

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

In the Matter of:

ST. CLAIR COUNTY, SHERIFF'S DEPARTMENT,
Respondent-Public Employer in Case No. C00 B-33,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Respondents-Labor Organizations in Case No. CU00 B-8,

-and-

DOUGLAS E. KOSCHNITZKE,
An Individual Charging Party.

APPEARANCES:

Fletcher, Galica, Clark, Tomlinson & Fealko, P.C., by Gary A. Fletcher, Esq., for the Public Employer

Frank A. Guido, Esq., General Counsel, for the Labor Organization

Douglas E. Koschnitzke, in pro per

DECISION AND ORDER

On July 21, 2000, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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

Dated: _____

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APPEARANCES:

Gary A. Fletcher, Esq., Fletcher, Galica, Clark, Tomlinson & Fealko, P.C., for the Employer

Frank A. Guido, General Counsel, for the Labor Organization

Douglas E. Koschnitzke, In pro per

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

The charges in this matter were filed on February 24, 2000, by individual Charging party Douglas E. Koschnitzke, naming as Respondents the St. Clair County Sheriff's Department and the Police Officers Association of Michigan. The charges were assigned to Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission and a consolidated complaint and notice of hearing was issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379 and 1973 PA 25, as amended, MCL 423.216, MSA 17.455(16), setting a hearing date of May 23, 2000. Thereafter, as discussed below, Respondents filed answers, including affirmative defenses, and a motion to dismiss. Charging Party was given opportunity to respond to their arguments. Based upon the pleadings and other written material received in this matter, the undersigned issues the following recommended order under Section 16(b) of PERA:

The Charges:

The identical charges allege that Respondents have violated PERA as follows:

1. The discharge was improper as charge was brought too late.
2. Union violated its duty of fair representation due to the fact that part of the release agreement contained provisions which were “self dealing” rather than bargained for on my behalf.
3. Union violated the same duty by not preparing for the case and not protecting chances to get a lesser sanction.
4. Collective bargaining agreement was breached by discharge.

The charges stem from the settlement of a grievance filed by the POAM challenging deputy Koschnitzke’s discharge from the St. Clair County Sheriff’s Department.

Respondents’ Affirmative Defenses/Motion to Dismiss:

On March 21, 2000, Respondent Union filed an answer denying the charges and asserting several affirmative defenses, including: 1) the charge fails to state a claim upon which relief can be granted; 2) the charge is barred by agreement, waiver, and release; 3) the charge is barred by the applicable statute of limitations. On April 12, 2000, the Employer answered the charges, with affirmative defenses similar to those of the Union. The Employer also submitted a motion to dismiss based on the release agreement and the statute of limitations, asserting that it was not timely served with the charge.

The Union and the Employer submitted with their answers a copy of the following agreement, signed by Koschnitzke and all parties on the day of the arbitration hearing on his grievance:

AGREEMENT

THIS AGREEMENT made and entered into this 24th day of August 1999, St.Clair County and the St. Clair County Sheriffs Department (collectively referred to as the “County”) and Douglas Koschnitzke (“Koschnitzke”).

The parties agree to resolve the pending arbitration case no. POAM Gr. 98-453 on the following terms and conditions:

1. Koschnitzke shall resign his employment with the County and shall

submit a letter of resignation to the Sheriff.

2. Koschnitzke waives, relinquishes and discharges any and all claims against the County and its agents including but not limited to his arbitration rights.

3. The Employee acknowledges that he has been represented by legal counsel for the Union in this matter and that he has been fully advised of his rights by legal counsel and the Union. The Employee enters into this Waiver knowingly, voluntarily, and with the full understanding of his rights. The Employee hereby waives, relinquishes and forever discharges any and all claims he has, will have or could bring against the Union, and its agents concerning their representation of him in this matter.

4. The St. Clair County Sheriff shall provide a letter to Koschnitzke identifying the years of his employment with the County, the position he held and that he resigned.

5. In consideration of the agreement, the County shall pay Koschnitzke \$5,000.

Charging Party was ordered by the undersigned to respond in writing to the Union and Employer assertions, particularly the waiver of his rights contained in the above release agreement.

Charging Party's Response:

In response to the Union and the Employer, Koschnitzke argues that the release agreement was against public policy and self-serving with respect to the Union. Koschnitzke maintains that he was under duress and that he involuntarily signed the release agreement. He argues that he should have been allowed outside counsel and that the Union did not prepare for the arbitration as he wished. He also claims that his charge is timely since the statute of limitations is satisfied once the complaint is timely filed with the Commission.

Discussion:

Koschnitzke claims that the release is invalid as contrary to public policy; however, nothing in Michigan law precludes settling parties from waiving whatever rights they choose. *Romska v Opper*, 234 Mich 512, 516 (1999). The language of the release agreement is clear and unambiguous; by its terms Koschnitzke entered into the waiver "knowingly, voluntarily, and with the full understanding of his rights." Koschnitzke signed the release after consulting with the Union's attorney. He now claims the release was made under duress, but does not allege any action by the Union or Employer which threatened him or prevented him from exercising his free will, an

essential element in a claim of duress. See *Hungerman v McCord Gasket*, 189 Mich App 675, 677 (1991); *Norton v State Hwy Dept*, 315 Mich 313, 320 (1946). Approximately six months after settling his grievance, resigning his position, and accepting a consideration of \$5000, Koschnitzke has changed his mind. He now wishes to challenge his discharge and involve the Union and the Employer in litigation, which is precisely what a release agreement is intended to avoid. As no reasons have been advanced which would void the release agreement, I find that Koschnitzke's claim for relief under PERA is barred by the agreement.¹ (For a waiver of claims by a charging party, see also *Wayne County*, 2000 MERC Lab Op ___ [6/12/00]).

In addition, the charges are subject to dismissal for failure to state a cause of action under PERA. Charging Party has not alleged any action by the Employer which would impinge on his PERA protected rights. With respect to the Union, allegations in a complaint for a breach of a union's duty of fair representation must contain more than conclusory statements alleging improper representation. *Martin v Shiawassee County Bd of Commrs*, 109 Mich App 32 (1981); *Wayne County Dept Public Health*, 1998 MERC Lab Op 590, 600; *Lansing School District*, 1998 MERC Lab Op 403. A breach of the duty of fair representation occurs only when a union's actions towards a bargaining unit member are arbitrary, discriminatory, or in bad faith. *Vaca v Sipes*, 387 US 171, 64 LRRM 2369 (1967). Koschnitzke's charges essentially allege that he disagreed with the way the Union handled his case. This does not state a claim under PERA.

The law is clear that a union has complete discretion with respect to whether or not it will take a grievance, how far it will proceed, and how it will present a case at arbitration. *Lowe v Hotel Employees Union*, 389 Mich 123 (1973). A union representative or attorney need not follow the dictates of the grievant but may investigate and present the case in the manner he or she determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729; *AFSCME Council 25*, 1992 MERC Lab Op 166. Koschnitzke claims that the release agreement was self-serving with respect to the Union, but does not specify facts to demonstrate that the conduct or advice of the Union's attorney was not in good faith. *Service Employees International Union, Local 502*, 1999 MERC Lab Op 383; *Bloomfield Hills Assoc of Paraprofessionals*, 1997 MERC Lab Op 221. Accordingly, I find that Koschnitzke has failed to state a claim against the POAM for a breach of the duty of fair representation.

Koschnitzke's assertion that he need only file with the Commission to satisfy the statute of limitations is also incorrect. Section 16(a) of PERA also requires timely service of the complaint by Charging Party upon the person against whom the charge is brought. Based upon their answers, it appears that neither Respondent was timely served with the charge. *Romulus Comm Schools*, 1996 MERC Lab Op 370, 373; *Ingham Medical Hosp*, 1970 MERC Lab Op 745, 747, 751.

Based on the above discussion, I find that the charges are barred by the release

¹Koschnitzke also failed to tender the consideration at the time of filing the charges which would also procedurally bar his claim. *Stefanac v Cranbrook Ed Community*, 435 Mich 155, 176 (1990); *Rinke v Auto Moulding Co*, 226 Mich App 432 (1997).

agreement. I also find that they fail to state a claim under PERA against either the Employer or the Union, and no issue has been raised by Charging Party which would warrant a hearing in this case. It is therefore recommended that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

DATED _____