STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL WORKERS (AFSCME), and LOCAL 3308 (36TH DISTRICT COURT),
Respondents-Labor Organizations,

Case No. CU97 J-37

-and-

ESSIE WINGO,
An Individual Charging Party.
_____/

APPEARANCES:

Miller Cohen, P.L.C., by Gail M. Wilson, Esq., for the Respondents

Essie Wingo *in pro per*

DECISION AND ORDER

On October 30, 1998, Administrative Law Judge James P. Kurtz issued his Decision and Recommended Order in the above case, recommending dismissal of unfair labor practice charges filed against Respondent AFSCME Council 25 and its Local 3308 under Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(e); MSA 17.455(10)(1)(e).

On November 23, 1998, Charging Party Essie Wingo filed timely exceptions to the Decision and Recommended Order of the Administrative Law Judge. Respondents filed an answer to Charging Party's exceptions on November 30, 1998.

Discussion and Conclusions of Law:

As set forth more fully in the Decision and Recommended Order, Respondent AFSCME Council 25, and its Local 3308, hereinafter referred to as the Union, is the bargaining representative for certain employees of the 36th District Court in Detroit, including Essie Wingo, the individual Charging Party. On August 27, 1997, Wingo received a written counseling warning from the Employer which alleged that she had violated work rules during a confrontation with a magistrate. In response, she contacted the Union and requested that a grievance be filed on her behalf. The Union initially filed a grievance regarding the matter, but later withdrew it after determining that

counseling warnings were not grievable under the collective bargaining agreement in effect at that time. On exception, Charging Party suggests that the ALJ erred in finding that the Union did not breach its duty of fair representation with regard to its handling of the grievance. We disagree. There is no evidence in the record to suggest that the Union acted in a manner which was arbitrary, discriminatory or in bad faith, *Harbor Springs Public Sch*, 1996 MERC Lab Op 462; *Vaca v Sipes*, 386 US 171 (1967), or that the Union violated its duty of fair representation as defined in *Goolsby v Detroit*, 419 Mich 651 (1984).

In the instant case, the grievance was filed approximately two days after it was signed by Charging Party, and just two weeks after the counseling warning was issued. When the Union decided to withdraw the grievance, the Local president promptly notified Charging Party of that fact by telephone and offered to request a special conference on her behalf. Although Charging Party rejected the offer, the Union acted in accordance with its standard procedure and raised the issue at such a meeting with the Employer. Furthermore, the record establishes that the Union's decision to withdraw the grievance was reasonable. As noted by the ALJ, the Union presented evidence that the parties to the collective bargaining agreement have never considered counseling warnings to be grievable under the contract. Accordingly we conclude that the Union satisfactory fulfilled its duty to represent Charging Party in this matter. Although Wingo may be unhappy with the resolution of her grievance, such dissatisfaction does not raise an issue of fair representation, absent a showing of bad faith, gross negligence, or arbitrary conduct on the part of the Union. *Wayne County, Dep't of Public Works*, 1994 MERC Lab Op 855, 858; *MESPA (Kalkaska Public Sch.)*, 1989 MERC Lab Op 403, 409-410.

Charging Party's other arguments on exception are similarly without merit. For example, she suggests that the Union failed to properly pursue the issue of whether the counseling warning would be made part of her personnel file. In support of this contention, Charging Party refers to the written summary of the conference which states, "*To date*, the counseling memorandum has not been placed in Ms. Wingo's personnel file." (Emphasis supplied.) We fail to see the significance of this document. Even if the counseling warning is eventually included in Charging Party's file, that does not establish that the document constitutes a disciplinary action grievable under the contract. In fact, the conference summary explicitly provides that such warnings are intended to solve problems "before the need for discipline [arises]" and that they are memorialized in writing "to ensure that supervisors are communicating with employees."

In support of her assertion that the Union breached its duty of fair representation, Charging Party also refers to a memorandum issued by the former court administrator to Diane Teamor, Wingo's supervisor. Charging Party argues that this memorandum proves that the court administrator wanted to fire her, thereby calling into question the Union's assertion that the counseling warning was not a disciplinary action. In the memorandum, however, the court administrator merely requested that Teamor "take some action" regarding the incident between Wingo and the magistrate. Moreover, the memorandum was written prior to the issuance of the counseling warning. Obviously, management decided that the appropriate response to the incident was to recommend that Wingo seek counseling through the Employee Assistance Program. We fail to see how this document in any way establishes that Charging Party was disciplined as a result of her

involvement in the July 22, 1997, incident.

Charging Party further contends that the Union breached its duty of fair representation by failing to notify her of the two special conference dates which were adjourned. Curiously, she makes no such allegation with regard to November 24, 1997, the date upon which the special conference was actually held, and the record is silent with regard to whether she in fact attended that meeting. Even if Wingo was not notified of the November 24 special conference, there is nothing in the record to suggest that she was prejudiced as a result. Wingo was concerned about whether the counseling warning would be placed in her personnel file, and the evidence indicates that the Union raised that issue at the meeting. It should also be noted that the collective bargaining agreement does not give employees an unqualified right to attend special conferences. Rather, the contract provides that such meetings "will be arranged between the Local Union President and the Employer or designated representative at the request of either party." Therefore, Wingo has failed to demonstrate that the Union breached its duty of fair representation on this basis.

Next, Wingo suggests that the Union breached its duty of fair representation by failing to inform her that the Employer was conducting an investigation into the confrontation which occurred on July 22, 1997. However, there is nothing in the record to establish that the Union was even aware of the investigation prior to the issuance of the counseling warning. Similarly, Charging Party offered no proof to support her contention that representatives of AFSCME Council 25, and its Local 3308 exhibited bias with regard to the grievance in order to gain favor with the Employer.

Finally, Charging Party takes issue with the ALJ's reference to the bargaining unit as "nonsupervisory." Wingo contends that the coordinator of court reporters, a supervisory position, is included in the unit. It is well-established that non-supervisory employees may not be included in the same bargaining unit as supervisory personnel. *Macomb County,* 1997 MERC Lab Op 233, 237-38; *Michigan State University,* 1984 MERC Lab Op 592, 596-5977. In this case, however, there is no evidence in the record to support Charging Party's contention that the unit contains both supervisory and nonsupervisory personnel. Even if her characterization of the bargaining unit is accurate, however, that fact is wholly irrelevant to the fair representation claim at issue.

For the reasons stated above, we adopt the findings and conclusion of the Administrative Law Judge as our own.

ORDER

The unfair labor practice charges in this case are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Date: _____