

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

In the Matter of:

ANTRIM COUNTY TREASURER,  
Respondent-Co-Employers,

Case No. C99 D-79

-and-

TEAMSTERS STATE, COUNTY, AND  
MUNICIPAL WORKERS, LOCAL 214,  
Charging Party-Labor Organization.

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APPEARANCES:

Sondee, Racine, and Doren, PLC, by John P. Racine, Esq., for Public Employer

Robert P. White, Esq., for Charging Party

**DECISION AND ORDER**

On October 30, 2000, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

**ORDER**

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: \_\_\_\_\_

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WORKERS, LOCAL 214,  
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APPEARANCES:

John P. Racine, Esq., Sondee, Racine, and Doren, PLC, for the Public Employer

Robert P. White, Esq., for the Charging Party

DECISION AND RECOMMENDED ORDER  
OF  
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Lansing, Michigan, on October 26, 1999, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on April 26, 1999, by the Teamsters State, County, and Municipal Employees, Local 214, alleging that Antrim County and its Treasurer had violated Section 10 of PERA. Based upon the record, including briefs filed by the parties on or before April 3, 2000, the undersigned makes the following findings of fact and conclusions of law and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

The charge alleges:

That the Employer, through its elected official Beverly Edgington ... did interfere with the administration of this Local Union by attempting to dictate who can serve as Union Steward and threatening a bargaining unit employee with loss of position and income if she

chooses to exercise her protected rights under the law.

Facts:

Teamsters Local 214 represents a bargaining unit comprised of approximately forty full-time and regular part-time employees of Antrim County. The Employer and the Union are parties to a collective bargaining agreement which expires on December 31, 2001. The Union collective bargaining committee, which is responsible for negotiations and grievance processing, consists of four stewards and two alternate stewards. Stewards are elected on a unit-wide basis rather than by department.

Beverly Edgington has served as County Treasurer, an elected position, for over twenty years. There are four employees in the Treasurer's office: chief deputy, two deputies, and clerk. All of these employees are included in the Teamsters' bargaining unit.

Marilyn Proctor served as chief deputy throughout 1998 and 1999. In November of 1998 she went on medical leave. At that time Edgington appointed Sherry Comben to serve as acting chief deputy. This position was paid at a higher rate than Comben's classification, deputy II. Proctor returned to work for a short time in January of 1999 and went on leave in April of 1999. Comben was again appointed to serve as acting chief deputy. During this time Edgington observed that Comben had signed a posting on the Union bulletin board to become steward. Edgington informed Comben that she felt that being a Union steward would conflict with Comben serving as chief deputy and that Comben would have to make a choice. Comben disagreed with Edgington with respect to any conflict of interest and told her that she was currently an alternate steward and had served in this capacity for several years. Edgington saw less of a conflict in serving as alternate steward, but insisted that as long as this was my office, the chief deputy was not going to be a union steward. Comben subsequently withdrew her name from consideration as Union steward and continued to serve as acting chief deputy until Proctor's return in June of 1999. Comben testified that other than learning about investments, there was no change in her job assignment while serving as acting chief deputy.

Edgington asserts that she has statutory authority to appoint a deputy as well as the authority to revoke that appointment. She testified that the contract also gave her that authority at Section 10.7(a):

The parties to this Agreement recognize that each Elected Official is entitled, by law, to one (1) Chief Deputy who is empowered to fulfill the duties of the Elected Official. Therefore, it is agreed that the appointment of the Chief Deputy is at the sole discretion of the Elected Official.

Edgington testified that she views the chief deputy as a confidant and may discuss sensitive matters with her. Although the chief deputy has never disciplined an employee, Edgington

testified that she has consulted her in hiring and firing decisions. In the Treasurer=s absence the chief deputy would be responsible for personnel matters in the department.

#### Discussion and Conclusions:

The Union maintains that the right to hold union office is central to employee organization rights; an employer which discourages employees from seeking or holding such a position is engaged in an act of destroying the very concept of collective action and representation and violates PERA. Respondent asserts that the Treasurer, in her role as co-employer, has exclusive authority with respect to the designation and removal of an employee to and from the position of chief deputy. The Employer argues that the Treasurer=s actions were justified because there is an inherent conflict of interest between the role of chief deputy and that of union steward.

The chief deputy position is included in the Teamsters= bargaining unit, in keeping with Commission precedent. The Commission has long held that the occasional exercise of supervisory-type functions by deputies when substituting for elected officials does not preclude their inclusion in a nonsupervisory bargaining unit. *Lapeer County*, 1997 MERC Lab Op 149, 155; *Charter Twp of Orion*, 1994 MERC Lab Op 87.

There is no question that PERA protects the right of an individual who is in a position included in the bargaining unit and a union member to hold union office. Under certain circumstances a collective bargaining representative and an employer may agree to a limited curtailment of this right. For example, in *Gogebic Community College*, 1975 MERC Lab Op 663, 673, the union and the employer agreed that union officers would not serve as department chairmen. It was found that this mutually agreed upon policy did not violate PERA, although the employer was obligated to bargain regarding the continuation of such a policy. (See also *Freezer Queen Foods*, 215 NLRB 638, 88 LRRM 1041 (1974) where the parties agreed that both for efficiency and conflict of interest reasons lead men would be prohibited from serving as stewards.)

Absent the agreement of the bargaining representative, however, the Commission has held that an employer must show a legitimate and substantial business justification for any rule which restricts the exercise of PERA rights. *Michigan State Univ*, 1998 MERC Lab Op 217; *Meridian Twp*, 1997 MERC Lab Op 457; *City of Southfield*, 1988 MERC Lab Op 66; *Twp of Redford*, 1984 MERC Lab Op 1056. Respondent argues that the Employer=s action had at most a comparatively slight impact on employee rights under PERA and this impact was greatly outweighed by the legitimate operational and management concerns of the Treasurer; that is, the Treasurer must have complete trust in the chief deputy, and the chief deputy would not be capable of fulfilling the management role of a co-employer should that individual also serve as union steward. The Commission has specifically rejected the argument that membership in a bargaining unit would jeopardize the trust which an elected official must have in a deputy, or interfere with their ability to delegate certain responsibilities to that deputy in their absence. *Mackinac County*, 1969 MERC Lab Op 479, 482-83; *Gratiot County*, 1969 MERC Lab Op 425, 428. The Employer has failed to demonstrate why the same rationale would not apply to holding union office. No evidence was introduced to show that serving

as a Union steward would conflict with any responsibilities of the chief deputy, particularly under the circumstances present here where another steward would be available should a problem arise involving department employees. As to the argument advanced by Respondent that the Treasurer has complete discretion to appoint or remove the chief deputy, clearly this authority cannot be exercised in a manner which conflicts with employee rights under PERA.

Based upon the above discussion, I find that the Treasurer=s action in threatening Comben with the loss of the position of chief deputy should she also serve as Union steward interfered with the exercise of employee rights guaranteed in Section 9 of PERA and thereby violated Section 10(1)(a). It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that Antrim County, its Treasurer, officers, agents, and assigns, cease and desist from threatening employees with the loss of the position of acting chief deputy or chief deputy if they also serve as Union steward or hold any other Union office.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch  
Administrative Law Judge

DATED: