that the local union is subject to all provisions of the International Constitution. Both the International Constitution and Local 1583's Constitution outline the qualifications for membership in their respective organizations. Local 1583's Constitution additionally states that membership in the local union is subject to the requirements of the International Constitution.

Article III, Section 7 of the International Constitution states:

> No person who has been expelled from membership in accordance with the provisions of this Constitution may be admitted to membership or employed by the Federation or any of its subordinate bodies for one year following such expulsion, and may thereafter be admitted to membership or offered such employment only with the prior approval of the International Executive Board.

The "Bill of Rights for Union Members" contained in the preamble of the International Constitution, includes the following paragraph:

> Members shall have the right to full participation, through discussion and vote, in the decision-making processes of the union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours or other terms and conditions of employment. All members shall have an equal right to vote and each vote shall be of equal weight.

Local 1583's Constitution sets out the procedures for the nomination and election of local union officers and stewards by "the membership." Local 1583's Constitution does not contain any specific reference to contract ratification.

Charging Party Ford, who began working for the Employer in 1983, was active in Local 1583 for many years, including holding the office of chief steward for between 15 and 18 years. Ford testified regarding his experience serving as an observer during one contract ratification election. According to Ford, observers were instructed to challenge the votes of individuals who appeared at the polls to vote but whose names were not on the list of employees provided to the Union by the Employer. He testified that these were either individuals whose who had not paid their dues or individuals who had paid but whose names had mistakenly been omitted from the Employer's list. According to Ford, if a prospective voter's name was not on the list, he or she was offered the opportunity to cast a challenged ballot.

In the early months of 2013, while Charging Parties' exceptions in Case Nos. CU10 G-032, CU10 G-033, and CU10 G-034 were pending before the Commission, Respondent and the Employer began negotiations for a new collective bargaining agreement to replace the current agreement set to expire in July 2013. On or about March 15, 2013, Respondent and the Employer reached a tentative agreement on a new contract with an expiration date in June 2017. Respondent sent out emails notifying employees of the tentative agreement and attaching copies of the agreement. Respondent did not send emails to the Charging Parties. However, several employees forwarded the email to Charging Party Ford, and Charging Parties also heard about the agreement by word of mouth from other employees.

Respondent scheduled a contract ratification election for March 25, 2013. All three Charging Parties went to the polling place to vote, although they did not go at the same time. When Ford appeared at polls and went to a table to show his identification and receive a ballot, the observer at the table, who recognized him, told him that he could not vote. When Ford asked her why, she said that because AFSCME International said that he was not a member. Ford then asked if they were voting on a new collective bargaining agreement, and she said yes, but that he was not allowed to vote on it. Ford then asked her if the new agreement would affect his wages and conditions of employment. She said yes, but repeated that he was not allowed to vote. This exchange drew the attention of other voters and poll workers. Ford left the polling area because the atmosphere seemed to be getting hostile. Ford was not offered a challenged ballot and did not ask for one.

When Yunkman appeared at the polls, Local 1583 President Gloria Peterson was sitting next to the observer who took his identification. She said to Yunkman, "You are not a member," and then asked him if he thought he was a member. Yunkman replied that he knew that, according to the Union, he was not a member. He said, however, that because the matter was still being litigated he felt he was a member. Yunkman then left the polling area without being offered a challenged ballot or asking for one. According to Zelanka, he appeared at the polls, went to the table and showed his identification, asked if he could vote, and was told he could not. He then left. Zelanka was not specifically told why he had not been allowed to vote and did not ask. Zelanka also was not offered and did not ask for a challenged ballot.

The tentative agreement became a binding contract after it was ratified by Respondent's members and adopted by the Employer.[2] As noted above, Charging Parties filed the instant charges on March 26, 2013.

Discussion and Conclusions of Law:

[2] In their charges, the Charging Parties asserted that this agreement was "an attempt to circumvent right-to-work." They also asked in their charges that the collective bargaining agreement be "held in abeyance" until a meeting was held to discuss Respondent's refusal to allow them to vote in the ratification election. 2012 PA 349 (Act 349), which took effect on March 28, 2013, amended PERA to make union security agreements unlawful, but exempted agreements entered into before the effective date of the Act. At the hearing, Charging Parties stated that they were not alleging that the contract was unlawful under Act 349, and that their only allegation was that Respondent unlawfully refused to allow them to vote in the ratification election.

