

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT ASSOCIATION OF EDUCATIONAL
OFFICE EMPLOYEES,
Labor Organization-Respondent

Case No. CU05 C-011

-and-

RENIE WILLIAMS,
An Individual-Charging Party.

APPEARANCES:

Ruby J. Newbold, President, for the Respondent

Renie Williams, *in propria persona*

DECISION AND ORDER

On May 31, 2006, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent 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

Nora Lynch, Commission Chairman

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT ASSOCIATION OF EDUCATIONAL
OFFICE EMPLOYEES,
Labor Organization-Respondent

Case No. CU05 C-011

-and-

RENIE WILLIAMS,
An Individual-Charging Party.

APPEARANCES:

Ruby J. Newbold, President, for the Respondent

Renie Williams, *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, this case was heard at Detroit, Michigan on December 5, 2005, 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 or before January 27, 2006, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On March 21, 2005, Renie Williams, a secretary employed by the Detroit Public Schools (the school district), filed this charge against her collective bargaining representative, the Detroit Association of Educational Office Employees. Williams alleges that Respondent violated its duty of fair representation by: (1) after May 4, 2004, failing to file a grievance at step two of the grievance procedure over the school district's assignment of Williams' work to an employee outside the bargaining unit; (2) failing to submit to the school district's employee relations office a written statement rebutting a hearing officer's May 4, 2004 finding that Williams failed to properly perform her assigned duties; (3) failing to file a grievance over a suspension based on those findings issued to Williams on November 1, 2004; (4) failing to represent Williams with respect to additional charges brought against her by her principal on November 9, 2004.

Facts:

Until the fall of 2005, Williams was the school secretary at Moses Field Elementary School. Rita Footman became principal at this school in February 2003. Sometime between the spring and fall of 2003, Williams, with Footman's approval, sent a letter to the school district's student information systems department complaining that the clerical coordinator assigned to her school, Laverne Russell, had failed to train her adequately in the procedures for keeping track of student attendance and students enrolled at the school (referred to as student membership). This letter triggered an investigation by that department into the school's student membership record-keeping procedures that resulted in Footman issuing a letter of reprimand to Williams on October 28, 2003 for failure to keep accurate records. In November 2003, Footman gave Williams another letter of reprimand for refusing to give Footman the passwords necessary to access various programs on her computer. Footman maintained that she needed the passwords so that work could be completed when Williams was absent; Williams contended that she had been instructed not to give her passwords out to anyone.

When Footman arrived at Moses Field, Crystal Lee, a classroom aide and a member of a bargaining unit represented by another union, was spending part of her time working in the office. After November 2003, Footman began to assign to Lee clerical duties that Williams had formerly done. Respondent's contract with the school district contains a provision prohibiting employees not covered by that agreement from performing bargaining unit work except in cases of reorganization. Sometime during the winter or early spring of 2004, Williams met with Respondent president Ruby Newbold, gave her copies of the reprimands, and explained what was happening with Lee. Insofar as the record discloses, Newbold did not take any action with respect to the reprimands. On April 15, 2004, Newbold sent Footman a step one grievance letter protesting the assignment of bargaining unit work to an employee outside the unit. Footman continued to give clerical work to Lee, although she moved Lee's workstation from the school office to an adjacent conference room.

On April 19, 2004, Russell, the clerical coordinator, notified Footman that Williams had failed to submit any student membership calendars to the school district's student information systems office during the entire 2004-2005 school year. Williams had told Footman in February 2004 that the binders with copies of the monthly calendars containing student membership information were missing from the office. On April 20, Footman gave Williams a letter accusing her of violating the school district's work rule #10, "employees must perform all work properly assigned by the administrator in charge." In this letter Footman accused Williams of failing to prepare or submit the calendars. Footman also maintained that Williams had failed to submit for payment three invoices for merchandise Footman had ordered. Because Williams had received the written reprimands in November 2003, under her collective bargaining agreement she was subject to more serious discipline for the alleged violations of work rule #10. The school district scheduled a disciplinary hearing on Footman's charges for May 4, 2004.

In late April, Williams called Respondent's office and reported to Respondent vice-president E'Lois Moore that Lee was still doing clerical work and, in fact, had assumed even more of Williams' duties. Moore assured her that the matter would be discussed at the May 4 hearing.

