

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

TRUE COPY

In the Matter of:

WAYNE-WESTLAND COMMUNITY SCHOOLS,  
Respondent-Public Employer in MERC Case No. 19-A-0092-CE,

-and-

WAYNE-WESTLAND ASSOCIATION OF PARAPROFESSIONALS,  
Respondent-Labor Organization in MERC Case No. 19-A-0095-CU,

-and-

JILLIAN BOSTON,  
An Individual Charging Party.

APPEARANCES:

Clos, Russell & Wirth, P.C., by Charles E. Clos, for the Labor Organization  
Jillian Boston, appearing on her own behalf

DECISION AND ORDER

On March 27, 2019, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order<sup>1</sup> in the above matter finding that Respondents 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.

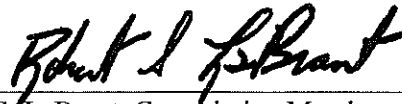
ORDER

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



Edward D. Callaghan, Commission Chair



Robert S. LaBrant, Commission Member



Natalie P. Yaw, Commission Member

Issued: **JUN 14 2019**

<sup>1</sup> MOAHR Hearing Docket Nos. 19-002603 and 19-002604

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STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

WAYNE-WESTLAND COMMUNITY SCHOOLS,  
Respondent-Public Employer in Case No. 19-A-0092-CE; Docket No. 19-002603-MERC,

-and-

WAYNE-WESTLAND ASSOCIATION OF PARAPROFESSIONALS,  
Respondent-Labor Organization in Case No. 19-A-0095-CU; Docket No. 19-002604-MERC,

-and-

JILLIAN BOSTON,  
An Individual Charging Party.

\_\_\_\_\_ /

APPEARANCES:

Clos, Russell & Wirth, P.C., by Charles E. Clos, for the Labor Organization

Jillian Boston, appearing on her own behalf

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

This case arises from unfair labor practice charges filed on January 29, 2019, by Jillian Boston against her Employer, Wayne-Westland Community Schools, and her Union, Wayne-Westland Association of Paraprofessionals (WWAP). 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 charges were consolidated and assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The identically-worded charges allege that a contractual provision pertaining to layoff and recall was not administered correctly by the school district. In a pretrial order issued on February 13, 2019, I directed Charging Party to show cause why the charges should not be dismissed for failure to state a claim upon which relief could be granted under PERA. The order specified that to avoid dismissal of the charge, Boston's written response must assert facts that establish a violation of the Act. Charging Party was directed to "clearly and concisely describe who did what and when they did it, and explain why such actions constitute a violation of the

Act, with consideration given to the legal principles” set forth in the order. On March 18, 2019, Charging Party filed a two-page document by facsimile entitled “Timeline of events – Evidence” attached to which were 55 pages consisting of copies of various emails and other documents.

Findings of Fact:

The following findings of fact are based upon the assertions set forth in the unfair labor practice charge, the “timeline” submitted by Charging Party purportedly in response to the Order to Show Cause and the attachments thereto, all of which are accepted as true for purposes of this Decision and Recommended order.

Charging Party Jillian Boston was employed by Wayne-Westland Community Schools as a Title I paraprofessional at Roosevelt-McGrath Elementary School. On June 4, 2018, Charging Party received a letter from Victoria Reilly, the school district’s director of employee relations, stating that Boston would be maintaining her current position at Roosevelt-McGrath for the 2018-2019 school year. Approximately one month later, however, Reilly notified Boston that she was being displaced from her position as a paraprofessional. In response to an inquiry from the Union, Reilly indicated that all Title I positions were being cut and, therefore, Boston was not entitled to bump into another paraprofessional position.

On August 20, 2018, Charging Party applied for a vacant paraprofessional position in the “ASD classroom” but she never heard back from the school district regarding that opening. On August 29, 2018, Angelle Allen, an employee in the school district’s human resources department, offered to place Charging Party in a paraprofessional position at either Hamilton Elementary School or Edison Elementary School. However, Allen advised Charging Party that she should wait before accepting one of those jobs because the district was going to offer her a different position. Boston later learned that positions at Hamilton and Edison were not actually available.

