

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

In the Matter of:

CITY OF DETROIT,

Public Employer - Respondent in Case No. C07 D-064,

-and-

AFSCME, LOCAL 1023,

Labor Organization - Respondent in Case No. CU07 D-015

-and-

KIMBERLY L. LANGFORD,

An Individual - Charging Party.

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APPEARANCES:

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

Kimberly L. Langford, *In Propria Persona*

**DECISION AND ORDER**

On April 27, 2007, 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

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

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KIMBERLY L. LANGFORD,  
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**APPEARANCES:**

Ben K. Frimpong for the Respondent-Labor Organization

Kimberly L. Langford, *in pro per*

**DECISION AND RECOMMENDED ORDER  
ON SUMMARY DISPOSITION**

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 assigned for hearing before David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. This matter comes before the Commission on unfair labor practice charges filed by Kimberly L. Langford on April 2, 2007, against Respondents City of Detroit and AFSCME, Local 1023. The charges state:

On 11-20-06 I was served with a (10) day suspension for an illness which occurred on 9-30-06 which enabled [sic] me from working emergency overtime. The fact that I am under the Family Medical Leave Act (FMLA) intermittent [sic] was not presented by the union.

On 1-29-07 I was served with a (30) day suspension for an illness which occurred on 10-4-06, which enabled [sic] me from working emergency overtime. The grievance hearing should have been scheduled within (7) working days. The hearing was not held until 2-21-07, two days before the suspension began, which violates the contract. The union did not advance the grievance according to our contract. In

either case, disciplinary action was not served in a timely manner. Other details may not have been presented by the union.

In an order entered on April 5, 2007, Langford was granted fourteen days in which to show cause why the charges should not be dismissed for failure to state a claim upon which relief can be granted under PERA. Charging Party did not file a response to this order.

Where a charge is facially defective, the failure of Charging Party to respond to the order to show cause, in and of itself, warrants dismissal of the charges. In any event, I find that Charging Party has not raised any issue cognizable under PERA as to either Respondent. With respect to public employers, PERA does not prohibit all types of discrimination or unfair treatment, nor does the Act provide an independent cause of action for an employer's breach of contract. Absent an allegation that the Employer interfered with, restrained, coerced or retaliated against the Charging Party for engaging in conduct protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the Employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564; *Detroit Bd of Ed*, 1987 MERC Lab Op 523, 524. In the instant case, Charging Party has not alleged that Respondent City of Detroit discriminated or retaliated against her because of union or other protected concerted activity. Accordingly, I find that dismissal of the charge in Case No. C07 D-064 is warranted.

Similarly, the charge against AFSCME Local 1023 must be dismissed for failure to state a claim upon which relief can be granted. A union's duty of fair representation 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. *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973). Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe, supra*. To this end, a union is not required to follow the dictates of the individual grievant, but rather it may investigate and present the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729. The fact that a member is dissatisfied with the union's efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131. Moreover, a union does not breach its duty of fair representation by a delay in processing a grievance as long as the delay does not cause the grievance to be denied. *SEIU, Local 502*, 2002 MERC Lab Op 185.

Despite being given an opportunity to do so, Charging Party has alleged no facts from which it could be concluded that the Union acted arbitrarily, discriminatorily or in bad faith with respect to its representation of her. Thus, pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, dismissal of the charge in Case No. CU07 D-015 is also appropriate.

RECOMMENDED ORDER

The unfair labor practice charges in Case Nos. C07 D-064 and CU07 D-015 are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge

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