

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

ANCHOR BAY EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Respondent,

-and-

RYAN ZERKEL,
Individual Charging Party,

-and-

MERC Case No. CU18 J-035

FRANCES MATLOCK,
Individual Charging Party,

-and-

MATTHEW DUFFIELD,
Individual Charging Party.

APPEARANCES:

White Schneider PC, by Erin Hopper Donahue, for the Respondent

Ryan Zerkel, Frances Matlock, and Matthew Duffield, appearing on their own behalf

DECISION AND ORDER

On May 20, 2019, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order¹ 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.

¹ MOAHR Hearing Docket No. 18-020186

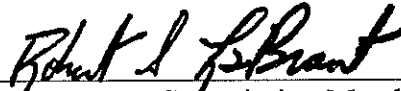
ORDER

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 25 2019

Issued: _____

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

ANCHOR BAY EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Respondent,

Case No. CU18 J-035
Docket No. 18-020186-MERC

-and-

RYAN ZERKEL,
Individual Charging Party,

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-and-

FRANCES MATLOCK,
Individual Charging Party,

-and-

MATTHEW DUFFIELD,
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APPEARANCES:

White Schneider PC, by Erin Hopper Donahue, for the Respondent

Ryan Zerkel, Frances Matlock, and Matthew Duffield, appearing on their own behalf

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

On October 15, 2018, Ryan Zerkel, Frances Matlock, and Matthew Duffield (collectively Charging Parties) filed the above captioned unfair labor practice charge against their bargaining representative, the Anchor Bay Education Association, MEA/NEA (Respondent or Union), with the Michigan Employment Relations Commission (Commission). 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 Administrative Law Judge Travis Calderwood, of the Michigan Office of Administrative Hearings and Rules, formerly the Michigan Administrative Hearing System, to hear this matter on behalf of the Commission.

Charging Parties allege that the Union has violated PERA by treating them differently, i.e., excluding them from various Union meetings and other Union activities because they are not members of the Union in good standing. The matter was set to be heard on December 7, 2018. On November 20, 2018, Respondent requested to adjourn the hearing pending the filing of a motion for summary disposition. The hearing was adjourned; Respondent filed its motion, with a request for oral argument, on November 30, 2018. In an email sent on December 3, 2018,

Charging Parties were instructed to file their response to Respondent's motion on or before December 21, 2018; the response was received on December 18, 2018.

A telephone conference was held on January 25, 2019, during which Respondent withdrew its request for an oral argument. Based on the facts contained in the pleadings and not in dispute as set forth below, and the arguments made in the pleadings, I make the following conclusions of law and recommend that the Commission issue the following order.

Unfair Labor Practice Charge:

As stated above, Charging Parties' initial unfair labor practice charge appears on its face to object to the Union's practice of excluding non-members from various meetings and/or other activities. As part of their allegations, Charging Parties, identify two separate issues and/or incidents where, according to Charging Parties, the Union is "withholding and not being transparent on information that effects [sic] people's livelihood..." The first incident identified by Charging Parties was a meeting for "members in good standing" to discuss and vote on a tentative agreement. The second incident involves an informational meeting for "members in good standing" and attended by an insurance carrier representative to discuss the insurance options available to members of the bargaining unit.

Respondent's motion, supported by the affidavit of Union President Jamie Pietron-Oldenburg, seeks dismissal of the charge under Rule 165(2)(d) and (f) of the Commission's General Rules, R 423.165, 2002 AACS; 2014 AACS.

Factual Background:

The following facts are derived from the parties' pleadings and are not in dispute. Charging Parties are not members of the Union in good standing but do occupy positions in the Union's bargaining unit. According to the affidavit of Pietron-Oldenburg, and unrefuted by Charging Parties, Charging Party Matlock resigned her membership on October 16, 2017, Charging Party Zerkel resigned his membership on August 20, 2018, and Charging Party Duffield's membership was revoked on August 31, 2018, for failing to pay dues.

On October 31, 2017, Pietron-Oldenburg sent Charging Party Duffield an email, apparently in response to a note left for the President by Duffield. That email stated in the relevant part:

Until you choose to opt out of the Association, it is my responsibility as the chief bargaining agent for the ABEA, to inform you of your standing as a member, as well as what you owe in dues to date. Once you make the decision to opt out you will no longer receive correspondence from me or the ABEA.

