STATE OF MICHIGAN

COURT OF APPEALS

DETROIT PUBLIC SCHOOLS,

Respondent-Appellee,

v

TEAMSTERS LOCAL 214,

Charging Party-Appellee,

and

DENICE GREER and 194 MEMBERS OF TEAMSTERS LOCAL 214,

Appellants.

UNPUBLISHED
October 15, 2013

No. 311218
MERC
LC No. 07-000252

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Appellants, individual members of Teamsters Local 214 (the Union), filed a motion to intervene in an unfair labor practice charge between the Union and Detroit Public Schools (DPS). The Michigan Employment Relations Commission (MERC) denied appellants' motion, concluding that they had no right to intervene because the duty to bargain in good faith is between the Union and the employer, not the employer and the individual employees. Appellants appeal as of right. We affirm.

Appellants were employed as security guards by DPS and were all members of the Union. In May 2005, DPS and the Union negotiated and ratified a concession in the form of 5.71 percent wage reduction. The wage concession was effective through June 30, 2006, at which time it was set to expire unless the parties agreed otherwise. According to DPS and the Union, the parties negotiated and ratified a successor agreement (the "2007 final offer") in the spring of 2007, which extended the 5.71 percent wage concession through June 30, 2007. The parties agreed to a reopener on the issue of wages for the period beginning July 1, 2007. If negotiations on the reopener failed to result in an agreement by June 30, 2007, wage rates would be restored to their pre-concession level effective July 1, 2007, subject to continued bargaining obligations on the reopener. DPS and the Union did not reach an agreement. DPS, however, unilaterally continued to apply the 5.71 percent wage reduction for work performed on and after

July 1, 2007. DPS and the Union continued to negotiate but failed to reach an agreement. Shortly thereafter, the Union filed an unfair labor practice charge against DPS, challenging the propriety of DPS's extension of the wage concession beyond July 1, 2007.

While the charge was pending in MERC, DPS terminated the 5.71 percent wage concession, effective January 15, 2008. DPS and the Union continued to bargain, and DPS proposed a 1.7 percent wage reduction for the remainder of the fiscal year, with no back pay for work performed between July 1, 2007 and January 15, 2008. The Union countered with a 1.2 percent wage reduction for the remainder of the fiscal year, also with no back pay. On February 15, 2008, DPS "passed an offer" which incorporated, among other things, the 1.2 percent concession proposed by the Union. The Union did not respond to that offer, but left the negotiations indicating that they would get back to DPS. When the Union did not respond, DPS advised the Union on March 6, 2008 that it "was declaring an impasse and implementing the 1.2% concession effective immediately." The Union did not return to bargaining and instead filed an amended unfair labor practice charge, challenging the propriety of the 1.2 percent wage reduction.

On May 19, 2011, an administrative law judge (ALJ) issued a decision and recommended order. The ALJ concluded that DPS's "failure to restore the proper wage rate on July 1, 2007, was both a unilateral change in wages . . . and a repudiation of an undisputed provision of the collective bargaining agreement in violation of the duty to bargain." However, the ALJ also concluded that DPS acted properly when it implemented the 1.2 percent wage reduction. The ALJ noted that DPS imposed the wage concession that the Union had proposed and found that there was a legitimate impasse in bargaining. The ALJ did not recommend awarding back pay for the period of July 1, 2007 through January 15, 2008, stating that the "imposition of the wage scheme in March 2008 obviated any back pay liability." Neither DPS nor the Union filed exceptions to the proposed order.

On June 13, 2011, appellants filed a motion to intervene and preliminary exceptions. Appellants asserted that the Union failed to discharge its duty of fair representation. Specifically, appellants noted that the Union and DPS stipulated that the union members ratified the 2007 final offer, which extended the 5.71 percent wage concession through June 30, 2007. However, appellants asserted that the 2007 final offer was never properly ratified, citing numerous alleged irregularities in the ratification process.

