

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

In the Matter of:

AMALGAMATED TRANSIT UNION &
ITS AFFILIATED LOCAL 26,
Respondents-Labor Organizations,

-and-

MERC Case No. CU16 D-026

FRANK LACEY,
An Individual Charging Party.

APPEARANCES:

Law Offices of Mark H. Cousens, by John E. Eaton, for Respondents

Frank Lacey, appearing on his own behalf

DECISION AND ORDER

On October 24, 2017, Administrative Law Judge David M. Peltz (ALJ) issued his Decision and Recommended Order¹ in the above matter finding that Respondents did not violate § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ found that the record was devoid of any evidence that Charging Party was prevented from running for election by the Respondents for the purpose of retaliating against him for filing an earlier unfair labor practice charge. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with § 16 of PERA.

Charging Party filed exceptions and a brief in support of exceptions to the ALJ's Decision and Recommended Order on November 16, 2017. After requesting and receiving an extension of time, Respondents filed their brief in support of the ALJ's Decision and Recommended Order on December 15, 2017. Although we do not believe that Charging Party's "exceptions" comply with Rule 176(4) of the Commission's General Rules, 2002 AACS R 423.176(4), we recognize that Charging Party is an individual not represented by counsel and, in this particular case, to the extent we are able, we will address Charging Party's "exceptions." As we interpret them, Charging Party's "exceptions" allege that Respondents violated his rights under PERA by failing to comply with the ATU constitution and bylaws.

In their brief in support, Respondents contend that Charging Party's exceptions do not comply with Rule 176(4) of the Commission's General Rules and that the Charging Party failed to meet his burden of proof.

¹ MAHS Hearing Docket No. 16-010666

We have reviewed the exceptions filed by Charging Party and find them to be without merit.

Factual Summary:

Background

Charging Party is employed by the City of Detroit as a coach operator in its Department of Transportation (DDOT) and is a member of a bargaining unit represented by Local 26, an affiliate of the Amalgamated Transit Union (ATU). On April 13, 2016, Charging Party filed the instant charge against the ATU and its Local 26 alleging that Respondents breached their duty of fair representation. Charging Party alleged, in Paragraph 10 of his charge:

Fred Westbrook and member [sic] of Local 26 Executive Board have been discriminatory in their application of Constitutional Law and Local By-Laws to deny applicants for nominations in their General Election.

In an order issued on April 22, 2016, the ALJ directed Lacey to show cause why the charge should not be dismissed for failure to state a claim upon which relief could be granted under PERA. On May 13, 2016, Charging Party responded to the ALJ's order to show cause. Charging Party clarified his allegation of discrimination by asserting that Local 26's president and its executive board refused to allow him to run for a position on the board because he had previously filed an unfair labor practice charge with MERC.

In his Decision and Recommended Order on Summary Disposition dated June 1, 2016, the ALJ recommended that the unfair labor practice charge be dismissed in its entirety because Charging Party failed to set forth any factually supported allegation which, if true, would establish that Respondent violated PERA. The ALJ noted that "[A] union's obligation towards members of its bargaining unit is limited to actions that have an effect on its members' terms and conditions of employment or their relationship with their employer." Given that Respondent's actions had no effect on Charging Party's employment, the ALJ recommended the dismissal of the charge.

Charging Party filed exceptions to the Decision and Recommended Order on Summary Disposition and, in a Decision and Order issued on September 19, 2016, the Commission set aside the Decision and Recommended Order on Summary Disposition and remanded the matter to the ALJ for further proceedings. The Commission found that Charging Party did set forth an allegation which should not have been dismissed on summary disposition when he alleged, on May 13, 2016, that Local 26 discriminated against him by not allowing him to run for a position on its Executive Board because he had instituted proceedings under PERA. The Commission noted:

...we agree with the NLRB that a union may not take coercive actions designed either to prevent a member from filing an unfair labor practice charge or to retaliate against a member for filing such a charge.

On January 12, 2017, the ALJ held an evidentiary hearing on remand in accordance with the Commission's order. At the start of the hearing, the ALJ notified Lacey that the charge related to his attempt to run for internal union election and that the issue to be decided was whether he was prevented from running for election "because the Union was discriminating against him for filing an earlier unfair labor practice charge."

Facts Brought Forth at January 12, 2017 Hearing

On May 20, 2016, Charging Party Lacey went to Local 26's office and nominated himself to run for Gilbert terminal executive board member in an election scheduled for May 27, 2016. Lacey had previously nominated himself to run for Local 26 president-business agent. As May 20 was the deadline for the submission of applications, Local 26's executive board met later that day to determine which nominees were eligible to run in the election and determined that Lacey was not eligible to run for either of the positions for which he had nominated himself.

By letter dated May 21, 2016, Local 26 Financial Secretary-Treasurer Henry Foutner informed Lacey that his name would not appear on the ballot for the election of Local 26 officers and executive board members inasmuch as 1) Lacey was not eligible to run for Gilbert terminal executive board member because he was assigned to the Coolidge terminal and 2) he could not be nominated for the president-business agent position because he subsequently nominated himself for another position. Specifically, the letter stated:

You signed the book to run for Gilbert Board Member and you are a Coolidge Operator and Coolidge Operators can only run for City wide positions ie [sic] President-business agent, Vice President-business agent, Financial Secretary-Treasurer, Recording Secretary or Sergeant-at-Arms or positions at the Coolidge Terminal ie [sic] Coolidge Board Member or Coolidge Steward! Page 9 of the Master Agreement between the City of Detroit and Amalgamated Transit Union AFL-CIO-Local 26 Section L. Union Representation During Temporary Shutdowns of Terminals for Repair Work. number 4. It reads: During this period of temporary shutdowns Union representation elections and voting will be conducted based on the then existing list of operating drivers. On your question of defaulting into another nomination position! [sic] Although Local 26 By-Laws doesn't speak to being nominated for two positions in Article 27 Matters Not Provided for, Section A, in Local 26 By-Laws it states: Should any question arise in this L.U., not herein provided for, the Constitution and General Laws of the International Association shall govern in such cases. Section 6.22 of the A.T.U. Constitution and General Laws Election of International Officers it [sic] clearly states: Beginning with the 57th Convention (which was in 2013) and continuing thereafter, no person shall be a candidate for more than one office. ect. [sic] when you signed the book to run for "Gilbert Board Member" on Friday May 20, 2016 you cancelled out the previous position "President-business agent" that someone had previously nominated you for." [Emphasis in original.]

On July 3, 2016, Lacey sent an appeal to ATU International President Fred Hanley challenging the conduct of the May election. On July 20, 2016, and August 14, 2016, Lacey sent additional letters to the International regarding the election.

ATU President Hanley denied Charging Party's appeal in a letter dated October 12, 2016 and notified Lacey that the Local properly had prohibited him from running for an executive board position. President Hanley told Charging Party that he was not eligible to run for an executive board position because 1) Charging Party had not satisfied the meeting attendance requirement and 2) he was classified as a Coolidge not Gilbert Terminal union member. Hanley did not specifically address the issue of Lacey nominating himself for two positions.

On October 24, 2017, the ALJ issued his Decision and Recommended Order on Remand in this matter finding that the unfair labor practice charge should be dismissed.

Discussion and Conclusions of Law:

In its decision remanding this case to the ALJ, the Commission held that a union may not take coercive actions designed either to prevent a member from filing an unfair labor practice charge or to retaliate against a member for filing such a charge. On this basis, we remanded this matter to the ALJ for further proceedings to determine if Respondents had discriminated against Charging Party by not allowing him to run for a position on the executive board because he had instituted proceedings under PERA. At the January 12, 2017 hearing on remand, Charging Party did not present any allegations to support his charge. Instead, he submitted evidence regarding a May 21, 2016 denial of his nominations to run for the positions of executive board member and Local 26 president-business agent. The May 21 denial, however, occurred more than a month after the instant charge was filed and eight days after Charging Party responded to the ALJ's order to show cause. Consequently, it could not have been the occurrence upon which the April 13, 2016 charge was based.

Furthermore, Charging Party did not seek to amend his original charge to add allegations regarding the subsequent denial of his nominations and, even had he attempted to do so, such an amendment would be untimely. See *City of Pontiac*, 22 MPER 46 (2009) and *City of Detroit*, 25 MPER 68 (2012). Consequently, Charging Party's contention, at the remand hearing, that Respondents acted improperly on May 21, 2016 when they would not allow him to run for union office because he had instituted proceedings under PERA is untimely under Section 16(a) of PERA. Further, the Commission has long held that the statute of limitations contained in Section 16(a) is jurisdictional, cannot be waived, and is not tolled by the pursuit of other remedies. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Walkerville Rural Communities Sch*, 1994 MERC Lab Op 582; *Detroit Fed of Teachers Local 231, AFT, AFL-CIO*, 1989 MERC Lab Op 882; *Detroit Public Schools*, 1982 MERC Lab Op 1058.

Notwithstanding the above, even if Charging Party had timely alleged that PERA was violated when his nominations were denied on May 21, 2016, the record lacks any evidence establishing that the Respondents took such action for the purpose of retaliating against him for filing an earlier charge. Charging Party, in fact, admitted that he had no direct evidence that his eligibility to run for office was denied for a reason other than what was stated in Mr. Foutner's

May 21, 2016 letter. Additionally, Lacey was subsequently nominated and allowed to run for a delegate position in a later election, thus, undermining his claim that the leadership of Local 26 was hostile toward him. While Charging Party appears to rely upon the timing of the May 21 denials to establish motive, the Commission has repeatedly held that suspicious timing is not sufficient, by itself, to establish unlawful motive. Rather, there must be other circumstantial evidence which supports the conclusion that the temporal relationship was not mere coincidence. See, e.g., *Southfield Pub Sch*, 22 MPER 26 (2009); *Macomb Twp (Fire Dep't)*, 202 MERC Lab Op 64, 73; *City of Detroit (Water & Sewerage Dep't)*, 1985 MERC Lab Op 777, 780. No such evidence exists in the instant case. Finally, Lacey offered no evidence that another Coolidge terminal operator was ever allowed to run for the Gilbert terminal executive board or that any other individual was allowed to run for two positions at the same time. Under such circumstances, Charging Party failed to meet his burden of proof. See *Service Workers (Kaiser Foundation Health Plan)* 349 NLRB 753 (2007).

Although Charging Party alleges that Respondents failed to comply with the ATU constitution and bylaws, the Commission has long recognized that it does not have jurisdiction to enforce internal union matters such as union bylaws and constitutions per se. *City of Detroit*, 30 MPER 61 (2017); *ATU Local 26*, 30 MPER 22 (2016); *City of Battle Creek*, 1974 MERC Lab Op 698 (no exceptions); *Wayne County Road Commission*, 1974 MERC Lab Op 698 (no exceptions). Consequently, even if Charging Party's rights under the ATU constitution were violated, this alone would not state a claim upon which relief could be granted under PERA.

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. Accordingly, we affirm the ALJ's decision that the instant charge should be dismissed in its entirety.

ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: April 16, 2018

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

In the Matter of:

AMALGAMATED TRANSIT UNION &
ITS AFFILIATED LOCAL 26,
Respondents-Labor Organizations,

Case No. CU16 D-026
Docket No. 16-010666-MERC

-and-

FRANK LACEY,
An Individual Charging Party.

