

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,  
Respondent-Public Employer in Case No. C01 J-211

-and-

GREATER DETROIT BUILDING AND  
CONSTRUCTION TRADES COUNCIL,  
Respondent-Labor Organization in Case No. CU01 J-056

-and-

LABORERS LOCAL 334,  
Respondent-Labor Organization in Case No. CU01 L-064

-and-

THOMAS J. JACKSON,  
An Individual Charging Party.

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**APPEARANCES:**

Gordon Anderson, Esq., for the Public Employer

J. Douglas Korney, for the Labor Organizations

Charging Party In Pro Per

**DECISION AND ORDER**

On August 27, 2002, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondents did not violate Section 10 of the Public Employment Relations Act, 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

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, this case was heard at Detroit, Michigan on February 5, 2002, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings and the arguments of the parties at the hearing, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charges:

On October 25, 2001, Thomas J. Jackson filed the unfair labor practice charge in Case No. C01 J-211 against his employer, Detroit Public Schools, and the charge in Case No. CU01 J-056 against his bargaining agent, the Greater Detroit Building and Construction Trades Council (the Council). With respect to the Employer, the charge reads:

D.P.S. Failure to pay me equal pay as my coworker under the same classification & removed from new position without just cause or union representation even though my coworker was paid and restored back to the position as of July 2001[.]

The charge filed against the Greater Detroit Building and Construction Trades Council consists of two and a half handwritten pages in which Jackson alleges that he was unfairly treated by both the Council and Laborers Local 334 “due to [his] past and present union and work involvement as an outspoken person . . . .” Specifically, Jackson claims that the Unions refused to file a grievance on his behalf after he was removed from his position as acting sweep team supervisor.

On December 26, 2001, Jackson filed an “amended charge,” naming Laborers Local 334, a local affiliate of the Council, as Respondent. I treated it as a separate case but consolidated it with the aforementioned charges for purposes of hearing and decision. In Case No. CU01 L-064, Jackson alleges that Laborers Local 334 violated PERA by harassing him in retaliation for his filing an earlier “complaint,” and by causing management to “single [him] out.” The charge specifically names Local 334 business agents Percy Robeson and Rick Williams as perpetrators of the alleged harassment.

Findings of Fact:

Respondent Greater Detroit Building and Construction Trades Council is the collective bargaining representative for all building tradesmen employed by the Detroit Public Schools, including plumbers, pipe fitters, bricklayers, sheet metal workers, roofers, carpenters and laborers. The building tradesmen are divided into two separate bargaining units, one made up of supervisory employees, and the other comprised of approximately 300 nonsupervisory journeymen and apprentices. Unit members pay dues to the Council’s local affiliates, and the affiliates assist the parent organization in processing grievances. Respondent Laborers Local 334 is the local affiliate representing the school district’s laborers.

Through the fall of 1998, Charging Party Thomas Jackson was employed as a construction laborer with the Building Repair Unit of the Detroit Public Schools and was a member the Council/Laborers Local 334 bargaining unit. However, as early as 1997, Jackson and various other unit members were performing the duties of inspector/sweep team supervisor, a position represented for purposes of collective bargaining by the International Union of Operating Engineers (IUOE), Local 5477. Effective November 25, 1998, Jackson was formally promoted to the position of acting sweep team supervisor, as were roofer journeyman Vernon Lego and carpenter journeymen Robert Morefield, Andrew McMurray and Gary Przybyla.

On January 26, 1999, Jackson, Lego, Morefield, McMurray and Przybyla received notification that they were being reassigned to their previous positions with the Building Repair Unit due to a reorganization of the Bond Capital Program. The transfers became effective February 1, 1999. At the same time, Richard Motyl was transferred from his position as sweep team supervisor back to his former position of coordinator of the Building Repair Unit. The coordinator position is represented for purposes of collective bargaining by the IUOE.

Edward Coffey is a union representative for the Council. Coffey learned of the transfers sometime around September of 2000 during a meeting with Robert Morefield. Moorefield asked Coffey for the Council's assistance in enforcing a verbal agreement which had been previously entered into between the school district and the transferred employees. The agreement apparently required the school district to compensate Jackson, Lego, Morefield, McMurray, Przybyla and Motyl for the time they spent working out of class as inspectors/sweep team supervisors. Although the Council had no prior knowledge of this agreement, Coffey agreed to contact the school district on behalf of his members.

Coffey called Dennis McClosky, the Employer's assistant director for labor affairs, who explained the terms of the agreement reached between the employees and the school district. McClosky promised to cut checks for each of the aggrieved bargaining unit members, provided that Coffey agree to pick up the checks on their behalf. Coffey accepted McClosky's proposal and, shortly thereafter, went to the labor affairs office to take possession of checks issued to Lego, Morefield, McMurray and Przybyla. McClosky told Coffey that a check for Charging Party was not available because Jackson had filed a "lawsuit" against the school district regarding the matter. Coffey also learned from the other transferred employees that Jackson was attempting to get the inspector job permanently, and that he felt he did not need the Council to represent him. In fact, Jackson ultimately received a check from the Detroit Public Schools in the amount of \$9,840.52 to compensate him for time he worked out of class as an inspector/acting sweep team supervisor. The check was dated February 13, 2001.

