

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

In the Matter of:

WAVERLY EDUCATIONAL SUPPORT PERSONNEL
ASSOCIATION, MEA/NEA,
Labor Organization-Respondent,

-and-

ERIN SYMONDS,
An Individual Charging Party in MERC Case No. CU16 H-044/Hearing Docket No. 16-024321,

-and-

MAUREEN CHARTRAND,
An Individual Charging Party in MERC Case No. CU16 H-046/Hearing Docket No. 16-024322,

-and-

NICKEY HADLEY,
An Individual Charging Party in MERC Case No. CU16 H-047/Hearing Docket No. 16-024323,

-and-

CATHLEEN PATINO,
An Individual Charging Party in MERC Case No. CU16 H-048/Hearing Docket No. 16-024324,

-and-

SHAWN GLEASON,
An Individual Charging Party in MERC Case No. CU16 H-049/Hearing Docket No. 16-024325.

APPEARANCES:

Erin Symonds, Maureen Chartrand, Nickey Hadley, Cathleen Patino, and Shawn Gleason, appearing on their own behalf

DECISION AND ORDER

On November 22, 2016, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: January 11, 2017

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

In the Matter of:

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APPEARANCES:

Erin Symonds, Maureen Chartrand, Nickey Hadley, Cathleen Patino, and Shawn Gleason, appearing for themselves

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

On August 11, 2016, Erin Symonds and Maureen Chartrand, employees of the Waverly Community Schools (the Employer), filed unfair labor practice charges with the Michigan Employment Relations Commission (the Commission), against their collective bargaining representative, the Waverly Educational Support Personnel Association, MEA/NEA, alleging that Respondent violated Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. On August 17, 2016, Nickey Hadley, Cathleen Patino, and Shawn Gleason, also employees of the Waverly Community Schools and members of the same bargaining unit as Symonds and Chartrand, also filed charges under Section 10 of PERA.¹ The five charges were consolidated and, pursuant to Section 16 of PERA, assigned to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System.

There are two sets of charges in this case. The charges filed by Symonds and Gleason are identical to each other, as are the charges filed by Chartrand, Hadley, and Patino. The allegations in both sets of charges address Respondent's actions with respect to an election or elections conducted by it on June 29, 2016.

On September 14, 2016, pursuant to Rule 165 of the Commission's General Rules, 2014 AACRS, R 423.165, I issued an order to Charging Parties Symonds and Gleason to show cause why their charges should not be dismissed on the basis that they failed to allege facts that, if true, would support a finding that Respondent violated its duty of fair representation under Section 10(2)(a) of PERA. I also directed Charging Parties Chartrand, Hadley and Patino to show cause why their charges should not be dismissed for failure to state a claim under PERA because they concerned what appeared to be an internal union matter over which the Commission lacks jurisdiction under Section 10(2)(a). None of the Charging Parties responded to my order.

Based on the facts as alleged in the charges, I make the following conclusions of law and recommend that the Commission issue the following order:

The Unfair Labor Practice Charges and Pertinent Facts:

All the Charging Parties are employees of the Employer and members of a bargaining unit represented by Respondent. According to both sets of charges, on June 29, 2016, Respondent held a ratification vote for its membership on the terms of a new collective bargaining agreement. The voting took place in the lobby of the Waverly Community Schools Administration Building from 2:00 p.m. through 4:00 p.m. In the lobby there was a sign-in sheet, and next to the sign-in sheet was a ballot box.

Members of the public had access to the lobby during the voting period, a bargaining unit member was performing his or her normal duties in the lobby during that time, and members of the unit who had finished their work day were permitted to remain in the lobby within sight of the polls after they had voted. In addition to the other individuals in the lobby, Respondent's UniServ Director

¹ The charges were initially filed in the name of the Waverly Educational Support Personnel Association, with the Waverly Educational Support Personnel Association also named as the Respondent. They were later amended to make Symonds, Gleason, Chartrand, Hadley, and Patino individual Charging Parties.

and its local union president stood directly next to the sign-in sheet and ballot box throughout the two hour voting period. Respondent's bylaws state that ratification of a proposed contract "shall be made by secret ballot." However, no special provision was made for voters to mark their ballots in private during the ratification election held on June 29, 2016.