APPEARANCES:

Law Offices of Mark H. Cousens, by John E. Eaton, for Respondents

Frank Lacey, appearing on his own behalf

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

This case arises from an unfair labor practice charge filed on April 13, 2016, by Frank Lacey against the Amalgamated Transit Union (ATU) and its affiliated Local 26. 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) of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Charge and Procedural History:

Charging Party is employed by the City of Detroit as a coach operator in its Department of Transportation (DDOT) and is a member of a bargaining unit represented by Local 26, an affiliate of ATU (the International). In Paragraph 10 of the charge, Lacey alleged that the Local 26 president and members of the Local's executive board were "discriminatory in their application of Constitutional Law and Local By-Laws to deny applicants for nominations in the General Election." In addition, the charge asserted that the Unions breached the duty of fair representation owed to him under Section 10(2)(a) of PERA by: (1) failing to have a duly elected or appointed business agent or president represent members; (2) negotiating a collective bargaining agreement with the City for a term in excess of three years without the approval of membership; (3) entering into a "supplemental agreement" with the City's emergency financial manager without the

approval of the executive board; (4) allowing members of the executive board to accept compensation for conducting union business in excess of that allowed by the contract; and (6) allowing the City to make changes to a ratified contract.

In an order issued on April 22, 2016, I directed Lacey to show cause why the charge should not be dismissed for failure to state a claim upon which relief can be granted under PERA. Lacey filed his response to the order to show cause on May 13, 2016. In his response, Charging Party clarified the discrimination allegation, asserting that the Local 26 president and its executive board refused to allow him to run for a position on the board because he had previously filed an unfair labor practice charge with MERC. On June 1, 2016, I issued a Decision and Recommended Order on Summary Disposition dismissing the charge on the basis that Lacey had failed to set forth any factually supported allegations which, if true, would establish a violation of PERA. This finding was based on the well-established principle that a union's obligation towards members of its bargaining unit is limited to actions that have an effect on its members' terms and conditions of employment or their relationship with their employer. See e.g. *Service Employees Int'l Union, Local 517*, 2002 MERC Lab Op 104; *Private Industry Council*, 1993 MERC Lab Op 907.

Charging Party filed exceptions to the Decision and Recommended Order on Summary Disposition on June 24, 2016. Respondent filed a brief in support of the recommended order on July 7, 2016. In a Decision and Order issued on September 19, 2016, the Commission disagreed with my conclusion that Lacey had failed to state a claim for discrimination in retaliation for filing an unfair labor practice charge. Regarding that allegation, the Commission cited with approval various decisions of the National Labor Relations Board (NLRB) standing for the proposition that a union may not take coercive actions designed either to prevent a member from filing an unfair labor practice charge or to retaliate against a member for filing such a charge. See e.g. *Graphic Communications Local 22 (Rocky Mountain News)*, 338 NLRB 130, 130-131 (2002); *Auto Workers Local 212 (Chrysler Corp)*, 257 NLRB 637 (1981), enf'd 690 F2d 82 (CA 6 1982). Accordingly, the Commission remanded the case to the undersigned for further proceedings regarding the discrimination allegation set forth in Paragraph 10 of the charge.² With respect to all of the remaining allegations, the Commission adopted my order recommending dismissal of the charge.

Upon receipt of the case file from the Commission, I immediately scheduled an evidentiary hearing for January 12, 2017. On November 1, 2016, the International Union filed a motion with the undersigned seeking clarification of the Commission's Decision and Order. Specifically, the ATU asserted that the remaining allegation pertained only to Local 26 and did not involve the

² In remanding the case, the Commission referenced an allegation by Lacey that Local 26 representatives "exhibited hostility toward his protected activities of filing a charge by constantly telling its members that his MERC filing cost the membership \$8000 in lawyer's fees." That assertion, however, was not set forth in the unfair labor practice charge, nor did Lacey ever seek to amend the charge to include such a claim. Therefore, it would be improper to consider such statements as constituting an independent violation of the Act. Rather, I interpret the Commission's reference to the allegation as being potentially relevant to the issue of the Local's motivation in prohibiting Lacey from running in the general election. In any event, Lacey offered no proof at hearing to support his claim that Local representatives made such remarks.

International. For that reason, the ATU sought clarification that it had been dismissed from any further proceedings in this case. I held a prehearing conference with the parties on November 15, 2016, during which I indicated that I had no authority to clarify an order issued by the Commission.

There was also discussion during the prehearing conference about the remedy which Lacey is seeking in this matter should he prevail on his claim that the Unions violated Section 10(2)(a) of PERA. Lacey is requesting that the Commission direct the Local to nullify the results of its prior election for executive board members and hold a new election with his name on the ballot. I advised the parties that based upon my understanding of the factual allegations set forth in the charge and the applicable case law, such relief would constitute an unprecedented intrusion into the internal affairs of the Local and would be disruptive to labor relations between Respondents and the City. For those reasons, I specified that the appropriate remedy for a finding of discrimination, coercion and/or interference by the Union would be a cease and desist order and the posting of a notice to members of the bargaining unit.

On November 23, 2016, Charging Party filed a motion “for leave to appeal.” In the motion, Lacey expressed his intent to proceed with an evidentiary hearing on the allegation that he was prevented from running in the general election while, at the same time, he sought permission from the undersigned to proceed directly to the Court of Appeals on the remaining counts of the charge which the Commission had already dismissed. On November 30, 2016, I issued an order indicating that I had no authority to grant or deny a request for leave to the appellate court and that the evidentiary hearing on remand would proceed as scheduled on January 12, 2017. The hearing was completed on that date and post-hearing briefs were filed by the parties on or before March 3, 2017.

