

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
COUNTY OF WAYNE

SHAWN KOSKYN,
GREG ANDREWS,
FRED ARMSTRONG, and
MARIA SANTIAGO-POWELL,
individuals,

Plaintiffs,

-v-

TEAMSTERS LOCAL 214,
an unincorporated labor union,

Defendant.

Case No. 13-
Hon.

13-011017-CL
-CL
FILED IN MY OFFICE
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CATHY M. GARRETT

Patrick J. Wright (P54052)
Derk A. Wilcox (P66177)
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There is no other pending or resolved civil action
arising out of the same transaction or occurrence
alleged in the Complaint.

COMPLAINT

INTRODUCTION

In 2012 Michigan passed the Freedom To Work Act (the “Act”), commonly known as “Right To Work.” The Act prohibited both public and private-sector unions from requiring payment from employees in the bargaining unit which the union represents. Incorporated in

MCL 423.210, the Act states that public-sector employees, such as Plaintiffs, cannot be required to: “(c) Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value to a labor organization or bargaining representative.”

The defendant Teamsters Local 214 (the “Teamsters”) recently issued a policy (the “Policy”) which violates the Act and discriminates against nonunion members of the bargaining unit by charging them for grievance processing and arbitration, while “fees will routinely be waived” for union members. See Exhibit A.

Even before the Act, it was settled law, both nationally and in Michigan, for both private and public-sector employment, that unions had a duty to represent all employees in the bargaining unit without discriminating between union members and nonmembers. See *Goolsby v Detroit*, 419 Mich 651, 661 (1984) and *Vaca v Sipes*, 386 US 171, 176–177 (1967).

Discriminating against nonunion members is a violation of the “duty of fair representation.”

Given the recentness of Michigan’s new Act, the courts have not yet declared that discriminating against nonunion members by charging them fees for grievance representation is a violation of Michigan’s Public Employment Relations Act (PERA) or the duty of fair representation. However, the clear language of the statute shows that the Teamsters’ Policy violates PERA, and Michigan court precedent clearly shows that such discrimination violates this duty.

Furthermore, for private-sector employment, such discrimination in a right-to-work state is impermissible under the National Labor Relations Act (“NLRA”): “Where state law prohibits a labor organization from compelling membership, a union may not require a fee for vital collective-bargaining services, including grievance processing, which is due nonmembers as a

matter of right.” *Furniture Workers Local 282*, 291 NLRB No. 24 (1988). PERA is modeled on the NLRA, and Michigan’s courts look to the NLRA for interpretative guidance when the statutes are analogous and not otherwise in conflict, as is the case here. See, *AFSCME v Highland Park School Dist*, 457 Mich 74 (1998).

PARTIES AND JURISDICTION

1. Plaintiff, SHAWN KOSKYN, is an individual who is employed by the City of Dearborn.
2. Plaintiff, SHAWN KOSKYN, is an employee in a bargaining unit whose representative is the defendant union, TEAMSTERS LOCAL 124, although he has resigned from the Teamsters.
3. Plaintiff, SHAWN KOSKYN resides in Dearborn Heights, Wayne County, Michigan.
4. Plaintiff, GREG ANDREWS, is an individual who is employed by the City of Dearborn.
5. Plaintiff, GREG ANDREWS, is an employee in a bargaining unit whose representative is the defendant union, TEAMSTERS LOCAL 124, although he has resigned from the Teamsters.
6. Plaintiff, GREG ANDREWS resides in Dearborn, Wayne County, Michigan.
7. Plaintiff, FRED ARMSTRONG, is an individual who is employed by the City of Dearborn.
8. Plaintiff, FRED ARMSTRONG, is an employee in a bargaining unit whose representative is the defendant union, TEAMSTERS LOCAL 124, although he has resigned from the Teamsters.
9. Plaintiff, FRED ARMSTRONG resides in Allen Park, Wayne County, Michigan.
10. Plaintiff, MARIA SANTIAGO-POWELL, is an individual who is employed by the City

of Dearborn.