In order to become a fee payer you must opt out directly with the Michigan Education Association. To resign your membership, send a resignation letter to MEA, PO Box 51, East Lansing, MI 48826. Your resignation letter should state your intention to resign, include your local association, Anchor Bay, and your membership number if you have that available. The letter must also be signed and dated by you. Please send a cc to me by email or mail.

While I appreciate and respect your views may differ from mine, I would hope that as colleagues there would be professionalism when it comes to school related communication. Addressing me as you did on the envelope, as well as your note on the letter, do not meet the standards of professionalism and respect that we all deserve in the workplace.

Shortly thereafter, Charging Party Duffield sent the following email to Pietron-Oldenburg:

Don't care

Tired of the blah blah blah

I do not want anymore communication from the ABEA

I do not care how the ABEA feels about me

I do not want anymore of those letters sent to me.

Next one that is sent, I will send it to my attorney and I will also send it the center in Midland

Leave me alone and I will be happy to leave all of you alone.

Charging Party Duffield and Pietron-Oldenburg exchanged two more emails, both similar in tone and message as set forth above.

On November 2, 2017, Charging Party Zerkel, in response to a mass email regarding ABEA polo shirts, sent an email to Pietron-Oldenburg, in which he wrote, "Please delete me from the Union [email] group, I am not interested in getting emails or other communication from the union."

On August 27, 2018, the ABEA held a float-building party for their float in the Anchor Bay School District Homecoming Parade. Pietron-Oldenburg posted a notice regarding the float-building party on both her personal Facebook page as well as the Union's public Facebook.¹ That notice, in addition to providing the dates and location for the event, also clearly stated, "All are welcome – bring the kiddos to help!"

According to Charging Parties, on September 14, 2018, Pietron-Oldenburg provided, by email, to members in good standing a tentative agreement.² According to the charge, that email went on to state:

[The tentative agreement] will be presented and we will have a follow up question and answer session. Immediately following the meeting we will vote in the commons. **YOU MUST BE A MEMBER IN GOOD STANDING TO ATTEND THIS MEETING AND VOTE ON THE TA.** [Emphasis in original].

¹ Charging Parties' pleadings also alleged that the Union's Facebook page, despite indicating that it is for members in good standing, contains individuals that are not members in good standing.

² Neither party provided a copy of the email in their respective pleadings.

According to Respondent, the Union voted to ratify the tentative agreement at a meeting on or about September 18, 2018. The next day, September 19, 2018, Pietron-Oldenburg sent an email with the tentative agreement attached to those members of the bargaining unit that were not members in good standing. That email indicated that the tentative agreement had been ratified and that she would provide a finalized copy of the agreement when it became available. Charging Party Zerkel, responding to that email, wrote, "Please don't. If I need it. [sic] I'll FOIA the union for it."

Sometime later in September, the Union President sent out another email that invited "ABEA members in good standing" to an informational meeting scheduled for October 30, 2018, with representatives from the Union's insurance carrier, MESSA, to discuss the three insurance options being offered under the ratified tentative agreement. On September 25, 2018, Charging Party Zerkel sent the President an email asking her to explain why non-members could not attend the meeting despite the content of the meeting "impact[ing] all teachers in this district whether they are a part of the MEA or not..." According to the emails attached to the charge, the President responded by stating the event is an "ABEA sponsored meeting for our members" and suggesting that Charging Party Zerkel contact MESSA for information regarding the insurance plans. Following that email, Charging Party Zerkel's responding email stated in the relevant part the following:

What's funny is I called MESSA and they don't have any information on file for the 3 plans that will be going into place. Just the current one, so they weren't helpful.

I also have calls into the NLRB and MERC to make sure your meeting is even legal, because I'm under the impression from MERC that opting out only prevents me from voting, not attending meetings that include the contract.

After the above back and forth, Pietron-Oldenburg provided, by email that same day, further details regarding the three new MESSA plans.

