

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

In the Matter of:

THIRTY-SIXTH DISTRICT COURT,
Respondent in Case No. C99 H-148,

-and-

AMERICAN FEDERATION OF STATE, COUNTY, AND
MUNICIPAL EMPLOYEES, COUNCIL 25, LOCAL 3308,
Respondent in Case No. CU99 H-37,

-and-

ESSIE B. WINGO,
An Individual Charging Party.

APPEARANCES:

Constance Allen, Esq., for the Public Employer

Miller Cohen, PLC, by Gail Wilson, Esq., for the Labor Organization

Essie B. Wingo, in pro per

DECISION AND ORDER

On September 18, 2000, Administrative Law Judge (hereafter "ALJ") Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondents Thirty-Sixth District Court and the American Federation of State, County, and Municipal Employees (hereafter "AFSCME"), Local 3308, did not violate Section 10 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint. The Decision and Recommended Order of the ALJ was served upon the interested parties in accordance with Section 16 of the Act. On October 6, 2000, Charging Party Essie B. Wingo filed timely exceptions to the Decision and Recommended Order of the ALJ. Respondent AFSCME filed a timely brief in support of the ALJ's recommended order on October 27, 2000.

Pursuant to Rule 66(2), R423.466, of the General Rules and Regulations of the Employment Relations Commission, exceptions must set forth specifically the question of procedure, fact, law,

or policy at issue, identify that portion of the ALJ's decision to which objection is made, and state the ground for the exceptions, including citation of authority, if any. In the instant case, no exception has been taken to any specific factual finding or legal conclusion of the ALJ. Rather, Charging Party essentially repeats the allegations set forth in her unfair labor practice charges and post-hearing briefs. In any event, we have carefully reviewed the exceptions in light of the record, including the transcript and exhibits submitted by the parties, and agree with the ALJ's determination that Wingo failed to establish that the Union acted in a manner which was arbitrary, discriminatory, or in bad faith. See e.g. *Vaca v Sipes*, 386 US 171, 177; 97 S Ct 903; 17 L Ed 2d 842 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). We also agree with the ALJ that Charging Party has neither alleged nor proven any violation of PERA by the Employer.

ORDER

For the above reasons, we hereby adopt the recommended order of the Administrative Law Judge as our final order in this case and dismiss the charges in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

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ESSIE B. WINGO,
Individual Charging Party

APPEARANCES:

Constance Allen, for Respondent-Public Employer

Gail Wilson, Miller Cohen, PLC, for Respondent Labor Organization

Essie B. Wingo, 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 February 8, 2000, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on August 13, 1999, by individual Charging Party Essie B. Wingo, alleging that the Thirty-Sixth District Court, and the American Federation of State, County, and Municipal Employees, Local 3308, had violated Section 10 of PERA. Based upon the record, including briefs filed by the parties on or before March 29, 2000, 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 against both Respondents are identical and read as follows:

The union did not represent me nor did they properly file a grievance. Calls to them elicit no concrete reason why I have not been paid since 7/2/99. I was told to remain on Leave w/Pay. Union was aware of it. I have been off work since 6/15/99. Paid through 7/2/99. On Monday, August 9, 1999, I spoke with Union Representative Cheryl Pinchem. She still had no concrete answer from the employer. I had been waiting for her to return my call from Friday, August 6, 1999. I called her at home. She is aware that I am filing this complaint, she said the court will not tell the union anything.

Facts:

Essie Wingo was formerly employed by the Thirty-Sixth District Court as a court reporter. Her position was included in a bargaining unit represented by AFSCME, Local 3308. Wingo was suspended from employment for twenty days in April of 1999 and the Union grieved the suspension. A settlement offer was made by the Employer to reverse the suspension and reimburse Wingo for 20 days of lost pay, provided that she would submit to a fitness for duty examination. Wingo refused the settlement offer; she returned to work May 10, 1999.

In June of 1999 Wingo was again suspended after being arrested by City of Detroit police due to an allegation that she assaulted another court employee. Wingo was subsequently notified by the personnel director that she had been scheduled for an appointment with the court's Employee Assistance Program (EAP) provider on June 22, 1999. She was informed that this was a fitness for duty assessment and was mandatory; failure to attend would result in disciplinary action up to and including discharge. Wingo did not attend the EAP appointment. In August Wingo received a second letter from the court informing her that if she did not attend an EAP session scheduled for September 8, 1999 she would be considered a voluntary quit. Wingo did not attend and her employment was terminated. AFSCME filed a second grievance protesting Wingo's termination. At the time of this hearing, the grievance was at the fourth step, which is the pre-arbitration stage.

Wingo testified that she has been unable to make contact with the Union regarding her grievance. According to Wingo, the last contact she had was a voice mail message from Union president Cheryl Pinchem late in August stating that the Union was to meet with the court regarding her situation. According to Wingo, she had spoken to Pinchem earlier in the summer and Pinchem was unable to tell her anything. Wingo did not contact Pinchem again, but waited for Pinchem to contact her. According to Wingo, the first she knew of the grievance was the day of the hearing on her unfair labor practice charge.

Pinchem testified that she attended a meeting with court representatives on August 23, 1999. According to Pinchem she called Wingo after the meeting and left a message for Wingo to call her. When she did not hear from Wingo, Pinchem testified that she sent her a letter in November by registered mail but it was returned.

Discussion and Conclusions:

Charging Party's claim that AFSCME Local 3308 failed to fairly and adequately represent her is not supported by the record. The standards for a breach of the duty of fair representation are well established. A union breaches its duty only when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. *Goolsby v Detroit*, 419 Mich 651 (1984); *Vaca v Sipes*, 386 US 171 (1967). There is nothing in this record which would even raise an issue as to the Union's conduct. The Union processed two grievances on Wingo's behalf, attempted to contact Wingo regarding the status of her grievances, left messages when unable to reach her, and continued to process her termination grievance. The fact that Wingo is dissatisfied with the Union's efforts on her behalf is insufficient to establish a breach of duty. *Wayne County DPW*, 1994 MERC Lab Op 855; *Muskegon Hts School Dist*, 1993 MERC Lab Op 654. While it is true that communication between the Union and Charging Party could have been better, Wingo also bears responsibility in this regard as she made minimal efforts to contact the Union.

Wingo apparently feels that she was justified in disregarding the Employer's order regarding EAP based on her belief that it was voluntary. However, it is a cardinal rule of labor relations that an employee must first obey an employer's directive, and then exercise their right to grieve the matter. Wingo's failure to cooperate with the Employer clearly limits the Union's ability to assist her. This case appears to be another attempt by Wingo to blame the Union for her continuing employment problems. In 1997 Wingo filed similar charges against Local 3308 which were found to have no merit and were dismissed by the ALJ and the Commission. *Michigan Council 25 AFSCME, Local 3308 (Thirty-sixth District Court)*, 1999 MERC Lab Op 132. With respect to the charge against the Employer, Charging Party has neither alleged nor proved that any action by the Employer impinged on her PERA protected rights.

Based on the above discussion, it is 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:

