

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

In the Matter of:

AMALGAMATED TRANSIT UNION, LOCAL 26,
Labor Organization-Respondent,

-and-

FRANK LACEY,
An Individual Charging Party.

MERC Case No. CU16 D-026
Hearing Docket No. 16-010666

APPEARANCES:

Frank Lacey, appearing on his own behalf

DECISION AND ORDER

On June 1, 2016, Administrative Law Judge David M. Peltz (ALJ) issued his Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent did not violate § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ found that Charging Party failed to set forth any allegation which, if true, would establish that Respondent Amalgamated Transit Union, Local 26 violated PERA. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with § 16 of PERA.

Charging Party filed exceptions and a brief in support of his exceptions to the ALJ's Decision and Recommended Order on Summary Disposition on June 24, 2016. Respondent filed its brief in support of the ALJ's Decision and Recommended Order on Summary Disposition on July 7, 2016.

In his exceptions, Charging Party contends that he did set forth allegations which, if true, would establish that Respondent violated PERA and that the ALJ erred in concluding that dismissal of the charge on summary disposition was warranted. Charging Party notes, among other things, that Local 26 discriminated against him by not allowing him to run for a position on its Executive Board because he had previously instituted proceedings under PERA.

In its brief in support of the ALJ's Decision and Recommended Order, Respondent contends that the ALJ's findings were based on applicable law and should be affirmed.

We have reviewed the exceptions filed by Charging Party, and find that summary disposition on all of the allegations set forth by Charging Party is not warranted in this case.

Factual Summary:

Charging Party Lacey is employed by the City of Detroit as a coach operator in its Department of Transportation and is a member of a bargaining unit represented by Respondent Local 26 of the Amalgamated Transit Union (Local 26). On May 22, 2014, Lacey filed a charge against Local 26 alleging that it breached its duty of fair representation under § 10(2)(a) of PERA. On March 20, 2015, Administrative Law Judge Julia C. Stern issued a Decision and Recommended Order for this unfair labor practice charge recommending that the Commission dismiss the charge in its entirety. No exceptions were filed to the decision and the Commission adopted it as its final order on April 27, 2015 in *Amalgamated Transit Union, Local 26*, 28 MPER 81 (2015).

On April 13, 2016, Frank Lacey filed the instant charge against the International Amalgamated Transit Union (ATU) and its Local 26 alleging that Respondents breached their duty of fair representation. Charging Party alleged ATU breached its duty of fair representation when it failed to regulate Local 26 in accordance with its constitution by giving Local 26 permission to enter into a contract with the City of Detroit and by allowing Local 26 to enter into a contract in excess of three years' duration. Charging Party also alleged ATU breached its duty of fair representation when it failed to ensure that Local 26 had an elected Business Agent/President.

In the charge, Charging Party further alleged Local 26 breached its duty of fair representation when it:

1. Failed to have a duly elected or appointed Business Agent/President represent members.
2. Allowed Fred Westbrook to represent members of Local 26.
3. Negotiated a collective bargaining agreement with the City of Detroit for a term in excess of three years without the approval of ATU.
4. Allowed members of its Executive Board to accept compensation for conducting union business in excess of that allowed by the terms of the 2014-2018 collective bargaining agreement.
5. Allowed the City of Detroit to make changes in a contract ratified by Local 26 members.
6. Applied the ATU constitution and by-laws in a discriminatory way with respect to Local 26's general election.

In an order issued on April 22, 2016, the ALJ directed Lacey to show cause why the charge should not be dismissed for failure to state a claim upon which relief could be granted

under PERA. The ALJ noted that the duty of fair representation applies only to those policies and procedures that have a direct effect on terms and conditions of employment.

On May 13, 2016, Charging Party responded to the ALJ's order to show cause. Charging Party alleged, among other things, that the City violated § 10(1)(a) and (b) of PERA by paying members of the Local 26 executive board more money for conducting union business than they were entitled to under the terms of the 2014-2018 collective bargaining agreement and that, by accepting this money, the Union violated its duty of fair representation.¹

Charging Party further alleged that Local 26 and its Executive Board refused to allow him to run for a position on the Executive Board because he had previously filed a MERC complaint.

In his Decision and Recommended Order on Summary Disposition, the ALJ recommended that the unfair labor practice charge be dismissed in its entirety because Charging Party failed to set forth any factually supported allegation which, if true, would establish that Respondent Amalgamated Transit Union Local 26 violated PERA. The ALJ noted that “[A] union's obligation towards members of its bargaining unit is limited to actions that have an effect on its members' terms and conditions of employment or their relationship with their employer.”

Discussion and Conclusions of Law:

Under Commission Rule 165 (2), summary disposition is appropriate where a charge fails to state a valid claim under PERA or where there is no genuine issue of material fact. In such instances, the ALJ is authorized to issue an order requiring a party to assert facts and arguments of law in support of its contention to avoid the grant of summary disposition in the opposing party's favor. *Wayne Cnty*, 24 MPER 25 (2011). Relying on *Smith v Lansing Sch Dist*, 428 Mich 248 (1987), we have consistently held that an evidentiary hearing is not warranted where no genuine material factual dispute exists. *AFSCME Council 25, Local 207*, 23 MPER 101 (2010); *Muskegon Hts Pub Sch Dist*, 1993 MERC Lab Op 869, 870; *Police Officers Labor Council*, 25 MPER 57 (2012). Where, however, a genuine material factual dispute exists, summary disposition is not appropriate. *Saginaw Cnty Sheriff*, 1992 MERC Lab Op 639 (no exceptions).

The 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 698 (no exceptions). Similarly, the duty of fair representation does not require that a union obtain membership approval prior to entering into an agreement with the employer to modify the language of an existing collective bargaining agreement. *City of Lansing*, 21 MPER 9 (2008); *City of Lansing*, 1987 MERC Lab Op 701, 708; *United Steelworkers Ass'n*, 2002 MERC Lab Op 163, 166 (no exceptions).

In this case, although Charging Party alleges, in part, that Respondents ATU and Local 26 violated his rights under PERA by failing to comply with the ATU constitution and by

¹ No charge was filed against the City of Detroit and it is not a party to this case.

allowing the City of Detroit to make changes in a contract ratified by Local 26 members, these allegations do not state a claim upon which relief can be granted under PERA.

Charging Party also contends that the City of Detroit violated § 10(1)(a) and (b) of PERA by paying members of the Local 26 Executive Board more money for conducting union business than they were entitled to under the terms of the 2014-2018 collective bargaining agreement and that, by accepting this money, the Union violated its duty of fair representation. The Commission finds that this issue is governed by ALJ Stern's decision in *Amalgamated Transit Union, Local 26*, 28 MPER 81 (2015) (no exceptions), in which the ALJ concluded that Charging Party failed to establish that Respondent Local 26 breached its duty of fair representation when members of its Executive Board were arguably paid more for conducting union business than they were entitled to under the Agreement. Charging Party Lacey did not take exception to the ALJ's Decision and Recommended Order, and the Commission adopted it as its final order on April 27, 2015. In this case, the Commission agrees that the alleged over-compensation of Executive Board members does not establish a violation of § 10(2) (a) and finds that, with respect to this issue, even if the facts alleged by Charging Party are true, he fails to state a valid claim under PERA. Finding no basis to support the existence of a PERA violation, the ALJ properly recommended summary dismissal of this portion of the charge.

In his exceptions, Charging Party further alleges that Local 26 discriminated against him by not allowing him to run for a position on its Executive Board because he had previously instituted proceedings under PERA. Although Respondent, in its Brief in Support of the ALJ's Decision and Recommended Order, agrees with the ALJ's conclusion that "such matters are internal union affairs which are not subject to breach of the duty of fair representation claims," the Commission disagrees. Instead, we find that Charging Party's allegations with respect to this issue do state a claim under PERA and that summary disposition on this issue, therefore, is not appropriate.

It is a violation of § 10(2)(a) of PERA for a labor organization or its agents to restrain or coerce public employees in the exercise of the rights guaranteed by Section 9 of PERA. Section 9 gives public employees the right to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid or protection, and to negotiate or bargaining collectively with their public employers through representatives of their own free choice. Section 16 of PERA grants the Commission the exclusive authority to prevent and remedy unfair labor practices and gives any person covered by the Act the right to file an unfair labor practice charge. The right to file a charge is indispensable to the administration of the Act because the Commission cannot initiate its own processes. As such, an individual's right under § 9 of PERA to give testimony or institute proceedings has long been recognized. *Lake Erie Transportation Commission*, 17 MPER 50 (2004); *Huron County Road Commission*, 1994 MERC Lab Op 407 (no exceptions); *Antrim/Kalkaska Community Mental Health*, 1995 MERC Lab Op 121 (no exceptions). Consequently, a labor organization that resorts to restraint and coercion to restrict the right of an employee to file a charge, restrains or coerces the employee in the exercise of a § 9 right in violation of § 10(2)(a).

Significantly, in interpreting § 7 of the National Labor Relations Act (NLRA), a statute which also gives covered employees the right to file an unfair labor practice charge, the NLRB

has repeatedly held that a union violates § 8(b)(1)(A) of the NLRA when it takes coercive actions designed either to prevent a member from filing a charge with the Board or to retaliate against a member for filing such a charge. See *Graphic Communications Local 22 (Rocky Mountain News)*, 338 NLRB 130, 130-131 (2002), in which the Board found coercive and unlawful the union's filing of an internal charge against a union member in retaliation for his filing of a charge with the Board against the union and *Auto Workers Local 212 (Chrysler Corp.)*, 257 NLRB 637 (1981), enfd. 690 F.2d 82 (6th Cir. 1982), in which the Board found unlawful the union's removal of a member from his position as chair of a union committee because he filed a Board charge against the union. Although the Commission is not bound by decisions interpreting the NLRA, we often find such decisions persuasive where the NLRA and PERA have identical language. See *Grandville Municipal Executive Ass'n v City of Grandville*, 453 Mich 428, 436, 553 NW2d 917 (1996). In this case, we agree with the NLRB that a union may not take coercive actions designed either to prevent a member from filing an unfair labor practice charge or to retaliate against a member for filing such a charge.

Although Respondent argues we are without jurisdiction to find a violation of § 10(2)(a) with respect to this issue because its actions involved an internal union affair that did not have an effect on Charging Party's terms and conditions of employment, we disagree. The language of § 10(2)(a) does not permit a union to deny an employee the rights provided by § 9, including the right to file an unfair labor practice charge. We recently addressed the issue of our jurisdiction over unfair labor practice charges alleging restraint or coercion in the exercise of public employees' § 9 rights in *Saginaw Ed Ass'n*, 29 MPER 21 (2015). As we explained in that decision, "this Commission generally has no jurisdiction over the internal affairs of labor organizations in the absence of a direct impact on the employment relationship or the denial of rights under § 9 of PERA." Similarly, in *Teamsters Local 214*, 29 MPER 46 (2015), we noted that "if a labor organization has restrained or coerced a public employee in the exercise of his or her § 9 rights, the labor organization has violated § 10 of PERA." See also *Michigan Ed Ass'n*, 18 MPER 64 (2005); *MESPA (Alma Pub Sch Unit)*, 1981 MERC Lab Op 149 (no exceptions).

In the present case, Charging Party filed a charge against Respondent Local 26 in *Amalgamated Transit Union, Local 26*, 28 MPER 81 (2015). Charging Party alleges that, subsequent to this, Local 26 discriminated against him by not allowing him to run for a position on its Executive Board because he had instituted the above-mentioned proceedings under PERA. Charging Party further alleges that Respondent exhibited hostility toward his protected activities of filing a charge by constantly telling its members that his MERC filing cost the membership \$8000 in lawyer's fees.

Charging Party, therefore, did set forth an allegation which should not have been dismissed on summary disposition. Consequently, we remand this matter to the ALJ for further proceedings consistent with this Decision.

ORDER

The recommended order on summary disposition is set aside and the matter is remanded to the ALJ for further proceedings consistent with this Decision.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: September 19, 2016

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

In the Matter of:

AMALGAMATED TRANSIT UNION, LOCAL 26,
Respondent-Labor Organization,

Case No. CU16 D-026
Docket No. 16-010666-MERC

-and-

FRANK LACEY,
An Individual Charging Party.

APPEARANCES:

Frank Lacey, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on April 13, 2016, by Frank Lacey against the Amalgamated Transit Union (ATU), Local 26. 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 charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

Charging Party is a member of a bargaining unit represented by Respondent ATU. In the charge, Lacey alleges that the Union breached its duty of fair representation under Section 10(2)(a) of PERA by the actions described below. In an order issued on April 22, 2016, I directed Lacey to show cause why the charge should not be dismissed for failure to state a claim upon which relief could be granted under PERA. Lacey filed his response to the order to show cause on May 13, 2016.

Discussion and Conclusions of Law:

Pursuant to Rule 165(1) of the General Rules and Regulations of the Employment Relations Commission, R 423.165(1), the ALJ may, on his or her own initiative or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party. Accepting all of the allegations set forth by Lacey as true, I conclude that dismissal of the charge on summary disposition is warranted.

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, and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). The union's actions will be held to be lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit, Fire Dep't*, 1997 MERC Lab Op 31, 34-35. To pursue such a claim, charging party must allege and be prepared to prove not only a breach of the duty of fair representation by the union, but also a breach of the collective bargaining agreement by the employer. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992).

It is well established that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations. *Service Employees Int'l Union, Local 517*, 2002 MERC Lab Op 104; *Service Employees Int'l Union, Local 586*, 1986 MERC Lab Op 149. This principle is derived from Section 10(2)(a) of the Act, which states that a union may prescribe its own rules with respect to the acquisition or retention of membership. See e.g. *Org of Classified Custodians*, 1993 MERC Lab Op 170; *Service Employees Int'l Union, Local 586*. Internal union matters are outside the scope of PERA, but are left to the members themselves to regulate. *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *MESPA (Alma Pub Schs Unit)*, 1981 MERC Lab Op 149, 154. For example, the Commission has held that the duty of fair representation does not require that a union seek to obtain the approval of its membership in order to enter into an agreement with the employer or to modify the language of an existing collective bargaining agreement. See e.g. *Lansing School District*, 1989 MERC Lab Op 218; *City of Lansing*, 1987 MERC Lab Op 701, 708; *United Steelworkers Ass'n*, 2002 MERC Lab Op 163, 166 (no exceptions). A union's obligation towards members of its bargaining unit is limited to actions that have an effect on its members' terms and conditions of employment or their relationship with their employer. *Service Employees Int'l Union, Local 517*; *Private Industry Council*, 1993 MERC Lab Op 907.

In the instant case, Charging Party raises a host of allegations relating to Fred Westbrook, the apparent leader of Local 26. Charging Party asserts that although Westbrook has held himself out as Respondent's president and lead negotiator, the actions he has undertaken in that capacity have been unlawful because Westbrook was not elected by a majority of bargaining unit members or appointed by the Union's executive board. In addition, Lacey alleges that Westbrook violated PERA by entering into a "supplemental [13(c)] agreement" with the City of Detroit's emergency financial manager without the knowledge of the Union's executive board. Next, Charging Party alleges that Westbrook breached Respondent's duty of fair representation by negotiating the 2014-2018 collective bargaining agreement between Local 26 and the City. According to Lacey, the contract violates the ATU constitution because it is for a term longer than three years and it runs afoul of Section 15(7) of PERA by failing to include language recognizing the powers of the emergency financial manager. Finally, Charging Party asserts that Westbrook acted unlawfully by negotiating changes to the 2014-2018 collective bargaining agreement without first seeking the approval of the bargaining unit. Even if all of these assertions are true, Lacey has not explained how any of the Union's actions affect employees' terms and conditions of employment. As noted, PERA does not require that a union seek the approval of its

members before entering into an agreement with the employer or modifying the language of an existing collective bargaining agreement. Accordingly, I conclude that these allegations all pertain to internal union matters outside the Commission's jurisdiction. See e.g. *City of Lansing*.

For the same reason, I also reject Charging Party's contention that Respondent violated its duty of fair representation with respect to the acceptance of duty pay by members of the Union's executive board. Lacey asserts that the City has paid members of the Local 26 executive board more money for conducting union business than they are entitled to under the terms of the 2014-2018 collective bargaining agreement. This is essentially the same argument that Lacey asserted in a prior case involving Respondent. In *Amalgamated Transit Union, Local 26*, 28 MPER 81 (2015) (no exceptions), Lacey presented evidence establishing that although the City and the ATU entered into a contract in 2010 which halved the number of hours of pay Respondent's executive board members and stewards received from the City to compensate them for time spent performing union duties, the reduction was never in fact implemented. In that case, ALJ Julia Stern rejected Lacey's assertion that members of Respondent's executive board breached their duty of fair representation by continuing to accept from the City twice the amount of pay for conducting union business to which they were entitled under the contract. The ALJ concluded that whether the board members should stop accepting this money was an internal union policy decision over which the Commission lacks jurisdiction. Although the instant charge arises under a different contract, the analysis is the same. Beyond the conclusory assertion that the Respondent's conduct was unlawful, Lacey has once again failed to explain how the executive board members' acceptance of additional union duty pay has had any actual impact on employees' terms and conditions of employment.

Lastly, I find no merit to Charging Party's contention that Respondent violated its duty of fair representation by denying his nomination to run for a position on the Union's executive board. The Commission has held that the establishment of qualifications for holding union office, and the conduct of elections for union offices, are internal union matters not subject to the duty of fair representation. For example, in *Detroit Association of Educational Office Employees*, 1984 MERC Lab Op 947, the Commission held that a union's establishment of qualifications for holding union office was strictly an internal union matter and not subject to the union's duty of fair representation. See also *ATU, Local 1039*, 25 MPER 61 (2012) (no exceptions) (alleged irregularities in the conduct of an election for union officers was strictly an internal union matter); *International Union, UAW*, 19 MPER 9 (2006) (no exceptions) (a union's failure to follow its own bylaws in conducting an election for union officers was an internal union matter); *Detroit Fed of Teachers*, 16 MPER 54 (2003) (no exceptions) (union's establishment of qualifications for voting in elections for local building representatives was an internal union matter outside the scope of PERA). Even a union's failure to follow its internal rules does not, standing alone, constitute a breach of the duty of fair representation and is, therefore, outside the jurisdiction of the Commission. See e.g. *Registered Nurses and Registered Pharmacists of Hurley Hospital*, 2002 MERC Lab Op 394 (no exceptions).

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation which, if true, would establish that Respondent Amalgamated Transit Union, Local 26 violated PERA. Accordingly, I conclude that the charge against the Union in Case No. CU16 D-026; Docket No. 16-010666-MERC, must be dismissed.

RECOMMENDED ORDER

The unfair labor practice charge filed by Frank Lacey against Amalgamated Transit Union, Local 26 in Case No. CU16 D-026; Docket No. 16-010666-MERC, is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 1, 2016