

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

In the Matter of:

CITY OF DETROIT,
Respondent-Public Employer in Case No. C03 K-246,

-and-

ASSOCIATION OF DETROIT SUPERVISORS,
Respondent-Labor Organization in Case No. CU03 K-050,

-and-

PAULA SATTERWHITE,
An Individual Charging Party.

APPEARANCES:

Andrew R. Jarvis, Esq., for the Public Employer

L. Roger Webb, P.C., by L. Roger Webb, Esq., for the Labor Organization

Paula Satterwhite in Propria Persona

DECISION AND ORDER

On January 31, 2005, Administrative Law Judge David M. Peltz 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

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

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L. Rodger Webb, P.C., by L. Rodger Webb, Esq., for the Labor Organization

Paula Satterwhite *in pro per*

**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 March 25, 2004, 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 November 13, 2003, Paula Satterwhite filed unfair labor practice charges against the City of Detroit and the Association of Detroit Supervisors (ACODS). Satterwhite alleges that in June of 2003, the City wrongfully demoted her from her position as a refuse collection foreman to her former position of refuse collector packer operator. She also claims that the Union violated its duty of fair representation by failing to process her grievance challenging the demotion.

On March 23, 2004, the Employer filed a motion to dismiss alleging that the charge in Case No. C03 K-246 fails to state a claim upon which relief can be granted. The City contends that Charging Party voluntarily chose to return to her former position as refuse collector packer operator rather than accept a layoff, and that the charge does not allege a PERA violation. Charging Party did not file a written response to the motion. However, at the start of the hearing in this matter, Satterwhite conceded that she was not alleging any anti-union discrimination or retaliation by the Employer.

Findings of Fact:

Background

ACODS is the exclusive bargaining agent for a unit of supervisory employees of the City of Detroit, including refuse collection foremen in the City's Department of Public Works (DPW). Refuse collection foremen oversee DPW employees working in the position of refuse collector packer operator (RCPO). The RCPOs are represented for purposes of collective bargaining by the International Brotherhood of Teamsters.

Charging Party began working for the City of Detroit as an RCPO on April 23, 1984. She continued to work in that position until September 7, 1994, when she resigned for medical reasons. Approximately ten months later, on or about August 7, 1995, Charging Party was rehired by the City and returned to her former RCPO position on a probationary basis. She completed her probationary period on November 7, 1995.

On November 18, 2002, Charging Party began working out of class as a refuse collection foreman. She was formally promoted to that position on November 24, 2002, subject to the successful completion of a six-month probationary period which was scheduled to conclude on May 24, 2003. In early May of 2003, Charging Party's supervisors recommended that she be placed on permanent status as a refuse collection foreman. That recommendation was approved by the City's human resources department on May 13, 2003.

Layoff of Refuse Collection Foremen

On May 20, 2003, Charging Party was notified by the Employer that her position of refuse collection foreman had been "reached for layoff" effective July 1, 2003. The layoff notice specified that Charging Party was to select one of four options pursuant to rules promulgated by the City's human resources department: (1) demotion in series; (2) demotion to formerly held class; (3) change of status to a vacant position; or (4) layoff. On or about May 30, 2003, Charging Party notified the Employer that she had decided to accept a demotion to her former position of RCPO.

In addition to Charging Party, the City also laid off three other refuse collection foremen in May of 2003. Upon learning of the layoffs, ACODS president Dennis Wheeler contacted Charlotte Bush, human resources manager for the City's utilities group, to determine whether anything could be done to save the positions. Bush indicated to Wheeler that the layoffs were an administrative decision originating from the Mayor's office and would not be reversed.

Wheeler then reviewed the seniority list with Bush to ensure that the layoffs were in conformance with the contract. Bush explained that the City had selected for layoff the least senior refuse collection foremen. When Wheeler brought up the fact that Charging Party had worked for the City for many years prior to her resignation in 1994, Bush indicated that seniority was calculated based upon continuous employment with the City. According to the list provided to Wheeler, Charging Party was the least senior refuse collection foreman employed at the time of the layoffs. Following his meeting with Bush, Wheeler was satisfied that the City had acted properly with respect to the layoffs.

Grievance and Union's Response

After receiving the layoff notice, Charging Party wrote to the City's pension system requesting information concerning her seniority with the Employer. On or about June 5, 2003, Charging Party received a letter from the pension system indicating that she had a total of 18 years and 4 months of "service credit" with the City of Detroit.

On June 27, 2003, Charging Party submitted a handwritten grievance to Union steward Keith Jackson challenging her demotion as being "out of seniority order" because she had worked for the City for over 18 years. Over the course of the next few months, Charging Party spoke to Jackson several times about the grievance. On each occasion, Jackson indicated to Charging Party that he had not heard anything further concerning the matter. Finally, on October 4, 2003, Charging Party wrote a letter to Wheeler requesting information regarding the status of the grievance. When Wheeler did not respond to that letter, Charging Party filed the instant charge.

