

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

In the Matter of:

WAYNE COUNTY MEA/NEA,
Respondent-Labor Organization

Case No. CU04 E-024

-and-

ANGELA BRISCOE,
An Individual Charging Party.

APPEARANCES:

Law Offices of Lee & Clark, by Michael K. Lee, Esq., for the Labor Organization

Angela Briscoe, In Propria Persona

DECISION AND ORDER

On March 1, 2005, Administrative Law Judge Roy L. Roulhac issued his 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

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

WAYNE COUNTY MEA/NEA,
Respondent-Labor Organization,

Case No. CU04 E-024

-and-

ANGELA BRISCOE,
An Individual Charging Party.

APPEARANCES:

Law Offices of Lee & Clark, by Michael K. Lee, Esq., for the Labor Organization

Angela Briscoe, In Propria Persona

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on November 15, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and a post-hearing brief filed by the Labor Organization on January 24, 2005, I make the following findings of facts and conclusions of law.

The Unfair Labor Practice Charge:

On May 11, 2004, Charging Party Angela Briscoe filed an unfair labor practice charge alleging that her labor organization, Wayne County MEA/NEA, failed to address twenty-nine grievances that she filed between December 1, 2003 and March 31, 2004. After discussions between the parties, they stipulated that the only issue to be decided is whether Respondent fairly represented her regarding a one-day suspension that she received on December 2, 2003.

Findings of Fact:

Charging Party Angela Briscoe is employed by the Westwood Community School District as a media specialist and is a bargaining unit member of Respondent Wayne County, MEA/NEA. At the end of each school year, media specialists are responsible for closing their computer labs and conducting an inventory. Charging Party did not perform the required inventory at the end of the 2002-2003 school year. At the beginning of the 2003-2004 school year, she was released from her other duties and given a half day on August 25 and 26, and two full days on September 2 and 3 to complete the inventory. It was not completed.

On September 6, 2003, the Employer directed Charging Party to complete the inventory by October 1, 2003, and informed her that failure to complete it may result in disciplinary action. Sometime around October 1, Jim Basherian, Respondent's district director, and Charging Party met with the Employer's representatives and secured an extension until December 1 for Charging Party to complete the inventory. Charging Party was advised that if the inventory were not completed, she would be disciplined. Charging Party did not complete the inventory as directed and was suspended for one day without pay. Thereafter, Respondent refused Charging Party's request to file a grievance challenging the suspension.

Conclusions of Law:

To establish a violation of the duty of fair representation, the evidence must show 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). Moreover, to prevail on such a claim, the charging party must not only establish a breach of the duty of fair representation, but also establish a breach of the collective bargaining agreement. *Knocke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1982).

In this case, Charging Party does not allege that the Employer violated the contract by suspending her without pay for failing to comply with an order to complete an inventory by December 1.¹ Furthermore, the record does not demonstrate that Respondent's refusal to file a grievance on her behalf was arbitrary, discriminatory or in bad faith. I find, therefore, that Charging Party has not established that Respondent violated PERA by refusing to file a grievance challenging her one-day suspension without pay. Accordingly, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated:

¹Charging Party acknowledged during the hearing that the Employer did not violate the contract. She, therefore, withdrew the charges filed against the Employer in Case Nos. C04 E-123 and C04 F-172.

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

WAYNE COUNTY MEA/NEA,
Respondent-Labor Organization,

Case No. CU04 E-024

-and-

ANGELA BRISCOE,
An Individual Charging Party.

APPEARANCES :

Law Offices of Lee & Clark, by Michael K. Lee, Esq., for the Labor Organization

Angela Briscoe, In Propria Persona

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan, on November 15, 2004, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and a post-hearing brief filed by the Labor Organization on January 24, 2005, I make the following findings of facts and conclusions of law.

The Unfair Labor Practice Charge :

On May 11, 2004, Charging Party Angela Briscoe filed an unfair labor practice charge alleging that her labor organization, Wayne County MEA/NEA, failed to address twenty-nine grievances that she filed between December 1, 2003 and March 31, 2004. After discussions between the parties, they stipulated that the only issue to be decided is whether Respondent fairly represented her regarding a one-day suspension that she received on December 2, 2003.

Findings of Fact:

Charging Party Angela Briscoe is employed by the Westwood Community School District as a media specialist and is a bargaining unit member of Respondent Wayne County, MEA/NEA. At the end of each school year, media specialists are responsible for closing their computer labs and conducting an inventory. Charging Party did not perform the required inventory at the end of the 2002-2003 school year. At the beginning of the 2003-2004 school year, she was released from her other duties and given a half day on August 25 and 26, and two full days on September 2 and 3 to complete the inventory. It was not completed.

On September 6, 2003, the Employer directed Charging Party to complete the inventory by October 1, 2003, and informed her that failure to complete it may result in disciplinary action. Sometime around October 1, Jim Basherian, Respondent's district director, and Charging Party met with the Employer's representatives and secured an extension until December 1 for Charging Party to complete the inventory. Charging Party was advised that if the inventory were not completed, she would be disciplined. Charging Party did not complete the inventory as directed and was suspended for one day without pay. Thereafter, Respondent refused Charging Party's request to file a grievance challenging the suspension.

Conclusions of Law:

To establish a violation of the duty of fair representation, the evidence must show 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). Moreover, to prevail on such a claim, the charging party must not only establish a breach of the duty of fair representation, but also establish 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 (1982).

In this case, Charging Party does not allege that the Employer violated the contract by suspending her without pay for failing to comply with an order to complete an inventory by December 1.² Furthermore, the record does not demonstrate that Respondent's refusal to file a grievance on her behalf was arbitrary, discriminatory or in bad faith. I find, therefore, that Charging Party has not established that Respondent violated PERA by refusing to file a grievance challenging her one-day suspension without pay. Accordingly, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated:

²Charging Party acknowledged during the hearing that the Employer did not violate the contract. She, therefore, withdrew the charges filed against the Employer in Case Nos. C04 E-123 and C04 F-172.