

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

In the Matter of:

WAYNE COUNTY SHERIFF'S ASSOCIATION/
POLICE OFFICERS ASSOCIATION OF MICHIGAN (POAM),
Labor Organization-Respondent,

MERC Case No. CU18 E-012

-and-

ANTIONETTTE LOYD,
An Individual Charging Party.

APPEARANCES:

Christopher Tomasi, Assistant General Counsel, Police Officers Association of Michigan, for Respondent

Antionette Loyd, appearing on her own behalf

DECISION AND ORDER

On September 11, 2018, Administrative Law Judge Julia C. Stern issued her 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 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: November 26, 2018

¹ MAHS Hearing Docket No. 18-010211

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

In the Matter of:

WAYNE COUNTY SHERIFF'S ASSOCIATION/
POLICE OFFICERS ASSOCIATION OF MICHIGAN (POAM),
Labor Organization-Respondent,

Case No. CU18 E-012
Docket No. 18-010211-MERC

-and-

ANTIONETTTE LOYD,
An Individual-Charging Party.

APPEARANCES:

Christopher Tomasi, Assistant General Counsel, Police Officers Association of Michigan, for Respondent

Antionette Loyd, appearing for herself

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

On May 3, 2018, Antionette Loyd, employed by the Wayne County Sheriff's Department (the Employer) filed the above unfair labor practice charge against her collective bargaining representative, the Wayne County Sheriff's Association, pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On July 12, 2018, Respondent filed a position statement and motion for summary disposition of the charge pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, 2014 AACRS, R 423.165. Based on the facts as alleged by Loyd in her charge and other pleadings, I make the following conclusions of law and recommended order.

The Unfair Labor Practice Charge and Subsequent Pleadings

Loyd is employed by the Employer as a deputy sheriff. In May 2015, Loyd took an exam administered by the Employer for promotion to the position of sergeant and was afterward placed on a promotional list for the position. In 2017, the Employer scheduled a new sergeant's exam and created a new promotional list based on the results of this exam. The last promotion the Employer made from the 2015 list was in June 2017, and sometime thereafter it began promoting from the

new list. According to Loyd, the Employer was prohibited by the collective bargaining agreement from promoting from a new list until a sufficient number of deputies had been promoted from the old list. Loyd made this argument first to Respondent's executive board in January 2018, and then to Ray Murray, her chief steward, in March or April 2018. However, Respondent did not file a grievance or take any other action to stop the Employer from using the new list to make promotions. Loyd alleges that Respondent violated its duty of fair representation by failing or refusing to listen to her arguments about the contract breach or provide her with information supporting its interpretation of the contract.

On May 17, 2018, I issued an order to Loyd to file a more definite statement of her charges against Respondent. Loyd filed her statement on June 25, 2018. On July 12, 2018, as noted above, Respondent filed a position statement and motion for summary disposition. Attached to this motion were several documents and an affidavit executed by Jeremy Cady, Respondent's former first vice-president. On July 16, 2018, Respondent filed a supplemental pleading correcting a statement made in its July 12 motion. On July 18, 2018, Loyd filed another copy of her more definite statement as her response. In the email accompanying her response, Loyd also wrote:

I received the information from POAM and their response to my charges. First, Ofc. Jeremy Cady is no longer employed with the Wayne County Sheriff Department as of February. I found this out last week. Secondly, I never had a discussion with Ofc Cady about this issue as I only brought this matter forward to the executive board in [the]January of 2018 meeting, and thirdly, the language that is stated by POAM and Ofc. Jeremy Cady is contradictive [sic] to the language that is clearly stated in the contract pertaining to the years of the test, and lastly I was number 18 on the list, plus they have someone on the list awaiting promotion that is already a sergeant. So yes, I have issues with the thrown together response from POAM and Jeremy Cady. . . . so if it would please the agency I still would like to have a meeting. Thank you.

Facts:

Although Respondent and Loyd disagree about certain facts, these facts are not material to my decision. Except as specifically indicated, the facts below are not in dispute.

Respondent and the Employer currently have a collective bargaining agreement covering the term October 1, 2015, through September 30, 2019. Article 15.5(B) of the agreement addresses the establishment and replacement of the promotional list for the position of sergeant. It states:

The County will begin the process of establishing a new prospective promotional eligibility list as soon as 95% of those candidates with a score of 75% or more on this list have been exhausted. The County shall notify the Union when 95% of those candidates with a score of 75% or more on this list have been exhausted. The new prospective list will take immediate effect at the time the last candidate with a score of 75% or more has been promoted from the current list. The new prospective list will have a duration of 2 years from the date of the preceding list was established [sic]. The Union shall be furnished a copy of all lists once they are established. Moreover, the Sheriff may make one discretionary charter promotion off of each list.

Loyd took a promotional exam for the position of sergeant in May 2015. The promotional list for that exam was certified sometime in September 2015. Loyd's name was on that list. According to Respondent and records it attached to its motion, a total of 14 promotions were made from this list, with the last one made in June 2017. According to Loyd, only 12 deputies, not including herself, were promoted from the 2015 list. However, there is no dispute that when the Employer made the last promotion from this list it had not promoted 95% of the candidates on this list with a score of 75% or more.