Sometime during the summer of 2001, Rick Motyl won a grievance against the school district relating to his removal from the inspector/sweep team supervisor position. Motyl was assisted throughout the grievance process by his union, the IUOE. When Charging Party learned of Motyl's success, he went to Edward Coffey and indicated that he needed to speak with him concerning the possibility of filing a grievance concerning his situation. Coffey told Jackson that, pursuant to established union procedures, he should discuss the matter first with a representative from Laborers Local 334. Thereafter, Charging Party met with Daryl Gray, a business agent for Local 334. Following his July 30, 2001 meeting with Charging Party, Gray wrote a letter to Coffey in which he opined that Jackson's grievance "would have merit" and urged the Council to "pursue this matter."

Several days later, Coffey called Laborers Local 334 business agent Percy Robeson and asked him to investigate whether Jackson or any other employee within the Building Repair Unit had a cognizable grievance against the school district. In August of 2001, Robeson went to interview Jackson at the Willis Warehouse, the main hub for Building Repair employees. When Robeson approached him, Jackson indicated that he had already spoken with other individuals at

Local 334. Robeson responded, “Well, you didn’t see the right people.” Robeson then requested that Jackson bring to his office any documentation in his possession supporting the grievance. Robeson never heard back from Jackson.

As noted, Jackson filed unfair labor practice charges against the Detroit Public Schools and the Greater Detroit Building and Construction Trades Council on October 25, 2001. After receiving a copy of the charges, Edward Coffey wrote a letter to Jackson explaining that the Union could not grieve his transfer because the acting sweep team supervisor position was not within the Council’s bargaining unit, and because the collective bargaining agreement between the school district and the Union required that grievances be filed within ten days of the alleged violation.

In December of 2001, Robeson, along with business agent Rick Williams, returned to the Willis Warehouse to question union steward Anthony Sykes about Jackson’s whereabouts and attempt to obtain his employment records. Robeson had received conflicting information concerning what position Charging Party held with the school district, and his purpose in meeting with the steward was to confirm his belief that Jackson was indeed employed as a construction laborer.

#### Discussion and Conclusions of Law:

Jackson asserts that the Detroit Public Schools violated PERA by failing to pay him the same wages as a coworker employed in the same classification. In addition, Jackson contends that the Employer unlawfully removed him from his position as Acting Sweep Team Supervisor without just cause. Because there is no allegation that the Employer was motivated by Jackson’s union or other activity protected by PERA, I conclude that the charge against the Employer fails to state a claim upon which relief can be granted. I also find that the charge against the school district is untimely under Section 16(a) of PERA, which requires that a charge be filed within six months of the date of the challenged action. The instant charge was filed on October 25, 2001, more than twenty months after Jackson was transferred back to his position as a construction laborer. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 5 82; *Washtenaw County*, 1992 MERC Lab Op 471.

With respect the Respondent labor organizations, I conclude that Jackson has not demonstrated that either the Greater Detroit Building and Construction Trades Council, or its affiliate, Laborers Local 334, failed to represent him fairly. A union’s duty of fair representation is comprised 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(1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123, 146; 82 LRRM 341 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. Because the union’s ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe, supra*. A union satisfies the duty of fair

representation as long as its decision was within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67; 136 LRRM 2721 (1991); *City of Detroit, Detroit Fire Dep't*, 1997 MERC Lab Op 31, 34-35.

Charging Party contends that Respondents violated the duty of fair representation by failing to intercede on his behalf following his reassignment to the position of construction laborer. However, the record indicates that he did not ask either labor organization to file a grievance on his behalf until July of 2001, well after the transfer became effective. It is undisputed that grievances be filed within ten days of the alleged violation. Moreover, there is no dispute that the acting sweep team supervisor position from which Charging Party was transferred was not within the bargaining unit represented by Respondents. For these reasons, neither the Council nor Laborers Local 334 were in a position to file a grievance on Jackson's behalf concerning the transfer. The fact that a grievance was filed on behalf of Rick Motyl does not in any way establish that Jackson was the subject of disparate treatment by Respondents. The grievance pertaining to Motyl was filed by the IUOE, the labor organization which represents the sweep team supervisors and, therefore, has the authority to file grievances concerning employment decisions affecting individuals holding that position.

In support of his contention that Respondents breached their duty of fair representation, Charging Party relies on the fact that the Council helped Lego, Morefield, McMurray and Przybyla recover the money owed to them by Respondent Detroit Public Schools. While it is undisputed that union representative Edward Coffey intervened on behalf of the other transferees, Coffey testified that he did not attempt to recover the money owed to Charging Party because he had been informed that Jackson had filed his own lawsuit against the school district and that he did not want the Council's assistance. Coffey was a credible witness who had a good recollection of events. Moreover, the record establishes that Jackson did indeed take action against the school district on his own behalf. In fact, he ultimately received a check from the Employer in the amount of \$9,840.52 to compensate him for the back pay owed to him. Therefore, I conclude that the Council's did not treat Jackson unfairly by failing to intervene on his behalf.

I also find no evidence to support Charging Party's allegations of harassment by Respondent Laborers Local 334. Jackson asserts that Percy Robeson and others individuals connected with Laborers Local 334 went to his work site and questioned his supervisors and coworkers in retaliation for his filing a complaint against the Unions. Charging Party characterizes these visits as an attempt by the Union to "find something on me in order to discredit me." However, Robeson testified credibly that he went to the Willis Warehouse first to interview Charging Party and determine whether he had a meritorious grievance and then, several months later, to determine what position Jackson was holding with the school district. Robeson's testimony is corroborated by a letter from union steward Anthony Sykes from which Jackson read aloud at the hearing. In the letter, Sykes states that Robeson and Rick Williams merely questioned him about Charging Party's "whereabouts and job assignments," and that they attempted to obtain his employment records. Such conduct does not, by itself, constitute harassment.

Based upon the above discussion, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge

Dated: \_\_\_\_\_