

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

In the Matter of:

CITY OF DETROIT, WATER AND SEWERAGE DEPARTMENT,
Respondent-Public Employer in Case No. C99 I-185,

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 2920,
Respondent-Labor Organization in Case No. CU99 I-41,

-and-

DEBRA L. HARPER,
An Individual Charging Party.

APPEARANCES:

Valerie Colbert-Osamuede, Esq., for the Public Employer

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

Debra L. Harper, In Pro Per

DECISION AND ORDER

On July 20, 2000, Administrative Law Judge Roy L. Roulhac issued his 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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DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216; MSA 17.455(10) and 17.455(16), this case was heard in Detroit, Michigan on January 24, 2000, by Administrative Law Judge Roy L. Roulhac. Based upon the record and post-hearing briefs filed by March 20, 2000, I make the following findings of fact, conclusions of law, and issue the recommended order set forth below:¹

¹Respondent City of Detroit did not file a brief.

The Charges:

On September 30, 1999, Charging Party Debra L. Harper filed charges against Respondents City of Detroit and AFSCME, Local 2920. The charge against the Respondent City of Detroit alleged “discrimination; cruel & excessive punishment”. The charge against the Union alleged “union misconduct; poor representation.” Subsequently, on November 17 and December 14, 1999, in response to requests for bills of particulars and a motion to dismiss, Charging Party set forth a litany of complaints against the Employer and the Union, most of which related to matters occurring more than six months before the charge was filed. During a pre-hearing conference on January 24, 2000, evidence was presented on two issues: (1) whether the union breached its duty of fair representation by failing to file a grievance regarding her suspension in February 1999, and (2) whether on February 25, 1999, Charging Party was inappropriately reassigned by the Employer, and if the Union breached its duty of fair representation by failing to file a grievance regarding the reassignment.

Findings of Fact:

Charging Party Debra L. Harper is an employee of the City of Detroit’s Water and Sewage Department and a member of AFSCME, Local 2920. The Employer and the Union are parties to a collective bargaining agreement which contains a five-step grievance procedure ending in binding arbitration. On Friday February 19, 1999, Harper was suspended for three days, effective Monday February 22 through Wednesday February 24 for failure to return from lunch in a timely manner on February 10 and February 15. At the hearing, Charging Party admitted that on February 10, she took a lunch break from 1:35 p.m. until 3:40 p.m., and on February 15, she took a lunch break from 1:30 until 3:25 p.m. According to Harper, she is allowed lunch breaks of one and a half hours.

On February 24, 1999, the Union filed a grievance challenging Charging Party’s suspension. During a third step grievance hearing, the Union argued that the three work day suspension was too severe. As a result, the Employer reduced Charging Party’s suspension from three work days to three calendar days. The suspension, therefore extended from Saturday February 20 through Monday, February 22, and Charging Party was reimbursed for time lost on February 23 and 24. Charging Party complained to the Union that the one day suspension was too severe and she should not have been suspended at all. The Union, however, did not advance the grievance beyond step three.

On February 25, 1999, Charging Party was involuntarily transferred by the Employer from one work location to another. The collective bargaining agreement, article 18, section H, provides in pertinent parts as follows:

H. Involuntary Transfers: In situations where it is necessary to transfer one or more employees from their present job location or shift to another location or shift in the department, such transfers shall first be offered to employees in order of their seniority. When there are not enough volunteers, the transfer shall be made according to inverse seniority.

Charging Party had more seniority than other clerks in her department. She discussed her involuntary

transfer with the Union president, but the Union did not file a grievance.

Conclusions of Law:

In *Goolsby v Detroit*, 419 Mich 651 (1984), the Court stated that to satisfy its duty of fair representation, a Union must (1) serve the interests of all members without hostility or discrimination towards any; (2) exercise its discretion with complete good faith and honesty; and (3) avoid arbitrary conduct. See also *Vaca v Sipes*, 386 U.S. 171 (1967). Arbitrary conduct constituting a breach of the duty amounts to behavior which reflects “reckless disregard for the rights of the individual employee.” A union has considerable discretion to decide which grievances will be withdrawn, settled, or advanced to arbitration. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123 (1973).

The record in this case establishes that the Union did not violate its duty of fair representation. Within five days of Charging Party’s suspension, the Union filed a grievance and was successful in having the suspension reduced from three work days to three calendar days, resulting in Charging Party losing pay for one day instead of three. Charging Party has failed to demonstrate that the Union’s decision not to pursue her grievance beyond step three was arbitrary, discriminatory, or in bad faith, especially since she admitted that her lunch breaks on February 10 and 15, 1999, extended beyond the allotted time.

Charging Party also complains that she was inappropriately transferred on February 25 and the Union breached its duty of fair representation by failing to file a grievance on her behalf. Section 16(a) of PERA provides that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the time a charge is filed. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582; *Shiawassee County Road Commission*, 1978 MERC Lab Op 1182. Charging Party was involuntarily transferred on February 25, 1999. However, the charges were not filed until September 30, 1999, over a month beyond the statutory six-month time period. Based on the above discussion, I recommend that the Commission issue the following order:

Order

It is hereby ordered that the above unfair labor practice charges be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____