

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

In the Matter of:

ASSOCIATION OF CITY OF DETROIT ENGINEERS,
Respondent-Labor Organization,

Case No. CU99 F-28

-and-

AHLAM KAMASH,
An Individual Charging Party.

APPEARANCES:

Sachs, Waldman, Gurewitz, Helveston, Bogas & McIntosh, P.C., by Mary Ellen Gurewitz, Esq., for Respondent
Ahlam Kamash, in pro per

DECISION AND ORDER

On June 30, 2000 , Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was 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), as amended, MCL 423.210 & 423.216; MSA 17.455(10) & 17.455(16), this case was heard at Detroit, Michigan on November 30, 1999, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the record, including the charge and evidence and arguments presented at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The charge was filed on June 25, 1999, by Ahlam Kamash against her collective bargaining representative, the Association of City of Detroit Engineers. Respondent filed grievances on Kamash's behalf in February and July 1998. Kamash alleges that Respondent breached its duty of fair representation in handling these grievances by (1) refusing to respond to her repeated attempts to find out the status of the grievances; (2) in November and December 1998, and again in March 1999, affirmatively misrepresenting the status of these grievances; (3) failing to properly investigate her grievances before meeting with the City; (4) not permitting her to be present during grievance meetings; (5) settling the July 1998 grievance without consulting her. Kamash asserts that

Respondent acted in bad faith. She also claims that Respondent's actions constituted "unreasonable and inept conduct undertaken with little care or with indifference to her interests."

Facts:

Kamash is employed as an inspector in the industrial waste control division of the City of Detroit, Department of Water and Sewerage (the department). Kamash inspects and issues permits to industrial waste contractors allowing them to discharge their waste into the Detroit sewage system. Respondent represents a bargaining unit of engineers employed by the City of Detroit. Kamash's position is included in this unit.

The grievance procedure in Respondent's contract with the City contains five steps. The first step is an oral conference with the employee's supervisor. After step one, the grievance is reduced to writing. Steps two and three involve meetings between Respondent and representatives of the employee's department. The grievance then goes to the City's Human Resources Department. Step four consists of a hearing before an Appeal and Review Board made up of equal numbers of union and City representatives. Arbitration is step five.

On Saturday, December 20, 1997, Kamash was scheduled to work a full day of overtime. In midmorning her supervisor, Ebere Onwuneme, accused her of not working. Onwuneme ordered her to punch out and go home. In January 1998, Kamash filed a harassment complaint against Onwuneme with the department. Kamash complained about the December 20 incident, memos written by her supervisor on December 17, 1997 and January 2, 1998 accusing her of not completing her work on time, and many other incidents. Her complaint stated that her problem with Onwuneme began when she asked him to stop touching and hugging her and spending so much time around her desk. Onwuneme's boss, manager Steve Kuplicki, forwarded her complaint to the department's human resources division, where it was investigated as a sexual harassment complaint by the department's coordinator, Horace Boyington. On January 26, 1998, Boyington issued a report finding no sexual harassment. Kamash protested to Boyington that her complaint was broader than sexual harassment. Boyington advised Kamash to contact her union representative.

Kamash went to Respondent President Marvin Woods. Kamash told Woods she was concerned about the friendly relationships between Onwuneme and her steward, Andrew Edevbie, and between Onwuneme and Woods. She asked Woods if he could be fair. Woods said he could. Woods also said that if she was concerned about Edevbie's relationship with Onwuneme she should take her grievance to Hany Choulagh, Respondent's grievance committee chair. Kamash met with Choulagh and gave him a number of documents connected to her case. On February 25, 1998, Choulagh filed a written grievance alleging that Kamash had been sexually harassed, been treated rudely and with hostility, and had not been paid for prescheduled overtime.

At the second step meeting on the February 25 grievance the employer told Choulagh to tell

Kamash that if she had a harassment complaint she should take it to Boyington.¹ The department denied the grievance. A third step meeting was held on July 1, 1998. Both Choulagh and Woods were at this meeting. At this meeting Woods learned that the December 20, 1997 overtime had been prescheduled overtime. On November 10, 1998, the department sent Respondent its written answer denying the grievance. The department referred to Boyington's report. It also said that Kamash had properly been paid for the number of hours she worked on December 20, 1997. Woods had not heard any further complaints from Kamash about harassment, and concluded that the problem had been resolved. He also knew that since the overtime on December 20 was scheduled overtime, Respondent had no basis under the contract for claiming that Kamash should have received pay beyond the hours she had worked. Woods also knew that the contract gave Onwuneme full discretion to send home an employee who was working overtime. Woods decided to drop the grievance.