Findings of Fact:

I. Case No. CU14 E-028; Docket No. 14-011790-MERC

As noted, the Commission remanded this matter to the undersigned for a determination of whether Respondent restrained or coerced Lacey by preventing him from running for a position on the Local’s executive board because he had previously filed an unfair labor practice charge against the Union. The prior charge was filed against ATU Local 26 on May 22, 2014, and alleged a breach of the duty of fair representation by the Local in violation of Section 10(2)(a) of PERA. The charge, Case No. CU14 E-028; Docket No. 14-011790-MERC, asserted that members of the Local’s executive board acted unlawfully by accepting payments for conducting Union business which exceeded the amount permitted under the collective bargaining agreement and by coercing or intimidating members into ratifying that contract. In addition, the charge asserted that there were various irregularities with respect to the conduct of the ratification election. In a decision issued on March 20, 2015, ALJ Julia C. Stern recommended dismissal of the charge in its entirety. The ALJ concluded that the coercion and intimidation claim was untimely under Section 16(a) of PERA, as was Lacey’s contention that the Union failed to provide its members with a copy of the ratified contract. With respect to the alleged election improprieties, the ALJ found that none of the assertions set forth by Lacey stated a valid claim for breach of the duty of fair representation. When no exceptions were filed, the Commission adopted the ALJ’s recommended decision as its final order on April 27, 2015.

II. The Instant Charge -- Background

DDOT has historically operated three bus terminals: Shoemaker, Coolidge and Gilbert. Sometime during the early 2000s, the Shoemaker terminal was closed for a period of approximately eight years. During that period, some Shoemaker employees were reassigned to the Coolidge terminal, while others were moved to Gilbert. The closure was considered temporary and employees retained their identity as operators from their original terminal during the period Shoemaker was shuttered. When Shoemaker reopened, employees were returned to that terminal. In 2010 or 2011, the Coolidge terminal was closed and it remained shut down at the time of the hearing in this matter. As before, employees from the closed terminal have been temporarily reassigned until the Coolidge terminal reopens at some point in the future. Charging Party had been working as a bus operator out of the Coolidge terminal. When that terminal was closed, Lacey was moved to the Gilbert terminal, where he was working at the time of the events giving rise to the instant charge. The Union considers Lacey a “Coolidge operator working from Gilbert.”

Article 6 of the collective bargaining agreement between the City and ATU, Local 26 is entitled, “Union Representation.” Several provisions of Article 6 pertain to representation issues in the event of a terminal closure. Article 6, Section D provides that throughout the life of the contract, one member of the Union’s executive board and one steward from a closed terminal will qualify for paid union time. Article 6, Section L states, in pertinent part:

Union Representation During Temporary Shutdowns of Terminals for Repair Work

1. Notwithstanding any provisions of Article 6, for the period of temporary shutdowns of each of the operating bus terminals, the City agrees that the existing Executive Board member and Steward positions for each operating terminal will remain intact, even when one of the terminals is temporarily closed, with apportion of the runs from that closed terminal being assigned to other terminal(s) remaining open.
2. Whenever Union representation issues arise at any then open terminal, an Executive Board member or Steward will serve a driver issue from his/her respective terminal (e.g. a Gilbert Executive Board member or Steward will serve a Gilbert driver issue). It is understood that if maintaining this representation arrangement is highly impractical in a particular situation or would be too disruptive of Department operations, then the Union will work with the Department to provide for the most reasonable representation arrangement available at the time.

* * *

During this period of temporary shutdowns Union representation elections and voting will be conducted based on the then existing list of operating terminal drivers.

III. Constitution and By-Laws

The ATU Constitution and General Rules contains language pertaining to the election of officers for the International Union's executive board. The version of the ATU Constitution which was in effect at the time of the events giving rise to the charge was amended in 2013 at the International Union's 57th general convention. Pursuant to Article 6 of the ATU Constitution, an election for positions on the International's executive board is held every third year. Article 6, Section 22 provides, in pertinent part, "Beginning with the 57th Convention and continuing thereafter, no person shall be a candidate for more than one office." Although the ATU also has provisions governing elections for its local affiliates, there is no analogous language in those rules prohibiting a member from running for more than one position on the local executive board.

The Local 26 by-laws, last amended in 1999, also contain provisions governing the election of officers and executive board members for the Local. Pursuant to those by-laws, the officers of the Local are the president-business agent, vice president-business agent, financial secretary-treasurer, recording secretary and sergeant-at-arms. The Local also has an executive board comprised of the vice president-business agent, financial secretary-treasurer, recording secretary, one board member from each terminal and one steward from each terminal. Officers and board members are selected at a general election which is held every three years during the fourth week of May. The eligibility requirements are set forth in Article 15 of the by-laws, which states that any member of the bargaining unit in good standing with the Local may run for elective office provided that he or she has attended six regular meetings each year during the two years preceding the election. Under Article 15, Section B, unit members who were present for less than the required number of meetings due to sickness or injury may be excused from the attendance requirement.

Article 17 of the Local 26 by-laws cover the nomination process for the election of officers for the Local 26 executive board. That article provides, in pertinent part:

Section A. The F.S.T. [Financial Secretary-Treasurer] of the L.U. [Local Union] shall announce by bulletin the election and filing dates, which shall be from the third Friday in April to the third Friday in May at twelve noon. Any member desiring to run for an elective office in the L.U. shall file his/her intentions with the Secretary, in person or by registered mail with the signature of a member in good standing, in this period. Those candidates whose names are in the book and qualify in accordance with the L.U. By-laws and International Laws and Constitution shall be declared nominated and their names shall appear on the ballot in alphabetical order.

Section B. The P.B.A. [President-business agent-Business Agent] of the L.U. shall declare the nominations closed at twelve noon on the third Friday in May, in the presence of the Executive Board who shall check and rule on the eligibility of all candidates. The Executive Board shall instruct the F.S.T. of the L.U. to notify all candidates whose names appear on the ballot by letter and further, notify those who did not qualify in accordance with L.U. and International Laws and Constitution.

* * *

Section G. Executive Board members and Stewards shall be elected by and from the terminal which he/she is to represent.

