

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

In the Matter of:

DETROIT FEDERATION OF TEACHERS,  
Respondent-Labor Organization,

Case No. CU00 J-36

-and-

DEBRA MARTIN HOPKINS,  
An Individual Charging Party.

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APPEARANCES:

John M. Elliott, President, and Keith R. Johnson, Administrative Assistant to the President, for Respondent

Debra Martin Hopkins, In pro per

**DECISION AND ORDER**

On September 21, 2001, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

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

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

In the Matter of:

DETROIT FEDERATION OF TEACHERS,  
Local 231,  
Labor Organization-Respondent

Case No.CU00 J-36

-and-

DEBRA MARTIN HOPKINS,  
Individual Charging Party

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APPEARANCES:

John M. Elliott, President, and Keith R. Johnson, Administrative Assistant to the President, for the Respondent

Debra Martin Hopkins, in pro per

**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 & 423.216, this case was heard at Detroit, Michigan on January 16, 2001, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by the Charging Party on March 5, 2001, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Debra Martin Hopkins filed this charge against her collective bargaining representative, the Detroit Federation of Teachers, Local 231, on October 13, 2000. Hopkins amended her charge on October 24, 2000. The charge, as amended, alleges that Respondent breached its duty of fair representation under Section 10(3)(i) of PERA by mishandling grievances Hopkins filed against her employer, the Detroit Board of Education, on April 12 and August 28, 2000, and by other actions discussed below.

Facts:

Hopkins is employed as a middle school teacher by the Detroit Public Schools. Keith Johnson is an employee of Respondent whose job includes representing teachers at Hopkins' school. John Elliott was, during the period of this charge, Respondent's president.

In early April 2000, Hopkins excluded a student from her classroom because of his disruptive behavior. Hopkins made a written request to be included in the conference with the student's parent before the student was readmitted to her class. She requested that the conference be scheduled for her preparation period. She also requested that the principal or assistant principal, and not merely the school counselor, be present at the conference. A few days later, while Hopkins was teaching a class, the school counselor appeared at Hopkins' classroom door with the student's parent. Hopkins asked the counselor to take the parent to an administrator and arrange for a conference at a time when Hopkins could be present. Hopkins returned to her class. Later that day Hopkins received a message from the counselor that the conference had been held, and that the student was readmitted to class.

This was not the first time Hopkins' request to participate in a disciplinary conference had been ignored. On February 25, 2000, Hopkins filed a grievance over the administration's failure to honor her request to be present at another student conference. Respondent decided not to proceed with this grievance.<sup>1</sup> During the course of attempting to get Respondent to process this grievance, Hopkins complained to Elliott about Johnson's conduct, including his failure to return her phone calls. Despite the fact that Respondent had refused to proceed with her February 25 grievance, on April 12, 2000 Hopkins filed a grievance over the incident described above. In her grievance Hopkins alleged that she had been denied "due process" in violation of Article VIII, Section C, of the collective bargaining agreement:

A teacher may exclude from his/her class a child who in the teacher's opinion is causing serious disruption. The teacher shall be available to confer with the principal or assistant principal or counselor to provide the necessary information concerning the problem and shall provide a statement of the problem in writing as soon as possible not to exceed twenty-four hours. The teacher will re-admit the child after some adjustment has been made, following a conference with the child and at least two of the following parties as determined by the principal: an administrator, a counselor, school social workers, school psychologist, attendance officer, a parent of the child. . . . Whether the teacher is present shall be determined by mutual agreement between the principal and the teacher.

In accord with the procedures set out in the contract, Hopkins signed the grievance, filed it with her principal, gave a copy to her Union building representative, and mailed a copy to Johnson's

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<sup>1</sup> Hopkins' original charge alleged that Respondent violated its duty of fair representation with respect to this grievance. However, since the alleged unfair labor practice occurred more than six months prior to the filing of the charge, evidence regarding this grievance was admitted for background purposes only.

attention at Respondent's office. Under the contract, the principal has ten school days to respond to the grievance at step one.