Jackson did not testify in this matter. Wheeler testified that he spoke to Charging Party several times after the layoffs were first announced and that he shared with her the results of his meeting with the Employer's human resources manager. In addition, Wheeler testified that he explained to Charging Party that there was nothing the Union could do for her. Wheeler has known Charging Party for many years and was aware that she had worked for the City prior to 1995.

Regarding Charging Party's communications with Jackson, Wheeler testified that Jackson told him that Charging Party had handed him a piece of paper and that he did not understand it. Wheeler instructed Jackson to give the paper back to Charging Party for clarification. To Wheeler's knowledge, Jackson never received any further correspondence from Charging Party. Wheeler testified that he never saw a copy of the grievance which Charging Party submitted into evidence in this matter.

Contract Provisions and City Rules

Article 13 of the contract between ACODS and the City governs reductions in force affecting bargaining unit members. With respect to the order and manner of reductions, the contract provides that employees "who have not completed their initial probationary period shall be laid off first in accordance with their seniority, the least senior employees being laid off first." In the event that it is necessary to reduce the number of permanent status employees in the class,

the contract states that removal “shall be in accordance with their total City seniority, the least senior employees to be removed first.” For purposes of reductions in force, the contract defines seniority as “total city seniority as determined in accordance with Human Resources Department Rules.”

Article 9 of the collective bargaining between the City and ACODS is entitled “Seniority.” That provision states, in pertinent part:

- A. Seniority is hereby defined as the length of *continuous service* beginning on the date of legal certification to a position in the classified service of the City of Detroit, or the date of induction into such classified service as provided by law.

* * *

Seniority, as defined above and in accordance with the Rules of the Human Resources Department incorporated herein by reference is primarily to serve as a basis for determining the order of demotion or layoff in the event of a reduction in force and the re-employment rights of employees.

- B. *Loss of Seniority: An employee shall lose his/her seniority for the following reasons only:*

- 1. *The employee resigns or quits.*

* * *

[Emphasis supplied.]

Rule 8 of the City’s human resources department rules (HR Rule 8) contains similar language with respect to determining the order of demotion or layoff in the event of a reduction in force. Specifically, HR Rule 8 provides, in pertinent part:

Section 1. Effect of Seniority

Seniority, as defined in this Rule, is established primarily to serve as a basis for determining the order of demotion or layoff in the event of a reduction in force and the reemployment rights of employees. This definition of seniority shall not be deemed as restricting or limiting the establishment of different measures of seniority for use within the various City Departments for departmental personnel purposes other than reduction in force and reemployment.

Section 2. Definition of Seniority

Seniority is hereby defined as the length of continuous service beginning on the date of legal certification to a position in the classified service of the City of Detroit, or the date of induction in to such classified service as provided by law.

* * *

Section 4. Continuous Service

Continuous service shall mean employment in the classified service without interruption or break.

a. The following shall be considered breaks in service and shall result in loss of accumulated seniority.

1. Resignation or voluntary quit.

* * *

[Emphasis supplied.]

Discussion and Conclusions of Law:

Charging Party contends that the Employer wrongfully demoted her from her position as a refuse collection foreman to her former position of refuse collector packer operator. She contends that the City should have considered her cumulative, rather than continuous, years of employment with the City in calculating her seniority. PERA does not prohibit all types of discrimination or unfair treatment. Absent any evidence or allegation that Respondent was motivated by union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation that the Employer was motivated by Satterwhite'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.

There is also nothing in the record that raises any issue cognizable under PERA with respect to the Union. To establish a violation of the duty of fair representation, it must be demonstrated that the union's conduct toward the bargaining unit member was arbitrary, discriminatory or in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). Furthermore, to prevail on such a claim, the complainant must establish not only a breach of the duty of fair representation, but also a breach of the collective bargaining agreement. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992). In the instant case, Charging Party has not demonstrated any breach of the contract between the Union and the Employer, nor has she established that the Union failed to protect her seniority rights under that agreement.

With respect to determining the order of demotion or layoff in the event of a reduction in force, Article 13 of the collective bargaining agreement between ACODS and the City provides that the order of removal shall be based upon "total city seniority as determined in accordance with Human Resources Department Rules." Both HR Rule 8, as well Article 9 of the contract, define seniority for purposes of reductions in force as "the length of continuous service"

beginning on the date of legal certification to a position in the classified service of the City. In addition, HR Rule 8 defines continuous service as “employment in the classified service without interruption or break.” Pursuant to that rule, a resignation or “voluntary quit” constitutes a break in service resulting in a loss of accumulated seniority.

The record establishes that Charging Party voluntarily resigned her position as RCPO with the City in September of 1994, and that she was rehired by the Employer ten months later, in August of 1995. Based upon the language of the contract and City rules which are incorporated by reference therein, Charging Party was the least senior refuse collection foreman employed at the time of the layoffs. Accordingly, there is no breach of contract by the Employer upon which to base a breach of duty of fair representation by the Union.

For the reasons set forth above, I conclude that Charging Party has failed to establish a valid claim under PERA. Accordingly, 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

David M. Peltz
Administrative Law Judge

Dated: _____