

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

In the Matter of:

UNIVERSITY OF MICHIGAN,
Respondent-Public Employer,

Case No. C00 H-140

-and-

MICHIGAN REGIONAL COUNCIL OF CARPENTERS,
Charging Party-Labor Organization.

APPEARANCES:

Office of the Vice-President and General Counsel, by David A. Masson, Esq., for the Public Employer

Novara, Tesija, Michela, & Priehs, P.C., by Nicholas R. Nahat, Esq., for the Charging Party

DECISION AND ORDER

On July 20, 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:

UNIVERSITY OF MICHIGAN,
Public Employer-Respondent

Case No. C00 H-140

-and-

MICHIGAN REGIONAL COUNCIL OF CARPENTERS,
Labor Organization-Charging Party

APPEARANCES:

David A. Masson, Esq., Office of the Vice-President and General Counsel, for Respondent

Nicholas R. Nahat, Esq., Novara, Tesija, Michela, & Priehs, P.C., for Charging Party

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; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on October 25, 2000, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on January 4, 2001, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Michigan Regional Council of Carpenters filed this charge on August 10, 2000, against the University of Michigan. Charging Party alleged that Respondent violated its duty to bargain under Section 10(1)(e) of PERA by refusing to bargain with it over the terms and conditions of employment of employees performing carpenter's work. At the conclusion of Charging Party's proofs, I granted Respondent's motion to dismiss this allegation on the grounds that Charging Party had not established that it was either the certified or recognized bargaining agent for Respondent's employees. Charging Party also alleged that Respondent violated Section 10(1)(b) by unlawfully creating and interfering with the administration of the Washtenaw County Local Building Trades Board of Directors, University Division.

Facts:

On November 17, 1967, the Labor Mediation Board (predecessor to the Employment Relations Commission), certified the Washtenaw County Building and Construction Trades Council as bargaining agent for the unit below, known as the skilled trades unit:

All electricians; sheet metal workers; roofers; roofer and sheet metal helpers; painters, including sign painters and spray painters; masons; plasterers; carpenters, including carpenter machinists; cabinet makers; plumber pipe fitters, including pipe coverers and steam fitters; refrigeration repairmen; heavy equipment operators; welders; construction laborers; and all apprentices to the foregoing at any location or facility of the University of Michigan; excluding temporary and student help; professional employees, teaching faculty, research staff; office clerical employees, technical employees; supervisors, and all other employees.

In its decision directing an election, the Board found that the Washtenaw County Building and Construction Trades Council (the Council) was composed of 11 local unions whose membership consisted of employees in the building trades. It noted that the Council was affiliated with the AFL-CIO and the National Building and Construction Trades Council. The Board found that the purpose of the Council was to organize and represent building, maintenance, skilled craftsmen and allied workers at the University of Michigan. It held that the Council was a labor organization within the meaning of the Act. The Board also held that the unit above was an appropriate unit under Section 13 of PERA. *Regents of the University of Michigan*, 1967 MERC Lab Op 609, 611.

After the Council was certified in 1967, it changed its name to the Washtenaw County Local Building Trades Board of Directors (WCBTB). Between 1974 and 1998, Respondent entered into approximately 13 collective bargaining agreements with the WCBTB covering the skilled trades bargaining unit. A representative of each member local union sat on the WCBTB board. The WCBTB elected officers, including a president, vice-president, secretary-treasurer and three trustees, from among its board members. Member local unions paid a monthly per-capita fee to cover the cost of administering the WCBTB, although none of the board members or officers received a salary from the WCBTB. A local union could be suspended by the WCBTB for failure to pay its monthly assessment.

In the 1980s the WCBTB created a University Division (UD). Under the WCBTB's bylaws, all members of the bargaining unit were eligible for membership in the UD. The WCBTB's bylaws permitted the UD to hold its own membership meetings and elect its own officers, including a chief steward and bargaining committee members. The chief steward of the UD became a full-time union officer whose salary was paid by Respondent in accord with terms of the collective bargaining agreement. In addition, the WCBTB's bylaws gave the chief steward a seat on the WCBTB. The record indicates that at the direction of the WCBTB, or with its acquiescence, the UD took over responsibility for negotiating and administering the collective bargaining agreement. Although the WCBTB's name continued to be on the contract, the WCBTB did not formally review or approve agreements either before or after they were ratified by the UD membership. The UD also had its own bylaws, pursuant to which it managed its own finances.

