

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

TRUE COPY

In the Matter of:

AFSCME INTERNATIONAL AND AFSCME LOCAL 3451,
Respondent-Labor Organization,

-and-

MERC Case No. 19-C-0471-CU

RONALD WHITTENBERG,
An Individual Charging Party.

APPEARANCES:

Ronald Whittenberg, appearing on his own behalf

DECISION AND ORDER

On April 18, 2019, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order¹ 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.

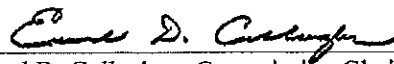
The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

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.

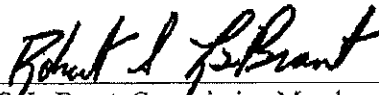
ORDER

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



Edward D. Callaghan, Commission Chair



Robert S. LaBrant, Commission Member



Natalie P. Yaw, Commission Member

JUN 12 2019

Issued: _____

¹ MOAHR Hearing Docket No. 19-005159

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

AFSCME INTERNATIONAL AND AFSCME LOCAL 3451,
Respondent-Labor Organization,

Case No. 19-C-0471-CU
Docket No. 19-005159-MERC

-and-

RONALD WHITTENBERG,
An Individual Charging Party.

APPEARANCES:

Ronald Whittenberg, 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 March 8, 2019, by Ronald Whittenberg against AFSCME International and AFSCME Local 3451. 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) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The unfair labor practice charge alleges that Respondent breached its duty of fair representation under PERA by failing to comply with the AFSCME constitution, by-laws and other internal union rules and policies. In an order issued on March 20, 2019, I directed Whittenberg to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted under the Act. Charging Party filed a timely response to the order to show cause on April 8, 2019.

Facts:

The following facts are derived from the allegations set forth by Whittenberg in the charge and response to the order to show cause, and are accepted as true for purposes of this Decision and Recommended Order. Whittenberg is the chief steward for AFSCME Local 3451. On December 21, 2018, Whittenberg submitted an internal union charge to Andy Milars, the president of the Local. The charge asserted that a member of Local 3451 had colluded with management by providing information to the employer concerning another member of the Union. Milars contacted AFSCME judicial chairperson Richard Abelson who, on or about February 1, 2019, notified Whittenberg that he had found no evidence of collusion. According to Charging Party, the Union did not conduct an investigation into the collusion allegation or hold a hearing regarding the matter, as required by the AFSCME constitution.

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 Whittenberg as true, dismissal of the charge is warranted in this matter.

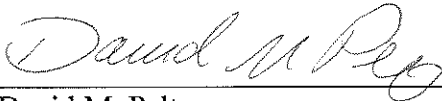
The gravamen of the charge is an allegation that the Union violated PERA by failing to follow its constitution, by-laws and internal rules regarding alleged misconduct committed by a member of Local 3451 and reported by Charging Party. Whittenberg asserts that the Union should have investigated the allegations and/or conducted a hearing regarding the internal union charge. It is well established, however, that the duty of fair representation does not embrace matters involving the internal structure and affairs of labor organizations which do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Ed Ass’n*, 17 MPER 25 (2004); *SEIU, Local 586*, 1986 MERC Lab Op 149. Internal union matters are outside the scope of PERA, but instead 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. This principle is derived from Section 10(2)(a) of the Act, which states that a union may prescribe its own rules pertaining to the acquisition or retention of membership. See e.g. *Org of Classified Custodians*, 1993 MERC Lab Op 170; *SEIU, Local 586, supra*. The Commission has held that the duty of fair representation applies only to those policies and procedures having a direct effect on terms and conditions of employment. See e.g. *Org of Classified Custodians, supra*; *SEIU, Local 586, supra*.

In the instant case, Charging Party has not alleged any action or inaction by Respondent which had an impact on the terms and conditions of his employment. For that reason, I recommend that the Commission issue the following order dismissing the charge in its entirety.

RECOMMENDED ORDER

The unfair labor practice charge filed by Ronald Whittenberg against AFSCME International and AFSCME Local 3451 in Case No. 19-C-0471-CU; 19-005159-MERC is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: April 18, 2019