

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN EDUCATION ASSOCIATION and
WEST BRANCH-ROSE CITY EDUCATION
ASSOCIATION,

UNPUBLISHED
January 24, 2003

Respondents-Appellants,

v

No. 230803
MERC
LC No. 98-000050

FRANK DAME,

Charging Party-Appellee.

Before: Neff, P.J., and Hoekstra and O’Connell, JJ.

PER CURIAM.

Respondents Michigan Education Association (MEA) and West Branch-Rose City Education Association (WB-RCEA) appeal as of right from an order of the Michigan Employment Relations Commission (MERC). We vacate the order and remand.

The charging party, Frank Dame, initiated this case by filing with the MERC an unfair labor practice charge against respondents, challenging, in pertinent part, the MEA’s policy of limiting resignations from MEA membership to the month of August.¹ This dispute arose out of the attempt by Dame, who was a high school teacher represented by the MEA and the WB-RCEA, one of the MEA’s local affiliates, to resign his MEA membership in April 1998.² Although the Administrative Law Judge (ALJ) who presided at the hearing in this case recommended dismissal of the unfair labor practice charge, MERC entered a decision that found an unfair labor practice under the Public Employment Relations Act (PERA), MCL 423.201, *et seq.*, based on a lack of notice to Dame of the restriction on the ability to resign from MEA

¹ On the MEA membership application signed by Dame and dated September 26, 1988, Dame checked a box corresponding to “Payroll Deduction,” which included the following statement:

I authorize my employer to deduct Local, MEA and NEA dues, assessments and contributions as may be determined from time to time, unless I revoke this authorization in writing between August 1 and August 31, of any year.

² Dame successfully resigned in August 1998.

membership. MERC ordered the MEA and WB-RCEA³ to reimburse Dame for the portion of the dues collected after his attempted resignation that were spent on nonrepresentational activities, with statutory interest, and to ensure that the MEA bylaws are easily accessible to all members and/or to explicitly notify each member of the one-month window period for resignations. This appeal ensued.

On appeal, the MEA first argues that the MERC's decision should be reversed because the MERC exceeded its authority when it decided claims that the parties did not litigate and that the ALJ did not decide.⁴ The MERC's factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. *Gogebic Community College Michigan Educational Support Personnel Ass'n v Gogebic Community College*, 246 Mich App 342, 348; 632 NW2d 517 (2001). However, with regard to questions of law, a legal ruling by the MERC should be set aside "if it violates the constitution or a statute" or is affected by a substantial and material error of law. *Id.* at 349.

In reversing the ALJ, the MERC essentially determined that the MEA had failed to provide Dame with notice of its policy regarding withdrawal from membership and, for that reason, it was improper for the MEA to have refused to give Dame's first attempted resignation from the MEA immediate effect. In this regard, the MERC stated:

Under the circumstances presented in this case, we conclude that Respondents violated their duty of fair representation, in violation of Section 10 of PERA, by refusing to allow Charging Party to terminate his membership in the Union upon his initial request to do so in April of 1998. Because our finding is premised upon the fact that Respondents failed to provide Dame with notice of his rights and obligations under both PERA and the MEA constitution and bylaws, we need not address the broader issue concerning the legitimacy of the Union's policy restricting the ability of its members to resign.

The MEA contends that the notice issue on which the MERC based its decision was never litigated by the parties. Contrary to the MEA's indication, Dame's arguments before the ALJ were not limited to challenging the general propriety of the MEA's internal practice of limiting withdrawal from membership to the month of August. Rather, Dame argued that he was not notified of his right to refrain from being a full member of the MEA.⁵ In this regard, Dame's counsel stated at the hearing:

With all due respect, Your Honor, assuming, for the sake of argument, that this is a contract--and we're prepared to offer evidence that Mr. Dame was never made aware of his Hudson rights, procedural rights to become an agency fee

³ Because there is no important distinction between the MEA and the WB-RCEA for purposes of the legal issues raised in this appeal, we simply refer to "the MEA" in the remainder of this opinion with this being understood to include the WB-RCEA where appropriate.

⁴ We note that the charging party, Dame, failed to file an appellate brief.

⁵ Dame testified at the hearing before the ALJ that he joined the MEA when he started teaching "under the assumption that it was part of my obligation as a teacher."

payer, an agency fee objector. He was not notified that he had a right to refrain from joining the Union and acquiring full Union membership.

* * * *

Your Honor, the Commission is charged with upholding the individual rights of public sector employees. And as established by Supreme Court precedent in [*Chicago Teachers Union v Hudson*], 475 US 292; 106 S Ct 1066; 89 L Ed 2d 232 (1986)] and *Abood [v Detroit Bd of Education*, 431 US 209; 97 S Ct 1782; 52 L Ed 2d 261 (1977)], my client has a right to notification of his Hudson rights.

However, we nevertheless conclude that the MEA is correct in arguing that the notice issue was beyond the scope of the issues specifically urged in Dame's exceptions to the ALJ's recommendation. R 423.466(3), promulgated by the MERC and in effect at the time of the ALJ recommendation and the MERC decision in this case,⁶ in pertinent part stated:

An exception to a ruling, finding, conclusion, or recommendation which is not specifically urged is waived.

After the ALJ made its recommendation, Dame submitted to the MERC two exceptions, a request for relief and a supporting brief. The MEA in response filed a brief in support of the ALJ's recommendation and in opposition to Dame's exceptions. The issue of notice was not raised in Dame's exceptions or in his request for relief and neither party addressed it in their briefs. Nevertheless, the MERC chose to ignore the issues raised and briefed by the parties and decided the case based on its finding that the MEA failed to give proper notice to Dame. Under these circumstances, we agree with the MEA that it was improper for the MERC to resolve this case based on a finding of a lack of notice to Dame because, under the plain language of R 423.466(3), Dame waived any notice issue by not specifically urging it in his exceptions to the ALJ recommendation. "An agency is under a duty to follow its own rules." *Detroit Base Coalition for the Human Rights of the Handicapped v Dep't of Social Services*, 431 Mich 172, 189; 428 NW2d 335 (1988). Accordingly, the MERC had a duty to follow R 423.466(3) and, thus, committed a material and substantial legal error by resolving this case in Dame's favor based on an issue that he waived by failing to specifically urge in his exceptions to the ALJ's recommendation. Therefore, we must vacate the MERC's decision and remand.

We note that the MEA also argues on appeal that the MERC lacked jurisdiction over this dispute because, under the facts of this matter, there could be no unfair labor practice. Although argued before it, the MERC failed to address this issue, nor did the charging party address this argument on appeal, having failed to file an appellate brief. Under these circumstances and

⁶ R 423.466 was rescinded on February 1, 2002, which was after the MEA filed its brief in this Court. There is no basis on which the abolition of R 423.466 is relevant to this case because R 423.466 was in force and, thus, binding on MERC at all times during the MERC proceedings in this case. Moreover, the more recently enacted R 423.176(5), effective February 1, 2002, contains similar language.

where remand is otherwise indicated, we decline to address this issue. On remand, the MERC should first consider whether it had jurisdiction over this dispute, and then proceed accordingly.

The MERC decision is vacated and the case is remanded to the MERC to consider the issues properly before it. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell