STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION
& GRAND BLANC EDUCATION ASSOCIATION,
Labor Organizations-Respondents,

MERC Case No. CU16 C-012
-and- Hearing Docket No. 16-005998

DANIEL MOREY,
An Individual Charging Party.
_____/

APPEARANCES:

Daniel Morey appearing on his own behalf

DECISION AND ORDER

On October 7, 2016, 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 22, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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-and-

DANIEL MOREY,
An Individual Charging Party.
_____/

APPEARANCES:

Daniel Morey appearing on his own behalf

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON ORDER TO SHOW CAUSE

On March 8, 2016, Daniel Morey filed the above unfair labor practice charge against the Michigan Education Association (MEA) and the Grand Blanc Education Association (GBEA), collectively the Charging Party or the Union. 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 Administrative Law Judge Travis Calderwood, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission).

Charging Party, who identifies himself as an "association representative," alleges that both the GBEA and the MEA were discriminating against unit members on the basis of seniority, and failed to fairly represent the unit members. Charging Party also alleges that the Respondents have engaged in a "pattern of behavior by union leadership to avoid transparency." Charging Party lists several examples of that behavior, including but not limited to, restricting information from members, closing executive board meetings, and not allowing members to be heard at membership meetings. Charging Party states that he filed the charge "[o]n behalf of the members I represent as an association representative…"

On March 29, 2016, I directed Charging Party, pursuant to Rule 165 of the Commission's General Rules, to show cause in writing why his charge should not be dismissed without a hearing for failure to state a claim for which relief can be granted under PERA. In that order I stated:

> Absent allegation that the Respondents somehow acted in bad faith or in an arbitrary and/or capricious manner, the claim that some members of the unit are receiving a greater level of compensation than other members with less seniority is not sufficient to establish an actionable claim under PERA. Similarly, Charging Party's dissatisfaction with the Respondent's conduct with respect to transparency, absent some discernible impact upon the relationship of bargaining unit members to their employer, also are not actionable violations under PERA.
>
> Lastly, in addressing Charging Party's claim that he has filed this charge on behalf of the members of the GBEA, it is clear that this charge was filed by Morey as an individual charging party and as such does not possess the standing to assert claims under PERA for others besides himself. See *Novi Community Schools*, 28 MPER 54 (2014) (no exceptions).

Charging Party Morrey filed his response on April 19, 2016. Included within that response was a signed statement allegedly indicating approval by nine members of the Association to allow Charging Party Morey to represent them in the present proceeding. First and last names were provided for eight of the nine individuals with the ninth one identified by just a first name. Addresses of the nine individuals were not included despite being required by Rule 151(2)(b) of the Commission's General Rules, R 423.151(2)(b). It is my finding that the information provided by Charging Party Morrey in this response is not adequate to amend the charge as filed to include those additional nine individuals as co-individual charging parties alongside Charging Party Morey. Additionally, no motion for joinder has been filed by either Charging Party or the Respondent, nor do the allegations contained within Morey's pleadings indicate that joinder would be appropriate under MERC Rule 157, R 423.157. As such it is the decision of the undersigned that the matter shall proceed with Morey as the sole individual charging party.

Background:

The following alleged facts are derived from the pleadings filed by Morey in pursuit of his unfair labor practice charge and in response to my order and are being considered in the light most favorable to charging party.

Just prior to the filing of this charge, the GBEA leadership approved a tentative agreement covering the 2015-2016, 2016-2017, and 2017-2018, school years. Charging Party alleges that the GBEA leadership approved that tentative agreement. Charging Party alleges that this tentative agreement continues a practice of discrimination from the prior two contracts which covered the years 2011 through 2015. More specifically, Charging Party claims that the current contract, along with the past contracts, have led to "significant differences in the compensation of 'lower seniority' members vs. 'higher seniority' members."

As evidence of this disparate treatment, Charging Party asserts that as the School District has demanded cuts to member benefits and salaries with the brunt of those "sacrifices", approximately 90% of the cuts and reductions, coming from "lower seniority members" while many of the "highest seniority" members have received pay increases.

Charging Party, in his response to my order to show cause, asserts that a recent survey given to members shows that 60.9% of all members requested that "steps" or compensation for years of

teaching experience be given the highest priority. Per that same survey, base salary was given the highest priority by 15.6% of members, while only 0.2% of responding members indicated that "lanes" or compensation for increased graduate work was their first priority. The tentative agreement, as alleged by Charging Party, included a base salary increase and there is full compensation for lanes for all three years with only "some movement" on steps was granted.[1] Additionally, Charging Party claims that the abovementioned survey indicated that 30.5% of the membership who responded requested that health care coverage remain unchanged, while the remaining membership requested higher deductibles, less benefits, or alternate provider with a different network of doctors and coverage. Charging Party then alleges that there was little to no effort on part of the negotiating team to act on these requests.

With respect to the transparency allegations, Charging Party claims that on February 23, 2016, the Union Secretary sent an email to the members stating that the tentative agreement would be presented in a closed session to the Union's Executive Board. Charging Party asserts that he challenged the Board's ability to go into closed session to consider the tentative agreement. Charging Party claims that at the meeting where the agreement was presented it was not made clear whether the meeting was open or closed and that members in good standing who had planned on attending the meeting did not do so because of the earlier statement that the meeting would be closed.

Charging Party's remaining allegations include a claim that an internal union grievance filed on October 15, 2014, by Union members with the Union President, in which the members objected to their not being allowed to address the membership as a whole during a general membership meeting had not been addressed or resolved. Charging Party claims that he contacted MEA Uniserve Director Tonya Pratt regarding that grievance, and that he requested mediation services from the MEA. Charging Party claims the services were never provided. Lastly, Charging Party claims that during the most recent Union election, candidates were limited to a single statement of 250 words or less during their campaigning and that those statements were available on a website accessible to parents, district administration, non-members and members. Charging Party stated that "many members expressed having limited information on the priorities and views of each candidate."

Discussion and Conclusions of Law:

Commission Rule 165, R 423.165, states that the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the charge does not state a claim upon which relief can be granted under PERA. See *Oakland County and Sheriff*, 20 MPER 63 (2007); aff'd *282* Mich App 266 (2009); aff'd 483 Mich 1133 (2009); *MAPE v MERC*, 153 Mich App 536, 549 (1986), lv den 428 Mich 856 (1987).

Under well-established Commission law, 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), also *Goolsby v City of Detroit*, 419 Michigan

[1] Charging Party's pleadings does not make it clear what "full compensation" or "some movement" means with respect to lanes or steps.

651 (1984). In *Goolsby*, at 682, the Court gave the following examples of "arbitrary" conduct by a union:

> The conduct prohibited by the duty of fair representation includes (a) impulsive, irrational or unreasoned conduct, (b) inept conduct undertaken with little care or with indifference to the interests of those affected, (c) the failure to exercise discretion, and (d) extreme recklessness or gross negligence.

The United States Supreme Court has held that 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 Association v O'Neill*, 499 US 65, 67 (1991).

Our Commission has steadfastly refused to interject itself in judgment over agreements made by employers and collective bargaining representatives, despite frequent challenge by employees. *City of Flint*, 1996 MERC Lab Op 1. 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.

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). This Commission has long recognized that it does not have jurisdiction to enforce union bylaws and constitutions per se. *City of Battle Creek*, 1974 MERC Lab Op 698 (no exceptions); *Wayne County Road Commission*, 1974 MERC Lab Op (no exceptions).

Charging Party's allegations against his Union are predicated, for the most part, on his disapproval and disagreement with the bargaining position taken by the Union in the negotiating and settlement of the last few contracts. However, Charging Party has not plead with any modicum of specificity that the Union's negotiating of the contracts in any way violated its duty to fairly represent its members under PERA. Charging Party has not plead any facts, that if proven true, could sustain a finding that the Union acted in a way that was based on an unlawful motive or that its actions were otherwise arbitrary, discriminatory or outside the bounds of reasonableness. Moreover, it is well established that a union must be granted broad discretion in discriminating between various categories of members and weighing the interest of various categories of members in collective bargaining negotiations. See *Ford Motor Co v Huffman*, 345 US 330 (1953); See also *Port Huron Area Sch Dist*, 1998 MERC Lab Op 43. Following this principle, the Commission has upheld union action in contract negotiations that produced provisions which had the effect of benefiting a number of employees while working to the detriment of others. See *Lansing School District*, 1989 MERC Lab Op 210; See also *Detroit Board of Education, Higgins School*, 1986 MERC Lab Op 305.

Charging Party's remaining allegations against his Union without question involve the group's internal governance, a topic in which the Commission is reticent to involve itself. Even absent the hands-off approach taken by the Commission, here too Charging Party has failed to plead facts, that if proven true, could sustain a finding that the actions complained of were based on an unlawful motive or were otherwise arbitrarily, discriminatory or outside the bounds of reasonableness. Charging Party's allegations against the Union relating to whether the Executive Board could go into closed session, to the extent the action may have been a violation of the Union's own internal rules, does not, standing alone, constitute a breach of the duty of fair representation and is therefore outside the jurisdiction of the Commission. See *Registered Nurse and Registered Pharmacists of Hurley Hospital*, 2002 MERC Lab Op 394 (no exceptions).

Lastly, I am not persuaded by Charging Party's contention that the Union violated its duty of fair representation by limiting the method by which campaigns for Union officer positions could be run. 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. See *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); See also *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).

Accordingly, it is the opinion of the undersigned that the Charging Party has failed to state a claim for which relief can be granted under PERA against the Union. As such, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge filed by Daniel Morey against the Michigan Education Association (MEA) and the Grand Blanc Education Association (GBEA) is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: October 7, 2016