

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

In the Matter of:

CITY OF DETROIT,

Public Employer-Respondent in MERC Case No. C14 E-052; Hearing Docket No. 14-008836,

-and-

SENIOR ACCOUNTANTS, ANALYSTS, AND APPRAISERS ASSOCIATION,

Labor Organization-Respondent in MERC Case No. CU14 D-024; Hearing Docket No. 14-008263,

-and-

DORENDA S. WERDLOW,

An Individual Charging Party.

APPEARANCES:

Letitia C. Jones, Attorney in the City of Detroit Law Department, for the Public Employer

Audrey Bellamy and Sharon Jordan for the Labor Organization

Dorenda S. Werdlow, Charging Party appearing on her own behalf

DECISION AND ORDER

On October 12, 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 29, 2016

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

In the Matter of:

CITY OF DETROIT,

Respondent-Public Employer in Case No. C14 E-052; Docket No. 14-008836-MERC,

-and-

SENIOR ACCOUNTANTS, ANALYSTS, AND APPRAISERS ASSOCIATION,

Respondent-Labor Organization in Case No. CU14 D-024; Docket No. 14-008263-MERC,

-and-

DORENDA S. WERDLOW,

An Individual-Charging Party.

APPEARANCES:

Letitia C. Jones, Attorney in the City of Detroit Law Department, for the Respondent-Public Employer

Audrey Bellamy and Sharon Jordan for the Respondent-Labor Organization

Dorenda S. Werdlow, Charging Party appearing for herself

DECISION AND RECOMMENDER ORDER

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).

Procedural History:

On April 30, 2014, Charging Party, Dorenda S. Werdlow, filed the above captioned unfair labor practice charges against her former employer, the City of Detroit (“Employer” of “City”) and her bargaining representative, the Senior Accountants, Analysts, and Appraisers Association (“Association”).

In her charge filed against the Employer, Werdlow alleges that she was targeted for lay-off in retaliation for her exercise of federally protected rights under Title VII of the U.S. Civil Rights Act of 1964. In the charge filed against the Association, Werdlow claims the Association failed to challenge her lay-off because of personal prejudices, refused to follow Association by-laws with respect to general meetings and elections, and failed to provide financial documentation upon request of Association members. Werdlow also alleges that the acting Association President was illegally occupying that position.

On May 14, 2014, I notified the parties that these matters would be consolidated and that they would be held in abeyance because of the City's then pending bankruptcy proceedings.

In August 2015, following the City's exit from bankruptcy, I notified the parties that MAHS would be reactivating these cases. That letter further instructed the parties to notify the undersigned in writing, by September 10, 2015, if a party believed placing these matters on the active docket would be in contravention of an order issued by the U.S. Bankruptcy Court or any other lawfully issued order. No objections were received. A pre-hearing conference was scheduled to be held on December 10, 2015.

During the December 10, 2015, pre-hearing conference, I indicated to the parties that I would be issuing an Order to Show Cause with respect to Werdlow's charge against the City. That order was issued December 15, 2015, and Werdlow responded in writing on January 1, 2016. On February 8, 2016, I issued an interim order in which I indicated that Werdlow's written response to my Order to Show Cause did not set forth any factual basis which would support a finding that she was engaged in union activities, that the City was aware of said union activities, or that she was subjected to discrimination or retaliation in violation of PERA. I stated in that order that I would issue a Decision and Recommended Order to such effect upon final disposition of the consolidated cases. In that same order I directed the Association to file a position statement responding to the allegations alleged by Werdlow in her initial charge as well as her response to my order.

The Association filed its position statement on March 16, 2016, and a hearing was subsequently scheduled for June 14, 2016. The Employer, the Association and Werdlow attended the hearing and all parties actively took part in the proceeding. Only the Employer chose to file a post-hearing brief. Based upon the entire record, including the Employer's post hearing brief filed on July 6, 2016, I make the following findings of fact, conclusions of law and recommended order.

Findings of fact:

Charging Party was an accountant in the City's Finance Department and was a District Representative with the Association. Sometime in April of 2014, Charging Party received an email from Bridget Lamar, a manager within the City's human resources department, directing her to attend a meeting the next day. It was understood by Charging Party that the meeting was to address layoffs within the department.

Charging Party was unable to attend that meeting. Charging Party was subsequently laid off from her position on or around May 2, 2014.

Shortly after receiving notice of the layoff, Charging Party claims she filed a grievance with the Respondent Association on her behalf as well as on the behalf of two other Finance Department employees, Leonard Cheeks and Brice Kaby-Cavally. Both in her pleadings and again at the hearing, Charging Party provided a copy of the grievance she claimed she filed. That document does not indicate the date it was allegedly filed and does not indicate that it was received by either Respondent. Charging Party claims she emailed the grievance to Lenetta Walker, as well as put the grievance under the door of the office space used by the Association. Charging Party further claims that she called Walker to let her know the grievance was coming. Charging Party identified Walker as the Association's Secretary. Charging Party further claimed that she followed up with Walker several times regarding the grievance but that she never received any further action from either the Association or the City. Walker was not present at the hearing and no party attempted to secure her participation or testimony by way of subpoena.