In June 2017, the Employer held a new sergeants' promotional exam and in or around September 2017 it established a new list. According to Respondent and its records, the first promotion from the new list occurred in July 2018. According to Loyd, however, one deputy was promoted from the new list before July 2018.

Cady's affidavit states that he served as Respondent's first vice-president from August 15, 2013, until December 31, 2017, was a member of Respondent's negotiating committee for Respondent's current contract with the Employer, and participated in negotiating the language in Article 15.5(B). He states in his affidavit that it was the intent of the parties to the negotiations that under Article 15.5(B) the sergeant's promotional list would expire two years after its inception regardless of how many candidates remained to be promoted from that list. In his affidavit, Cady asserts that Respondent's grievance committee examined Loyd's complaint and determined that it had no merit. He also asserts that he himself explained to Loyd the reason why a grievance would not have merit, although his affidavit does not state when he and Loyd had this conversation. He also claims in his affidavit to have personal knowledge that Respondent's executive board explained to Loyd why a grievance would not have merit. However, he does not explain in his affidavit how he came to have this knowledge.

Loyd denies discussing the new promotional list with Cady. According to Loyd, it was not until January 2018 that she raised the issue with Respondent's executive board at a monthly membership meeting. At that meeting Latonya Enochs, Respondent's second vice-president, told Respondent's executive board that she, Enochs, had documentation from the Employer's labor relation's office of the parties intent when they negotiated Article 15.5(B). The executive board asked Enochs to provide it with these documents at or before the March 2018 membership meeting. Between the January and March meetings, Loyd asked Respondent's president and vice-president about the documents Enochs had promised to produce but was told nothing. No documents regarding the issue were presented to the executive board at the March membership meeting. After the March meeting, Loyd asked her chief steward, Ray Murray, if he had received any information from the executive board or Enochs. He had not. Loyd drafted a grievance for Murray to file. However, neither Murray nor any other Respondent representative filed a grievance.

Discussion and Conclusions of Law:

A union representing public employees in Michigan owes these employees a duty of fair representation under Section 10(2)(a) of PERA. The union's legal duty toward the employees it represents is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Goolsby v Detroit*, 419 Mich 651,679 (1984); *Eaton*

Rapids EA, 2001 MERC Lab Op 131,134. Also see *Vaca v Sipes*, 386 US 171 (1967). A union is guilty of bad faith when it acts with improper intent, purpose, or motive; this encompasses fraud, dishonesty, and other intentionally misleading conduct. *Spellacy v Airline Pilots Ass'n*, 156 F3d 120, 126 (CA 2, 1998). A union's conduct is arbitrary if it can fairly be characterized as so far outside a wide range of reasonableness that it is wholly irrational, or if the union fails to exercise its discretion or is guilty of gross negligence. *Merritt v Int'l Ass'n of Machinists & Aerospace Workers*, 613 F3d 609 (CA 6, 2010); *Goolsby*.

Although a union owes a duty to all its members, its ultimate duty is to its membership as a whole. Therefore, a union, as long as it acts in good faith, has considerable discretion to decide how or whether to proceed with any particular grievance. That is, a union is not required to file a grievance under all circumstances, and an employee does not have the right to demand that it do so. Rather, a union is permitted to assess each grievance on its individual merit and to weigh the likelihood of the grievance's success against the cost to the union of pursuing it. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. The Commission does not substitute its judgment as to the merits of a grievance for that of the union. A union's deliberate, reasoned decision not to file or pursue a grievance, if made in good faith, is held to be lawful as long as that decision is not outside the range of reasonableness. *Air Line Pilots Ass'n v O' Neill*, 499 US 65, 67 (1991); *City of Detroit, Fire Dep't*, 1997 MERC Lab Op 31, 34-35.

Article 15.5(B) includes this statement, "The new prospective list will have a duration of 2 years from the date of the preceding list was established." According to Respondent, this sentence means that any promotional list established under Article 15.5(B) expires after two years, regardless of how many deputies have been promoted from that list, and all subsequent promotions are to be made from the new list. As Loyd interprets the provision, while the Employer may administer a new exam and create a new list after a list has been in effect for two years, it is required to keep making promotions from the old list until the 95% threshold is reached.

As discussed above, it is well established that a union does not violate its legal duty of fair representation by refusing a member's request to file a grievance if the union, acting in good faith, decides that the grievance lacks merit and that decision is not so outside the range of reasonableness that it can be considered irrational. Respondent and Loyd interpret Article 15.5(B) differently. However, Loyd has not asserted that Respondent refused to file her grievance because of personal hostility toward her or other improper motive. Under applicable law, when a union and a member disagree about the merits of a potential grievance, the Commission does not determine which party's position is correct. Nor is the union required to prove that the member is wrong. Rather, the union is allowed to exercise its discretion as long as its decision is within the range of reasonableness. I conclude that Respondent's decision not to file Loyd's grievance in this case fell within the range of reasonableness and, therefore, it acted within the scope of its discretion.

Rule 165(1) of the Commission's General Rules, 2002 AACS, 2014 AACS, R 423. 165(1), states that the Commission or administrative law judge designated by the commission may, on its own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party on grounds set forth in Rule 165, including that there is no material dispute of fact and the respondent is entitled to judgment as a matter of law. Based on the facts as alleged by Loyd in this case, I find that Respondent did not violate its duty of fair representation and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: September 11, 2018