On August 30, 2018, Reilly offered Charging Party part-time work as a parent coordinator at Roosevelt-McGrath, a position outside the WWAP bargaining unit. Boston accepted the offer and began working in that position on or about September 12, 2018. At the end of October or sometime in early November, Charging Party became aware that not all Title I positions had been cut and that some paraprofessionals with less seniority than Boston had been retained by the school district. Charging Party requested a meeting with the Employer to discuss her displacement from the paraprofessional position and asked for a Union representative to be present. Although the meeting was held on November 19, 2018, the school district did not allow Boston to have a WWAP representative present on her behalf.

On November 20, 2018, Reilly called Charging Party and asked her to resign as part-time parent coordinator so that she could once again be qualified to apply for paraprofessional position with the school district. That same day, Charging Party sent an email to Reilly seeking clarification as to why she was being asked to resign. In an email to Boston dated December 5, 2018, Reilly wrote, in pertinent part:

You did not submit a Leave of Absence letter when you accepted a position outside of the para union. While we have spoken about previous concerns about your displacement over the summer, again since you are no longer a member of the para union at this point there is not a situation/placement for us to remedy, we can only work to ensure better communication occurs for displaced paras at the beginning of the year. At this point you are considered an external candidate for any paraprofessional position.

On Thursday, January 24, 2019, Union president Ann Heinicke sent to Charging Party a copy of a grievance asserting that the school district violated Article 12 of the collective bargaining agreement by failing to place Boston in a vacant paraprofessional position. As a remedy, the grievance sought reinstatement to a paraprofessional position, reinstatement of seniority and back pay. Heinicke asked Charging Party to review the grievance for accuracy and return a signed copy "by Friday afternoon as we only have 5 days to get it in." Charging Party responded with an email stating that she would send the grievance to her lawyer, to which Heinicke replied, "We only have a short window of time so please expedite." That evening, Boston notified Heinicke that based upon the advice of her lawyer, she would not be signing the grievance because it lacked "any proposed solution." WWAP building representative Arlene Ursem immediately responded to Boston and stated that the version of the grievance she was sent "had a solution" and that she was forwarding a copy to Charging Party as an attachment for her review.

On January 25, 2019, Charles Clos, counsel for the WWAP, sent an email to Heinicke, Ursem and other individuals regarding the Boston grievance. In the email, Clos wrote that although Charging Party was refusing to participate in the grievance process, the Union should "reconsider filing the grievance" to protect its rights under the terms of the collective bargaining agreement. The Union filed the grievance three days later. Thereafter, the school district denied the grievance on the ground that it was untimely. On February 6, 2019, Clos recommended to the Union that it demand a special conference with the school district so that the parties could attempt to resolve the dispute over Boston's employment. To date, Charging Party has applied for several open paraprofessional positions with the school district but has not received an offer of employment.

#### Discussion and Conclusions of Law:

Pursuant to Rule 165(1), R 423.165(1), of the General Rules and Regulations of the Employment Relations Commission, which govern practice and procedure in administrative hearings conducted by MAHS, the ALJ may "on [his] own motion 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 Boston as true, dismissal of the charge against the school district in Case No. 19-A-0092-CE; Docket No. 19-002603-MERC and the charge against the Union in Case No. No. 19-A-0095-CU; Docket No. 19-002604-MERC is warranted.

Section 9 of the Act protects the rights of public employees to form, join or assist labor organizations, to negotiate or bargain with their public employers through representatives of their own free choice, to engage in lawful concerted activities for mutual aid or protection, and to

refrain from any or all of these activities. The types of activities protected by PERA include filing or pursuing a grievance pursuant to the terms of a union contract, participating in union activities, joining or refusing to join a union, and joining with other employees to protest or complain about working conditions. Sections 10(1)(a) and (c) of the Act prohibit a public employer from interfering with the Section 9 rights of its employees and from discharging or otherwise discriminating against them because they have engaged in, or refused to engage in, the types of activities described above. PERA does not, however, prohibit all types of discrimination or unfair treatment by a public employer, nor does the Act provide a remedy for a breach of contract claim asserted by an individual employee. The Commission's jurisdiction with respect to claims brought by individual employees against public employers is limited to determining whether the employer interfered with, restrained, and/or coerced a public employee with respect to his or her right to engage in, or refusal to engage in, union or other concerted activities protected by PERA.

