

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

AMALGAMATED TRANSIT UNION,
LOCAL 1564,
Respondent-Labor Organization,

Case No. CU98 J-52

-and-

SHEILA WILLIAMS,
An Individual Charging Party.

APPEARANCES:

Sachs, Waldman, O'Hare, Helveston, Bogas & McIntosh, P.C., by Mary Ellen Gurewitz, Esq., for Respondent

DECISION AND ORDER

On March 16, 1999, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Date: _____

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APPEARANCES:

Mary Ellen Gurewitz, Atty, Sachs, Waldman, O'Hare, Helveston, Bogas & McIntosh, P.C. for Respondent

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455(10), this matter came on for hearing at Detroit, Michigan, on January 15, 1999, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on October 12, 1998, by individual Charging Party Sheila Williams, alleging that the Amalgamated Transit Union, Local 1564, had violated Section 10 of PERA. Based upon the entire record in this matter, including transcript of proceedings received on February 5, 1999, the undersigned makes the following findings of fact and conclusions of law and issues the following recommended order:

The Charge and Background Matters:

The charge alleges "no proper representation" by ATU, Local 1564. Charging Party did not appear at the hearing scheduled for 10:00 a.m. on January 15, 1999, pursuant to a Notice of Hearing dated October 21, 1998. Attempts to reach Charging Party by telephone that morning were unsuccessful. As no request for adjournment had been received and Respondent Union was present and ready to proceed, the Union was allowed to make a record in defense of the charge. By letter of January 19, 1999, the undersigned informed Sheila Williams of the proceedings. Williams contacted the undersigned by telephone on January 22, 1999, and indicated that she intended to pursue the matter further and would make a written request to that effect. No such request was

received.

Facts:

Sheila Williams was employed by the Suburban Mobility Authority for Regional Transportation (SMART) as a coach operator beginning in April of 1992. Her position was included in a bargaining unit represented by ATU, Local 1564. The president and business agent for the Local is Floyd Best.

In August of 1998 an incident occurred involving Williams and an individual who had come to the office to make application for a job. Williams allegedly assaulted this individual because of a previous personal problem between the two. The Employer undertook an investigation into the matter which revealed that the job applicant had sought emergency treatment after the incident and had filed a police report. Under SMART's personnel policies, an employee found to have engaged in a physical assault was subject to immediate discharge. Following the Employer's investigation of the incident, on August 19, 1998, Williams was discharged.

On August 20, 1998, Williams filed a grievance with the Union alleging wrongful termination. The grievance process normally involves four steps, but discharge grievances go immediately to the third step. At the third step grievance meeting on Williams' grievance held on September 10, 1998, her grievance was denied on the basis that no contractual violation existed. Williams wrote a letter to Best on September 26, 1998, objecting to her termination and stating that she did not feel she was getting positive representation from him or her Union representative.

A step four grievance meeting was held on October 6, 1998. On October 16, 1998, a letter was sent to Best from the Human Resource Department at SMART indicating the following disposition of Williams' grievance:

Grievance denied. There has been no contractual violation. Sheila Williams was discharged effective 8/19/98 for physical assault of another person (Odetta Gipson). Investigation of this incident revealed that Ms. Williams instigated a verbal altercation that subsequently ended in a physical attack of Ms. Gipson as evidenced by the police report and the filing of assault and battery charges against Ms. Williams. In addition, Ms. Gipson sought medical treatment for injuries sustained in the altercation at the Detroit Riverview Hospital Emergency Department.

The Authority has thoroughly reviewed the circumstances involved in this case and has determined that there were no mitigating circumstances to warrant Ms. Williams' actions. The discharge will stand as appropriate.

On October 22, 1998, Best wrote to Williams, responding to her letter of September 26, 1998, and indicating that she should prepare for the membership arbitration meeting scheduled for November 29, 1998. By letter of November 13, 1998, Williams was formally notified that the Local's executive board would meet on November 20, 1998 to decide whether it would recommend to the membership that her grievance proceed to arbitration; she was told to make arrangements with the financial secretary if she wished to address the board. The policy of the Local is that the executive board makes a recommendation, but the membership has the final say as to whether or not a grievance proceeds to arbitration.

Williams addressed the executive board on the morning of November 20, 1998. The board subsequently voted not to recommend arbitration by a vote of eight to one. A membership meeting was held that evening and Williams addressed the membership prior to the vote. The membership voted not to proceed to arbitration by a vote of 55 to 44. Williams subsequently left a telephone message for Best asking why the board and the membership voted against her. Best replied by letter of December 2, 1998, that he had no information in that regard. Williams also wrote to the International President of the ATU challenging the Local's decision not to arbitrate her grievance. President Jim La Sala responded in a letter dated December 9, 1998, that local unions were provided discretion to evaluate the merits of individual grievances and once the local has acted, the International is not empowered to overturn the decision absent a finding that the local failed to adhere to proper standards.

Discussion and Conclusions:

A union may be found to have breached its duty of fair representation when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. *Vaca v Sipes*, 386 US 171, 190 (1967); *Goolsby v City of Detroit*, 419 Mich 651, 661 (1984). There is nothing in the charge, or in the exhibits and testimony presented at hearing, which would even raise an issue as to the Local's conduct in this matter. The Local processed the grievance in the regular manner and in a timely fashion. Williams was allowed to address both the executive board and the membership with respect to her termination, and both voted not to proceed to arbitration. I find that the Respondent's duty of fair representation was not breached and the charge must be dismissed. *Detroit Bd of Ed*, 1997 MERC Lab Op 394, 397; *Zeeland Education Ass'n*, 1996 MERC Lab Op 499, 508; *Detroit Fire Fighters Ass'n, Local 344*, 1995 MERC Lab Op 633, 637-638. It is therefore recommended that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

Dated: _____