

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 25, LOCAL 3308
Labor Organization-Respondent,

Case No. CU04 K-064

-and-

MONSOOR MUNTAQIM,
An Individual-Charging Party.

APPEARANCES:

Ben K. Frimpong, Esq., for the Respondent Labor Organization

Monsoor Muntaqim, *in Propria Persona*

DECISION AND ORDER

On August 31, 2006, Administrative Law Judge Julia C. Stern issued her 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated:_____

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APPEARANCES:

Ben K. Frimpong, Esq., for the Respondent Labor Organization

Monsoor Muntaqim, *in propria persona*

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, 423.216, this case was heard at Detroit, Michigan on March 20, 2006 before Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on April 17, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Monsoor Muntaqim filed this charge against his former collective bargaining representative, the American Federation of State, County and Municipal Employees (AFSCME) Council 25 and its affiliated Local 3308 (the Union or Local 3308) on November 24, 2004. Muntaqim was employed by the 36th District Court (the Court) and a member of a bargaining unit represented by Respondent. After the Court discharged Muntaqim on October 6, 2003, Respondent filed a grievance regarding his termination and processed it through the initial steps of the grievance procedure set out in the contract between Respondent and the Court. On April 6, 2004, and again on May 26, 2004, Respondent's arbitration review panel notified Muntaqim that Respondent would not take the grievance to arbitration. Muntaqim alleges that Respondent breached its duty of fair representation toward him by its conduct in processing this grievance and by its refusal to arbitrate. He asserts that Respondent should have insisted that he be present at the step four grievance meeting with the Court.

He also alleges that the arbitration review panel's decision not to arbitrate the grievance was flawed because: (1) the arbitration review panel failed to consider witness statements confirming that he was not at fault in the incident that led to his discharge; (2) Local 3308 had, but did not submit to the arbitration panel, evidence that other employees had received a lesser penalty for the same offense.

Facts:

Muntaqim was employed by the Court as a clerk in the records department of its civil division. On September 23, 2003, he was involved in an altercation with another clerk, Nora Manjo. In the afternoon of that day, Manjo, on her own initiative, left her desk in the docket department and began assisting the clerk at the front desk in the records department. Manjo's supervisor, Chuck Jackson, was aware that she was there but did not tell her to return to her desk. The altercation began when Muntaqim told Manjo to go back to the docket department. The two employees had a loud argument that went on for some time. Many employees witnessed all or part of the argument. They agree that Jackson tried to get Manjo to return to her desk and that he told Muntaqim to return to his work area. Muntaqim continued to exchange words with Manjo as he walked back and forth between the records room and the front desk. According to Muntaqim, Manjo approached him in a threatening way and he told her, "I don't deal with women that way. Why don't you go get your man?" Manjo replied that she would fight him like a man, and Muntaqim said, "Then you can die like a man." Several witnesses also recalled this last statement. The witnesses agreed that Manjo lunged at Muntaqim, that someone restrained her, and that Jackson and another employee were knocked to the floor. After Manjo was ushered into the hallway, she went to the chief judge's office where she said that Muntaqim had threatened to kill her. After making a written statement, Muntaqim was sent home and placed on paid administrative leave for an indefinite period.

On September 30, after the Court had done an initial investigation of the incident, Manjo was also placed on administrative leave. Between September 30 and October 3, the Court appointed representatives to collect statements from witnesses. On October 3, based on statements from Manjo, Muntaqim, and eleven witnesses, the investigators issued a written recommendation that both employees be discharged. Muntaqim was notified of his discharge on October 6. Both employees were charged with multiple rule violations, but their discharge letters emphasized their alleged violations of the Court's workplace violence policy. This policy prohibited "any direct, indirect, or implied threats or acts of violence." After being informed of his discharge, Muntaqim was escorted from the Court building by a guard and told that he was barred from returning.

The Union filed grievances regarding both Manjo's and Muntaqim's discharges. The Manjo grievance was not part of the record in this case, and there is nothing in the record indicating what the Union argued on her behalf. The Muntaqim grievance argued that discharge was an excessive penalty for his conduct. Both grievances were filed at the third step of the grievance procedure. A step three meeting to discuss the Muntaqim grievance was held on either October 6 or 9. At this meeting, the Union stressed Muntaqim's long tenure and good work record. It argued that Muntaqim was known by the Court to have a quick temper and that the Court had tolerated cursing between employees in the civil division for years. The Union also said that Muntaqim was willing to do whatever it took to get his job back. On October 10, the Court issued a written denial of the grievance. The denial stated that Muntaqim had threatened to kill another employee and had violated the Court's workplace violence policy.

The Union advanced the Muntaqim grievance to the fourth step. In preparation for this meeting, the Union obtained the witness statements given to the Court's investigators. It is the practice of the Court and the Union to allow individual grievants to attend a fourth step meeting. The Court told the Union that it would not allow Muntaqim to attend the meeting because it did not want him in the building. The Union did not press the issue. The fourth step meeting was held on October 16, 2003. In addition to the arguments it made at the third step, the Union argued that Muntaqim had not been the aggressor. It also said that Muntaqim had not threatened to kill Manjo but was merely responding to her threat to fight him. On October 29, the Court denied the grievance at the fourth step, again citing its workplace violence policy.

Around the time of the denial of the grievance at the fourth step, Local 3308 vice-president Avery Jamison called Muntaqim on the telephone. Jamison explained that the Court considered him a threat. Muntaqim understood from this conversation that the Court was not going to agree to any settlement of the grievance that returned Muntaqim to work. Jamison later gave Muntaqim copies of the witness statements and advised him to get a lawyer.