The duty of fair representation is a judicially created doctrine founded on the principle that a union's status as exclusive bargaining representative carries with it the obligation and duty to fairly represent all employees in the bargaining unit, members and nonmembers. *Government Employees Labor Council,* 27 MPER 18 (2013); *Vaca v Sipes,* 386 US 171 (1967); *Goolsby v Detroit,* 419 Mich 651 (1984). This duty extends both to collective bargaining and the enforcement of the collective bargaining contract. *Vaca,* at 177. However, both §10(2)(a) of PERA and §8(b)(1)(A) of the National Labor Relations Act, 29 USC §150, include provisos protecting the rights of labor organizations to prescribe their own rules with respect to the acquisition or retention of membership. This protection has been held to extend to restrictions on participation by nonmembers in union governance. As the Commission noted in *AFSCME Council 25, Local 1583*___MPER _____, (Case Nos. CU10 G-032, CU10 G-033, and CU10 G-034), it has held that a union does not violate its duty of fair representation under PERA by suspending or expelling members from the union, restricting attendance at union meetings to members, prohibiting nonmembers from voting in internal union elections, and enforcing other restrictions against nonmembers, as long as those requirements do not have a direct effect on terms and conditions of employment.

The issue of whether Respondent violated PERA by expelling the Charging Parties from membership was litigated and decided in *AFSCME Council 25, Local 1583*___MPER _____, (Case Nos. CU10 G-032, CU10 G-033, and CU10 G-034). Charging Parties are barred from relitigating this issue under the principle of collateral estoppel. See *People v Gates,* 434 Mich 146, 154(1990). The only issue properly before me, therefore, is whether Respondent violated its duty of fair representation by barring Charging Parties from voting in the contract ratification election held after they were expelled from membership.

Ford and Yunkman testified that when they appeared at the polls, they were explicitly told that the reason they were not allowed to vote was that they were not union members. Respondent asserts that the Charging Parties were prohibited from voting on the contract because they were not union members, and Charging Parties presented no evidence that they were excluded from voting for any other reason. I find, therefore, that reason Charging Parties were prohibited from voting on March 25, 2013 was that they were not union members on the date of the election.

The Commission has held that the establishment of qualifications for holding union office and the conduct of elections for union offices are internal union matters not subject to the duty of fair representation. For example, in *Detroit Association of Educational Office Employees*, 1984 MERC Lab Op 947, the Commission held that a union's establishment of qualifications for holding union office was strictly an internal union matter. See also *ATU, Local 1039,* 25 MPER 61 (2012) (no exceptions) (alleged irregularities in the conduct of an election for union officers was strictly an internal union matter); *International Union, UAW,* 19 MPER 9 (2006) (no exceptions) (a union's failure to follow its own bylaws in conducting an election for union officers was an internal union matter); *Detroit Fed of Teachers,* 16 MPER 54 (2003) (no exceptions) (union's establishment of qualifications for voting in elections for local building representatives was an internal union matter outside the scope of PERA)

However, in *Wayne Co Cmty College Federation of Teachers,* 1976 MERC Lab Op 347, 352, the Commission concluded that the duty of fair representation not only encompassed collective bargaining and the administration of collective bargaining agreements, but also applied to internal union decision making procedures that denied union members "meaningful input into the collective bargaining process." In *Wayne Co Cmty College,* the union maintained a weighted voting formula which it applied to contract ratification elections, elections for members of its bargaining team, and elections for members of its executive board. Under this formula, the votes of part-time faculty members could not exceed twenty percent of the total votes cast. This was accomplished by counting the votes of full-time and part-time members separately, and, if the percentage of the total number of votes cast by part-timers exceeded twenty percent of the total, allocating the part-timers' twenty percent of the vote based on how the part-timers had actually cast their votes. The twenty percent rule was used despite the fact that a majority of the unit were part-timers. Although both the Commission and the ALJ held that the union was not required to give the same weight to the votes of full-time and part-time members, the Commission concluded that by applying its existing formula to both elections to select the bargaining team and elections to ratify the contracts upon which negotiators had agreed, the union had effectively denied part-time union members meaningful input into the collective bargaining process and, therefore, violated its duty of fair representation toward them. Thereafter, in *Service Employees International Union, Local 586,* 1986 MERC Lab Op 149, the Commission concluded that a union arbitrarily and capriciously refused to allow certain union members - all of whom had signed dues deduction cards and were having dues deducted from their paychecks - to vote in an election to ratify a collective bargaining agreement.

