

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

In the Matter of:

UTICA EDUCATION ASSOCIATION,
Respondent-Labor Organization

-and-

LIZA PARKINSON,
An Individual Respondent,

-and-

LAWANDA PARKER,
An Individual Charging Party.

Case No. CU14 E-030
Docket No. 14-011669-MERC

APPEARANCES:

Law Offices of Lee & Correll, by Michael K. Lee and Megan R. McGown, for the Labor Organization and Liza Parkinson, an Individual Respondent

Lawanda Parker, appearing on her own behalf

DECISION AND ORDER

On October 21, 2014, Administrative Law Judge Travis Calderwood 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: November 26, 2014

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

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LIZA PARKINSON,
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LAWANDA PARKER,
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APPEARANCES:

Law Offices of Lee & Correll, by Michael K. Lee and Megan R. McGown, for the Labor Organization and Liza Parkinson

Lawanda Parker, appearing on her own behalf

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON MOTION FOR SUMMARY DISPOSITION

This matter arises from an unfair labor practice charge filed on May 29, 2014, by Lawanda Parker against her labor organization, the Utica Education Association (UEA) and UEA President, Liza Parkinson. 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 Travis Calderwood, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (Commission).

Background:

In the most recent prior proceedings before the Commission involving Charging Party, Case Nos. C12-171 and CU12 I-037, Charging Party filed charges against her employer, the Utica Community Schools (School District), and her bargaining representative, the UEA. In Case No. C12-171, Parker claimed that her employer assembled a grade change review panel in retaliation for her actions as a “union activist” and in response to numerous grievances she filed

against the principal of her school. Parker also alleged that the district discriminated against her in retaliation for her prevailing in an earlier 2004 unfair labor practice proceeding.¹ In Case No. CU12 I-037, Parker claimed that the UEA violated its duty of fair representation under the PERA by working with management throughout the grade change process, by failing to ensure that the procedure was conducted fairly and by refusing to provide her with information concerning the actions of the grade change review panel. On January 29, 2014, ALJ David M. Peltz issued a recommended order dismissing both of the charges. ALJ Peltz determined that while it was true that Parker had engaged in protected activity of which the school district was aware, she had failed to provide any factually specific allegations which, if true, would establish a prima facie case of unlawful discrimination under PERA. With regard to the charge against the union, ALJ Peltz concluded that Parker failed to set forth a prima facie establishing a breach of the duty of fair representation by UEA because she did not provide any factually supported allegations against the union and she failed to describe with specificity how the conduct of the school district violated the collective bargaining agreement. Parker filed exceptions to the ALJ decision in Case No. CU12 I-037. She did not file exceptions in Case No. C12 I-171. On August 14, 2014, the Commission affirmed the ALJ's dismissal of both charges. See *Utica Cmty Sch*, 28 MPER 11 (2014).

Current Charge and Procedural History:

In the charge presently before this ALJ, filed on May 29, 2014, Parker alleges that both the UEA and UEA President, Liza Parkinson², acted in a discriminatory and/or retaliatory manner and violated their duty of fair representation by filing Board of Reference (BOR) charges against her.³ Parker claims that the BOR charges were filed against her as retaliation for her previous unfair labor practice charges brought before the Commission. Parker did not include the full substance of the BOR charges in her initial filing. However, Parker did state that one of the BOR charges claimed she “creates unnecessary costs to the MEA.” Parker concluded that the charge must have been referring to attorney fees incurred in defending the Union against her prior unfair labor practice charges. Parker further alleged that Parkinson was obstructing and impeding the administration of justice in relation to the BOR charges. Finally, the relief sought by Parker was for Case No. C12-171 and Case No. CU12 I-037 to “be re-opened and/or these matters be further investigated.”

Prior to a complaint or notice of hearing being issued, Respondents, through the same counsel, filed a joint Motion for Summary Disposition. Respondents' motion set forth two

¹ In Case No. C04 L-320, filed on December 8, 2004, Parker and the UEA filed an unfair labor practice charge against the Utica Community Schools, alleging that the district violated PERA by eliminating her extracurricular assignment and her position as a high school assistant band director as retaliation for her protected union activity. The ALJ in that case determined that anti-union animus was at least a motivating factor behind the district's actions and issued a recommended order directing the district to cease and desist from discriminating against Parker because of her union activity, reinstate the assistant band director position and extracurricular assignment and make her whole for any monetary loss she may have suffered as a result of the violation. The Commission affirmed the ALJ's decision in its entirety on October 16, 2007.

² While Parker's charge seeks to include an individual union officer as an individual respondent, I find no authority under the PERA to allow such a filing.

³ Parker's charge does not explain or describe what BOR charges are, other than to suggest that said charges can result in “fine(s), loss of membership and officer status.” Respondents, in their Motion for Summary Disposition state that the “Board of Reference is an internal judicial body within the Michigan Education Association.”

arguments for which they claim summary disposition should be granted: (1) service was not effective as to either Respondents because Parker served Respondents' Counsel and not Respondents themselves, and/or (2) the Commission lacks jurisdiction over the subject matter of the charge for the fact that the conduct at issue is an internal union matter which has no direct effect on the terms and conditions of Parker's employment.

On June 23, 2014, Parker filed a response to Respondents' motion. In her response, Parker claims that service upon Respondents' Counsel was proper given her opinion that the issues in her present charge are so closely related to the previous cases, in which Respondents were represented by said Counsel. As to Respondents' second claim, Parker claims that "any action taken against Parker which can potentially remove her union membership directly impacts her relationship with the employer."

