STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ANCHOR BAY EDUCATION ASSOCIATION/MEA,
Labor Organization-Respondent

-and-

BONNIE DEBUS,
Individual Charging Party in Case No. CU17 D-009,

-and-

MARY SUE WYSS,
Individual Charging Party in Case No. CU17 D-010,

-and-

LEON NIEWOIT,
Individual Charging Party in Case No. CU17 D-011,

-and-

KELLY A. RING,
Individual Charging Party in Case No. CU17 D-012.

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APPEARANCES:

McKnight, Canzano, Smith, Radtke & Brault, P.C., by Lisa M. Smith, for Respondent

Bonnie Debus, Mary Sue Wyss, Leon Niewoit, and Kelly A. Ring, appearing on their own behalf

DECISION AND ORDER

On December 10, 2018, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order[1] 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 any of the parties.

[1] MAHS Hearing Docket Nos. 17-007561, 17-007562, 17-007563, & 17-007564

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

Issued: February 15, 2019

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

ANCHOR BAY EDUCATION ASSOCIATION/MEA,
Labor Organization-Respondent,

-and-

BONNIE DEBUS,
Individual Charging Party in Case No. CU17 D-009/Docket No. 17-007561-MERC,

-and-

MARY SUE WYSS,
Individual Charging Party in Case No. CU17 D-010/Docket No. 17-007562-MERC,

-and-

LEON NIEWOIT,
Individual Charging Party in Case No. CU17 D-011/Docket No. 17-007563-MERC,

-and-

KELLY A. RING,
Individual Charging Party in Case No. CU17 D-012/Docket No. 17-007564-MERC.

_____/

APPEARANCES:

McKnight, Canzano, Smith, Radtke & Brault, P.C., by Lisa M. Smith, for Respondent

Bonnie Debus, Mary Sue Wyss, Leon Niewoit, and Kelly A. Ring, appearing on their own behalf

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

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 above captioned cases were assigned to Administrative Law Judge Travis Calderwood of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission). The cases were consolidated.

Unfair Labor Practice Charges and Procedural History:

On April 4, 2017, Bonnie Debus, Mary Sue Wyss, Leon Niewoit and Kelly Ring, all teachers at the time of filing with the Anchor Bay School District, each filed similar charges against their bargaining representative Anchor Bay Education Association/MEA (Respondent or Association). Charging Parties, alleged that the Association breached its duty of fair representation by refusing to process a grievance and subsequent related acts including the Association's dissemination of that grievance at a Union meeting which identified the Charging Parties by name. Additionally, Charging Parties also took issue with the Association's alleged waiver of an internal Union rule that required a 96 hour wait prior to holding a ratification vote. The filings of Charging Parties Debus, Wyss and Niewoit, were identical. Charging Party Ring's filing, in addition to the allegations shared with Debus, Wyss and Niewoit, also included more details and other allegations described in more detail below.

Since their filings, these consolidated proceedings have been scheduled, rescheduled, adjourned without date, and reactivated for several reasons, including but not limited to attempts by the parties to reach settlement. On January 12, 2018, Respondent filed a Motion for Summary Disposition under Rule 165(2)(d) and (f) of the Commission's General Rules, R 423.165, 2002 AACS; 2014 AACS, together with supporting affidavits and exhibits.

On February 9, 2018, the date that Charging Parties' written responses to Respondent's Motion was due, I received an email from Attorney Joseph A. Golden, who had been representing Charging Parties, requesting that he be allowed to withdraw as counsel and further indicating that it appeared to him that Charging Parties wished to appear before the undersigned for oral argument on Respondent's motion. On February 12, 2018, Respondent responded by email objecting to Charging Parties' request for oral argument.

In an interim order, issued February 15, 2018, I first granted Attorney Golden's request to withdraw. Next, I directed charging parties, either collectively or individually, to notify my office whether, under *Smith v Lansing School Dist*, 428 Mich 248 (1987)**,** they were requesting oral argument. Charging Parties Debus, Wyss, and Ring all responded requesting oral argument. Charging Party Niewoit did not provide any response, nor did he request an extension to file such. On February 28, 2018, I issued another interim order, this time scheduling oral argument on Respondent's motion for March 30, 2018.

