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Butzel Long Successfully Represents Higher Education Client Eastern Michigan University in MERC Unfair Labor Practice Proceedings

7.19.2019

Butzel Long's higher education client, Eastern Michigan University, recently obtained a successful dismissal of unfair labor practice charges brought by the union representing its tenured and tenured track faculty, the Eastern Michigan University Chapter of the American Association of University Professors. *Eastern Michigan University v EMU-AAUP* MERC Case Nos C18E-042 and C18E-044 (July 11, 2019). The University prevailed after a hearing at the Michigan Employment Relations Commission ("MERC"), which considered four alleged violations of the Michigan Public Employment Relations Act ("PERA").

The first allegation was that the Dean of the University's College of Technology unlawfully restrained, coerced and intimidated a faculty member who had threatened to file a grievance against an Associate Dean. The events evolved from a complaint made by the Associate Dean that the faculty member had engaged in an angry, unprofessional confrontation with her over a work-related issue, which was so disturbing that potential workplace violence concerns were evident. Pursuant to the University's Work Place Violence Policy, the Dean interviewed the faculty member (with Union representation), and it was claimed by the Union that at the interview the Dean had engaged in coercive questioning about the faculty member's alleged intent to file a grievance. EMU's Dean denied this allegation, asserting that any comments concerning the filing of a grievance were in fact raised by the faculty member herself, in denying that any potential violation of the Work Place Violence Policy had occurred.

MERC concluded that the Dean had lawfully interviewed the faculty member, and that the interview was fully justified by University concerns about potential work place violence. The Commission additionally concluded the Dean's testimony of events was fully credible, and that no coercive interrogation

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about grievance filing had occurred.

The second unfair labor practice allegation made by the union was that another EMU Dean and an Associate Provost had violated PERA through alleged threatening and intimidating comments at a grievance meeting; stating that the underlying grievance “should have never been filed”. The grievance asserted that faculty input procedures had not been followed before the University accepted certain student transfer credits from a local community college. This contention was totally without basis in fact, as the Dean had engaged in extensive faculty input discourse before making the academic decision that the transfer credits should be accepted. At the grievance meeting, the administrators simply expressed frustration with the union’s meritless grievance, and its attempt at that time to repeat arguments and positions which had previously been considered by and rejected by the Dean on the transfer credit issue.

MERC dismissed this allegation, finding that no unlawful coercive behavior had occurred in the grievance meeting. The Commission applied longstanding precedent recognizing that grievance meetings can often be heated and passionate, and that harsh words may be exchanged by the parties in such a setting. An employer, the Commission held, does not violate PERA in criticizing a perceived lack of merit in a union’s grievance, even when such criticism is made in mocking or dismissive terms. An unfair labor practice is committed only where threats of retaliation for filing the grievance have been made, which the Commission found did not occur in this case.

The final two unfair labor practice allegations evolved out of a meeting called by a University administrator with a soon to be demoted department head, who would be returning to a faculty position with no administrative duties. The purpose of the meeting was to present the department head with a settlement agreement and release, which set forth certain beneficial terms concerning his return to faculty, and which released the University from prospective legal claims the department head had indicated an intent to make. When the department head arrived at the meeting, he was accompanied by the Union President, whom he had asked to represent him. The administrator requested that the Union President leave the meeting because the department head was still in an administrative position as of that date, and not yet a member of the faculty bargaining unit.

The Union initially contended that the department head had unlawfully been denied “Weingarten rights”, i.e. union representation rights which arise in investigatory interviews conducted by an employer. A second unfair labor practice allegation proffered concerning these events was that the University’s insistence on denying the department head union representation constituted illegal “direct dealing”, i.e. unlawful individual bargaining with a union-represented employee without the presence of the union. The University asserted various defenses to these claims, including the defense that the department head was excluded from the faculty bargaining unit at the time of the meeting, and his merely prospective entry into that unit at a future date did not establish a current right to union representation.

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The Commission dismissed these allegations on several grounds which included:

- “Weingarten” rights were not triggered because the purpose of the meeting was not “investigatory”;
- No interrogation occurred at the meeting; the department head was simply presented with the settlement agreement and asked to sign it (which he declined to do);
- Unlawful “direct dealing” did not occur at the meeting, because the faculty collective bargaining agreement fully permitted individual bargaining between the University and a faculty member as to compensation, workload and other terms and conditions of employment. The Commission found it unnecessary to decide the department head’s bargaining unit status on the date of the meeting because even if he was a union member on that date, the collective bargaining agreement would have permitted the University’s efforts at individual bargaining with him.

Please feel free to contact Craig S. Schwartz, who represented the University as counsel in this case, if you desire a copy of the decision or wish to further discuss the Commission’s ruling in the matter. (ph 248-258-2507; e-mail Schwartz@butzel.com)