

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

In the Matter of:

DETROIT BOARD OF EDUCATION,
DEPARTMENT OF PUBLIC SAFETY,
Respondent-Employer in Case No. C98 I-193,

-and-

TEAMSTERS STATE, COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL 214,
Respondent-Labor Organization in Case No. CU98 I-48,

-and-

NORMA BURKETT,
An Individual Charging Party.

APPEARANCES:

Gordon J. Anderson, Esq., for the Public Employer

Judy Sawicki, Esq., for the Labor Organization

Norma Burkett, In Pro Per

DECISION AND ORDER

On November 22, 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:

Gordon J. Anderson, Esq., for the Public Employer

Judy Sawicki, Atty, for the Labor Organization

Norma Burkett, In pro per

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 March 12, 1999, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed by Individual Charging Party Norma Burkett, alleging that the Detroit Board of Education, Department of Public Safety, and the Teamsters State, County and Municipal Employees, Local 214, had violated Section 10 of PERA. Based upon the record, including the transcript of hearing received on April 21, 1999, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charges:

The charges filed against the Employer and the Union are identical and read as follows:

- (1) Terminated w/o due process, gross negelet (sic) of time limits per contract
- (2) Gross negligence in refusal to represent to full extent of contract

Facts:

Charging Party Norma Burkett worked as a security officer for the Detroit Board of Education for several years. This classification is included in a bargaining unit represented by Teamsters Local 214. During her course of employment, Burkett had a continuing problem with tardiness and excessive absenteeism. She received discipline and was repeatedly counseled about it. On more than one occasion her work hours and job location were adjusted in an attempt to alleviate her tardiness and absentee problems.

On October 3, 1997, supervisor Leon Lewis sent a memo to Charles Mitchell, Director of Public Safety, requesting that a disciplinary hearing be held regarding Burkett's continuing attendance abuse. A hearing was held on October 30, 1997, which was attended by Burkett, her Union representative, and representatives of the Employer, including Lewis. On January 15, 1998, Mitchell sent a memo to Personnel summarizing the hearing as follows:

The hearing committee presented the charges and the accused plead not guilty without rebuttal or production of evidence. The committee reviewed the charges and the officer's past work history. The committee found Officer Burkett guilty of all charges.

Therefore, I am forwarding these findings to your office for disposition.

On January 28, 1998, Personnel responded to Mitchell's memo and recommended Burkett's termination.

On February 10, 1998, a letter was sent to Burkett from the Office of Support Staff Personnel, stating that she had been found in violation of Detroit Public Schools' work rules and concluding as follows:

A review of your work record with the Department of Public Safety reveals continuous acts of unacceptable behavior. You have been counseled, given oral and written warnings, and written reprimands to

help in correcting your behavior.

Consequently, a recommendation will be submitted to the Detroit Board of Education at its next meeting to terminate your employment with the Detroit Public Schools. The effective date of your termination will be February 28, 1998.

The Board did not hold its regular monthly meeting in February and Burkett continued to report to work. On March 25, 1998, Lewis called Burkett at approximately 8:30 a.m. and asked her to report to the northern annex. At that time Lewis asked if she had received the February 10 notice of her termination. When Burkett indicated that she had not received it, Lewis gave her a copy and asked for her badge and equipment.

Following this meeting Burkett went to the Union office and requested that a grievance be filed. A grievance was filed that day by her steward Bill Pasha. Chief Steward Jack Crumpler testified that a termination grievance is automatically sent to a fifth step, a hearing with the superintendent's designees. He accordingly contacted labor relations on March 26, 1998, to request a hearing. A step five grievance hearing was held on April 22, 1998, attended by Burkett, her Union representatives and management personnel. Crumpler testified that the Union did not receive a response to the grievance from the Employer until July 20, 1998, at which time the grievance was denied. Burkett contacted Crumpler during the interim to find out the status of the grievance and he explained that it was still in labor affairs.

After the denial at the fifth step, Union representatives brought the grievance before a grievance panel for a determination of whether to advance the grievance to arbitration. The grievance panel convened in July but felt it needed more information and requested Burkett's total disciplinary package from the Employer. After receiving this information, the grievance panel met again in September and denied the grievance. Burkett was sent a letter on September 29, 1998, by certified mail which explained that the Union was withdrawing the grievance for the following reasons:

The basis of your grievance, i.e., that you were never warned or given anything in writing prior to your termination, is not borne out by the record. Indeed, over a period of several years, but particularly in the years which are allowed by contract to be used for discipline, your record shows that you were issued several disciplinary reprimands, received several improvement plans from your employer, were counseled again and again regarding your attendance, and even had your starting time changed in an effort to assist you in getting to work on time. None of this apparently was of any great help since your record continued to be very poor in the area of attendance and punctuality.

We believe that, in this case, the employer went the extra mile to assist you. We find your grievance without merit, and therefore denied.

Enclosed with this letter was a copy of the grievance panel policy which provides that a grievant has the right to appeal the decision to the Union's appeal board and procedures for such action. Burkett did appeal the denial of her grievance to the appeal board which met on October 27, 1998. At that time Burkett was given the opportunity to address the board and present her argument as to why the grievance should be taken to arbitration. On November 17, 1998, Burkett received a letter from Teamsters Local 214 stating that the appeal board concluded that the decision of the grievance panel was proper and summarizing the reasons why her grievance was found to be without merit.

Discussion and Conclusions:

Charging Party has failed to present any evidence in this case which would support a finding of a violation of PERA by either the Employer or the Union. The record reveals that Burkett had a long history of tardiness and attendance problems and after repeated warnings the Employer terminated her. Charging Party has neither alleged nor proved a violation of PERA by the Employer.

With respect to the charge against the Union, the record demonstrates that Teamsters Local 214 processed Burkett's grievance in good faith and in accordance with its usual procedures. After a full investigation and consideration by its grievance panel, the Union determined that the grievance had no merit. Burkett was given the opportunity to appeal this decision and speak to the appeals board which reviewed the action of the grievance panel and affirmed its decision to withdraw the grievance. Charging Party has not demonstrated that the actions of Union representatives were in any way arbitrary, discriminatory, or in bad faith within the meaning of decision defining a union's duty of fair representation. *Goolsby v Detroit*, 419 Mich 651 (1984); *Lowe v Hotel & Restaurant Employees, Local 705*, 389 Mich 123 (1973). It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby ordered that the charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

DATED: _____