Shirley Murray, whose title is supervisor for center-based programs, was designated by the school district to hear the charges against Williams on May 4. Newbold and Moore attended this hearing with Williams. Laverne Russell, the clerical coordinator, testified at that hearing that as of May 4, the student information systems office had no record of receiving any student membership calendars from Moses Field for the period August 2003 through April 2004. Williams testified she had prepared the calendars in a timely fashion and had sent them directly to student information systems. Williams produced a memo from a student information systems staff member directing Williams to send all correspondence to her. She also stated that after she was informed that student information systems did not have the calendars, she redid them all using information from the computer and lunch slips because her binder was missing and submitted them to student information systems again. With respect to the invoices, Footman said that she ordered and received merchandise from three vendors between July and November 2003. According to Footman, after receiving past due notices from the vendors in the spring of 2004, she had sent the invoices for payment herself. She said that Williams had not prepared purchase orders for the three bills until February 2004, and had never sent the invoices. Williams maintained that she had not been given the invoices until February 2004, and that she submitted them when she received them. According to Williams, Lee and others actually prepared the purchase orders, and the invoices were not paid when Williams submitted them because the amounts on the purchase orders did not match the amounts on the invoices. Williams stated that by the time she received the invoices they were already way past due. She also pointed out that Footman had violated procurement procedures by ordering merchandise before purchase orders had been generated. After listening to the testimony, Murray concluded that Williams had not sent the calendars to student information systems. She also concluded that Williams had the invoices in her possession but had not generated purchase orders for the three bills until February 2004, and that she had never sent the invoices for payment. In accord with the school district's disciplinary procedures, notes from the May 4 hearing and supporting documents were forwarded to the school district's employee relations office for review of Murray's conclusions and a decision regarding discipline.

Immediately after the hearing, Newbold asked Williams for the name of the person to whom Williams had sent the invoices and said she would check on Williams' claim that Footman hadn't followed procurement procedures. Newbold also asked Footman about the Lee grievance, but Footman said that she did not want to discuss it at that time. Newbold told Williams that she would move the Lee grievance to the second step the next day. According to Newbold, in the days after May 4 she called Williams at Moses Field several times but was told each time that Williams was not in. On May 5, however, Williams sent Newbold a letter stating that responsibility for doing payroll, student membership and ordering had been removed from her and assigned to Lee, and that student emergency information was now kept locked in the conference room where Lee worked.

On May 18, Williams wrote Newbold a certified letter asking her to send a statement to the employee relations office challenging the information Footman had provided at the May 4 hearing. The letter also asked Newbold to file a step two grievance over the fact that Lee had been assigned Williams' work. After Newbold received this letter, she called Footman and asked her about Lee. Footman said that Lee was not doing clerical work on a regular basis, but that when Williams was absent she assigned various persons, including Lee, to do her work. Footman told Newbold that Williams was sometimes absent two or three days per week. According to Newbold, she did not check Williams' attendance records but believed Footman because Williams had been absent when

Newbold tried to call her after the May 4 hearing. Newbold agreed that Footman could use other staff to do clerical work when Williams was not there. Newbold did not tell Williams of this conversation.

Over the next month Williams called Newbold several times but did not reach her. On June 28, Williams sent another certified letter asking Newbold to send a statement to the employee relations office and file a second step grievance over Lee performing her work.

Williams testified that in the spring and summer of 2004, Footman solicited teachers and other members of the school staff to file complaints about her. During that summer, Footman forwarded a number of documents to the employee relations office regarding Williams. These included a May 13 complaint from a parent that Williams had used profanity to her; a July 13 complaint by a teacher describing an incident in which Williams allegedly ignored a page from a classroom for nursing assistance; another letter dated the same day in which Footman accused Williams of insubordination by sending away a computer technician without asking other staff if they had requested his services; a memo from a school custodian stating that Williams had used profanity in a conversation between them; another memo from the custodian suggesting that Williams had broken the school intercom; and a letter from a parent complaining that she had called the office to report her child's absence and the information had not been recorded. Williams sent or faxed copies of these letters and memos to Newbold.

By the end of the summer, Williams had been told by Footman not to sort or distribute incoming mail or faxes or receive notes from teachers. In addition to performing these duties, Lee was handling all supply orders and entering daily student attendance and membership information into the computer. On September 2, Williams sent Newbold a letter complaining about the reassignment of her work and also describing why she felt Footman and Lee were harassing and excluding her. Newbold acknowledged receiving these complaints. According to Newbold, she tried to call Williams but could not reach her at the school. Newbold then spoke to Footman, who told her that Lee was no longer working in the office. Newbold also called Lee's union representative, who assured her that Lee was no longer doing clerical work.

On November 1, 2004, the employee relations office issued a memo upholding Murray's May 4, 2004 findings and suspending Williams without pay for one workday. On November 8, 2004, Williams received a notice from the employee relations office to attend a hearing on November 19 regarding alleged violations of nine work rules, including excessive tardiness or absenteeism, failure to notify her administrator of absences, wasting time during working hours, endangering the safety of others, failure to perform work as assigned, disclosing confidential information, insubordination and unprofessional conduct.