On April 27, 2000, Johnson came to Hopkins' school to attend a meeting of the teaching staff. Hopkins reported on the actions of a committee of teachers formed to address what the teachers perceived as serious disciplinary problems at the school. Hopkins said that several grievances had been filed over blatant violations of the contract, but that Respondent had refused to follow up on them. Johnson interrupted her, saying, "She's talking about a grievance she wrote that was frivolous and has been denied." Since Hopkins was discussing the events of the April 12 grievance when she was interrupted, she believed Johnson's remark referred to this grievance. Johnson testified, however, that he was referring to the February grievance. He testified that, although he frequently speaks informally with administrators about grievances, he had not spoken to Johnson's principal about the April 12 grievance and did not know anything about its status on April 27. Hopkins was shocked and embarrassed by Johnson's remark, and she immediately left the meeting. About eight days later Hopkins received her principal's written response denying the grievance.

Under the contract only Respondent can move a grievance to step two. On May 16, Hopkins wrote to Elliott asking him to move forward with her April 12 grievance. She pointed out that she and the principal had not mutually agreed that she would not be present at the conference. Hopkins also complained about Johnson's calling her grievance frivolous in front of other teachers. Hopkins attached a copy of the principal's response to her letter to Elliott. She did not attach a copy of the grievance itself, since she had already sent one to Respondent's office. At the end of May, Elliott sent Hopkins a letter stating that he had not seen a copy of her April 12 grievance. Hopkins concluded that Johnson had lied to Elliott about having a copy of the grievance. She testified that at that point she "was just fed up" with Respondent. As a result, Hopkins did not send Respondent another copy of the April 12 grievance or make any further attempt to get Respondent to process the grievance.

During the 1999-2000 school year, Hopkins was teaching sixth grade math. Hopkins spoke with her department head several times during that year about returning to teaching seventh grade. In March 2000, she submitted a written request to be assigned to teach only seventh grade. When Hopkins received her schedule for the 2000-2001 school year on August 28, she discovered that she had been assigned a split schedule of three sixth grade and two seventh grade classes. She also discovered that the teacher who had previously taught the split schedule had been given a full schedule of seventh grade assignments, although he had requested to teach only sixth grade. Hopkins complained to her department head about the administration's failure to honor her request. Later that day Hopkins filed a grievance alleging violations of Article VII, Section D of the contract:

2. Teachers may express in writing to their principal their preference of grade level, subject, department assignment, extra-curricular assignment, school committee [sic]. Requests for the following semester assignments shall be made by October 15 or March 15.

Such requests shall be kept on file for one school year in an accessible place. These requests shall be given consideration as vacancies occur in the building on the basis of seniority, priority of request in the case of tied seniority, competency of the individual in the judgment of the principal.

Requests which were not acted upon shall be refiled each September to remain active. A teacher whose request was not acted upon may ask for an explanation.

In an attachment to this grievance, Hopkins accused the school administration of deliberately giving her an undesirable assignment to encourage her to transfer to another school because of her efforts to force the administration to enforce the student code of conduct.

Hopkins received her principal's step one answer on August 30. The principal stated that the assignments were made in the best interests of the students, that they were not meant as an "indictment" against Hopkins, and that building seniority was not an issue in determining teaching assignments.

Hopkins' asked Elliott to move her grievance to step two. Because the contract stated only that a request "will be given consideration," Johnson and Elliott agreed that Hopkins did not have a right under the contract to the assignment she wanted. However, because Johnson and Elliott knew that Hopkins was angry at Respondent, Elliott instructed Johnson to move the grievance to step two so that Hopkins would have an opportunity to appear before an employer representative and make her arguments. Hopkins and Elliott had phone conversation in which Elliott said, "I will send (the grievance) on, but you don't know what labor relations (referring to the employer's labor relations office) is like." Hopkins asked Elliott if Johnson was going to be there, and Elliott told her that Johnson was not going to be talking, that Hopkins would represent herself. Hopkins said that she didn't even want Johnson to be present.

On September 26, Respondent received written notice from the employer that the step two meeting/hearing would be held on September 28. Johnson called Hopkins' school three times to give her the information about the meeting: once on the afternoon of September 26, again around noon on September 27, and finally on the morning of September 28. Each time Johnson was told that Hopkins was not available, and that she would be given the message. Around noon on September 28, Hopkins picked up a message left in her school mailbox stating that the step two hearing would be held at 3:30; the message did not give a date. Hopkins called Elliott. He told her that Respondent had known of the hearing for several weeks, and that she should have received a letter. On September 29, Hopkins sent Elliott a letter complaining about Johnson's conduct. The step two hearing was rescheduled.