Nearly one year later, the MERC issued a final decision and order in which it adopted the ALJ's recommendation and denied appellants' motion to intervene. The MERC concluded that appellants lacked standing to pursue a charge against DPS because the duty to bargain is between the Union and the employer. Additionally, the MERC noted that appellants sought to become parties to the action and be aligned as charging parties because they were dissatisfied with the Union's representative. The MERC stated that appellants' dissatisfaction with the Union could not be resolved as part of the Union's charge against DPS. Rather, appellants had to file a separate action against the Union for breaching its duty of fair representation. Appellants moved for reconsideration, which the MERC denied. In doing so, the MERC noted that by the time appellants moved to intervene in the action, it was too late for appellants to file a claim against the Union relating to the Union's handling of the case because the six-month statute of limitations had expired. The MERC concluded that appellants could not bring a time-barred

claim by moving to intervene in the case. Subsequently, appellants filed the present appeal arguing that the MERC abused its discretion by denying their motion to intervene.

Generally, a decision regarding a motion to intervene is reviewed for an abuse of discretion, *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612; 773 NW2d 267 (2009), except with regard to the MERC's rulings. We articulated the standards governing review of the MERC's rulings in *Branch Co Bd of Comm'rs v Int'l Union, United Auto, Aerospace & Agriculture Implement Workers of America, UAW*, 260 Mich App 189; 677 NW2d 333 (2003):

> We review MERC decisions pursuant to Const 1963, art 6, § 28, and MCL 423.216(e). MERC's findings of fact are conclusive if they are supported by competent, material, and substantial evidence on the record considered as a whole. MERC's legal determinations may not be disturbed unless they violate a constitutional or statutory provision or they are based on a substantial and material error of law. In contrast to [] MERC's factual findings, its legal rulings are afforded a lesser degree of deference because review of legal questions remains de novo, even in MERC cases. [*Id.* at 192-193 (internal quotation marks and citations omitted) (omission by *Branch Co Bd of Comm'rs*).]

Appellants cite MCR 2.209(A)(3) to claim that they had a right to intervene in the action. However, MCR 2.209(A)(3) applies to civil court actions, and not administrative proceedings. See MCR 2.001. The applicable rule governing intervention in the MERC proceedings is Rule 157 of the Commission's General Rules, 2002 AACS R 423.17, which provides, "persons having such an interest in the subject of the action that their presence in the action is essential to permit the commission to render complete relief shall be made parties and aligned as charging parties or respondents in accordance with their respective interests."

The Michigan Public Employment Relations Act (PERA), MCL 423.201 *et seq*, governs public labor relations. See *Detroit Fire Fighters Ass'n IAFF Local 344 v Detroit*, 482 Mich 18, 28; 753 NW2d 579 (2008). "One of PERA's primary purposes is to resolve labor-management strife through collective bargaining." *Id.* at 28-28 (internal quotation marks and citation omitted). Section 10(1)(e) of PERA provides that a public employer shall not "[r]efuse to bargain collectively with the *representatives* of its public employees, subject to the provisions of section 11." MCL 423.210(1)(e) (emphasis added). Section 11 of PERA further provides, in relevant part:

> Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for such purposes, *shall be the exclusive representatives* of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer . . . . [MCL 423.211 (emphasis added).]

The above provisions are clear and unambiguous and provide that the duty to bargain runs exclusively between the employer and the representative. In the present case, it is undisputed that the Union was the exclusive bargaining unit for the security officers. Therefore,

the duty to bargain was between DPS and the Union, not DPS and the individual officers. See *Wayne Co (Community Mental Health Agency)*, 21 MPER 73 (2008) (no exceptions), citing *Detroit Pub Schs*, 1985 MERC Lab Op 789; *City of Hazel Park*, 1979 MERC Lab Op 177; *Old Mills Tavern Hotel, Inc*, 1975 MERC Lab Op 171 ("[A]n individual employee cannot assert that an employer has violated its duty to bargain in good faith with the employee's bargaining representative because the obligation to bargain runs between the employer and the exclusive bargaining representative. An individual employee cannot assert the claims of his or her union."). Because the Union represented appellants' interests in the action, their presence was not essential for the MERC to render relief. Thus, appellants have no right to pursue an unfair labor practice charge against DPS. Their allegations that the Union violated its duty of fair representation should have been pursued in a separate action against the Union.

Affirmed.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens