

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

In the Matter of:

WESTERN MICHIGAN ASSOCIATION  
OF UNIVERSITY PROFESSORS,  
Labor Organization-Respondent,

MERC Case No. 21-G-1506-CU

-and-

MUSTAFA MIRZELER,  
An Individual Charging Party.

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**APPEARANCES:**

Miller Cohen, PLC, by Robert D. Fetter, for Respondent

Carol Weideman, appearing on behalf of Charging Party

**DECISION AND ORDER**

On September 30, 2021, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order<sup>1</sup> 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.

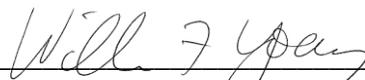
The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service, and no exceptions have been filed by either of the parties.

**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

  
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Tinamarie Pappas, Commission Chair

  
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William F. Young, Commission Member

Issued: December 14, 2021

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<sup>1</sup> MOAHR Hearing Docket No. 21-015388

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

In the Matter of:

WESTERN MICHIGAN ASSOCIATION  
OF UNIVERSITY PROFESSORS,  
Respondent-Labor Organization,

Case No. 21-G-1506-CU  
Docket No. 21-015388-MERC

-and-

MUSTAFA MIRZELER,  
An Individual Charging Party.

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**APPEARANCES:**

Miller Cohen, PLC, by Robert D. Fetter, for the Respondent

Carol Weideman appearing on behalf of the Charging Party

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

On July 16, 2021, Charging Party, Mustafa Mirzeler, filed the above unfair labor practice charge with the Michigan Employment Relations Commission (Commission) against his bargaining representative, the Western Michigan Association of University Professors (Respondent or Union). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, the charge was assigned to Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules.

**Unfair Labor Practice Charge:**

Charging Party's unfair labor practice charge against the Union states in the relevant portion the following:

The violation occurred on July 12, 2021[,] when the filing party, Mustafa Mirzeler received an email from the current Vice President (Natalio Ohanna) of the WMUAAUP chapter. The specific action that occurred was discriminatory in nature and was directed to myself (Mustafa Mirzeler). Natalio Ohanna challenged "how I was appointed" as a participant to the personnel committee that included four members (myself and three white professors.) The challenge was directed only to me, and indicated that somehow I wasn't worthy to serve on the committee. No other members were questioned as to their capacity or appropriate place on the committee. The committee was vetted and accepted by the

WMUAAUP Executive Committee in January, 2021. At that time, my membership was confirmed. As an individual of Middle Eastern descent, the violation I am bringing to MERC was discriminatory, arbitrary, and not in good faith for a dues-paying member of the WMUAAUP labor union. This also is a pattern I have experienced by the union as a whole (a past occurrence is beyond the 6 month time frame but I state it to confirm the pattern of abuse.)

An evidentiary hearing was scheduled to convene on August 23, 2021. On July 27, 2021, Respondent notified my office that it intended to file a motion for summary disposition. The August 23, 2021, hearing date was adjourned pending receipt and review of the Respondent's motion. Respondent filed its motion pursuant to Rule 167(2)(d) and (f) of the Commission's General Rules, R. 423.165, on August 13, 2021. Respondent argues that the charge should be dismissed because the claims "involve a purely internal union matter and do not otherwise effect Charging Party's terms and conditions of employment." Charging Party filed his response on August 27, 2021.

#### Discussion and Conclusions of Law:

Under well-established Commission law, a union's duty of fair representation is comprised of three responsibilities: (1) to serve the interest 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), also *Goolsby v City of Detroit*, 419 Michigan 651 (1984). In *Goolsby*, at 682, the Court gave the following examples of "arbitrary" conduct by a union:

The conduct prohibited by the duty of fair representation includes (a) impulsive, irrational or unreasoned conduct, (b) inept conduct undertaken with little care or with indifference to the interests of those affected, (c) the failure to exercise discretion, and (d) extreme recklessness or gross negligence.

The United States Supreme Court has held that a union's actions are lawful as long as they are not so far outside a wide range of reasonableness as to be irrational. *Airline Pilots Association v O'Neill*, 499 US 65, 67 (1991).

A union's duty of fair representation extends to union conduct in representing employees in their relationship with their employer but does not embrace matters involving the internal structure and affairs of labor organizations that do not impact upon the relationship of bargaining unit members to their employer. *West Branch-Rose City Education Ass'n*, 17 MPER 25 (2004). 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.

In the instant matter, Charging Party's allegations made against Ohanna, while serious in terms of societal issues regarding racial discrimination, do not appear to have any impact on his

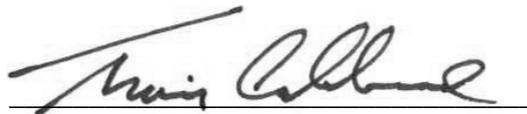
relationship to his employer with respect to the terms and conditions of his employment and are therefore outside the scope of PERA's protection.<sup>1</sup>

In the instant case, all of the allegations set forth in the charge pertain to purely internal matters and, therefore, are outside the jurisdiction of the Commission. Accordingly, I conclude that the charge must be dismissed without a hearing and recommend that the Commission issue the following order.

Recommended Order

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: September 30, 2021

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<sup>1</sup> I must note that Charging Party in his reply also made allegations against Ohanna regarding certain actions that occurred in 2019. Charging Party recognized rightly that any action relative to those allegations was barred by PERA's six-month statute of limitations. The preceding notwithstanding, the undersigned must observe that allegations of discriminatory treatment base upon an individual's race, while not necessarily violative of PERA on their own, certainly could be grounds to conclude that a union's conduct was arbitrary for purposes of finding a potential violation of the duty of fair representation.