The WCBTB had no employee members; employees joined the local union for their particular trade. Per the WCBTB bylaws, the UD was entitled to a portion of the dues or service fees collected from unit members. Under the terms of the collective bargaining agreement, a member of the bargaining unit was required to pay to the WCBTB either dues or a service fee equivalent to the dues required by the local union affiliate of the WCBTB for the classification in which the unit member was employed. In practice, Respondent sent the dues and fees it collected through checkoff to the UD. The UD took its portion, and forwarded the remainder of the dues and service fees to the local unions. As noted above, monthly fees that the local unions paid directly to the WCBTB covered the expenses of the WCBTB itself.

In June 2000 Respondent and the UD's bargaining committee were negotiating a new collective bargaining agreement to replace the contract set to expire on July 31, 2000. John Wetherbee, a representative of the Charging Party, was the president of the WCBTB at that time. On June 22, 2000, Wetherbee, without consulting other WCBTB officers or board members, sent Respondent a letter stating that the WCBTB was disclaiming "any interest in negotiating on behalf of the carpenters and carpentry and related work which falls under the above-referenced agreement." The letter asked Respondent to contact the Charging Party immediately to commence negotiations "on behalf of the carpenter unit." Respondent replied on June 27, stating that the WCBTB was apparently proposing to redefine the unit as it had existed for more than 30 years, that Respondent had no obligation to bargain over this proposal, and that Respondent would not agree to change the original certification. On June 29, Charging Party's counsel sent Respondent a letter demanding that it bargain with Charging Party as representative of Respondent's carpenters. On June 30, the secretary-treasurer of the WCBTB, a representative of the International Brotherhood of Electrical Workers, wrote Respondent rejecting the position taken by Wetherbee in his June 22 letter and asking Respondent to disregard Wetherbee's letter.

At a WCBTB meeting in July 2000, the board voted to abolish itself and to change the name of the UD to the University of Michigan Skilled Trades Board of Directors (STB). The chief steward of the UD became the president of the STB, and all the officers of the UD became the board members of the STB. At the time of the hearing, the STB had no drawn up new bylaws. According to the president of the STB, however, the STBD is a part of and affiliated with the council of trade unions overseeing construction trades work in Washtenaw County. Respondent recognized the STB as the successor to the WCBTB and continued negotiating with the former UD bargaining committee, now members of the STB. Between July 2000 and the date of the hearing, Respondent and the STB reached agreement on a collective agreement covering the term August 1, 2000 through July 31, 2003. At the time of the hearing, the contract had been ratified by Respondent's Board and the UD/STB membership but not yet signed. The STB's name has replaced the WCBTB's on the signature page of this document.

Discussion and Conclusions of Law:

Charging Party contends that Respondent violated Section 10(1)(e) of PERA by refusing to recognize Charging Party as the representative of Respondent's employees performing carpentry work. However, I find that there is no "carpentry unit," and that Charging Party has no grounds for demanding that Respondent bargain with it as a separate entity. In 1967 the Labor Mediation Board held that the Council itself was a labor organization within the meaning of PERA, even though it

recognized that this organization was an association of building trade unions. The Board also determined that a unit consisting of all Respondent's skilled trades employees was an appropriate unit. The Washtenaw County Building and Construction Trades Council became the certified bargaining representative for this unit. The record indicates that the Council later changed its name to the WCBTB, and that the WCBTB eventually delegated its responsibilities for collective bargaining and contract administration to the UD. However, since 1967 Respondent has recognized and bargained with the Council, its successors or delegates, for the unit as originally certified. There is no indication that Respondent and the WCBTB ever agreed to create a separate unit of employees performing carpentry work.¹ Charging Party was a member of the Council and later the WCBTB. However, Charging Party has never been certified by the Mediation Board or the Commission or recognized by Respondent as the bargaining agent for any of Respondent's employees.

Charging Party also alleges that Respondent has unlawfully dominated or interfered with the administration of the UD. It asserts that the Respondent chose the UD's bargaining representatives and that the directors of the WCBTB were not "permitted" to bargain with the Respondent. These claims are not supported by the facts. The record indicates that the UD was created by the WCBTB. Members of the UD elected the UD's bargaining committee, as provided by the WCBTB's bylaws. Nothing in the record suggests that after the UD was created the WCBTB's directors ever sought to bargain directly with Respondent.

Based on the findings of fact and conclusions of law above, I find Charging Party's allegations to be without merit. I conclude that Respondent did not violate Section 10(1)(e) of PERA by refusing to bargain with Charging Party. I also conclude that Respondent did not dominate or unlawfully interfere with the administration of the UD in violation of Section 10(1)(b) 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

¹ An established bargaining unit may not be altered without an order from the Commission or the agreement of both parties to the collective bargaining relationship. *Michigan State Univ*, 1993 MERC Lab Op 345.

Julia C. Stern
Administrative Law Judge

Dated: _____