The Local 26 by-laws also contain general provisions relating to interpretation of the rules and various other procedural matters. Among these provisions is Article 24, which provides that all “questions of order” are to be governed by *Robert’s Rules of Order*.³ Article 27 of the Local by-laws states: “Matters Not Provided For -- Should any question arise in this L.U., not herein provided for, the Constitution and General Laws of the International shall govern in such cases.”

³ Article 66 of Robert’s Rules of Order govern nominations and elections. It states:

Before proceeding to an election to fill an office it is customary to nominate one or more candidates. This nomination is not necessary when the election is by ballot or roll call, as each member may vote for any eligible person whether nominated or not. When the vote is viva voce or by rising, the nomination is like a motion to fill a blank, the different names being repeated by the chair as they are made, and then the vote is taken on each in the order in which they were nominated, until one is elected. The nomination need not be seconded. Sometimes a nominating ballot is taken in order to ascertain the preferences of the members. But in the election of the officers of a society it is more usual to have the nominations made by a committee. When the committee makes its report, which consists of a ticket, the chair asks if there are any other nominations, when they may be made from the floor. The committee's nominations are treated just as if made by members from the floor, no vote being taken on accepting them. When the nominations are completed the assembly proceeds to the election, the voting being by any of the methods mentioned under Voting, unless the by-laws prescribe a method. The usual method in permanent societies is by ballot, the balloting being continued until the offices are all filled. An election takes effect immediately if the candidate is present and does not decline, or if he is absent and has consented to his candidacy. If he is absent and has not consented to his candidacy, it takes effect when he is notified of his election, provided he does not decline immediately. After the election has taken effect and the officer or member has learned the fact, it is too late to reconsider the vote on the election. An officer-elect takes possession of his office immediately, unless the rules specify the time. In most societies it is necessary that this time be clearly designated. *Robert’s Rules of Order Revised*, Fourth Edition, Robert’s Rules Online, available at www.rulesonline.com.

IV. The 2016 General Election

Sometime in late April or early May of 2016, Lacey went to the office of Local 26 for the purpose of entering his name in the nomination book to run for Union president-business agent in the upcoming election which was scheduled to take place on May 27, 2016. The nomination book was unavailable at that time, so Lacey subsequently sent in his nomination by registered letter. The letter was received by Henry Foutner, who was the Local's financial secretary/treasurer at the time.⁴ It was Foutner's standard practice not to open registered mail himself; rather, he regularly forwarded such correspondence, including Lacey's letter, directly to Local 26 President-business agent Fred Westbrook, Jr.

The deadline for the submission of nominations was May 20, 2016. On that date, Lacey came to Foutner's office and submitted a nomination to run for Gilbert terminal executive board member. Later that day the Local 26 executive board met for the purpose of opening the nomination book and determining whether the nominees listed therein were eligible to run in the election. Westbrook was not in attendance, though he did confer with the Local's vice president prior to the meeting. The vice president chaired the meeting, during which the executive board made the determination that Lacey was not eligible to run for either president-business agent or Gilbert terminal board member.

Perri Lile was the only witness to testify in this matter who attended the nomination meeting. Lile was a member of the Local Union's executive board at the time of the meeting. She initially testified that the board declared Lacey ineligible to run because he had not attended six meetings during the two-year period preceding the election as required by the Local by-laws. However, Lile subsequently asserted that Lacey was declared ineligible to run for president-business agent because he had written down the wrong Local number when he submitted the nomination. According to Lile, Lacey nominated himself to run for president-business agent of ATU Local 28 rather than Local 26. With respect to his nomination for Gilbert terminal executive board member, Lile asserted that the board had declared Lacey ineligible to run for that position because at the time of the nomination he was still considered a bus operator assigned to the Coolidge terminal. According to Lile, that determination was based upon the most recent roster provided by the City which identified Lacey as a bus operator out of the Coolidge terminal. Lile testified that in order for Lacey to be considered a Gilbert bus operator, he would have had to put in for a formal transfer.

Foutner did not attend the May 2016 nomination meeting. However, he testified that after the meeting, he was informed that the executive board had declared Lacey ineligible to run for Local president-business agent because after he submitted his nomination for that position, he nominated himself to run for Gilbert Terminal executive board member. According to Foutner, the second nomination cancelled out the earlier one because "you can't run for two positions." Foutner

⁴ Foutner was previously charged with violating the ATU constitution, an offense which would have disqualified him from running for an officer position with the Local. However, the membership ultimately found him not guilty of the charges.

testified that Local 26 follows the rule set forth in the International Union's constitution which prohibits a member from running for more than one position in an election. Foutner indicated that he learned of this rule during a conversation with the president of the International. With respect to Lacey's nomination for Gilbert terminal board member, Foutner testified that Lacey was deemed ineligible to run for that position because he was still considered to be a Coolidge operator -- despite the temporary closure of that facility.

As financial secretary/treasurer, it was Foutner's responsibility to notify members whether their nominations had been accepted or rejected. By letter dated May 21, 2016, Foutner informed Lacey that his name would not appear on the ballot for the election of Local 26 officers and executive board members. Specifically, the letter stated:

You signed the book to run for Gilbert Board Member and you are a Coolidge Operator and Coolidge Operators can only run for City wide positions ie [sic] President-business agent, Vice President-business agent, Financial Secretary-Treasurer, Recording Secretary or Sergeant-at-Arms or positions at the Coolidge Terminal ie [sic] Coolidge Board Member or Coolidge Steward! Page 9 of the Master Agreement between the City of Detroit and Amalgamated Transit Union AFL-CIO-Local 26 Section L. Union Representation During Temporary Shutdowns of Terminals for Repair Work. number 4. It reads: During this period of temporary shutdowns Union representation elections and voting will be conducted based on the then existing list of operating drivers. On your question of defaulting into another nomination position! [sic] Although Local 26 By-Laws doesn't speak to being nominated for two positions in Article 27 Matters Not Provided for, Section A, in Local 26 By-Laws it states: Should any question arise in this L.U., not herein provided for, the Constitution and General Laws of the International Association shall govern in such cases. Section 6.22 of the A.T.U. Constitution and General Laws Election of International Officers it [sic] clearly states: Beginning with the 57th Convention (which was in 2013) and continuing thereafter, no person shall be a candidate for more than one office. ect. [sic] when you signed the book to run for "Gilbert Board Member" on Friday May 20, 2016 you cancelled out the previous position "President-business agent" that someone had previously nominated you for." [Emphasis in original.]