In the instant case, the gravamen of Charging Party's claim against Wayne-Westland Community Schools is that the school district breached the terms of its collective bargaining agreement with the Union. Specifically, the charge asserts that "Article 12 Reduction in Personnel, Layoff and Recall was not administered correctly. Under Article 12. 7 A section 3 I should have been able to placed into an open position of my choice according to seniority. I was not given this option." As noted, the Commission has no jurisdiction over breach of contract claims brought by individual employees. Neither the charge nor the "timeline" filed by Boston set forth any factual allegations which, if true, would support a finding that Charging Party was subjected to discrimination or retaliation for engaging in, or refusing to engage in, protected activities in violation of the Act.

In the "timeline," Boston asserts that the school district refused to allow her to have a Union representative present at the November 19, 2018, meeting with management. It is unclear whether Charging Party is claiming that this refusal by the district constituted a violation of PERA. Nevertheless, the pleadings filed by Boston in this matter do not set forth any facts which, if true, would establish that the school district violated her right to Union representation. In *NLRB v Weingarten, Inc.*, 420 US 251 (1975), the National Labor Relations Board (NLRB) recognized that an employee has the right to the presence of a union representative at an investigatory interview when the employee reasonably believes that the interview may lead to discipline. The Commission has adopted the Board's reasoning in cases arising under PERA. See e.g. *Univ of Michigan*, 1977 MERC Lab Op 496. In the instant case, there is no allegation that the November 19, 2018, meeting was investigatory in nature or any indication that Boston reasonably believed that discipline would result from that discussion. Rather, the meeting was held for the purpose of discussing Boston's displacement from her paraprofessional position at Roosevelt-McGrath Elementary School and the district's failure or refusal to move her into another paraprofessional position. For these reasons, summary dismissal of the charge against the Employer in Case No. 19-A-0092-CE; Docket No. 19-002603-MERC is warranted.

The charge against Wayne-Westland Association of Paraprofessionals in Case No. 19-A-0095-CU; Docket No. 19-002604-MERC must also be dismissed on summary disposition. 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 Commission has “steadfastly refused to interject itself in judgment” over grievances and other decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab Op 1, 11. A labor organization has the legal discretion to make judgments about the general good of the membership and to proceed on such judgments, despite the fact that they may conflict with the desires or interests of certain employees. *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218, citing *Lowe v Hotel and Restaurant Employees Union, Local 705*, 389 Mich 123 (1973). The mere fact that a member is dissatisfied with their union’s efforts is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Ass’n*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Moreover, to prevail on a claim of unfair representation in a case involving the handling of a grievance, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public Sch Dist*, 201 Mich App 480, 488 (1993).

The charge in Case No. No. 19-A-0095-CU; Docket No. 19-002604-MERC, did not specifically identify any conduct by the Union as being violative of PERA. In the Order to Show Cause, Charging Party was directed to “clearly and concisely describe who did what and when they did it, and explain why such actions constitute a violation of the Act, with consideration given to the legal principles” set forth therein. Charging Party did not file a response which in any way complies with that order with respect to the Union. Rather, she submitted a “Timeline of Events” along with copies of emails, job descriptions and other documentation. The Commission does not investigate unfair labor practice charges, nor is it appropriate for this tribunal to attempt to derive a theory of the case on a party’s behalf based solely upon generalized assertions of fact and/or exhibits provided by that party. Simply put, while Boston’s filings in this matter may explain what transpired factually, Charging Party has not identified what specific action, or inaction, by the Union she believes constituted a violation of the Act. Based upon the documents attached to the charge, it appears that the Union responded to the concerns raised by Boston and filed a grievance seeking her reinstatement and other make-whole remedies. To whatever extent that Charging Party may disagree with the Union’s decision-making generally or its handling of the grievance, there is no factually supported allegation which would suggest that the WWPA acted arbitrarily, discriminatorily or in bad faith in connection with this matter. Accordingly, I conclude that the charge against the Union in Case No. No. 19-A-0095-CU; Docket No. 19-002604-MERC must be dismissed without a hearing.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to meet her burden of proving that either Respondent violated PERA. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge filed by Jillian Boston against her Employer, Wayne-Westland Community Schools, in Case No. 19-A-0092-CE; Docket No. 19-002603-MERC, and Boston's charge against Wayne-Westland Association of Paraprofessionals in Case No. 19-A-0095-CU; Docket No. 19-002604-MERC are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink that reads "David M. Peltz". The signature is written in a cursive style and is positioned above a horizontal line.

David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: March 27, 2019