During her testimony discussing the email to Walker, Charging Party claimed that she probably copied the Association's Vice President Sharon Jordan and President Audrey Bellamy. During the hearing Charging Party was unable to provide a copy of any email indicating that either Bellamy or Jordan were copied on the grievance.¹

Charging Party testified that as District Representative she had occasions to write up grievances for other members in the past. According to Charging Party she was provided a copy of a grievance template form, the same form she used for her own grievance in this matter, by Greg Murray a former Association Vice President.

Brice Kaby-Cavally testified that Charging Party talked to him about filing a grievance. Kaby-Cavally did not offer any testimony in support of Charging Party's claim that she emailed a copy of the grievance to Walker or that a copy was slid under the Association's door. Kaby-Cavally did testify that he called Walker several times and even went to see her in person where she worked in the City's Budget Department in order to inquire on the status of the grievance.

Neither Charging Party nor Kaby-Cavally claimed to have spoken with anyone with the City's Labor Relations Division regarding the alleged grievance nor did either claim to have spoken in person with anyone at the Association aside from Walker.

Both Bellamy and Jordan testified that they were not made aware of the grievance until long after the Charging Party filed the present charge with the Commission. Bellamy stated that beginning in September of 2013 Walker no longer held any leadership position with the Association or handled any of the Association's grievances and that she, Bellamy, had assumed responsibility of processing the Association's grievances. Bellamy further testified that she had been involved with the Association's grievances since at least 2012 and that the template form used by Charging Party was different from the one that she had been using. Bellamy also claimed that no union member filed a grievance or asked that the Association file any grievance with respect to the layoffs.

Discussion and Conclusions of Law:

Charge Against the Employer

The Commission administers and enforces PERA. Section 9 of PERA protects the rights of public employees to form, join, or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to refrain from any or all of these activities. "Lawful concerted activities for mutual aid and protection" includes complaining with other employees about working conditions and taking other kinds of actions with other employees to protest or change working conditions.

With respect to public employers, Section 10(1)(a) of PERA prohibits public employers from engaging in "unfair" actions that seek to interfere with an employee's free exercise of the specific rights contained in Section 9 of the Act. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 259 (1974). PERA does not prohibit all types of discrimination or unfair treatment. *Detroit Pub Sch*, 22 MPER 16 (2009). Absent a valid claim under PERA, the Commission lacks jurisdiction to address the fairness of an employer's actions. *Id.*

¹ Charging Party was advised at the hearing by the undersigned that if she was able to locate an email indicating that the grievance had in fact been copied to either Jordan or Bellamy or both, she could request under Rule 166 of the Commission's General Rules, R 423.166, to reopen the record. No such motion has been received.

Charging Party claims in her charge that she was targeted for lay-off because of her assertion and exercise of federal rights guaranteed to her under Title VII of the U.S. Civil Rights Act of 1964. As evidence of that, Werdlow asserts that a motivation for the Employer's action can be traced to a successful suit brought against the City in 2013 under Title VII. At no point does Charging Party make any claim that the Employer was aware of any union activities for which she was subjected to discrimination or retaliation in violation of PERA. Accordingly it is the finding of the undersigned that Charging Party has failed to state a claim upon which relief can be granted under PERA and the dismissal of the charge against the Employer is proper. 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).

Charge Against the Association

Under well-established 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 651 (1984).

In the instant case there is no indication that the Association was actually aware that Charging Party wished to file a grievance challenging her layoff in 2014. Charging Party's claims that she provided the grievance to Walker, even if true, do not establish that the Association had actual knowledge of the grievance because the record shows that Walker no longer held any Association leadership position nor was she involved in the Association's grievance handling at the time the alleged grievance was filed. Furthermore, given Charging Party's claims that she probably copied Jordan and Bellamy on the grievance but is not sure considered in light of the latter's claims that they were never made aware of the grievance, I find that neither Jordan or Bellamy were sent a copy of the grievance.

Charging Party did not offer any testimony or evidence as to the remaining allegations against the Association she had originally lodged in her charge, i.e., the Association's refusal to follow by-laws with respect to general meetings and elections, the failure to provide financial documentation upon request of Association members and that Bellamy was illegally occupying that position. As such, it is my finding that Charging Party failed to meet her burden of proof thereto and no further discussion is needed or warranted.

Accordingly, it is the opinion of the undersigned that the Charging Party has failed to establish that the Association breached its duty to fairly represent her.

RECOMMENDED ORDER

The unfair labor practice charges filed by Dorenda S. Werdlow against the City of Detroit and the Senior Accountants, Analysts, and Appraisers Association, are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: October 12, 2016