Respondent also scheduled an "insurance meeting" to begin immediately after the voting period mentioned above. The purpose of this meeting was not explained in any of the charges, and, although a vote was also conducted at the insurance meeting, it was not clear from the charges whether this vote was part of the contract ratification process. The flyer mailed to union members before the meeting stated that the insurance vote would be a "member vote," that "everyone was invited," and that "in order to take part in any vote you must be a member in good standing." However, according to the charges filed by Chartrand, Patino, and Hadley, members who attempted to enter the insurance meeting were told by Respondent representatives that only union members who were currently signed up for insurance benefits were eligible to vote. Members who were currently taking the cash-in-lieu of insurance benefit, and members who were not eligible for insurance benefits in their current positions, were turned away.

The charges filed by Symonds and Gleason allege that Respondent violated its duty of fair representation by failing to provide members with a secret ballot in the ratification election. They also allege that the presence of Respondent's UniServ Director and its local union president so close to the ballot box served to intimidate voters and potential voters. The charges filed by Hadley, Chartrand and Gleason allege that they (or other unit members) were improperly barred from voting in the insurance election.

Discussion and Conclusions of Law:

A failure to respond to an order to show cause may, in itself, warrant dismissal of an unfair labor practice charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

Section 10(2)(a) of PERA makes it an unfair labor practice for a labor organization representing public employees to "restrain or coerce" public employees in the exercise of the rights guaranteed in Section 9 of PERA. It also states, "This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership."

The Commission has interpreted Section 10(2)(a) as incorporating the duty of fair representation as it was originally developed under federal laws applying to private sector employees. A union's legal duty towards its members under the doctrine 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. *Goolsby v Detroit*, 419 Mich 651,679 (1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131, 134. See *Vaca v Sipes*, 386 US 171, 177 (1967). A union is guilty of bad faith when it "acts [or fails to act] with an improper intent, purpose, or motive . . . encompass[ing] fraud, dishonesty, and other intentionally misleading conduct." *Merritt v International Ass'n of Machinists and Aerospace Workers*, 613 F3d 609, 619 (CA 6, 2010), citing *Spellacy v Airline Pilots Ass'n-Int'l*, 156 F3d 120, 126 (CA 2, 1998). "Arbitrary" conduct constituting a breach of the duty of fair representation is that "which reflects reckless disregard for the rights of the individual employee."

Goolsby, at 672. This includes impulsive, irrational, or unreasoned conduct, inept conduct undertaken with little care or with indifference to the interests of those affected, and extreme recklessness or gross negligence which can reasonably be expected to have an adverse effect on any or all union members. *Goolsby*, at 680.

Consistent with federal law, the Commission has interpreted the second sentence of Section 10(2)(a) as meaning that a labor union's duty of fair representation under that section does not extend to strictly internal union affairs involving union structure and governance, and that a union's obligations towards members of its bargaining unit under this section is limited to actions that have an effect on their terms and conditions of employment or their relationship with their employer. *SEIU Local 517*, 2002 MERC Lab Op 104; *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *Private Industry Council*, 1993 MERC Lab Op 907; *MESPA (Alma Pub Sch Unit)*, 1981 MERC Lab Op 149. 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. In *ATU, Local 1039*, 25 MPER 61 (2012) (no exceptions), the Commission concluded that alleged irregularities in the conduct of an election for union officers was strictly an internal union matter. In *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 held to be an internal union matter not within the Commission's jurisdiction.

The Commission has recognized that contract ratification elections have an impact on terms and conditions of employment. In a few cases, it has found that a union breached its duty of fair representation in the way it conducted contract ratification elections. In *Wayne Co Cmty College Federation of Teachers*, 1976 MERC Lab Op 347, 352, a union had a procedure for counting votes in contract ratification elections that gave much more weight to the votes of union members with full-time positions than union members holding part-time appointments. The Commission held that this affected the terms and conditions of employment of part-time employees because it effectively denied them any meaningful input into the collective bargaining process. It concluded, therefore, that this weighted method of counting votes violated the union's duty of fair representation.