The parties, with the exception of Niewoit appeared before the undersigned on April 13, 2018, in Detroit.2 At the conclusion of the hearing, I indicated on the record that it was my finding that the allegations made by Wyss, Debus, and Niewoit, as summarized below failed to state a claim under PERA upon which relief could be granted. Furthermore, to the extent that Charging Party Ring's allegations mirrored those of the other three Charging Parties, those allegations also failed to state a claim under PERA upon which relief could be granted. The preceding notwithstanding, I also indicated that portions of Ring's charge, attributed solely to her alone, contained allegations regarding comments made during an Association meeting that, when

2 At the opening of the hearing I noted that, given Niewoit's failure to respond to my February 15, 2018, directive and subsequent failure to appear at the April 13, 2018, hearing, I considered his charge abandoned.

taken in the light most favorable to the non-moving party, created a material issue of fact as to who said what and that an evidentiary hearing was necessary to resolve whether that narrow issue established a violation of Section 10(2)(a) of PERA.

In an Interim Order issued June 7, 2018, I indicated that at such time that a Decision and Recommended Order was issued with respect to Ring's allegations that survived Respondent's motion, I would recommend that the charges filed by Debus, Wyss, Niewoit, and the portions of Ring's charges which were identical, be dismissed in their entirety. At that same time, an evidentiary hearing was scheduled to hear the portions of Ring's allegations that survived Respondent's Motion for Summary Disposition. However, prior to hearing, Ring on August 22, 2018, voluntarily withdrew her remaining allegations. Accordingly, for the reasons set forth in my June 7, 2018, Interim Order, and which are repeated below, I recommend that the Commission dismiss the consolidated cases in their entirety.

Discussion and Conclusions of Law:

As I understand the allegations brought by Charging Parties, they believe that the Association has breached its duty of fair representation and/or otherwise discriminated against them in favor of other members of the Union. Central to these allegations is Charging Parties' complaint of how the Association handled both the negotiations and ratification of a wage reopener. Charging Parties allege that the Association agreed to a tentative agreement that benefited some teachers, mostly those with more years of service, at a rate much greater than those teachers with less years of service. Charging Parties also allege that the Association failed to adhere to its own rule regarding the timing of when the membership could vote to ratify the tentative agreement.

Following the ratification of the tentative agreement on the wage reopener, Charging Parties then sought to challenge the manner by which the District had been paying longevity pay under the collective bargaining agreement. Charging Parties first asked the Association to file a grievance over their concerns, but the Association declined to proceed with the request. Nonetheless, Charging Parties filed a grievance in their own name in early March of 2017. Sometime shortly after the grievance was filed, it was discussed and passed out at an Association meeting. The names of Charging Parties were clearly identified on the grievance form. Unique to the allegations as filed by Ring, are claims that statements were made at the Association's meeting that included, "this grievance is not against the union! It is directly grieved at you, the individual teachers." Ring also alleged that "misinformation" was communicated at the meeting and that the combination of all these factors "created an uncomfortable and hostile work environment for those of us listed on the grievance."

Under Rule 165(2)(g) of the Commission's General Rules, R 423.165(2)(g), Charging Party Niewoit's failure to reply to my February 15, 2018, interim order as well as his failure to appear at the April 13, 2018, oral argument renders his charge abandoned. The preceding notwithstanding, for the reasons set forth below dismissal of his charge would nonetheless be appropriate.

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 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).

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 Parties' allegations against the Association are predicated, in part, on their dissatisfaction with the Association's negotiation and ratification of a wage reopener. However, Charging Parties have not pled any allegations that, if proven true, could establish that the Association's actions with respect to its negotiation of the wage reopener was based on an unlawful motive or that its actions were otherwise arbitrary, discriminatory or outside the bounds of reasonableness. Moreover, 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. Additionally, 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.

Furthermore, to the extent that the Charging Parties complain of the method and manner by which the tentative agreement was ratified, including the claim that the Association failed to follow its own rules regarding timing of the ratification vote, such claims do not raise any PERA issue. See *Registered Nurse and Registered Pharmacists of Hurley Hospital*, 2002 MERC Lab Op 394 (no exceptions). Even if I were to ignore the hands-off approach taken by the Commission, Charging Parties have nonetheless 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.

Moving on to the Association's handling of the grievance, an individual employee'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. Here, similar to my findings above, Charging Parties have failed to plead facts that, if proven true, could sustain a finding that the Association's refusal to process the grievance was based on an unlawful motive or were otherwise arbitrarily, discriminatory or outside the bounds of reasonableness. Similarly, that the grievance was passed out at a Union meeting and the names of the Charging Parties were attached to it does not implicate or violate PERA.

I have considered all other arguments as set forth by the parties and conclude that such does not require a change in the conclusion. As such and in accord with the above findings of fact and conclusions of law, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges brought by Bonnie Debus, Mary Sue Wyss, Leon Niewoit and Kelly Ring, and as consolidated herein, are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood
Administrative Law Judge
Michigan Administrative Hearing System

Dated: December 10, 2018