Meanwhile, on June 26, 1998, Kamash had received three day (one working day) suspension for an incident which occurred on June 24. Kamash and a co-worker, Thomas Thomas, took a city-owned van on an inspection. Neither Kamash nor Thomas was familiar with this van. They noticed they were low on fuel, stopped at a nearby facility owned by another city department, and filled the van with gas. Kamash, who was driving, did not notice a sign on the fuel gauge that said "diesel fuel only," and Thomas, who pumped the gas, did not notice a similar sign on the gas cap. Before they reached their destination the van stopped running and had to be towed. The service garage initially reported that the van's engine had been damaged by the non-diesel fuel, but it was later determined that the van had not suffered any actual damage. Kamash and Thomas both received notices of suspension dated June 26. The notices read, "negligence: (1) obtaining fuel from non-DWSD source and (2) causing damage to department property." The suspensions were accompanied by a memo from Kuplicki stating that both Kamash and Thomas had been negligent in failing to recognize that the vehicle needed diesel fuel. He also said that it would be decided later whether Kamash and Thomas would be charged for damages incurred.

Choulagh filed a written grievance protesting Kamash's and Thomas' suspensions on July 1, 1998. A fourth step hearing on this grievance was held in November 1998. The department argued that Thomas and Kamash had been negligent in ignoring the signs on the gas cap and gas gauge. Woods argued that the penalty for their negligence was too harsh. Since Kamash and Thomas had not in fact been charged for any damage, Woods did not believe the degree of damage to the van was relevant, and he did not raise this point at the hearing. During this proceeding the City agreed to reduce the suspensions to written reprimands, although it would not agree to pay Thomas and Kamash the day's pay they had lost. Woods agreed to this settlement, and the grievance was dropped.

It is the City's policy that grievants not attend grievance meetings, but this policy is

¹ Choulagh testified that he told the employer at the second step meeting that Kamash had already filed a complaint. He also testified that after the second step meeting he told Kamash to file another complaint, and that Boyington conducted another investigation after the second step meeting. There is no evidence of a second investigation.

sometimes waived if a union insists. Woods did not insist in Kamash's case, however, because he felt that Kamash's tendency to get emotional when discussing her case might harm her interests. Kamash was not invited to any of the meetings held between Respondent and the City on her grievances. Kamash was also not sent copies of any of the City's responses to her two grievances. Respondent also did not tell Kamash that her grievances had been settled and dropped at the time these decisions were made. Between August and December 1998, Kamash made frequent calls to Choulagh to inquire about the status of her suspension grievance. Each time, Choulagh told Kamash each time that Respondent was "working on it." Kamash said to Choulagh that she wanted to know when the step four hearing was scheduled so she could attend. Choulagh told her several times that this hearing would be in two weeks.² After hearing this again in December, Kamash called Respondent President Marvin Woods. She left messages on two occasions but Woods did not return her phone calls. On January 13, 1999, Kamash sent a certified letter to Woods addressed to Respondent's post office box; it was never claimed.

In late February 1999, Kamash and Thomas went to Onwuneme and said that they needed to talk to Woods but couldn't reach him. Onwuneme called Woods, who called Thomas. Woods told Thomas that his suspension would be changed to a written reprimand without pay. Thomas asked Woods if they could meet. Woods arranged a meeting with Kamash and Thomas for March 5. Kamash and Thomas complained to Woods that he had failed to return their phone calls. Woods apologized and said it would never happen again. Kamash asked about her February 1998 grievance, and Woods said that he was not sure of the status of that grievance was. Woods told Kamash and Thomas that the step four hearing on their grievance had been held in November 1998. He said that Thomas and Kamash would have their suspensions reduced to written reprimands, although the department refused to pay them for the one day's pay they lost. Woods said that unlike a suspension, a written reprimand would not interfere with their ability to be promoted. Woods said that their case was very weak, that he would not take their grievance any further, and that he had more important cases. Neither Kamash nor Thomas liked the terms of this settlement. Kamash complained that she had not been consulted. Both Kamash and Thomas both asked for something in writing confirming that there was an agreement. Woods said he would obtain a written copy for them, and the meeting ended.