Following the October 30, 2018, meeting, Pietron-Oldenburg sent out another email inviting members in good standing to attend one of three lunchtime meetings at three of the school district's buildings along with an afterschool session. That email provided in bold and underlined that the meetings are "ABEA sponsored meetings for members in good standing." Charging Parties' response claims that Charging Party Zerkel approached a Union building representative for the high school and asked whether he would be kicked out if he attended. According to Charging Parties, the representative responded by stating, "I won't kick anyone out, it is your insurance too, just sit in the back and don't eat any of the union provided food." Charging Party Zerkel did not attend the meeting because that particular building representative was not present on the day of the meeting at the high school. Charging Parties Duffield and Matlock did attend the meeting. Neither individual was asked to leave the meeting.

Attached to Charging Parties' response to Respondent's motion are two emails to Charging Parties Duffield and Zerkel and one to Charging Party Zerkel, all from the Michigan Education Association. The November 27, 2018, email sent to both Duffield and Zerkel begins by stating, "As a MEA Local 1 member in good standing..." before inviting them to attend a workshop on "Workplace Violence and Bullying." The November 23, 2018, email, sent to just to Zerkel, appears to be a form email regarding MEA member discounts.

Discussion and Conclusions of Law:

Commission Rule 165, R 423.165, states that the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule. Under subsection (d), dismissal is proper on the grounds that, “[t]he charging party has failed to state a claim upon which relief can be granted”, while subsection (f) allows dismissal when, “[e]xcept as to the relief sought there is no genuine issue of material fact.” R 423.165(2)(d), (f).

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). This Commission has long recognized that it does not have jurisdiction to enforce union bylaws and constitutions per se. *City of Battle Creek*, 1974 MERC Lab Op 698 (no exceptions); *Wayne County Road Commission*, 1974 MERC Lab Op (no exceptions).

Charging Parties’ initial charge against the Union appeared on its face to be predicated on the idea that the Union violated PERA by excluding non-members from meetings and failing to provide information regarding a tentative agreement. However, this Commission has stated that a Union may exclude non-members from attending union meetings. See *AFSCME Council 25, Local 1583*, 27 MPER 48 (2014). Moreover, to the extent that the initial charge appears to take issue with an alleged failure by Pietron-Oldenburg to communicate with Charging Party Zerkel regarding the tentative agreement’s insurance options, I note that the email correspondence provided therein indicates that the President first attempted to refer Zerkel to the actual insurance carrier and, when notified by Zerkel that the insurance carrier could not provide information, did provide information regarding those plans. The Commission has held that a union does not breach its duty of fair representation by failing to adequately communicate with a member unless that failure results in some actual harm to the member. See *Detroit Police Officers Ass'n*, 1999 MERC Lab Op 227, 230. Charging Parties have not alleged with any modicum of specificity that any one of them has suffered any actual harm as a result of being excluded from any meeting. Lastly, to the extent that Charging Parties seem to take affront to the presence of non-

members on Facebook pages maintained by Pietron-Oldenburg and/or the Union, there is no indication in the initial charge how the same is a violation of PERA.³

Charging Parties, in their response to Respondent's motion, point out that despite requests by both Charging Party Zerkel and Charging Party Duffield not to be contacted by the Union, they did in fact continue to receive communications from the Union and Pietro-Oldenburg in particular.⁴ Additionally, Charging Parties also point to communications from the MEA itself which appear to erroneously indicate that Charging Party Zerkel and Duffield are members in good standing. However, nowhere in their response do Charging Parties actually articulate how continuing to receive these few, and rather innocuous email communication either violated the Union's statutory duty of fair representation or otherwise coerced or restrained their exercise of their Section 9 rights not to be a union member.

In sum, I find that Charging Parties' initial charge, appearing to be predicated on the Union's attempts to exclude non-members from Union meetings and the failure of Pietron-Oldenburg, to provide information to the satisfaction of Charging Party Zerkel, does not articulate any actionable claim under PERA. Similarly, I find that Charging Parties' response to Respondent's motion, also does not articulate any actionable claim under the PERA.

I have considered all other arguments as set forth by the parties and conclude that such does not require a change in the conclusion. As such and in accord with the above findings of fact and conclusions of law, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges brought by Ryan Zerkel, Frances Matlock and Matthew D. Duffield are hereby dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: May 20, 2019

³ Moreover, Pietron-Oldenburg's affidavit, claims that to her knowledge, the page is accessible to members in good standing, former employees who have yet to be removed, and some members' spouses.

⁴ I note that Duffield's request was made while he was still apparently a member of the union and the record does not indicate that he ever requested to withdraw or resign from the Union as was his unfettered right to do so.