

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

In the Matter of:

CITY OF DETROIT (HEALTH DEPT),  
Public Employer-Respondent in Case No. C03 G-150,

-and-

AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES, COUNCIL 25,  
Labor Organization-Respondent in Case No. CU03 G-030

-and-

DORIS O. KNIGHT,  
An Individual-Charging Party.

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APPEARANCES:

Bruce A. Henderson, Esq., Assistant General Counsel, City of Detroit Law Department, for the Respondent Employer

Bruce A. Miller, Esq., Miller Cohen, P.C., for the Respondent Labor Organization

Doris O. Knight, in pro per

**DECISION AND ORDER**

On August 13, 2004, Administrative Law Judge Julia C. Stern issued her 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

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, 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 April 27, 2004, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including a post-hearing brief filed by the Respondent Labor Organization on June 7, 2004, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Doris O. Knight filed these charges on July 14, 2003 against her employer, the City of Detroit, and

her collective bargaining agent, the American Federation of State, County and Municipal Employees, (AFSCME), Council 25 (the Union). Knight amended her charges on September 5, 2003. Knight alleges that the Employer violated the Respondents' collective bargaining agreement when, on May 23, 2003, Knight's supervisor called Knight into a meeting to give her an oral reprimand without giving her advance notice of the purpose of the meeting. Knight also alleges that the Union violated its duty of fair representation by failing to represent her properly at the May 23 meeting, and by subsequently refusing to file a grievance on her behalf over the reprimand.

Facts:

Knight is employed as a nutrition assistant in the City of Detroit Health Department. She is part of a bargaining unit represented by AFSCME Local 457. On May 23, 2003, Knight's supervisor, Anthony Fleming, contacted Bonita DuFour, chief steward for AFSCME Local 457. Fleming asked DuFour to be present while he gave Knight an oral reprimand. Fleming gave DuFour a copy of the reprimand form.<sup>1</sup> Fleming then went to Knight's desk and told her he wanted to talk to her in a nearby room. When Knight entered the room, DuFour was there. Fleming told Knight that he was giving her an oral reprimand for being rude to a co-worker or co-workers. Knight first asked Fleming and DuFour why she had not been given advance notice of the meeting and time to talk to her union representative. Knight testified that she believed that she also asked Fleming for details of the charges against her. Knight was certain that Fleming did not give her any more information, but she did not testify as to what, if anything, Fleming said in response to her question. Fleming asked DuFour if she would like to speak to Knight alone, and DuFour said she would. Fleming then left the room.

Knight testified that throughout the meeting DuFour was holding a piece of paper in her hand. Knight assumed that this was the statement of the complaint against her. Knight testified that after Fleming left the room, she asked DuFour what the charges were and who had complained about her. According to Knight, DuFour replied, "You cannot see the charges because it's illegal." Knight asked DuFour why, if someone had made a complaint about her, she could not see it. Although Knight could not recall specifically what else DuFour said, she testified that DuFour gave the impression that she knew who had complained but would not tell her. Knight said that if DuFour would not give her any information she could not defend herself, and that she did not see any sense in having a meeting under these circumstances. Knight left the room to return to work. As she left, Fleming and Gloria Walker, another union steward, were standing outside the door. Knight testified that either Fleming or DuFour told her that if they did not have the meeting that day, Knight would receive a written reprimand.

On or about May 25, Knight called DuFour and asked to meet with her. According to Knight, she told DuFour on the telephone that she needed to find out what the charges were so she could rebut them. DuFour told Knight that she would be working in Knight's area the following week. DuFour and Knight met on a Friday, near the end of the workday. Knight again asked DuFour to explain what the charges were against her. Knight told DuFour that if the charges were false "she wanted representation, she wanted to file

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<sup>1</sup> A written form accompanies an oral reprimand. This form is placed in the employee's personnel file and remains there for one year.

a rebuttal, she wanted to file a grievance.” DuFour tried to convince Knight that an oral reprimand was not worth contesting. Knight argued that it was important to her because she did not want it on her record. Eventually, Knight told DuFour that if DuFour was not going to represent her, Knight would get somebody else. DuFour then said it was time for her to go home and left the room.

Knight testified that she did not approach Walker or any other union representative about filing a grievance because she felt that they would take the same attitude as DuFour. After Knight filed the unfair labor practice charges in July 2003, she requested to see her personnel file. Knight did not find either a notice of oral reprimand or written reprimand in her file.

According to DuFour, the oral reprimand form Fleming gave her had no details. When Knight asked her what the charges were, DuFour said that she had no idea except that it was an oral reprimand based on rudeness. DuFour told Knight that Fleming would give her the information at the meeting. According to DuFour, Knight then said that if DuFour could not give her information about the charges, Knight did not want DuFour as a union representative. DuFour testified that she left the room after Knight told her this. According to DuFour, she did not know what happened after she left, including whether Knight actually received the reprimand. DuFour admitted that when she met with Knight after the May 23 meeting, Knight asked for her help in obtaining the information Knight needed to rebut the charges. According to DuFour, she told Knight that because Knight had indicated that she did not want DuFour representing her, DuFour could “no longer be involved in this.” DuFour told Knight that she was free to go to another steward or the local president, but that DuFour could not even talk to her about it. DuFour denied telling Knight that it would be illegal to tell her who had complained about her.