The Union also processed the Manjo grievance through the fourth step without success. On October 29, 2003, Local 3308 submitted its files on both grievances to the Union's arbitration review panel to decide whether they should be arbitrated. The arbitration review panel consists of seven Union representatives with experience in presenting cases to arbitrators. On March 19, 2004, the arbitration review panel rejected the Muntaqim grievance on the basis that the file it had received from Local 3308 was incomplete. The panel's letter to Muntaqim and Local 3308 president Cheryl Pinchem noted that the file indicated that an investigation was conducted and witnesses were interviewed, but that the panel had received no witness statements. After receiving this letter, Pinchem sent the panel copies of the witness statements she had received from the Court. Pinchem also sent the panel a letter explaining that Muntaqim had been under stress since his wife had died and that his health was deteriorating. On April 6, the arbitration panel again declined to pursue the Muntaqim grievance. Its letter to Muntaqim and Pinchem stated:

. . . There does not appear to be any dispute [that] the grievant engaged in implied threats of violence in the workplace against a co-worker who was also terminated for the same situation. Unless we can show other employees have engaged in the same type of conduct but received a penalty less than discharge the case will remain rejected. It appears the employer had just cause for the termination.

After receiving this letter, Muntaqim, with Jamison's help, compiled a list of fifteen incidents where employees of the Court had engaged in physical violence or made verbal threats toward each other but had received penalties less than discharge. Jamison told Muntaqim that he would write a letter to the arbitration panel describing these incidents, and Muntaqim assumed that Jamison would do this. However, after discussing the incidents on the list, Avery, Pinchem and Local 3308 treasurer Janice Jones decided that none of them were sufficiently similar to Muntaqim's case. They decided not to submit the list to the arbitration panel. On May 26, 2004, the panel notified Muntaqim that since no appeal had been filed after April 6, the panel's file on his case had been closed.

The arbitration panel decided to arbitrate the Manjo grievance. On October 19, 2004, arbitrator Ruth E. Kahn issued an award reinstating Manjo without backpay. Kahn found that Muntaqim was more culpable in the incident than Manjo. She concluded that although Manjo was guilty of misconduct, discharge was an excessive penalty in her case.

Discussion and Conclusions of Law:

A union's duty of fair representation under PERA 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 (1967); *Goolsby v Detroit*, 419 Mich 651(1984). The *Goolsby* Court, at 679, defined "bad faith" conduct as "an intentional act or omission undertaken dishonestly or fraudulently," and "arbitrary" conduct as "impulsive, irrational or unreasoned conduct, or inept conduct undertaken with little care or with indifference to the interests of those affected." Muntaqim does not claim that the Union's actions were motivated by personal hostility toward him or that they were dishonest. Although he argued at the hearing that in refusing to take his grievance to arbitration the Union discriminated against him based on his race or religion, he produced no evidence to support that claim. Muntaqim's essential claim is that the Union was inept in processing his grievance and that its decision not to arbitrate was unreasoned or irrational.

A union does not have the duty to take every grievance to arbitration, and an individual member does not have the right to demand that it do so. The union is permitted to assess each grievance with a view to individual merit. In doing so, the union must consider the good of the general membership and may weigh the burden upon contractual grievance machinery and the likelihood of success. See *Lowe v Hotel and Restaurant Employees Union*, 389 Mich 123, 146-147 (1973); *Detroit Public Schools*, 2002 MERC Lab Op 151, 152-153. A union's good faith decision not to proceed with a grievance is not arbitrary if it falls within a broad range of reasonableness. *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35, citing *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991).

In this case, the Union processed the Muntaqim grievance diligently through the steps of the grievance procedure short of arbitration. As noted above, a union has the discretion to make good faith decisions about how it will process a grievance. In this case, Local 3308 decided not to insist, in the face of the Court's opposition, that Muntaqim be allowed to attend the fourth step grievance meeting. However, it presented the Court with several arguments as to why discharge was too severe a penalty, including that Muntaqim was not the aggressor in his altercation with Manjo. Local 3308 also decided not to send the Union's arbitration panel information it had compiled about incidents of workplace violence at the Court because it concluded that the facts in these cases were not similar enough to Muntaqim's case. These actions were not, I find, "irrational" or "unreasoned." Nor were they examples of "inept conduct undertaken . . . with indifference" to Muntaqim's interests. I conclude that Local 3308 did not violate its duty of fair representation in its handling of the grievance its filed on Muntaqim's behalf.

Muntaqim asserts that the Union's arbitration panel did not consider the statements of witnesses that he was not the instigator or aggressor in his argument with Manjo, and that the panel wrongly blamed him for the incident. After receiving the panel's March 19, 2004 letter, Local 3308

president Pinchem sent it copies of the witness statements the Court had used to make its decision to discharge both Muntaqim and Manjo. Muntaqim had admitted to the Court that he told Manjo in the course of their argument that she could “die like a man,” and several witnesses recalled this statement. In its April 6, 2004 letter explaining its reasons for refusing to arbitrate Muntaqim’s grievance, the panel stated, “There does not appear to be any dispute that the grievant engaged in implied threats of violence in the workplace.” I find no evidence that the arbitration panel failed to consider the witness statements Local 3308 sent it or that it concluded that Muntaqim was to blame for the argument. As noted above, in deciding whether to arbitrate a grievance a union has the discretion to weight the merits of a grievance and consider the likelihood of success. In this case, the Union decided that Muntaqim’s conduct during his argument with Manjo was serious enough that an arbitrator was unlikely to reinstate him. This decision clearly fell within the range of reasonableness allowed to a union under its duty of fair representation. I conclude that the Union did not violate its duty of fair representation by refusing to arbitrate the grievance over Muntaqim’s termination.

In accord with the above findings of facts and conclusions of law, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____