11. Plaintiff, MARIA SANTIAGO-POWELL, is an employee in a bargaining unit whose representative is the defendant union, TEAMSTERS LOCAL 124, although she has resigned from the Teamsters.
12. Plaintiff, MARIA SANTIAGO-POWELL resides in Wyandotte, Wayne County, Michigan.
13. Defendant TEAMSTERS LOCAL 214 (the “Teamsters”), upon information and belief, is an unincorporated voluntary association labor union.
14. Defendant Teamsters is located in the City of Detroit, Wayne County, Michigan.
15. The policy at issue in this matter was issued by the executive board of the Teamsters and confirmed by the local president, Joseph Valenti, at the Detroit office. Ex. A
16. This complaint requests injunctive and declaratory relief as authorized by MCR 2.605; and equitable relief over which this Court has jurisdiction.
17. This matter involves the Union’s duty of fair representation, over which this court has jurisdiction. See, e.g. *Demings v Ecorse*, 423 Mich 49 (1985).
18. Because the Plaintiffs are public employees, and the Teamsters are representing public employees, the matter is controlled by Michigan’s Public Employment Relations Act (“PERA”), MCL 423.201 et seq.
19. This matter involves a violation of MCL 423.210(3). As such this court has jurisdiction over this matter pursuant to MCL 423.210(10): “[A] person who suffers an injury as a result of a violation or threatened violation of subsection (3) may bring a civil action for damages, injunctive relief, or both. In addition, a court shall award court costs and

reasonable attorney fees to a plaintiff who prevails in an action brought under this subsection. Remedies provided in this subsection are independent of and in addition to other penalties and remedies prescribed by this act.”

GENERAL ALLEGATIONS

20. Plaintiffs hereby incorporate the preceding paragraphs as though restated herein.
21. On or about June 10, 2013, Teamsters instituted the Policy that affects nonunion members of the bargaining unit. The Policy is called “TEAMSTER MEMBERS WHO OPT OUT OF PAYING UNION DUES POLICY.” Ex. A.
22. The Policy states that: “the union will charge a flat fee of \$150.00 for the processing of a grievance and a flat fee of \$____ or one-half of the cost of the arbitrator and outside counsel, whichever is less.” Ex. A, section (d).
23. The Policy states that: “the [section d] fees will routinely be waived so long as the individual has maintained their membership in good standing...” Ex. A, section (h).
24. The Policy states that: “in the event that a non-member refuses to pay the fees, the union will advised [sic] the non-member that it will not pursue his/her case.” Ex. A, section (l).
25. The Policy results in nonunion bargaining unit members being charged fees for grievance representation while the same fees for union members “will routinely be waived.”
26. The Policy will discriminate against nonmembers such as Plaintiffs, and favor members.

THE POLICY VIOLATES PERA

27. Plaintiffs hereby incorporate the preceding paragraphs as though restated herein.
28. MCL 423.209 states that: “(2) No person shall by force, intimidation, or unlawful threats compel or attempt to compel any public employee to do any of the following: (a) Become

or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.”

29. It is unlawful to threaten nonunion represented employees with the payment of fees for grievance representation.
30. The threat of additional fees is meant to compel public employees to join or remain union members.
31. MCL 423.210(2) states: “A labor organization or its agents shall not do any of the following: (a) Restrain or coerce public employees in the exercise of the rights guaranteed in section [MCL 423.209 – the right to not be compelled to become or remain a union member].”
32. MCL 423.210(3) states: “[A]n individual shall not be required as a condition of obtaining or continuing public employment to do any of the following: ... (c) Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value to a labor organization or bargaining representative.”
33. MCL 423.210(5) states: “An agreement, contract, understanding, or practice between or involving a public employer, labor organization, or bargaining representative that violates [MCL 423.210(3)] is unlawful and unenforceable.”
34. The Policy violates MCL 423.209 and MCL 423.210, which are Sections 9 and 10 of PERA.

BREACH OF THE DUTY OF FAIR REPRESENTATION

35. Plaintiffs hereby incorporate the preceding paragraphs as though restated herein.
36. Under PERA, the Union owes a duty of fair representation to all employees in the

bargaining unit it represents.

