

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

In the Matter of:

AFSCME COUNCIL 25,
Respondent-Labor Organization,

Case No. CU06 H-031

-and-

GERALD BERNARD ROBINSON,
Individual Charging Party.

APPEARANCES:

Ben K. Frimpong, Esq. for the Labor Organization

Gerald Bernard Robinson, *In Propria Persona*

DECISION AND ORDER

On November 17, 2006, Administrative Law Judge Doyle O'Connor 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated:_____

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**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 and 423.216, this matter was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the response to an order to show cause, and a motion to dismiss and a response to that motion, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Position of the Parties:

Gerald Robinson filed a charge on August 17, 2006 suggesting dissatisfaction with his Union's response to his assertion that his female City of Detroit supervisor had sexually harassed him. An order to show cause was issued on August 30, 2006, directing Charging Party to address the apparent failure to state a claim under PERA arising within the statute of limitations.

Charging Party filed a response to the order to show cause on September 5, 2006, asserting that he had been improperly terminated from his employment with the City of Detroit Water and Sewerage Department in 2004 over an incident which led to a charge by the Employer that Robinson had used abusive language in the workplace and had threatened violence against a male coworker. Charging Party further asserted that AFSCME Council 25 ('the Union') had

acted improperly in failing to advise him of the limitation periods for bringing sexual harassment charges before various state, local, and federal agencies. Charging Party also suggested that the Union had inadequately investigated the facts related to his termination from employment.

On September 25, 2006, Charging Party filed additional documentation regarding his claims, including an arbitrator's award upholding his discharge based on finding him at fault in the dispute that led to his termination. On October 30, 2006, the Union filed a motion to dismiss, asserting that it had in good faith represented Charging Party and had, albeit unsuccessfully, pursued a grievance contesting his termination from employment to binding arbitration. The Union asserted that Charging Party had pled no more than mere dissatisfaction with the outcome of the arbitration and had, therefore, failed to state a claim under the Act.

Charging Party responded to the motion to dismiss on November 6, 2006. He acknowledged that the Union had conferred with and met with him on multiple occasions, and had presented multiple witnesses, including the local Union president, to testify on his behalf at arbitration. Robinson made no claim of bad faith, arbitrary, or discriminatory handling of the dispute by the Union. Robinson reiterated his complaint that the Union had failed to advise him of the relevant deadlines for pursuing a civil rights claim before state, local, or federal agencies.

Findings of Fact:

The findings of fact are derived from the charge and the Charging Party's response to the order to show cause, his supplemental filings, and his response to the Union's motion to dismiss, with those allegations taken in the light most favorable to Charging Party. Robinson was employed in the Detroit Water and Sewerage Department. He asserts that he was the object of unwelcome sexual advances by his female supervisor and that he was threatened with retaliation for rejecting such advances.

Robinson asserts that he was not at fault in a disputed incident with a male coworker that led to Robinson's termination from employment. The City charged him with using abusive language in the workplace and with threatening his male coworker. Robinson asserts that some other City employees with similar offenses had not been fired. Robinson was covered by a collective bargaining agreement and the dispute over his discharge went to arbitration. Robinson attached a copy of the arbitration award, which upheld the discharge, finding that Robinson had been the aggressor in the disputed incident with his male coworker.

Robinson acknowledges that his Union met with and conferred with him regarding his employment difficulties and that the Union pursued the matter to arbitration. Robinson acknowledges that the Union presented multiple witnesses on his behalf, including his local union president, at the arbitration hearing.

Discussion and Conclusions of Law:

To avoid dismissal, Charging Party must allege facts that, if established, would prove that the Union's conduct toward him was arbitrary, discriminatory or done in bad faith. *Vaca v Sipes*,

386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). To pursue such a claim, Robinson would have to allege facts that, if proved, would establish not only a breach of the duty of fair representation by the Union, but also a breach of the collective bargaining agreement by the Employer. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992). Allegations in a complaint for a breach of a union's duty of fair representation must contain factual support and not just conclusory statements alleging improper representation. *Martin v Shiawassee County Bd of Commrs*, 109 Mich App 32 (1981); *Wayne County Dept Public Health*, 1998 MERC Lab Op 590, 600 (no exceptions); *Lansing School District*, 1998 MERC Lab Op 403.

Here, Robinson has, in his charge and in his various supplemental filings, merely asserted that the complaints against him should not have resulted in the termination of his employment. He has not pled facts that would support a finding that the Union acted toward him in a discriminatory, arbitrary, or bad faith fashion. His allegations, if proved, would not support a finding that his union acted improperly or with antagonism toward him.

Likewise, the fact that Robinson is dissatisfied with his union's efforts or the arbitrator's ultimate decision is insufficient to constitute a proper charge of a breach of duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. A union has considerable discretion to decide how to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146. A union's decision on how to proceed in an arbitration case is not unlawful as long as it is not so far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35.

The Union interviewed Robinson in preparing to present his case to an arbitrator. Multiple witnesses, including the local union president, testified on Robinson's behalf. No basis has been offered which would support a conclusion that the Union failed to exercise proper discretion in the manner in which it presented the grievance regarding Robinson's termination. The mere fact that the Union was unsuccessful at arbitration does not support a charge.

Similarly, the alleged failure of the Union to timely advise Robinson of the statutes of limitations regarding pursuit of civil rights charges before public agencies does not state a claim under PERA. The Union's duty is to negotiate and administer the collective bargaining agreement. The Union does not serve as the employee's exclusive representative as to all possible legal actions beyond the contractual grievance procedure, and has no general duty to pursue, or to give advice regarding, such outside agency claims on behalf of unit members. There is no allegation here that the Union voluntarily undertook to pursue such claims. Charging Party's allegations do not state a claim under the Act.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____