On July 3, 2016, Lacey sent an appeal to International president Fred Hanley challenging the May election. In the five-page letter, Lacey asserted that there were numerous improprieties in the conduct of the election which he claimed constituted an effort by Westbrook to deter him from being allowed to run for a position on the executive board. Among the allegations set forth by Lacey in the letter were: (1) the notices of election issued by the Local were not in accordance with the ATU constitution; (2) the Local denied Lacey the right to review his meeting attendance records; (3) the Local convinced its membership to vote down an amendment to the by-laws which Lacey had proposed concerning eligibility to run for office; (4) the decision to deny Lacey the opportunity to run for Gilbert terminal executive board member was based upon an unlawful provision in the collective bargaining agreement which effectively gives the City the right to determine who can run for Union office; (5) the decision to deny Lacey the opportunity to run for president-business agent of Local 26 was improper because there is no rule in the Local by-laws

prohibiting a member from running for more than one position. Lacey sent additional letters to the International regarding the election on July 20, 2016, and August 14, 2016.

ATU President Hanley notified Charging Party that the International had denied his appeal in a letter dated October 12, 2016, finding no merit to the assertion that the Local improperly prohibited Lacey from running for an executive board position. In the letter, Hanley asserted that the issues raised in the appeal were discussed at the Local's June 17, 2016, executive board meeting and that the board had rejected Lacey's challenges and sustained the results of the election. According to Hanley, the challenges and the board's recommendations were then brought before the June 26, 2016, membership meeting, but the board's findings were sustained because a quorum was not achieved and Lacey was absent.⁵ Addressing the issues raised by Charging Party on appeal, Hanley concluded that the Local's attendance requirements rendered Lacey ineligible to run for a position on the executive board and that Lacey was not eligible to run for Gilbert terminal executive board member because he was assigned to the Coolidge terminal. With respect to that latter issue, Hanley wrote:

The Local 26 Bylaw, Article 17, Nomination and Election of Officers, Section G, provides:

Executive Board Members and Stewards shall be elected by and from the terminal which he/she is to represent.

At all times for the 2016 nomination process you physically worked at Gilbert Terminal and sought nomination to represent Gilbert Terminal, but you were still classified as an employee of the temporarily closed Coolidge Terminal. Section 14.2, Eligibility for LU Office, of the CGL [ATU Constitution and General Laws] states in part that, "Members to be eligible to run for office in an LU must have complied with the provisions of the Constitution and the bylaws of the LU." Thus, the CGL permits locals to enact bylaw criteria for office eligibility more restrictive than that found in the CGL. Geographic eligibility restrictions, such as by terminal, are one such permissible restriction. You note that the Coolidge Terminal has been closed for four years and there are no plans to reopen it, so in your view the bylaw is outdated. Whether or not the bylaw is outdated is a matter to be addressed by the local and is not grounds for disregarding it. Lastly, although questions may remain on the best process by which to represent members from closed terminals, I again sustain the action of the local regarding your eligibility for office.

Hanley did not specifically address the issue of Lacey having been nominated for two positions.

V. Penny Allen and the Safety Committee

Penny Allen was an employee of DDOT assigned to the Shoemaker terminal at the time of the events giving rise to the charge. Allen served as a Union representative on the DDOT safety

⁵ Besides these references in the Hanley letter, no evidence was introduced at hearing regarding either of the June 2016 Local 26 meetings.

committee, which is described in Article 6, Section K of the collective bargaining agreement as follows:

Each terminal shall have a Safety Committee consisting of the Board Member, Steward, Union Safety Representative (or alternate), District Superintendent (or representative) and the Auto Repair Superintendent (or representative). The Safety Committee at each terminal shall meet on a monthly basis to discuss and resolve health and safety concerns. The Departmental Safety Representative may participate in these monthly terminal meetings. Members of the Terminal Safety Committee will be excused from work without the loss of time to participate in monthly terminal safety meetings. The Union Safety Representative or alternate will be excused from work without loss of time to attend Departmental Safety meetings.

Westbrook is not involved in deciding who is appointed to the safety committee. Rather, representatives are selected by, and serve at the discretion of, individual executive board members. Although Allen was assigned to the Shoemaker terminal, she was appointed by executive board member Perri Lile to serve as safety representative for the Coolidge terminal. Allen testified that at the time of her appointment to the committee, she was told that a safety representative could be selected to perform that function at any terminal regardless of the specific location to which that unit member was assigned to work.

Allen submitted an affidavit on Lacey's behalf in connection with the prior unfair labor practice proceeding in Case No. CU14 E-028; Docket No. 14-011790-MERC. On some unidentified date thereafter, Allen's appointment as safety representative for the Coolidge terminal was rescinded by Lile on the ground that Allen did not work at that terminal. At hearing, Allen testified that she believes she was removed from the safety committee because of the aforementioned affidavit. Although Lacey called Lile to testify during his case-in-chief in this matter, he did not ask her any questions about Allen or the safety committee, nor did he introduce the Allen affidavit as an exhibit.

