

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

In the Matter of:

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), LOCAL 455,
Labor Organization-Respondent,

MERC Case No. CU15 J-037
Docket No. 15-057028

-and-

LISA KLEEKAMP,
An Individual Charging Party.

APPEARANCES:

James Alan Britton, Assistant General Counsel, International Union UAW, for Respondent

Lisa Kleekamp, appearing on her own behalf

DECISION AND ORDER

On May 5, 2016, Administrative Law Judge Julia C. Stern issued her 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 either 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: June 17, 2016

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

In the Matter of:

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 455,
Labor Organization-Respondent,

Case No. CU15 J-037
Docket No. 15-057028-MERC

-and-

LISA KLEEKAMP,
An Individual-Charging Party.

APPEARANCES:

James Alan Britton, Assistant General Counsel, International Union UAW, for Respondent

Lisa Kleekamp, appearing for herself

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 on Friday, March 25, 2016, before Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System (MAHS) for the Michigan Employment Relations Commission. Based upon the entire record, including testimony of witnesses and facts the parties agreed at the hearing were not in dispute, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Lisa Kleekamp, an employee of Saginaw County (the Employer) filed this unfair labor practice charge against her collective bargaining representative, the International Union, United Automobile, Aerospace and Agricultural Implement Workers, (UAW) Local 455, on October 6, 2015. In August 2015, Kleekamp applied for a vacant position with the Employer. The Employer selected another applicant. Kleekamp alleges that Respondent violated its duty of fair representation under Section 10(2)(a) of PERA by refusing to file a grievance over the Employer's failure to award her the position.

Respondent filed a position statement in response to Kleekamp's allegations on November 23, 2015. On December 8, 2015, Kleekamp filed an amended charge/supplement to her original charge.

Findings of Fact:

Respondent Local 455 represents two separate bargaining units of employees of the Employer. Unit 50 is known as the UAW Professional Unit. Unit 48 is known as the UAW Managers' Unit. The bargaining units have separate collective bargaining agreements. Some, but not all, of the provisions in these two contracts are identical. Kleekamp is a member of Unit 50. The position for which Kleekamp applied, Assistant Director of Michigan Works!, is a position in Unit 48.

Article 7.1 of the Unit 48 collective bargaining agreement states that when regular vacancies in the bargaining unit are to be filled and the department head does not fill the position internally, the open job will be posted for a period of five working days for bargaining unit members only. On or about August 12, 2015, the Employer posted the Assistant Director of Michigan Works! position with applications limited to current members of Unit 48.

Article 7.1 of the Unit 48 collective bargaining agreement also states:

If there are no qualified bidders for any open and posted job in the sole discretion of the Employer, the Employer may fill the job externally within a reasonable time. However, the Employer must provide the Union notice if the time will extend beyond ninety (90) days. Positions shall be filled using job-related criteria established by the Employer.

Article 7 of the Unit 50 contract also states that if vacancies are not filled internally by the department head, the open positions will be posted for bargaining unit members only. Article 7 of the Unit 50 contract then states:

If there are no qualified bidders for any open and posted job in the sole discretion of the Employer, the Employer may fill the job externally within a reasonable time. However the Employer must provide the Union notice if the time will extend beyond six months. Positions will be filled using job-related criteria established by the Employer that will include: seniority, education, training, experience, ability, and previous performance, including discipline, excessive tardiness, and absenteeism (except as allowed by law.)

The Employer did not select a candidate for the Assistant Director of Michigan Works! position as a result of the August 12, 2015, posting. The position was posted again on or about August 25, 2015, as an "internal" posting, i.e., applications would be accepted from any current employee of the Employer. The posting listed the criteria for the position as follows:

Bachelor's degree with course or on-the-job training in areas such as education, accounting, business, public administration, and computer systems administration. At least 5 years of experience. Experience and detailed knowledge of Michigan Works! systems, WIOA, Health and Human Services welfare reform legislation, Wagner Peyser, labor laws, wage and hour law, education legislation, and numerous other related laws, regulations and policies. Must have general management, negotiation and coordination skills. Must be comfortable with computers and computer network systems.

Kleekamp and one other individual who held a position in Unit 48 applied for the position in response to the August 25, 2015, posting. On or about September 17, 2015, Kleekamp was notified that the Employer had awarded the position to the other applicant. Kleekamp then approached Respondent Local 455 President Lynette Royer and asked her to file a grievance over the Employer's failure to award her the position. Kleekamp told Royer that she had greater seniority than the applicant selected and that the successful candidate had not even worked for the Employer for five years. Kleekamp also asserted that she was better qualified. Royer told Kleekamp that the Employer did not have to take seniority into account since the Assistant Director of Michigan Works! was a Unit 50 job and the seniority language was only in the Unit 48 contract. She also told Kleekamp that she could not file a grievance for Kleekamp over the Employer's selection of an employee to fill a Unit 50 job.

However, according to Royer's testimony, on or about September 22, 2015, Royer went to see the Employer's personnel director, Jennifer Broadfoot, to ask her about the Employer's filling of the Assistant Director Michigan Works! position. Royer asked Broadfoot who had applied for the position and what seniority the applicants had. Broadfoot told Royer that there were two candidates from Unit 48 who had applied. She told Royer that the candidate who had been selected had more experience, although that experience was not all with the Employer. She said that the successful candidate was familiar with most of the computer systems the Employer used and with the laws as required in the job description, and that she also had some managerial experience. Broadfoot told Royer that although the Employer did not have to base its decision on the criteria in the Unit 48 contract, it did weigh those factors and that it thought it had selected the appropriate candidate. About a week later, Royer met with Kleekamp and told Kleekamp what Broadfoot had told her. Royer told Kleekamp again that Respondent would not file a grievance challenging the Employer's decision to fill the position.

Discussion and Conclusions of Law:

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). As long as it acts in good faith and without a discriminatory motive, a union has considerable discretion in deciding whether, or in what manner, to proceed with a grievance, and is permitted to assess each grievance on its individual merit. A union's actions are lawful so long as they are not so far outside a wide range of reasonableness as to be irrational. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *Air Line Pilots Ass'n v O' Neill*, 499 US 65 (1991); also see *AFSCME Local 2394*, 28 MPER 25 (2014). A union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success at arbitration. It is not required to follow the dictates of an individual grievant. 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 Ass'n*, 2001 MERC Lab Op 131.

In this case, the position for which Kleekamp applied was a position in the Unit 48 bargaining unit. In filling the vacancy, the Employer, therefore, was obligated to comply with Article 7.1 of the Unit 48 collective bargaining agreement but had no obligation to consider the criteria for filling vacancies, such as seniority, set out in the Unit 50 contract. Since the Unit 48 agreement required the Employer to "fill the position using job-related criteria established by the Employer," Respondent might have had a basis for filing a grievance had the Employer established criteria that were not job-related

and/or disregarded the criteria set out in the posting. Kleekamp argues that the Employer did the latter by selecting a candidate who did not have five years of experience. However, the Employer maintained that the candidate it selected did have the requisite experience, even though it was not all with the Employer. As Respondent points out, the qualifications in the posting for the Assistant Director Michigan Works! position did not differentiate between experience with the Employer and other types of experience. Whether or not Respondent's interpretation of the contract and the language of the job posting was correct, I find that Respondent's decision that a grievance filed on Kleekamp's behalf would not succeed was not so unreasonable that it could be considered irrational. Kleekamp did not allege in this case that Respondent refused to file the grievance because of personal hostility toward her or out of other motives unrelated to the merits of the grievance. I find that Kleekamp did not establish that Respondent acted in bad faith or in a discriminatory or arbitrary fashion in refusing to file the grievance and I conclude that Respondent did not breach its duty of fair representation in this case. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: May 5, 2016