STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Respondent-Public Employer in Case No. C99 F-98

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 25 and LOCAL 101,
Respondent-Labor Organization in Case No. CU99 F-19,

-and-

DEAN M. ROBERGE,
An Individual Charging Party.
_____/

APPEARANCES:

Wayne County Labor Relations Division, by John Miles, Esq., for the Public Employer

Miller Cohen, P.L.C., by Bruce A. Miller, Esq. and Richard G. Mack, Esq., for the Labor Organization

Dean Roberge, In Pro Per

DECISION AND ORDER

On May 16, 2000, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondents 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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DECISION AND RECOMMENDED ORDER
ON
MOTIONS TO DISMISS

On June 1, 1999, Charging Party filed unfair labor charges against Respondents Wayne County and Wayne County Roads Local 101.[1] The charge against Respondent Wayne County reads:

> On July 7, 1998 I was injured on the job. Due to this I missed a lot of time and was put on restriction or a (bridge assignment).
>
> On Feb 6, 1999, I had a probationary/provisional employee evaluation. Due to my attendance I didn't pass it. I was told to report back to the airport on Monday, February 8, 1999. This was the third time I was sent back to the airport. The first time I never went because of my restriction. The second time I went and was sent home. I was told I can't

[1]The correct name of the Respondent Union is set forth in the case caption.

> work at the airport with restrictions, so I went back to the golf course. The third time I didn't report due to a doctors appt. on Monday Feb 8,1999 with Dr. Almad. I was going to ask him to lift my restrictions so I could return back to work at the airport on Tuesday Feb. 9,1999. When I arrived at his office the doctor was not in, so I made another appt. for Feb. 22, 1999 and the restriction remained the same.
>
> On Feb. 15, 1999 I received a letter by mail stating that I voluntarily quit. I didn't quit the golf course sent me to a job that wouldn't let me work with restriction.[2]
>
> I hope you can help me get my job back.

Charging Party claims that the Union failed to represent him after February 15, 1999 as follows:

> . . . A few days after I received the letter I called the union and talked to Roberty Kirby. He said they would take care of it. Then we played phone tag for a week or two. I didn't know were (sic) the office was located, they moved it. After a few weeks went by I got a hold of Robert Kirby and went downtown to the union office. They never filed the grievance and it was too late now to do so. Robert and Lee both told me to let my attorney handle it. Its all the same case. The next day I call my attorney Mr. Messary L. Gorchore. He told me I can't get your job back but I can get you back pay from workers comp. I am not that kind of an attorney! I know a lot of time has passed. The union didn't help me and my attorney can't. I hope you can!

The Motions to Dismiss:

In its August 26, 1999 Motion, Respondent Wayne County claimed that the charge does not allege a violation of the Public Employment Relations Act, MCLA 423.201 *et seq.* It also asserts that on June 21, 1999, after the charge was filed, Charging Party entered into a workers compensation redemption agreement and waived all claims against Wayne County, resigned from Wayne County employment effective February 15, 1999, and agreed not to reapply for employment.

Respondent AFSCME Local 101 filed a motion to dismiss on November 3, 1999. It contends that: (1) Charging Party's pleadings are insufficient to support a breach of the Union's duty of fair representation because he makes no claim that Wayne County violated the collective bargaining agreement; (2) in the settlement agreement, Charging Party concedes that he voluntarily resigned from employment; (3) although Charging Party learned on February 15, 1999, that the County had considered him to have voluntarily quit, he did not submit the warning letters to the Union within the 14-day time limit for filing grievances; (4) Charging Party may not bring this action because he had suffered no damages.

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[2]Article 16.06, section C, of the collective bargaining agreement between Respondents provides that employees are considered to have voluntarily quit if they are absent without leave for five (5) or more consecutive work days.

Charging Party entered into a settlement agreement with the County whereby he agreed to receive a lump sum payment of $3,000 in exchange for resigning and acknowledged that the settlement package was "in excess of any earned wages or benefits due."

On October 28 and November 3, 1999, Charging Party was directed to show cause why the Motions to Dismiss should not be granted. He did not respond.

Discussion and Conclusions of Law:

In hybrid breach of contract and duty of fair representation cases, a viable claim cannot be established without evidence of a violation of the collective bargaining agreement by the employer, and a breach of the duty of fair representation by the union. *Knoke* v *E Jackson Schools*, 201 Mich App 480, 485 (1993); *Martin* v *E Lansing Schools*, 193 Mich app 166, 181; *Wayne County, Dept of Environ. Health*, 1998 MERC Lab Op 1998. In considering motions to dismiss, any well-pled allegations must be accepted as true and construed in a light most favorable to the charging party. *Wayne County, supra; Senior Accountants, Analysts and Appraisers Ass'n*, 1997 MERC Lab Op 436. 437.

Charging Party has failed to allege facts which raise a triable issue of a breach of contract by the Employer or a breach of the duty of fair representation by the Union. Nowhere in his charge against the Employer does he contend that the collective bargaining agreement has been violated. Rather, he claims he did not voluntarily quit and seeks the Commission's help in getting his job back. Absent a violation of the collective bargaining agreement by the Employer, the Union's failure to file a grievance does not constitute conduct which is "arbitrary, discriminatory, or in bad faith." *Goolsby* v *City of Detroit*, 419 Mich 651, 661. Moreover, on June 21, 1999, after the charges were filed, Charging Party entered into an agreement with the Employer to voluntarily quit his job and waive all claims against the Employer. I, therefore, recommend that the Commission issue the following order.

Order Dismissing Charges

The unfair labor practice charges are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____