37. The duty of fair representation is owed to all members, union and nonunion members alike, in the same bargaining unit. See, *Goolsby v Detroit*, 419 Mich 651, 661-65 (1984).
38. The Union breached the duty of fair representation when it discriminated against some bargaining unit members in its Policy.
39. The Union has breached its duty of fair representation where it has promised to refuse to pursue the nonunion members grievance based on the nonunion members' nonpayment.
40. A union breaches the duty of fair representation when it refuses to process a grievance before assessing the merit of the grievance itself. See, *Ruggirello v Ford Motor Co*, 411 FSupp 758, 760 (ED Mich, 1976).
41. The Union's blanket policy of refusing to process grievances of nonunion members based on nonpayment is a refusal to process the grievance without assessing the merits of the grievance.
42. A union may not enact internal policies that discriminate against nonunion members of the bargaining unit where those policies "have a direct effect on terms and conditions of employment." See, *AFSCME Council 25, Local 226*, 26 MPER ¶ 46 (2013).
43. Grievances coverage is covered under the terms and conditions of employment.
44. The Union has discriminated against plaintiffs where it has set punitive terms on nonunion members that have a direct effect on the terms and conditions of employment.
45. PERA imposes a duty of fair representation that is similar to that owed by unions that represent private-sector employees governed by the National Labor Relations Act (NLRA). "...PERA impliedly imposes on labor organizations representing public sector

employees a duty of fair representation which is similar to the duty imposed by the NLRA on labor organizations representing private sector employees.” *Demings v City of Ecorse*, 127 Mich App 608, 615–617 (1983).

46. The NLRA prohibits a private-sector union from charging nonunion members fees for grievance representation: “Where state law prohibits a labor organization from compelling membership, a union may not require a fee for vital collective-bargaining services, including grievance processing, which is due nonmembers as a matter of right.”
47. The PERA duty of fair representation is similar to the private-sector standard in that a union may not charge fees for grievance processing.

RELIEF REQUESTED

For the above reasons, the Teamsters’ Policy violates PERA and the duty of fair representation. Plaintiffs request injunctive and declaratory relief striking down the Teamster’s Policy. Additionally, Plaintiffs request that the Teamsters pay Plaintiffs’ court costs and attorney fees pursuant to MCL 423.210(1): “[A] court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought under this subsection.”

Dated: August 22, 2013

MACKINAC CENTER LEGAL FOUNDATION
/s/ Derk A. Wilcox
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The attached is the policy adopted by Teamsters Local 214's Executive Board Effective July 1, 2013 regarding the procedures to be followed affecting bargaining unit members who opt out of paying dues and have requested to have their grievances processed.



TEAMSTERS MEMBERS WHO OPT OUT OF PAYING UNION DUES POLICY

The following is the policy adopted by the Executive Board on June 10, 2013 affecting members of bargaining unions who opt out of paying union dues.

- (a) the union review cases on the merits (which we already do);
(b) the union will consider pursuing individual cases for bargaining unit members on a non-discriminatory basis;
(c) the union will routinely charge individuals for the actual cost of grievance processing and arbitration (arbitrator's fee and outside counsel);
(d) the union will charge a flat fee of \$150.00 for the processing of a grievance and a flat fee of \$ _____ or one-half of the cost of the arbitrator and outside counsel, whichever is less;
(e) payment in full in advance will be expected;
(g) the union has discretion to waive fees in appropriate cases especially where the issue or decision may have a broad impact on the membership as a whole;
(h) the fees will routinely be waived so long as the individual has maintained their membership in good standing since the end of their probation (except for layoffs);
(i) the union will publicize this policy to all members, non-members and to new hires;
(j) the union will maintain records showing that such notice was given individually to each member and non-member;
(k) the union will create form letters, with a separate form letter for cases (1) that it has determined have no merit and will not be pursued, or (2) that cases where the issue seemingly or may arguably may have merit and that the union will pursue the case provided the charges set forth above are paid unless the individual can establish reason acceptable to the union for the waiver of the fees;
(l) in the event a non-member refuses to pay the fees, the union will advised the non-member that it will not pursue his/her case. However, the union will not withdraw the case, but will hold it in abeyance. The non-member will then have six months to either file a ULP or a duty of unfair representation suit. In the event the non-member takes such action, the union can then determine how it will respond to such action.

13-011017-CL

FILED IN MY OFFICE WAYNE COUNTY CLERK 9:11:48 AM CATHY M. GARRETT

Confirmed by:

Joseph Valenti President

THIS POLICY MAY BE ALTERED AS NEEDED TO COMPLY WITH APPLICABLE LAW

PERMANENT POSTING!

PERMANENT POSTING!

PERMANENT POSTING!