VI. Geraldine Johnson and the International Convention

The International holds a general convention every three years. Delegates and alternate delegates to the convention are selected by local elections. There is no provision in the Local by-laws requiring that a candidate for delegate be from any particular terminal. Geraldine Johnson has been employed by DDOT as a bus operator since 1997 and is a member of Local 26. Lacey and Johnson nominated each other for delegate positions at a meeting held in July or August of 2016. Two days later, Johnson was informed that she was ineligible to run as delegate because she was working as a security guard at the time and was not a member of Local 26. Johnson testified in this matter as a witness for Charging Party. Although Johnson denied that she was working as a security guard, she testified that she was on light duty assignment from May 28, 2016, through July 2016, when she went off work on disability leave. When asked to explain the relevancy of Johnson's testimony, Lacey asserted that Johnson, like Allen, had provided an affidavit in the prior case and that the Local retaliated against her for that action.

At hearing, Johnson denied having submitted any affidavit on Lacey's behalf.⁶ It is undisputed that Lacey himself was allowed to run in the election for a delegate position.

Discussion and Conclusions of Law:

The instant charge named both the International Union and the Local as Respondents and several allegations in the charge specifically asserted misconduct by the ATU. It is Paragraph 10 of the charge which contains the allegation regarding which the Commission remanded to the undersigned, the remaining counts having already been dismissed. Paragraph 10 alleges, "Fred Westbrook and member [sic] of Local 26 Executive Board have been discriminatory in their application of Constitutional Law and Local By-Laws to deny applications for nominations in their General Election." Although Lacey attempted to clarify this claim in his response to the order to show cause by providing additional information concerning the alleged retaliatory acts, he did not move to amend the charge to include an allegation that the International Union was complicit in the denial of his rights under Section 10(2)(a) of PERA, nor did Lacey introduce any evidence into the record at hearing which would even suggest that representatives of the International harbored animus or hostility toward him for filing the prior charge. In fact, the charge was filed on April 13, 2016, before Lacey filed his appeal with ATU and the International became involved in this dispute. Thus, this decision will focus solely on the issue raised in Paragraph 10 of the charge; i.e. whether Lacey was unlawfully prevented from running for election by the officers of Local 26 or by members of the Local's executive board. With respect to that issue, the record is totally devoid of any evidence which would justify the conclusion that the Local took such action for the purpose of retaliating against Lacey for filing the earlier charge.

Although there was repeated reference at hearing to Charging Party's meeting attendance record, it is undisputed that Local 26 did not rely upon that factor to justify its decision to keep Lacey's name off the ballot. Rather, the Local's stated reasoning for denying Lacey the opportunity to run for executive board member in the 2016 election was set forth in the letter which Foutner sent to Lacey on or about May 27, 2016. In that letter, Foutner indicated the executive board had made the determination that Lacey was ineligible to run for Gilbert terminal executive board member because he was still a Coolidge operator at the time of the election and that the nomination for Gilbert terminal executive board member canceled out Lacey's earlier nomination for Union president-business agent. Lacey argues that those reasons were pretextual and that the determination of the Local's executive board conflicts with the language of the ATU constitution and the Local 26 by-laws. I disagree.

In rejecting Charging Party's candidacy for Gilbert terminal board member, Local 26 relied on Article 17, Section G of its by-laws, which states, "Executive Board members and Stewards shall be elected by and from the terminal which he/she is to represent." Lacey argues that this provision should not have rendered him ineligible to run for a position as Gilbert terminal board member since he was working out of that terminal at the time of the 2016 election. However, Lile

⁶ A review of the file in Case No. CU14 E-028; Docket No. 14-011790-MERC, which is in the possession of the Bureau of Employment Relations and of which I take judicial notice, reveals that Lacey submitted affidavits from several individuals, including Johnson, as part of the post-hearing brief which he filed with ALJ Stern on October 21, 2014.

testified that although Lacey was assigned to the Gilbert terminal in May of 2017, eligibility for a Local board position is based upon the last roster provided by the City which, in this case, still identified Lacey as an employee of the Coolidge terminal. According to Lile, Lacey was considered by the Local to be a “Coolidge operator working out of Gilbert.” Likewise, Foutner testified that Lacey was still considered a Coolidge operator despite the temporary closure of that facility. Lacey did not introduce any evidence showing that he ever requested a transfer to the Gilbert facility, nor did he present a City roster or any other documentation to contradict the testimony of the Union witnesses concerning his employment status. There is also no evidence in the record suggesting that the Union has ever interpreted Article 17, Section G differently by allowing an employee to run for a board position at a terminal to which he or she was reassigned due to a temporary shutdown.

The Local’s interpretation of Article 17, Section G is also consistent with the language of the collective bargaining agreement entered into between the City and Local 26. Article 6, Section D of the contract provides that one member of the Union’s executive board and one steward will continue to qualify for paid union release time even if the terminal to which they are assigned is closed. The contract further states that during the period of a temporary shutdown of an operating bus terminal, the “existing Executive Board member and Steward positions for each operating terminal will remain intact.” In addition, the agreement provides that when a Union issue arises involving an employee from a terminal which has been temporarily closed, he or she will continue to be serviced by the executive board member or steward from that employee’s original terminal.⁷ These provisions evince a clear intent by both the City and the Local to preserve the existing Union leadership structure in the event a terminal is temporarily closed. For these reasons, I find that the Union’s determination that Lacey was ineligible to run for Gilbert terminal board member was a reasonable interpretation of its own by-laws and is in no way indicative of any intent to discriminate or retaliate against Lacey because he filed an unfair labor practice charge with the Commission.

