

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

In the Matter of:

AMALGAMATED TRANSIT UNION LOCAL 26,  
Labor Organization-Respondent

Case No. CU06 I-038

-and-

LAMAR WILLIAMS,  
An Individual-Charging Party.

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**APPEARANCES:**

Law Offices of Mark Cousens, by John E. Eaton, Esq., for the Labor Organization

Lamar Williams, *In Propria Persona*

**DECISION AND ORDER**

On October 27, 2006, Administrative Law Judge Doyle O'Connor (ALJ) issued his Decision and Recommended Order finding that Respondent, Amalgamated Transit Union Local 26, did not violate Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, by refusing to file a grievance on behalf of Charging Party Lamar Williams following his termination. The ALJ held that Charging Party failed to allege facts sufficient to establish that the Union acted out of improper motive and that based on the facts alleged, the Union could rationally decide not to pursue Charging Party's grievance. The Decision and Recommended Order was served on the interested parties in accordance with Section 16 of PERA.

On November 20, 2006, Charging Party filed exceptions to the ALJ's Decision and Recommended Order. In his exceptions, Charging Party alleges that the ALJ erred in finding that the Union did not commit an unfair labor practice. We have reviewed Charging Party's exceptions and find them to be without merit.

**Factual Summary:**

The facts in this case were set forth fully in the Decision and Recommended Order and need not be repeated in detail here. Williams was employed as a bus driver, in a position governed by United States Department of Transportation rules prohibiting the use of illegal drugs and mandating individual testing for such use. Williams failed such a drug test, was subsequently suspended by his employer, and was placed on a last chance agreement. Williams then failed a second test and was terminated. Williams then

discussed his termination with the Union. The Union ultimately decided it would not pursue a grievance on his behalf and notified Williams of this decision.

Discussion and Conclusions of Law:

To prevail against a union on a claim of unfair representation involving a grievance, a charging party must establish both that that union breached its duty of fair representation and that a breach of the collective bargaining agreement occurred. *Goolsby v Detroit*, 211 Mich App 214 (1995); *Knoke v East Jackson Pub Sch Dist*, 201 Mich App 480, 488 (1993). Charging Party failed to state any allegation that would establish a breach of the Union's duty of fair representation or a breach of the collective bargaining agreement.

A union's decision not to proceed to arbitration with a grievance is not arbitrary 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. Williams did not allege that the Union's decision was irrational, arbitrary, or made in bad faith, and the facts alleged do not support such a conclusion. Williams was terminated for his repeated violations of federal regulations, and the Union could reasonably decide not to pursue a grievance challenging his termination on those grounds. Moreover, Williams concedes that the Union took the steps to speak with him prior to its ultimate decision not to pursue a grievance on his behalf. The fact that Williams is dissatisfied with the Union's efforts on his behalf does not establish a breach of the duty of fair representation. *Muskegon Hts Pub Sch Dist*, 1993 MERC Lab Op 654.

For the reasons set forth above, we adopt the Administrative Law Judge's findings of fact and conclusions of law. Accordingly, we find that Respondent did not violate Section 10 of PERA.

**ORDER**

The unfair labor practice charge is dismissed in its entirety.

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:**

John E. Eaton, for the Labor Organization

Lamar Williams, *in pro per*

**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 why the charge should not be dismissed, I make the following findings of fact, conclusions of law, and recommended order.

**The Unfair Labor Practice Charge:**

Lamar Williams filed a charge on September 12, 2006 asserting that he was terminated from his employment as a bus driver and that his Union, Amalgamated Transit Union, Local 26, failed to pursue a grievance on his behalf.

An order to show cause why the charge should not be dismissed was issued on September 14, 2006, directing Charging Party to address the apparent failure to state a claim under the Act. The Charging Party filed a response to the order to show cause on September 22, 2006 indicating that he had been fired from his bus driver position because he had failed a drug test mandated by Federal Department of Transportation (DOT) rules. His response additionally acknowledged that he had previously been suspended from work for a similar violation and had been returned on a last chance agreement. His response noted that after he was fired following the second adverse drug test outcome, he met with two Union officials who advised him that the Union would not pursue a grievance over

his discharge. No allegation is made that the Union acted out of bias, ill-will towards Williams, or that the Union failed to conduct a good faith investigation of the facts before reaching its decision to not pursue a grievance.

#### Findings of Fact:

The findings of fact are derived from the charge and the Charging Party's response to the order to show cause, with those allegations taken in the light most favorable to Charging Party.

Williams was employed as a bus driver in a position covered by Federal DOT rules prohibiting the use of illegal drugs by covered drivers and mandating individual testing for use of illegal drugs. Williams was suspended and placed on a last chance agreement by his employer after failing such a drug test. When Williams again failed such a drug test he was fired.

Williams spoke with a Union representative by phone and then met with two officers of the Local regarding his termination. He was advised that the Union would not pursue a grievance on his behalf.

#### Discussion and Conclusions of Law:

To establish a violation of the duty of fair representation, the Charging Party must demonstrate that the union's conduct toward the bargaining unit member 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 prevail on such a claim, a complainant must establish not only a breach of the duty of fair representation, but also a breach of the collective bargaining agreement. *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 more than 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.

The charge in this matter fails to make any factual allegation that, if proved, would establish a breach of the Union's obligations to Williams. There is no allegation that the Union acted out of improper motive. Likewise, there is no allegation that the Union's decision was arbitrary or the result of gross negligence. Rather, it is alleged that the Union discussed the dispute with Williams and met with him regarding the issue, while ultimately deciding to not pursue a grievance.

The fact Williams is dissatisfied with his Union's efforts or ultimate decision is insufficient to establish 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 which grievances to pursue and which to settle. When evaluating whether to accept a grievance, a union also has discretion to consider the likelihood of success and

the interest of the union membership as a whole. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146. A union's decision not to proceed to arbitration with a grievance is not arbitrary 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.

Accepting all of Williams' factual allegations as true, he was fired as a result of repeatedly testing positive for illegal drugs in violation of Federal DOT regulations covering bus drivers. On these facts, a Union could rationally decide not to pursue the matter through the grievance procedure.

#### RECOMMENDED ORDER

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

#### MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge

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