

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

In the Matter of:

DETROIT BOARD OF EDUCATION,  
Respondent-Public Employer in Case No. C97 J-212,

-and-

TEAMSTERS LOCAL 214,  
Respondent-Labor Organization in Case No. CU97 J-26,

-and-

ANNIE HOWARD, ET. AL.,  
Individual Charging Parties.

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**APPEARANCES:**

Gordon Anderson, Esq., for the Public Employer

John L. Harris, Vice President, for Teamsters Local 214

Annie Howard, *In Pro Per*

**DECISION AND ORDER**

On October 28, 1998, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above case, finding that Respondent Teamsters Local 214 violated its duty of fair representation under Section 10(3)(i) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(3)(i); MSA 17.455(10)(3)(i).

On November 18, 1998, the Union filed timely exceptions to the Decision and Recommended Order of the ALJ. The Individual Charging Parties did not file a brief in support of the recommended order.

This case arises from unfair labor practice charges filed on October 13, 1997, by Annie Howard and 111 other school bus drivers employed by Respondent Detroit Board of Education. Charging Parties allege that the Employer has not paid them all or some of the monies owed to them for the period September 9, 1997, to October 7, 1997, and that the Union has failed to assist them in resolving this matter. The ALJ found that the Detroit Board of Education had breached its contract in failing to pay the bus drivers, but he dismissed the charges against the Employer on the

ground that the breach did not violate PERA. With regard to the charges against the Union, however, the ALJ concluded that the Charging Parties were not fairly represented. The sole evidence relied upon by the ALJ in support of this conclusion was an admission by John Harris, the Union's vice president, that charging parties "did not receive representation" from the stewards who initially handled their complaints. We fail to see how this statement alone establishes that the Union violated its duty of representation as defined in *Vaca v Sipes*, 386 US 171 (1967), and *Goolsby v Detroit*, 419 Mich 651 (1984).

In *Vaca*, the Supreme Court held that a union's duty of fair representation is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty; and (3) to avoid arbitrary conduct. *Id.* at 177. "Arbitrary conduct," includes (a) impulsive, irrational, or unseasoned conduct, (b) inept conduct undertaken with little care or with indifference to the interests of those affected, (c) the failure to exercise discretion, and (d) extreme recklessness or gross negligence. *Goolsby*, 419 Mich at 679. See also *Detroit Fire Fighters Ass'n*, 1995 MERC Lab Op 633, 637-638.

Although the Union initially may have failed to respond properly to Charging Parties' complaints, there is nothing in the record to suggest that it 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). In fact, the Union's vice president testified that he "did move on [the complaints]" when he became aware of the situation. Furthermore, the vice president told the ALJ that representatives from Teamsters Local 214 had a meeting with the Employer after the charge was filed, at which the Employer promised that there would be a "concerted effort" to rectify the paycheck problem. Based on that meeting, the vice president believed that the situation had been corrected. It was not until later that the vice president learned that the situation had not been fully remedied. Furthermore, the Employer's attorney stated that his client had meetings concerning this issue with the Union's president and that it was in the process of trying to resolve the problem. Finally, bus driver Lillie Henley admitted that she did have Union representation at a February 1997 meeting concerning the missing paychecks. Based upon the record before us, we believe that Charging Parties have failed to establish the hostility, ill-will, malice, indifference or gross negligence required to find the Union guilty of a failure to fairly represent. *Detroit Fire Dep't*, 1997 MERC Lab Op 31, 34. Accordingly, it is not necessary for us to address the Union's contention that the ALJ erred in finding a breach of contract on these facts.

For the reasons stated above, we reject the findings and recommendations of the Administrative Law Judge in this case. We conclude that the record is insufficient to establish that Respondent Teamsters Local 214 violated its duty to fairly represent its members.

**ORDER**

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

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