Similarly, there is no evidence in the record proving that the Local’s stated reason for denying Charging Party the opportunity to run for president-business agent was pretextual. The record establishes that Lacey submitted his nomination to run for president-business agent by registered mail in late April or early May of 2016. On May 20, 2016, Lacey came to the Local office and submitted a nomination for Gilbert terminal board member. Foutner testified that the latter nomination cancelled out the earlier one pursuant to a provision in the ATU Constitution and General Rules. Article 6, Section 22 of the International constitution provides that “no person shall be a candidate for more than one office.” Although that provision governs elections for positions on the International executive board, neither the constitution nor the Local 26 by-laws specifically address the question of whether a member can run for more than one office. However, Article 27 of the Local 26 by-laws state, “Should any question arise in this L.U., not herein provided for, the Constitution and General Laws of the International shall govern in such cases.” Given that Article 6, Section 22 of the International constitution is the only rule governing dual nominations, it was

⁷ In his post-hearing brief, Charging Party asserts that Article 6 of the contract constitutes a violation by the City of Detroit of Section 10(1)(b) of PERA, which prohibits a public employer from initiating, creating, dominating, contributing to, or interfering with the formation or administration of a labor organization. Given that Lacey has not filed a charge against the City, this argument need not be addressed.

not unreasonable for the Local to have determined that Lacey's nomination for Gilbert terminal board member cancelled out his earlier nomination for president-business agent.⁸

A Union's interpretation of its own rules is entitled to considerable deference and must be upheld unless patently unreasonable. *Vesta v Hoffa*, 451 F2d 706, 709 (CA 6 1971); *Monzillo v Biller*, 735 F2d 1456, 1458 (DC Cir 1984). See also *Telephone Traffic Union Local 212 (New York Telephone)*, 278 NLRB 998, 1002 (1986) ("A union is permitted to interpret its constitution in a reasonable manner unless it is subversive of personal or property rights"). Absent proof that Local 26 interpreted its rules differently in this matter or other evidence establishing that the Local was hostile to Charging Party's rights under the Act, I am unable to find a violation of Section 10(2)(a).

In an attempt to establish animus on the part of the Local executive board, Charging Party relies on the testimony of Penny Allen. It is undisputed that Allen provided an affidavit on Lacey's behalf in the prior unfair labor practice proceeding and that she was later removed from her position as safety representative. Allen testified that she believes that it was her participation in the earlier case which resulted in her removal from the safety committee. However, beyond that conclusory assertion, there is nothing in the record to establish a nexus between those two occurrences. To infer a discriminatory motivation under such circumstances would be to inappropriately engage in speculation and conjecture. Such speculation as to motive has been expressly prohibited by the Michigan Supreme Court in *MERC v Detroit Symphony Orchestra*, 393 Mich 116 (1974). While it could be argued that the timing of Allen's removal from the safety commission was curious, the Commission has repeatedly held that suspicious timing is not sufficient, by itself, to establish unlawful motive. Rather, there must be other circumstantial evidence which supports the conclusion that the temporal relationship was not mere coincidence. See e.g. *Southfield Pub Sch*, 22 MPER 26 (2009); *Macomb Twp (Fire Dep't)*, 202 MERC Lab Op 64, 73; *City of Detroit (Water & Sewerage Dep't)*, 1985 MERC Lab Op 777, 780. No such evidence exists in the instant case.

Charging Party asserts that a discriminatory motive is established by the fact that Local 26 did not uniformly follow its own rules. Lacey compares the Union's treatment of him with that of Henry Foutner, who the Local allowed to run for the position of financial secretary/treasurer in 2016, despite the fact that he had been charged with violating the International constitution. However, the record establishes that Foutner was actually cleared of such charges by the membership. The testimony of Geraldine Johnson, which Charging Party contends also establishes disparate treatment by Local 26, likewise has no apparent relevance to this case. Lacey asserts that Johnson was prohibited from running in a Union election because she too submitted an affidavit on his behalf in Case No. CU14 E-028; Docket No. 14-011790-MERC.

However, the election in question was not the general election, but rather a vote to select delegates for the International Convention. Notably, Lacey himself was nominated and allowed to run for a delegate position in that election, thus undermining his claim that the leadership of Local 26 was hostile to his interests.

⁸ Lacey asserts that the Local 26 by-laws mandate that Respondent follow *Robert's Rules of Order* which, he claims, contains a provision, Article 66, allowing a person to be nominated for more than one office where an election is held by mail ballot. However, Article 66 of the current version of *Robert's Rules of Order* contains no such provision and, even if it did, that fact would not cause me to question the Union's interpretation of its internal rules.

In his post-hearing brief, Charging Party asserts that representatives of Local 26 portrayed him as an “antagonist” to other members by telling them that he cost the Union thousands of dollars. Charging Party made the same claim in his response to the order to show cause, alleging, as proof of the Local’s hostility toward him, that Westbrook and other Union officials told members that the prior unfair labor practice charge cost the Union \$8000 in attorney fees. Although Lacey was called as a witness by Respondents in this matter, he did not testify on his own behalf and there is no evidence in the record substantiating his claim that he was the subject of disparaging remarks.

Finally, Charging Party contends that animus against him is established by the fact that Westbrook once threatened to charge him with misconduct. The only evidence in the record relating to this contention is a passing acknowledgment by Westbrook that sometime after the election, he sent a letter to Lacey warning him that the disclosure of Union business is a chargeable offense. Westbrook testified that Lacey had “disclosed Local Union business all over the Amalgamated Transit Union to other Locals.” However, the record contains no additional information or context regarding the alleged disclosure or even a denial by Lacey of the allegation that he had improperly disclosed Union business. It would be mere speculation to conclude based on this evidence that the warning issued by Westbrook was motivated by Lacey having filed the earlier charge with the Commission.

I have carefully considered all of the remaining arguments asserted in this matter and conclude that they do not warrant a change in the result. Despite having been given a full and fair opportunity to do so, Charging Party has failed to meet his burden of proving that Respondents ATU, Local 26 violated Section 10(2)(a) of PERA. Accordingly, I conclude that Paragraph 10 of the charge against the Unions in Case No. CU16 D-026; Docket No. 16-010666-MERC, must be dismissed.

RECOMMENDED ORDER

Paragraph 10 of the unfair labor practice charge filed by Frank Lacey against Amalgamated Transit Union and its affiliated Local 26 in Case No. CU16 D-026; Docket No. 16-010666-MERC, is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: October 24, 2017