After the meeting, Woods called the department's human resources officer and arranged for the City's labor relations division to send Woods a letter stating the terms of the grievance settlement. This letter was put in Kamash's file, although Woods did not send Kamash or Woods a copy.

Discussion and Conclusions of Law:

A union's duty of fair representation consists 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. *Vaca v Sipes*, 386 US 171, 177; 87 S Ct 903; (1967); *Goolsby v Detroit*, 419 Mich 651,679(1984).

² Choulagh denied making this statement. According to Choulagh, he told Kamash that it was not up to him but was Woods' decision, because there was money involved.

Kamash asserts that Respondent was guilty of bad faith. Kamash maintains that because Respondent President Woods and her supervisor, Ebere Onwuneme, were friends, Woods deliberately sabotaged her grievances to protect Onwuneme. Woods admitted that he and Onwuneme had worked together before Onwuneme's promotion and maintained a cordial relationship. However, there is no evidence in this record that Woods was motivated by a desire to protect Onwuneme. I also note that the decision to suspend Kamash and Thomas in June 1998 was apparently made by Kuplicki. I find that the evidence did not establish that Respondent acted in bad faith.

Kamash also argues that Respondent was guilty of arbitrary conduct. However, the record indicates that Respondent made good faith, reasoned decisions to drop Kamash's February 1998 grievance and settle her July 1998 grievance. Woods decided to drop the February 1998 grievance after the third step because he believed that the sexual harassment aspect had been settled, because the contract does not provide that employees be paid for overtime hours beyond time worked except in the case of a call back, and because the City has the right under the contract to send an employee home when that employee is working overtime. Woods decided to accept the department's offer to settle the July 1998 grievance because, although he believed that the reduced penalty offered by the department was still too harsh, the reduction to a written reprimand would not interfere with Kamash's or Thomas' ability to be promoted, it was clear that Kamash and Thomas had been negligent, Woods did not believe the case could be won in arbitration, and it was not worth spending the money to arbitrate the grievance. A union has a duty to the membership as a whole, as well as to its individual members.

In exercising its discretion, it has a duty to consider the general good of the membership. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123 (1973). This includes the duty to weigh the cost of arbitrating a grievance, and the likelihood that grievance could be won, against the harm suffered by the individual member. I find that Respondent properly exercised its discretion and did not act arbitrarily when it decided to drop Kamash's February 1998 grievance and settle her July 1998 grievance.

Kamash also alleges that Choulagh failed to properly investigate her February 1998 grievance before meeting with the department at the second step. Whether Choulagh read the documents Kamash gave him before attending the second step meeting is not significant, since the record indicates that by the third step meeting Woods and Choulagh were familiar with the facts of her case. The evidence does not support a finding that Choulagh was guilty of "gross negligence," or "indifference to the grievant's interests."

Finally, Kamash alleges that Respondent breached its duty of fair representation when Woods refused to return her phone calls or reply to her letter inquiring into the status of her grievances, and in March 1999 when he failed to live up to his promise to send her a copy of the written settlement of her July 1998 grievance. She also alleges that Choulagh acted unlawfully in November and December 1997 when he told her that her July 1998 grievance had not yet gone to the fourth step. In order to find out that their grievance had been settled, Kamash and Thomas had to ask their supervisor to contact Woods. Kamash was never told directly by Respondent that it had dropped her February 1998 grievance. However, the Commission has held that a union's delay or failure to communicate

to a member that his or her grievance is no longer being processed is not a breach of the duty of fair representation unless that delay or failure results in some actual harm to the member. *Detroit Police Officers Assoc*, 1999 MERC Lab Op 227,230. See also the ALJ decisions in *Wayne Co Sheriff Dept*, 1998 MERC Lab Op 101, and *Detroit Assoc of Educational Office Employees*, 1997 MERC Lab Op 475. As indicated above, I have concluded that Woods did not breach his duty of fair representation toward Kamash when he decided to drop her first grievance after the third step or when he settled her second grievance at the fourth step. While Kamash may have been aggravated and frustrated by Woods' failure to communicate with her, there is no indication it caused her any actual harm.

In accord with the findings of fact and discussion and conclusions of law set forth above, I find that Respondent did not violate its duty of fair representation under Section 10(3)(b)(i) of PERA. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge in this case is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern

Administrative Law Judge

Dated: _____