When Hopkins arrived on October 12 for the step two hearing, she was surprised to see her principal sitting and talking to the labor relations representative, and surprised to see that Johnson was present. Hopkins told Johnson not to speak, that she was representing herself. Johnson pulled out a paper and told Hopkins she needed to read it. Hopkins refused, telling Johnson that if there was something she needed to read she should have had it earlier. What Johnson was trying to show her

was his copy of the notice of the September 28 meeting showing that Respondent had not received it until September 26. Hopkins did not look at the paper or listen to Johnson's explanation. Hopkins testified that she felt the hearing would not be fair, and she decided to leave the meeting. As she was leaving, Johnson told her that she couldn't dictate who represented her. He also said that if she left the meeting she was forfeiting her right to a hearing. Hopkins made no further efforts to persuade the Respondent to process her grievance. The following day she filed the instant charge.

#### 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; (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123, 146 (1973). A union need not pursue every grievance, but may weigh certain factors include the likelihood of success, the costs, and the burden on the contractual grievance machinery. *East Jackson PS*, 1991 MERC Lab Op 132, *aff'd*, 201 Mich App 480 (1993). A union satisfies its duty of fair representation as long as its decision is within the range of reasonableness. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67, (1991). In other words, in a dispute between an employee and the union over the interpretation of contract language, the union does not violate its duty of fair representation under Section 10(3)(i) of PERA if it makes a good faith, reasoned, nondiscriminatory decision that the contract has not been violated.

Hopkins sent Respondent's copy of her April 12 grievance to Johnson's attention. After this grievance was denied at the first step, she asked Elliott to take it to the second step. Elliott replied that he didn't have a copy of the grievance. Hopkins concluded that Johnson had lied to Elliott about not having a copy, although there is no evidence that this is what happened. Hopkins did not send Elliott another copy of her April 12 grievance, and she made no further attempts to get Respondent to process this grievance. As a result, neither Johnson nor Elliott had to make a decision about the merits of the grievance. When Hopkins filed her August 28 grievance, Johnson knew that she had complained about him. However, there is no evidence that Respondent's decision not to process Hopkins' August 28 grievance was made in bad faith. Hopkins and Respondent clearly disagreed over the proper interpretation of Article VII, Section D, of the contract. I find that Respondent failed to proceed with the August 28 grievance because both Johnson and Elliott agreed that the contract gave Hopkins' principal the discretion to ignore her request for a seventh grade assignment.

Hopkins' charge includes a number of other complaints. She complains that Johnson talked to her principal about her April 12 grievance before talking to her about it. Although Johnson denies speaking to Hopkins' principal about this grievance, a union representative does not breach his or her duty of fair representation by discussing a grievance informally with an employer representative without the grievant being present. Hopkins complains that Johnson failed to give her adequate notice of the September 28 step two hearing. According to the record, Johnson did not receive sufficient notice of the September 28 meeting to allow him to notify Johnson by mail in the usual

way. The meeting was, in any case, rescheduled to allow Hopkins to attend. Hopkins also complains about Johnson's conduct at the April 27 teacher meeting. Johnson may have been rude when he interrupted Hopkins during the April 27 meeting and called her grievance frivolous, but this action did not constitute an unfair labor practice. See *Muskegon Co, Brookhaven Medical Care Facility*, 1995 MERC Lab Op 657, (Union did not violate commit an unfair labor practice when its representative embarrassed the Charging Party by publicly stating that her grievance had no merit and then passing the grievance around the employee lunchroom). Finally, Hopkins asserts that Elliott violated the Union's duty of fair representation by failing to act on her complaints about Johnson. Elliott testified credibly that he did not believe Johnson was guilty of any serious lapse of duty in his treatment of Hopkins, a judgment that I find to be confirmed by this record.

In accord with the findings of fact, discussion and conclusions of law above, I conclude that Hopkins did not demonstrate that Respondent violated its duty of fair representation under Section 10(3)(i) of PERA. I recommend that the Commission issue the following order.

**RECOMMENDED ORDER**

The charge in this case is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

Date: \_\_\_\_\_