In *Service Employees International Union, Local 586*, 1986 MERC Lab Op 149, the union removed certain long-standing union members from its list of members in good standing shortly before a scheduled contract ratification election without notifying them that it was doing so or giving them the opportunity to correct the union's records. When these members arrived at the polls, they were turned away. The Commission held that the union's failure to allow these members to vote, after providing them with no notice that they were no longer considered members in good standing, violated the union's duty of fair representation because it was irrational and unreasoned and, therefore, constituted arbitrary conduct.

However, in *Registered Nurses and Pharmacists of Hurley Hospital*, 16 MPER 2 (2002)(no exceptions), a union's violations of its bylaws and past practices in conducting a contract ratification election was held not to constitute arbitrary conduct amounting to a breach of its duty of fair representation. In that case, the union's bylaws required it to notify members of a ratification election both by mail and by posting on bulletin boards throughout the hospital facilities. Contrary to the

bylaws and its previous practice, the union posted notices of the election giving the date and time of the election, but failed to send out postcards notifying individual members of the time and date and how to vote absentee. At about the same time as the notices with the correct information were posted, the local paper, the *Flint Journal*, published an article quoting the union president as stating that the polls would close at 7:30 p.m. instead of at 5:00 p.m. as indicated in the posted notices. In addition, contrary to previous practice, the union failed to have ballot boxes at two offsite locations where unit members were generally not able to leave their work locations during their shifts. The election committee closed the polls at 5:00 p.m. on the day of the election, and at least three voters who showed up later were turned away. No one submitted an absentee ballot. After the contract was ratified, a motion was made at a union meeting to hold another election but the motion was rejected on the grounds that the union had already communicated its acceptance of the contract to the employer. The Commission noted that while the union had failed to comply with its bylaws in conducting this election, there was no indication that it had deliberately prevented voters from voting as was the case with the union in *Service Employees International Union, Local 586*. It held that the union's failure to take additional steps to ensure that its members knew the time of the election or could vote did not constitute arbitrary conduct because it was not "irrational or unreasoned," or "inept conduct undertaken with indifference to the interests of its members."

In this case, Symonds and Gleason complain that Respondent did not provide voters with a private place to mark their ballots or ensure that others kept a reasonable distance from the polling place. Therefore, they assert, other employees may have seen their ballots as they cast them. They also complain that the presence of Respondent's UniServ Director and local president so close to the ballot box was intimidating. In this case, Symonds and Gleason did not allege in their charges that Respondent acted in bad faith, e.g., intentionally intimidated voters to discourage them from voting or to affect the way they voted. They also did not allege that any union member in good standing was denied the right to vote in the contract ratification election. I find that neither Respondent's failure to take additional steps to provide employees with a private place to mark their ballots nor the presence of the UniServ Director and Respondent's president close to the ballot box in this case constituted arbitrary conduct as that term is defined above.

I conclude that the facts, as alleged by Symonds and Gleason in their charges, do not support a finding that Respondent breached its duty of fair representation. I recommend, therefore, that the Commission dismiss their charges.

Hadley, Chartrand and Patino allege that Respondent prevented members in good standing from voting in the "insurance election." As discussed above, however, the Commission has consistently held that a union's duty of fair representation under Section 10(2)(a) extends only to matters that affect employees' terms and conditions of employment and not to internal union matters. The charges filed by Hadley, Chartrand and Patino did not explain the purpose of the insurance election, e.g., whether it was part of the contract ratification process or merely an attempt by Respondent to obtain union members' input on some insurance issue. Their charges, as filed, did not indicate that the insurance election had an impact, or potential impact, on the terms or conditions of employment of members of the bargaining unit or their employment status. Hadley, Chartrand and Patino were given the opportunity to explain, in a response to my order to show cause, the purpose of the insurance election and how the vote impacted them. However, they did not do so. I conclude that

the charges filed by Hadley, Chartrand and Patino fail to state claims upon which relief can be granted under PERA, and I recommend that the Commission dismiss their charges on that basis.

Based on the facts as alleged in the charges, as set out above, and the discussion and conclusions of law above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 22, 2016