On November 15, Williams sent Newbold a copy of the November 1 decision and the November 8 letter from employee relations. In her letter to Newbold, Williams asked to meet with a Respondent steward to discuss the November 8 charges and to have the hearing postponed to allow for preparation. Her letter also stated:

I am requesting that you also intervene to have the disciplinary [sic] removed from all records. Ms. Footman did not properly assign work and in fact held on to the three

receipts for over thirty days. Investigation is attached. 1

Newbold testified that Respondent's contract with the school district does not impose time limits on filing a grievance over discipline issued. According to Newbold, Respondent never made a decision on whether to file a grievance over Williams' suspension because it needed to talk to her further about the issues.

Meredith Bennett, Respondent's steward, was assigned by Newbold to assist Williams with the November 8 charges. Bennett and Williams agree that Bennett did not assume any responsibility for filing a grievance over the one-day suspension. Bennett arranged for the hearing on the November 8 charges to be rescheduled to December 7. On about November 15, Williams went on an approved medical leave because of a knee injury. Sometime in late November, Bennett came to Williams' apartment and picked up documents pertaining to the November 8 charges. Bennett also gave Williams her home telephone number, and Bennett and Williams talked about the incidents leading to the charges. Between November 15 and December 5, Williams sent a number of faxes to Respondent's office. According to Bennett, around the beginning of December she tried repeatedly to reach Williams to discuss her case, but no one answered at Williams' home number. According to Williams, she left messages at Bennett's home number but Bennett did not call her back. On Sunday, December 5, Williams left a phone message on Respondent's office answering machine stating that she would not be able to attend the December 7 hearing. On the afternoon of December 6, Williams sent a fax to Respondent's office with the same message. Bennett did not receive Williams' message. Neither Bennett nor Footman notified the school district's hearing officer that Williams was on a medical leave. On the morning of December 7, Bennett and the hearing officer arrived at Moses Field and were told by Footman that Williams had called to say that she could not make the hearing. Bennett left.

On December 17, Newbold sent Williams the following letter:

We have received your faxes requesting that the union take specific action on one of the nine alleged work rule violations that the district has filed against you.

Please be advised, because of your continuous lack of cooperation and communication with us, you have hampered us from providing you with the best possible representation. You are also jeopardizing your future employment with the Detroit Public Schools.

In order for us to provide the best possible representation, you must (1) contact us via the telephone where we can ask you questions, (2) if there is a problem, be more timely in contacting your union representative, and (3) stop picking and choosing which violation you want us to fight. All the DPS work rules are important. In addition to the alleged work rules violations the district has charged you with insubordination and unprofessional conduct. The alleged charge of insubordination, if upheld, is reason for termination by itself.

1 Williams spoke to the vendors about the three orders and drafted a memo indicating when and by what method Footman placed the orders, when the merchandise was shipped, and when the vendors sent their invoices.

Upon receipt of this letter, please contact Chief Steward Meredith Bennett at (313) 341-0280 immediately to discuss your case.

After the morning of December 7, Williams and Bennett spoke on the phone, Williams explained why she had not been at the hearing, and they agreed to let the other know if they heard from the school district. It is unclear from the record when Williams returned from her medical leave. Neither she nor Bennett heard anything from the school district about the November 8, 2004 charges during the remainder of the 2004-2005 school year. In September 2005, Williams transferred to a different school. In the fall of 2005, after the unfair labor practice charge was filed, Bennett contacted the school district and learned that the hearing officer had taken testimony from Footman on December 7, but had postponed making a decision while the school district investigated whether Williams had a legitimate excuse for not attending the hearing. At the time of the unfair labor practice hearing in December 2005, the school district had neither made a decision on the November 8, 2004 charges nor scheduled a new hearing on these charges.

Discussion and Conclusions of Law:

Under Section 16 (a) of PERA, a charge must be filed with the Commission within six months of the date of the alleged unfair labor practice. The limitation period under Section 16(a) is jurisdictional and is not waived when a Respondent fails to assert it as a defense. *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 502. The statute of limitations under Section 16(a) begins to run when the charging party knows, or should know, of the alleged unfair labor practice. *Huntington Woods v Wines*, 122 Mich App 650 (1983), aff'g 1981 MERC Lab Op 836. When a charging party's complaint against his or her union is based on the union's inactivity, the statute of limitations begins to run when the charging party should have reasonably realized that the union would not act on his behalf. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004) at 134, citing *Metz v Tootsie Roll Industries, Inc*, 715 F2d 299 (CA 7, 1983).