On July 21, 2014, a telephone pre-hearing conference was held with the parties. At that time, even though Parker had participated in previous proceedings before the Commission, I explained to Parker the general procedure regarding the filing of unfair labor practices and filing of exceptions. I further indicated to Parker that I have no authority to issue an order to "re-open" her previous cases before the Commission. During that call, Respondents' Counsel agreed to withdraw the claim that service was improper but wished to continue with the claim that the Commission lacks jurisdiction because the controversy at issue is an internal union matter.

On September 10, 2014, I directed Charging Party to show cause in writing why Respondents' Motion for Summary Disposition should not be granted and why the charge should not be dismissed without hearing because the relief requested cannot be granted under PERA. On September 29, 2014, Charging Party filed her response to my directive. Charging Party restated her earlier arguments and in response to the question regarding impact on her relationship with her employer alleged that the BOR charges, if successful, could remove her from her position as a Union Officer and suspend or expel her from membership in the Union. Charging Party claims that such a suspension or expulsion could result in termination of her employment because a union security clause is still in effect. Charging Party also included a three-page document entitled "Summary of Board of Reference Charges Against Lawanda Parker" and which was dated April 23, 2014. That Summary set forth the following seven charges against Parker:

1. Improper Conduct during and after the UEA General Election held March 25 & 26, 2014.
2. Knowingly made false and malicious statements.
3. Attempted to interfere with the duties of the UEA Representative Assembly.
4. Interfered with the Co-Chairs of the UEA Elections Committee in performing (sic) their duties.
5. Hinders the UEA President's ability to perform duties.
6. Violated UEA Communications Policy through misuse of school district email and position as UEA Secondary Trustee.
7. Damaged the reputation and credibility of the Utica Education Association with the membership, the employer, neighboring local associations and the MEA.

The last BOR charge includes the following statement: “Makes demands on both MEA and UEA leadership and staff that are unnecessary (sic) costly to resources of the organization.”

Discussion and Conclusions of Law:

It is well established law that a union's duty of fair representation is comprised of three responsibilities: (1) to serve the interest 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 City of Detroit*, 419 Michigan 651 (1984). Furthermore, a union's actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991). A union's duty of fair representation extends to union conduct in representing employees in their relationship with their employer but does not embrace matters involving the internal structure and affairs of labor organizations that 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.

The Commission has long held that internal union matters fall outside the scope of PERA and instead are properly 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. The Commission derives that principle from Section 10(2)(a) of PERA, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. In addressing 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 directly effecting terms and conditions of employment. *See e.g. Organization of Classified Custodians*, 1993 MERC Lab Op 170; *SEIU, Local 586, supra*.

In order to survive a motion for summary disposition predicated on the premise that Charging Party has failed to state a claim of a breach of the duty of fair representation, Charging Party's allegations “must contain more than conclusory statements alleging improper representation.” *AFSCME, Local 2074*, 22 MPER 83 (2009), citing *Martin v Shiawassee County Bd of Commrs*, 109 Mich App 166, 181; 310 NW2d 896 (1981). An individual's dissatisfaction with the union's efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Education Association*, 2001 MERC Labor Op 131. A union's ultimate duty is towards its membership as a whole, and as such, a union is not required to follow the dictates or wishes of an individual employee. Instead, a union may investigate and take action it determines to be best. It is well established that a labor organization possesses the legal discretion to make judgments about the general good of its membership, and to proceed on such judgments despite the fact that they may be in conflict with the desires or interests of certain employees. *Lansing School District*, 1989 MERC Labor Op 210.

While Parker has claimed that the BOR charges filed against her are in direct retaliation and response to her filing prior charges in Case No. C12-171 and Case No. CU12 I-037, she has not offered anything other than conclusory statements to support such accusations. The “Summary of Board of Reference Charges” provided by Parker does not on its face include any

reference to the previous Commission proceedings, nor is any connection to the subject matter of those cases implied therein. Parker's reliance on the statement of "unnecessary costs" as proof of retaliation for the filing of the previous cases, absent more, is merely a conclusory statement at best. Despite numerous opportunities to support her claims, Parker has provided no corroborating evidence and it appears that there is no likelihood she would be able to at hearing.

The Commission has long held 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. Parker has not indicated in any way how the UEA's conduct has impacted the relationship between her and her employer. Further Parker's claim that a removal from office or even a suspension or expulsion from membership could result in her termination from employment is simply unfounded. Parker's claim is predicated upon an incorrect understanding of union security clauses. While it is possible that Parker is still covered under a union security clause because said clause existed prior to March 28, 2013, the date that Michigan became a "right-to-work" state, her expulsion or suspension from union membership would simply transform her to the status of a "fee-payer."

As stated previously, I find no authority under the PERA to allow an action against an individual union officer as a respondent separate from the union. Accordingly, Parker's claim that Parkinson has impeded or obstructed the BOR process shall be addressed as actions by the Union and as such are irrelevant to the present charge because as the Commission held in *Registered Nurses and Registered Pharmacists of Hurley Hospital*, where a violation of the union's own internal rules is alleged or occurred, a union's failure to follow its internal rules does not, standing alone, constitute a breach of the duty of fair representation and is therefore outside the jurisdiction of the Commission. *Registered Nurse and Registered Pharmacists of Hurley Hospital*, 2002 MERC Lab Op 394 (no exceptions).

Lastly, the relief requested by Parker, the reopening or investigation of prior cases already disposed of by an ALJ, is a remedy completely outside of the purview or authority of this ALJ to grant or recommend, and is effectively moot given the Commission's issuance of its August 14, 2014, Decision and Order in Case No. C12 I-171 and Case No. CU12 I-037.

For the reasons set forth herein, I conclude that Parker has failed to state a factually supported claim upon which relief could be granted under PERA. Therefore, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

DATED: October 21, 2014