However, neither *Wayne County Cmty College* nor *Service Employees International Union* addressed the question of whether a union violates its duty of fair representation by refusing to allow nonmembers to vote in contract ratification elections. In *Lansing Sch Dist,* 1989 MERC Lab Op 210 (supplemental decision and order on remand), the Commission held that barring nonmembers from a contract ratification election did not violate a union's duty of fair representation. The charging parties in *Lansing* were teachers who had voluntarily chosen not be members of the union. They had been exempted from complying with agency fee requirements included in successive contract by a "grandfather" clause included these contracts. After the union and their employer entered into a new contract that removed that clause, charging parties brought a charge alleging that the union had violated its duty of fair representation. Among the acts alleged to constitute unfair labor practices were the union's failure to allow the charging parties, as nonmembers, to participate in either the pre-negotiation process of determining what proposals would be brought to the bargaining table or the election held to ratify the contract after a tentative agreement had been reached. After the Commission dismissed the charge on summary disposition, the dismissal was appealed to the courts. The Michigan Supreme Court, in *Smith v Lansing Sch Dist,* 428 Mich 248 (1987), concluded that under the Administrative Procedures Act, MCL 24.272, the Commission was not required to hold an evidentiary hearing, but was required to give the Charging Parties the opportunity to present oral arguments opposing summary disposition. It remanded to the Commission to give the Charging Parties the opportunity to argue orally. On remand after oral argument, the administrative law judge held that the union did not violate its duty of fair representation by refusing to allow the nonmember charging parties to participate in the process of negotiating and ratifying the contract eliminating the grandfather clause. He noted that the charging parties in that case had chosen to

be nonmembers, and therefore to be excluded from participation in the union's internal affairs, which included the negotiation and ratification of contracts. He recommended that the charge be dismissed.

The Commission affirmed. After discussing the *Wayne County Cmty College* and *Service Employees International Union* cases, the Commission stated, at 218:

> We have never held, however, that a union is required to open up its contract ratification procedures or other decision making mechanisms to nonmembers. PERA does not set standards for internal union democracy or even mandate that a contract be submitted to the union's membership for ratification before becoming effective. Since the allegations here do not indicate that the Charging Parties were given less of an opportunity to participate in the Union's decision making than that usually granted to nonmembers, the charges do not state a claim of unlawful discrimination.

Although *Lansing School Dist* did not rely on case law under the NLRA, the NLRB has also held that a union does not violate its duty of fair representation by refusing to allow nonmembers to vote in contract ratification elections. *In Branch 6000, National Assn of Letter Carriers,* 232 NLRB 263, 264 (1977), the union and employer entered into a contract that explicitly provided that employees would be entitled to vote on their work schedule. The union then conducted a vote limited to its members only. The NLRB held that the union violated its duty of fair representation by refusing to allow nonmembers to vote in this circumstance. However, at n 1, it distinguished this vote from the ratification of a contract:

> This is unlike the ratification of an otherwise agreed-upon contract, in which the required ratification is an integral part of the union's representation process, and thus an internal union matter properly determinable by union members alone, for the same reasons the members alone may choose the negotiators. Here, in contrast, the voting was on the choice of one work schedule or another, so that the voting became a substitute for negotiation and thereby eliminated from the situation the union representation element, and with it the propriety of limiting to union members a voice in the choice.

The NLRB's decision was affirmed in *Branch 6000, National Assn of Letter Carriers v NLRB,* 595 F2d 808 (1979). See also discussion in *American Postal Workers (Postal Service),* 300 NLRB 34, 35 (1990) of *Branch 6000* and the circumstances under which a union is required to allow nonmembers to vote on a matter that impacts their working conditions.

Charging Parties argue that, unlike the charging parties in *Lansing Sch Dist,* they did not voluntarily choose not to be members of the Union. Respondent counters that they voluntarily chose to violate the internal rule that led to their expulsion. While the ALJ in *Lansing* noted that the charging parties in that case had chosen to be nonmembers, I conclude that this fact did not form the basis of his ruling or the ruling of the Commission. Rather, both the ALJ and the Commission held that the union could prohibit the nonmembers charging parties from participating in the ratification of the contract because, like the selection of union officers,

contract ratification is integral to the union's internal decision making. As discussed above, I have found that the reason Charging Parties were not allowed to vote in the March 25, 2013 union ratification election was that they were not union members on the date of this election. I conclude that the Union did not violate its duty of fair representation toward them by refusing to allow them to vote in the election for that reason, and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: March 27, 2014