Williams alleges that Respondent violated its duty of fair representation by failing to move a grievance over the school district's assignment of Williams' work to Lee to the second step of the grievance procedure. On April 15, 2004, after Williams complained to Newbold that classroom aide Crystal Lee was performing clerical work that had previously been assigned to her, Newbold filed a step one grievance and gave it to Williams' principal, Rita Footman. On May 4, Newbold told Williams that she would move this grievance to the next step of the grievance procedure. However, Newbold did not take this action because Footman assured her that Lee only performed bargaining unit work when Williams was absent. Williams continued to complain, but Newbold again decided not to move the grievance to the second step after she was told by both Footman and Lee's union representative that Lee was no longer doing any clerical work. On May 5, May 18, June 28 and September 2, 2004, Williams sent Newbold letters explaining how her work had been reassigned and asking/demanding that Newbold move the grievance to the second step. Newbold did not tell Williams of her conversations with Footman and, insofar as the record discloses, Williams did not get any response to these letters. I find that by the time Williams sent her September 2 letter, she should have reasonably realized that Newbold would not move the grievance over Lee to the second step. I conclude, therefore, that since Williams did not file her charge until March 21, 2005, this allegation should be dismissed as untimely filed under Section 16(a).

Williams also alleges that Respondent violated its duty of fair representation by failing to send a written statement to the school district refuting its hearing officer's findings that she failed to properly perform her assigned duties, and by failing to file a grievance after Williams was suspended based on these findings. To prevail against a union on a claim of unfair representation based on a union's refusal or failure to process a grievance, a charging party must establish a breach of the union's duty of fair representation and also a breach of the collective bargaining agreement. *Goolsby v City of Detroit*, 211 Mich App 214 (1995); *Knoke v East Jackson Public School Dist*, 201 Mich App 480, 488 (1993). The duty of fair representation requires a union to: (1) serve the interest of all its members without hostility or discrimination; (2) exercise its discretion with complete good faith and honesty; and (3) avoid arbitrary conduct. *Goolsby v Detroit*, 419 Mich 651 679 (1984), citing *Vaca v Sipes*, 386 US 171, 177 (1967); *Wayne State Univ*, 18 MPER 31 (2005). A union has considerable discretion in deciding whether or not to file or proceed with a grievance. *Michigan State Univ*, 17 MPER 75 (2004) *Detroit Federation of Teachers*, 2001 MERC Lab Op 322; *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 146 (1973). It satisfies its duty of fair representation as long as its decision is within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35; *Ann Arbor Pub Schs*, 16 MPER 15 (2003). However, as the Court clearly stated in *Goolsby* at 679 and 682, a union's failure to exercise its discretion to determine whether a grievance should go forward constitutes "arbitrary conduct" when that failure can reasonably be expected to have an adverse effect on any or all union members.

Williams repeatedly asked Newbold to submit a written statement to the school district's employee relations office rebutting the May 4, 2004 findings of the school district's hearing officer that she failed to properly perform her duties. It is unclear from the record whether Respondent had the right to file such a statement, or whether the statement would have been considered by the employee relations office. However, Respondent clearly had the right to file a grievance over the suspension. On November 15, 2004, Williams asked Respondent to intervene to have the discipline overturned. Newbold admitted that Respondent neither filed a grievance for Williams nor made a decision not to file one. According to Newbold, it needed more information from Williams but could not reach her by phone. Respondent, however, had Williams' address, and Respondent steward Bennett was able, with some difficulty, to reach her to discuss the charges Footman brought against her in November 2004. I find no credible explanation on this record for Respondent's failure to make a decision about whether to file a grievance within a reasonable time after the discipline was issued.

However, in order to prevail against Respondent in this case, Williams must also establish that her suspension violated the collective bargaining agreement, i.e. a grievance, if filed, would have had merit. As indicated in the November 1, 2004 memo upholding the hearing officer's findings, the serious offense with which Williams was charged was failure to submit monthly student membership information for her school to the school district's student information systems office for the period between August 2003 and May 2004. Williams claimed that she sent, and later resent, the information directly to an individual in that office, but presented no corroborating evidence to support her claim. Williams was also accused of failing to submit invoices for payment for three bills. Williams maintained that she submitted the invoices but payment was denied because the purchase orders, which she did not prepare, were incorrect. However, she had no evidence to

corroborate her claim that she submitted the invoices. I conclude that Williams' allegation that Respondent violated its duty of fair representation by failing to file a grievance over her November 1, 2004 suspension should be dismissed because Williams failed to establish that this suspension violated the collective bargaining agreement.

Williams also alleges in this case that Respondent breached its duty of fair representation by failing to represent her with respect to charges brought by her principal on November 9, 2004. The record indicates that Bennett looked over Williams' documents and talked to her in preparation for the December 7 disciplinary hearing that did not take place. At the time of the unfair labor practice hearing, the school district had neither disciplined Williams for the alleged rule violations in the charges nor scheduled a new disciplinary hearing. Bennett's decision to wait until the school district took further action was clearly not "beyond the range of reasonableness." I conclude that Williams failed to establish that Bennett's in action in this case violated Respondent's duty of fair representation.

In accord with the findings of fact and conclusions of law set forth above, I conclude that Williams did not establish that Respondent Detroit Association of Educational Employees violated its duty of fair representation toward her. Accordingly, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____