

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

In the Matter of:

SCIENTIFIC GAMES RACING,  
Private Employer-Respondent in Case No. C07 A-009,

-and-

LOCAL 3, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO,  
Labor Organization-Respondent in Case No. CU07 A-004,

-and-

CHARLES MURPHY,  
An Individual-Charging Party.

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APPEARANCES:

Charles Murphy, *in propria persona*

**DECISION AND ORDER**

On March 22, 2007, Administrative Law Judge Julia S. 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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Christine A. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

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APPEARANCES:

Charles Murphy, *in propria persona*

DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE  
ON SUMMARY DISPOSITION

On January 19, 2007, Charles Murphy filed unfair labor practice charges with the Michigan Employment Relations Commission against his former employer, Scientific Games Racing (the Employer), and his collective bargaining representative, Local 3, International Brotherhood of Electrical Workers, AFL-CIO (the Union) under the Michigan Labor Mediation Act (LMA), 1939 PA 176, as amended, MCL 423.1 et seq. Murphy's charge against the Employer asserted that he was discharged without good cause. His charge against the Union alleged that it acted in bad faith by failing and refusing to file or pursue a grievance over his discharge. The charge was assigned to Julia C. Stern, Administrative Law Judge for the Commission.

On January 31, 2007, pursuant to my authority under Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, I issued an order to Murphy to show cause why both his charges should not be dismissed for failure to state a claim upon which relief could be granted under the LMA. In response to my order, Murphy filed amended charges on March 9, 2007. In his amended charge against the Employer, Murphy asserts that his termination breached and demonstrated a complete disregard for the collective bargaining agreement. Murphy attached to his amended charge a copy of a decision by the Michigan Unemployment Agency concluding that Murphy should be awarded unemployment benefits because the Employer had failed to show that he was discharged for

misconduct connected with his employment. Murphy's amended charge against the Union includes a copy of an affidavit given to an agent of the National Labor Relations Board (the Board) in connection with an unfair labor practice charge filed by him with that federal agency.

Facts:

The facts as alleged by Murphy are as follows. The Employer is a private company based in Alpharetta, Georgia. Murphy provided services to the Employer's client, the Hazel Park Harness Raceway, in Michigan. The Employer did not have a supervisor on-site at this racetrack and, according to Murphy, he did not know who his immediate supervisor was. Murphy was discharged on August 7, 2006, allegedly for falsifying time records to claim pay for time not worked and for leaving his job assignment early on two occasions without notifying a supervisor. The former charge was added when the Employer discovered that Murphy had inaccurately reported his hours for one of the two days on which he had left work early. Murphy maintained that he told someone at the racetrack that he was leaving on both occasions. He also asserted that he had merely made a mistake in filling out his time card.

When Murphy was fired, he did not know whom from the Union to contact about filing a grievance. On August 12, 2006, he called Butch Geis, the only Union representative he had ever met, in Louisiana. Geis gave him the phone number of an individual named Joe Frat in Chicago. Geis told Murphy to tell Frat to write a grievance for him and fax it to Geis. On August 13, Murphy talked to Frat on the phone for about fifteen minutes. Frat told him that he would prepare a grievance and send it to Geis.

On August 17, Murphy called Geis and asked for a copy of the grievance. Geis told him that the Union did not use forms and that all grievances were handled over the phone with the Employer. Geis also said that Murphy's chances of getting back to work were slim, because the Employer had started "cracking down" on employees leaving early. Geis told Murphy that Howard Cohen, a Union business representative, would meet with the Employer about his case and that Murphy should call Geis again in a month. In late September, Murphy sent Geis a copy of the decision awarding him unemployment benefits. Geis told Murphy that this decision would not help him get his job back.

On October 14, 2006, Murphy called Geis and asked if Cohen had met with the Employer yet. Geis told Murphy that he had, and that the Employer would not agree to allow him to return to work. When Murphy asked about arbitration, Geis told him that the Union would not arbitrate the grievance because it could not win.

On November 17, 2006, Murphy filed an unfair labor practice charge against the Union with the Board. On about November 30, Murphy received a letter from Cohen stating that it had come to Cohen's attention that Murphy wanted to file a grievance. Cohen said that he had no record of a first step grievance, and that he would set up a meeting with the Employer immediately. On December 3, Murphy sent Cohen a letter explaining his side of what had happened and why he was terminated. He also told Cohen about his conversations with Geis and that he had believed that a grievance had already been filed.

On or about December 14, Murphy received a copy of a letter from Robert Olenick, another Union business representative, to Employer representative Paul Chaney. The letter referred to a conversation between Olenick and Chaney on December 8, during which Chaney had allegedly said that Murphy had prior disciplinary problems. According to the letter, Chaney promised to send Olenick the Employer's records of these problems. After Murphy received this letter, he called Olenick. Olenick told him that Chaney had said that Murphy had been fired the previous year. Murphy said that this was not true. Olenick told Murphy that Chaney had not sent him the proof of this firing and that the Union planned to proceed with the grievance. On December 17, Murphy withdrew his charges against the Union with the Board.

On January 2, 2007, Murphy called Olenick and asked if he had discussed his case with the Employer again. Olenick said that when the charge was withdrawn, he assumed that Murphy had gone back to work. Between January 5 and January 16, Murphy called Olenick repeatedly without success. On January 17, the two men finally spoke. Olenick told Murphy that he planned to discuss Murphy's case with a Mr. Woods, from the Employer's human resources department, at a labor-management seminar on February 26. Murphy had no further contact with the Union about his termination.

#### Discussion and Conclusions of Law:

The Employment Relations Commission enforces both the Public Employment Relations Act, (PERA), 423.210 et seq., which protects the rights of public employees in Michigan to form, join, or assist in labor organizations; to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection; and to bargain with their employees through representatives of their free choice, and the LMA, which provides similar protections to private sector employees not covered by the National Labor Relations Act, 29 USC 150 et seq. Sections 10(1)(a) and (c) of PERA and Sections 16(1) and (3) of the LMA prohibit employers from discharging employees because of their union activities or other activities protected by these statutes. However, neither statute makes it unlawful for an employer to discharge an employee without a good reason or for improper reasons unrelated to the purposes of the statute. An employee's allegation that his discharge violated the terms of a collective bargaining agreement requiring just cause for discharge is not sufficient to state a claim under these statutes. *Knoke v East Jackson Pub Sch Dist*, 201 Mich App 480 (1993); *Utica Cmty Schs*, 2000 MERC Lab Op 268; *Detroit Bd of Ed*, 1995 MERC Lab Op 75.

Murphy maintains that his discharge was unfair and unreasonable and that the Employer completely disregarded the contract's requirement that a discharge must be for good cause. However, he has not asserted that he was discharged because of the Employer's anti-union animus or because of his union or other protected activities protected by the Act. I conclude that Murphy has failed to state a claim upon which relief could be granted against the Employer under the LMA, and that his charge should, therefore, be dismissed.

Murphy's charge against the Union asserts that it mishandled the grievance over his termination. Under Section 10(3)(a)(i) of PERA, a union representing public sector employees in Michigan owes these employees a duty of fair representation. However, the LMA contains no parallel provision. Under Section 23(2) of the LMA, the only actions by unions that can be

remedied by the Commission as unfair labor practices are certain types of unlawful picketing, as set out in Section 17(a) of that statute. I conclude that Murphy's allegation that the Union breached its duty of fair representation does not state a claim upon which relief can be granted under the LMA, and that his charge against the Union must also be dismissed.

For reasons set out above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge

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