

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

In the Matter of:

TEAMSTERS LOCAL 337,
Labor Organization-Respondent,

Case No. CU04 J-057

-and-

PENNY GARDNER-JOSEPH,
An Individual-Charging Party.

APPEARANCES:

Rudell & O'Neill, P.C., by Kevin O'Neill, Esq., for Respondent

Penny Gardner-Joseph, *in propria persona*

DECISION AND ORDER

On February 7, 2006, 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

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Section 23(a) of the Labor Mediation Act (LMA), 1939 PA 176 as amended, MCL 423.23, this case was heard at Detroit, Michigan on October 14, 2005, before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based on the pleadings and record made at the hearing, I make the following findings and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

On October 18, 2004, Penny Gardner-Joseph filed this charge against her collective bargaining representative, Teamsters Local 337, and a charge against her former employer, Hazel Park Harness Raceway (Case No. C04 J-274). Gardner-Joseph's charge against her employer alleged that it discriminated against her for her union activity when it terminated her employment. Her charge against the Respondent Union alleged that it violated its duty of fair representation by its handling of the grievance it filed over her discharge, and by its refusal to proceed to arbitration on the grievance. The cases were consolidated and a complaint and notice of hearing was issued on December 14, 2004. The complaint mistakenly cited the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 et. seq., as the authority under which it was issued, and Section 10 of that Act as the statutory provision allegedly violated. Since, as an employee of Hazel Park Harness Raceway, Gardner-Joseph was not a "public employee" as defined in Section 1(e) of

PERA, the complaint should have not have cited PERA.1 Gardner-Joseph withdrew the charge in Case No. C04 J-274 on March 9, 2005.

Discussion and Conclusions of Law:

Section 10(3)(a)(i) of PERA makes it unlawful for a labor organization to restrain or coerce a public employee in the exercise of his or her right to organize and engage in concerted activity. The courts have held that under this provision, and similar language in the National Labor Relations Act, 29 USC 151 et seq, a union’s breach of its duty of fair representation is an labor practice because it may result in employees’ unwillingness to participate in their union, thus restraining their right to engage in protected concerted activity. *Demings v City of Ecorse*, 127 Mich App. 608, 617-618 (1983), *aff’d* 423 Mich 49 (1985); *Local Union No 12, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO v NLRB*, 368 F2d 12 (CA 5, 1966), *cert den*, 389 U.S. 837 (1967).

As noted above, however, Gardner-Joseph was not a “public employee” as defined in PERA. Hazel Park Harness Raceway was an employer, and Gardner-Joseph an employee, under the LMA. See MCL 423.2 (e) and (f). However, although Section 16(3) of the LMA prohibits an employer from discriminating against an employee with regard to hire or terms and conditions of employment because of the employee’s union activity, the LMA does not contain a provision parallel to Section 10(3)(a)(i) of PERA. Certain types of picketing and threats to picket, as set out in Section 17(a) of the LMA, are the only acts by a labor organization that constitute unfair labor practices remediable by the Commission under that statute. See MCL 423.23(2). I conclude that the Commission has no jurisdiction over Gardner-Joseph’s charge against the Respondent Union under PERA, and that her charge against the Union failed to state a claim upon which relief could be granted under the LMA. For these reasons, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____

1 Section 1(e) of PERA states, “Public employee’ means a person holding a position by appointment or employment in the government of this state, in the government of 1 or more of the political subdivisions of this state, in the public school service, in a public or special district, in the service of an authority, commission or board, or in any other branch of the public service”