#### Discussion and Conclusions of Law:

A union’s duty of fair representation under PERA consists of three elements: (1) serving the interests of all members without hostility or discrimination toward any; (2) exercising its discretion in complete good faith and honesty; and (3) avoiding arbitrary conduct. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). The *Goolsby* Court, at page 679, defined “bad faith” as an intentional act or omission undertaken dishonestly or fraudulently, and “arbitrary” conduct as actions that are “impulsive, irrational, or unreasoned,” “undertaken with little care or with indifference to the interests of those affected” or “extreme recklessness or gross negligence.”

A union member has no absolute right to have the union file a grievance on his or her behalf. Rather, the union has discretion to decide which grievances should be carried forward, although it must exercise this discretion in complete good faith and without hostility or discrimination. Because the union must consider the good of the general membership, it may consider such factors as the burden on the contractual grievance machinery, the amount at stake, and the likelihood of success in determining whether to go forward with a grievance. *Knoke v East Jackson PS*, 201 Mich App 480, 486 (1993), affg 1991 MERC Lab Op 132; *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 146 (1973). See also *Ann Arbor Public Schools*, 2003 MERC Lab Op \_\_\_\_ (Case Nos. C01 F-112 and CU01 F-030, decided March 5, 2003), and *International Alliance of Theatrical Stage Employees, Local 272*, 2001 MERC Lab Op 1.

Knight and DuFour differ regarding what took place between them during their two meetings in May 2003. However, I conclude that even if Knight's testimony is credited, she has not established that the Union violated its duty of fair representation. When Fleming asked Knight to meet with him on May 23, 2003, Fleming had prepared a notice of oral reprimand which he gave to DuFour before the meeting. Fleming had obviously decided to reprimand Knight for alleged rudeness toward co-workers before this meeting took place. Although Knight clearly believed otherwise, there is no indication that the purpose of the meeting was to give Knight an opportunity to defend herself or rebut the allegations. Rather, the evidence indicates that the May 23 meeting was called solely to allow Fleming to deliver the reprimand.<sup>2</sup> Under those circumstances, DuFour's role was that of an observer. Given the purpose of the meeting and DuFour's role, whether DuFour knew the details of the complaint at that time or refused to give them to Knight is irrelevant.

After the May 23 meeting, Knight reasonably sought the Union's assistance in challenging what she assumed was a notice of oral reprimand, or possibly even a written reprimand, that had been placed in her file. Knight reasonably believed that she had the right to know the details of the complaints leading to the oral/written reprimand. I find, however, that even if Knight's testimony regarding her discussion with DuFour the following week is credited, Knight did not establish that the DuFour acted in bad faith or arbitrarily refused to file a grievance on Knight's behalf. According to Knight, DuFour attempted to persuade her that a grievance over an oral reprimand was not worth pursuing. Knight disagreed. As noted above, a union does not have an obligation to file a grievance whenever a member requests that it do so, but has the right and obligation to determine whether, on balance, the grievance should go forward. I find no evidence that DuFour was acting in bad faith when she argued that Knight's grievance was not worth pursuing. During their discussion, Knight grew angry and told DuFour that she would get "someone else," presumably another union representative, to represent her. After that statement, DuFour reasonably assumed that if Knight still wanted to pursue the matter, she would approach another union steward to file a grievance. Based on Knight's testimony, I find nothing in DuFour's conduct warranting a finding that she violated the Union's duty of fair representation toward Knight in this matter.

Knight's claim against the Employer is that it breached Respondents' collective bargaining agreement by calling her into the May 23 meeting without giving her advance notice of the purpose of the meeting. A breach of contract is not per se an unfair labor practice. *JO Mutch Co*, 1966 MERC Lab Op 314. An employee does not state a claim under PERA simply by alleging that his or her employer has violated the collective bargaining agreement. *City of Detroit Wastewater Treatment Plant*, 1993 MERC Lab Op 793, 794; *Ferris State College*, 1978 MERC Lab Op 757, 762-763. I conclude, therefore, that Knight has failed to allege that the Employer violated PERA by its conduct on May 23, 2003.

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<sup>2</sup> Employees have a right under PERA to union representation at a meeting called to investigate allegations of wrongdoing, if they reasonably believe that the meeting may result in their being disciplined. *NLRB v Weingarten Inc*, 420 US 251 (1975); *Univ of Michigan*, 1977 MERC Lab Op 496. However, an employee has no right to union representation at a meeting held simply to inform an employee of disciplinary action previously decided upon. *Baton Rouge Water Works Co*, 246 NLRB 995 (1979). See also *City of Detroit (DOT)*, 1991 MERC Lab Op 390.

For the reasons set forth above, I conclude that Knight did not establish that the Union violated its duty of fair representation under Section 10(3) (a) (i) of PERA. I also conclude that Knight's charge against the Employer does not state a claim under the Act and should be dismissed. I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are hereby dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

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